

# 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 135

26 SEPTEMBER 2013

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1 [PROCEEDINGS ON 26 SEPTEMBER 2013]  
 2 [09:09] CHAIRPERSON: The Commission resumes.  
 3 Colonel, you're still under oath.  
 4 DUNCAN GEORGE SCOTT: s.u.o.  
 5 CHAIRPERSON: Mr Chaskalson.  
 6 CROSS-EXAMINATION BY MR CHASKALSON (CONTD.):  
 7 Thank you, Chairperson. Colonel, when we broke yesterday  
 8 I'd been taking you through the evolution of the SAPS  
 9 version on when the encirclement plan was abandoned and  
 10 replaced with the plan to disperse and disarm, and had been  
 11 showing that the version that was first advanced by SAPS in  
 12 the presentation, in the narrative, in your first two  
 13 statements, and in the evidence of Major-General Annandale,  
 14 was one which consistently suggested that the encirclement  
 15 plan had been abandoned on the Tuesday in favour of the  
 16 plan to disperse and disarm. You'll recall that section of  
 17 the cross-examination?  
 18 COLONEL SCOTT: I recall the section,  
 19 yes.  
 20 CHAIRPERSON: Before you continue, Mr  
 21 Chaskalson, you remember you put to him what Major-General  
 22 Annandale had said and you suggested that he read the  
 23 passage in the transcript to get the context and so forth  
 24 overnight, and then give his answer. I don't know whether  
 25 it's perhaps appropriate to deal with it first –

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1 MR CHASKALSON SC: Indeed, Chair –  
 2 CHAIRPERSON: Unless you want to deal  
 3 with the other point you're making?  
 4 MR CHASKALSON SC: Not at all,  
 5 Chairperson. That was in fact the very next point to which  
 6 I was going to turn. So Colonel, you'll recall I referred  
 7 you to a passage from the testimony of Major-General  
 8 Annandale and in fairness to you I said you can't really  
 9 answer, you can't be expected to answer for Major-General  
 10 Annandale, but if you want to look at it overnight and  
 11 respond in the morning, you should feel free to do so. So  
 12 this is your opportunity, but in fairness to you I do want  
 13 to emphasise that from our perspective we don't see any  
 14 obligation on your side to respond for Major-General  
 15 Annandale.  
 16 COLONEL SCOTT: Thank you, and  
 17 Chairperson, I don't think I can respond to his words. I  
 18 don't know what his thought patterns were or what he was  
 19 thinking at the time. Whether it was just a misspoken word  
 20 by him, I can't, I don't know. I haven't contacted him  
 21 either to find out.  
 22 CHAIRPERSON: What he said was wrong?  
 23 COLONEL SCOTT: In my opinion, yes.  
 24 CHAIRPERSON: Thank you.  
 25 MR CHASKALSON SC: Colonel, you've now

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1 had an opportunity to, well, reflect on what we covered  
 2 yesterday. Can you offer us any explanation for why these  
 3 four different aspects of the SAPS case, the presentation,  
 4 the narrative, Major-General Annandale's testimony, and  
 5 your own first two statements all seem to suggest that the  
 6 encirclement plan was abandoned on the Tuesday.  
 7 COLONEL SCOTT: Thanks. I can try.  
 8 Obviously it's all limited to memory recall as well, and  
 9 I've also been pondering on it. At the time that the  
 10 operation was running, and as I was mentioning, there was a  
 11 lot of lack of sleep and so on –  
 12 CHAIRPERSON: Lot of?  
 13 COLONEL SCOTT: Lack of sleep and  
 14 fatigue, and what I've come to appreciate later when  
 15 putting my consolidated statement together, which was the  
 16 first time I actually started scouring the documents to try  
 17 and get a more objective timeframe and see what I was  
 18 saying at the time, this is where I started picking up that  
 19 – and it was coming back to memory what was actually  
 20 happening with regard to my presentations, and I know it  
 21 may be a repetition, but just to go through it, on the  
 22 Tuesday I definitely presented the whole presentation to  
 23 the formalised JOCCOM that afternoon at about 2 o'clock.  
 24 The Wednesday morning I only gave the strategic area again  
 25 which dealt with the operational deployment side of phase

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1 1, and then obviously reflected there again to the other  
 2 phases at the time by name. I may have at that stage  
 3 already given more detail on phase 2, having more time now  
 4 to have gone into detail on that, but by Thursday – and why  
 5 I say this is in the mornings I couldn't actually update  
 6 the numbers in some of the slides when it spoke to 56 POPs  
 7 members need to go to this position and so on. I would be  
 8 waiting for the roll-call to be done to see who was there  
 9 to try and fill that in, and then most of that deployment  
 10 positioning anyway was done by General Annandale, being the  
 11 superior rank to be able to tell the superior officers  
 12 okay, you will take command there, you will go to this  
 13 position, etcetera. So I know that by the Thursday some of  
 14 the numbers that I was trying to fill in were not always  
 15 coinciding with what was being shown. I wasn't in time, or  
 16 fast enough to get everything right by the time I needed to  
 17 present, and already by the Wednesday on the coordinating  
 18 instructions, the times that I had ideally put out in the  
 19 coordinating instructions were also not being met because  
 20 it would almost be on a stopwatch that you needed to be out  
 21 here by this time, you needed to be briefing members by  
 22 that time; we needed you at the front by this time, which  
 23 is normally the way I would run an operation, and those  
 24 weren't being met because of the size and the magnitude and  
 25 the parades that need to be held and the JOCCOM briefings

1 were going on longer than I'd expected them to, etcetera.  
 2 So in upgrading these slides, by the Thursday I  
 3 got to the place where, and with the experience I was  
 4 having at that time as well as these slides were becoming  
 5 extra information. Most of the people that had seen them  
 6 by then had seen them and it was just a repetition, and the  
 7 emphasis was now more on the actual putting up the  
 8 deployment, still going over the mission, putting up the  
 9 deployment to show the commanders where they were expected  
 10 to be and what they were expected to do, explaining to them  
 11 their roles. So by Thursday, the best explanation I've got  
 12 is that some of the slides are still from the Wednesday. I  
 13 got to sitting in the meeting and changing some of the  
 14 dates on them and trying to upgrade some of them, but in  
 15 being incomplete, I – and I speak under correction, I'm not  
 16 sure that I presented most of what I was even presenting on  
 17 the Wednesday, and definitely not what I was presenting on  
 18 the Tuesday.  
 19 Come the operational period in time, that evening  
 20 after the operation had happened, to the best of my  
 21 recollection we knew that there was going to need to be a  
 22 media briefing by the National Commissioner, and of the  
 23 opinion as well that part of these briefings, and even  
 24 briefings to her and other senior officers, I would need to  
 25 give some reflection, whether it be a record of what was

1 actually shown needed to be made more viewable or, than  
 2 what was there, to try and fix it for the showing to the  
 3 senior police management, and possibly in the briefings  
 4 thereafter. So I started the Ops Platinum, which is an  
 5 incomplete document, which is on the Thursday evening.  
 6 The Friday morning the decision was taken that  
 7 the presentation to the media would only comprise of  
 8 photographs, and if there was any video material, which was  
 9 only of the 13th at that time that we could get our hands  
 10 on, and that's what went forward. The same presentation –  
 11 CHAIRPERSON: [Microphone off, inaudible]  
 12 she also of course made a statement herself, the National  
 13 Commissioner, didn't she? On the Friday morning.  
 14 COLONEL SCOTT: Yes –  
 15 CHAIRPERSON: The National Commissioner  
 16 made a statement as well.  
 17 COLONEL SCOTT: Yes –  
 18 CHAIRPERSON: Are you talking about the  
 19 presentation that you were presenting after that?  
 20 COLONEL SCOTT: Ja, the visual  
 21 presentation.  
 22 CHAIRPERSON: Oh, okay.  
 23 COLONEL SCOTT: Just going back a bit  
 24 though, I think what maybe interrupted my putting together  
 25 of the plan on the Thursday afternoon, or Thursday early

1 evening, was the tasking now to start with the briefing  
 2 note to the President, which was trying to get as much  
 3 information together as possible, because I know that I  
 4 only sent that off officially at about 2 o'clock in the  
 5 morning.  
 6 To get back to the National Commissioner's  
 7 briefing, I'm not sure, I think that happened at about 10,  
 8 11 o'clock in the day. I was also mistaken, and I think  
 9 that my statement speaks to the President's briefing being  
 10 on the 18th; it was also the 17th, the briefing of the  
 11 President. So it was almost two, three, four hours after  
 12 the National Commissioner's briefing when the President  
 13 came, gave a press briefing, and we briefed him after that  
 14 again. In saying that, the briefing he received would be  
 15 very similar to the one that was given to the media,  
 16 because I can't recall upgrading the President's briefing  
 17 other than what was shown to the media that day.  
 18 Continuing to work on this presentation further,  
 19 I think after the Commission was announced the decision was  
 20 taken that we would need to put together to assist the  
 21 Commission with something from the SAPS' side of a  
 22 presentation to show what the SAPS, how they experienced  
 23 it, and this is where the beginnings of, I think the first  
 24 version is actually even saved as "President Zuma," but if  
 25 you look at the date it's already on the Monday when I'm

1 working on that, and I've taken parts of the plan from the  
 2 Thursday when I was busy there and I started putting them  
 3 into this presentation on that Monday now.  
 4 At the same time I was also tasked to build the  
 5 presentation which showed what we were doing post the 16th  
 6 to maintain the law and order in the area, and that had to  
 7 accompany the original presentation to the President, which  
 8 we now give to an inter-ministerial committee, and I think  
 9 that was possibly on the Monday, and we had to also brief,  
 10 I think it was, the Provincial Portfolio Committee also was  
 11 briefed, and so it went on. But for much of that week I  
 12 was kept pretty busy and not able to reflect specifically  
 13 on the events of the 16th, or specifically recalling JOCCOM  
 14 meetings from the 6 o'clock in the morning, or the, as much  
 15 of the wording and so on that I could remember from there.  
 16 But eventually coming back to the plan and  
 17 reading my own slides from where I had put in that this is  
 18 the meeting of the 16th, it was still reflecting  
 19 encirclement and I was at that stage convinced by what I  
 20 still had that it's, at that time of the morning was  
 21 encirclement, and this continued pretty much until we got  
 22 to Roots and everybody got to sitting down in their groups  
 23 and talking, and something there, or someone or something  
 24 there got to show me, and I say that because I can't  
 25 recollect specifically a time or a specific event, but I

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1 would think it may have been the photographs or the Google  
 2 printouts of the morning that I handed out which shows the  
 3 prepositioning of the Nyalas, that it wasn't encirclement  
 4 because there the prelude to a phase 3 was already  
 5 structured in part of the planning of a phase 2, which  
 6 meant that I was now off with encirclement when it had to  
 7 have been a dispersion action already. I'd forgotten about  
 8 the meeting on the Wednesday at this stage. That was only,  
 9 as I say, triggered later this year when I was actually at  
 10 the offices here and somebody mentioned the cattle, and  
 11 that brought back a flood of memories, the cattle in the  
 12 environment, which actually brought back the flood of  
 13 memories, and I still for a moment thought that that was  
 14 on, that could have been on the Thursday, but then it was  
 15 again a little bit later clarified that but Brigadier  
 16 Engelbrecht was also part of that and he wasn't there at  
 17 that time, so it had to have been on the Wednesday, because  
 18 there was that slight conflict for me about exactly where,  
 19 due to a lack of memory, where to position these things,  
 20 although now I could recall where, that that had taken  
 21 place; it was just about where to sequence them. But the  
 22 objective evidence to me was the handouts that I'd given  
 23 out on the Thursday morning to the commanders showing phase  
 24 2 –  
 25 CHAIRPERSON: What time did you give them

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1 out?  
 2 COLONEL SCOTT: At half past 8 in the  
 3 morning, Chairperson, and I also, something that also comes  
 4 back to memory is that it's possible that both tactical  
 5 options were still on the cards, that we hadn't totally  
 6 discarded encirclement because encirclement could possibly  
 7 still be used as an early morning, but that dispersion was  
 8 definitely brought in for a larger grouping. So I don't  
 9 know if that may help explain certain issues, but I recall  
 10 in writing my first statement as well that I'd actually  
 11 mentioned in phase 3 we had two options, because when you  
 12 develop options, or tactical options in a plan, you develop  
 13 always more than one. You consider as many as you can, and  
 14 then choose the feasible one to continue with, and when I  
 15 initially wrote my statement I put two in, but then in  
 16 shortening the statement in a sense I took the opinion of  
 17 just writing what had actually happened. I didn't think  
 18 that the –  
 19 MR CHASKALSON SC: Colonel, I'm really  
 20 sorry to interrupt you. It's just been communicated to me  
 21 that our power is about to blow and we need to take a short  
 22 break.  
 23 CHAIRPERSON: We'll now adjourn and  
 24 return after the power blows over.  
 25 [COMMISSION ADJOURNS COMMISSION RESUMES]

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1 [09:46] CHAIRPERSON: The Commission resumes. I  
 2 understand the power did blow just after we adjourned, but  
 3 it's been restored and so we can carry on with your  
 4 evidence. You were in the middle of an explanation about  
 5 the problems you had, as I understand it, in reconstructing  
 6 what had happened over the relevant period. You were  
 7 explaining the various things that you had to do in the  
 8 period immediately thereafter which also delayed the  
 9 process of reconstruction. Is that an accurate summary of  
 10 what you were telling us? Can you remember more or less  
 11 the point you had reached, is there something further you  
 12 wish to say in that regard?  
 13 COLONEL SCOTT: I've actually lost the  
 14 point where I was at. I know it was in the second week of  
 15 the Marikana –  
 16 CHAIRPERSON: It was actually the second  
 17 week, you explained how in the second week you said there  
 18 were various duties in relation to the preservation of law  
 19 and order at that time to which you had to give attention.  
 20 And so you were, after some delay really, finally able to  
 21 sit down to start reconstructing fully what had happened at  
 22 the relevant period. And then you also told us about how  
 23 you were involved in briefing the President and also the  
 24 inter-ministerial committee. Those were more or less the  
 25 points that you were making. Those who later read the

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1 transcript will see that there was probably something very  
 2 important you said just before the power failed which I've  
 3 forgotten, but you know. Anything you want to add, I think  
 4 the general thrust of what you were telling us is clear.  
 5 Then perhaps if you think of anything later that's relevant  
 6 you can add it.  
 7 COLONEL SCOTT: Chairperson, I was just  
 8 checking the – I think it's the finalised presentation at  
 9 the end of Roots which is Complete Marikana 2012-08-03 is  
 10 what stands as the heading although I think it is saved  
 11 only at the end of Roots. And I was just going through  
 12 that to have a look because certain points I raised  
 13 yesterday that the plan initially was spread out and then  
 14 brought back to a certain day. The parts of the plan that  
 15 were spread out were simply those Google Earth pictures.  
 16 They were spread out over the three days, but the part of  
 17 the plan that speaks to phase 1, 2 and 3 came along from  
 18 the beginning as a slide before days were even put out.  
 19 And that was one slide which eventually became expanded  
 20 into more when these pictures were all taken back to the  
 21 Tuesday. So there was no malicious intent to present that  
 22 and I see that in the document at the end of Roots it does  
 23 state there and I'll quote it off the document itself and  
 24 I've just opened this now in the break to have a look.  
 25 MR CHASKALSON SC: Chairperson, possibly

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1 if I can assist here, the document to which Colonel Scott's  
 2 referring is going to be in exhibit. We've provisionally  
 3 given it the number JJJ155, JJJ155. It's the PowerPoint –  
 4 CHAIRPERSON: Has it been put in yet?  
 5 MR CHASKALSON SC: It has been put in. I  
 6 don't have a page reference for it at this stage. It will  
 7 be in one of the later files. I can get –  
 8 CHAIRPERSON: No, has it been referred to  
 9 yet in the course of the evidence?  
 10 MR CHASKALSON SC: It hasn't been  
 11 referred to.  
 12 CHAIRPERSON: So shall we, just for the  
 13 sake of good housekeeping, record it as exhibit now?  
 14 MR CHASKALSON SC: Indeed, Chairperson.  
 15 CHAIRPERSON: JJJ155 and how does one  
 16 describe it?  
 17 MR CHASKALSON SC: The PowerPoint  
 18 presentation entitled Complete Marikana –  
 19 CHAIRPERSON: Complete?  
 20 MR CHASKALSON SC: - Complete Marikana  
 21 2012-08-03.  
 22 CHAIRPERSON: How can that be right?  
 23 COLONEL SCOTT: I think that 08 is  
 24 supposed to be an 09.  
 25 CHAIRPERSON: It sounds like it, unless

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1 it was a 10.  
 2 COLONEL SCOTT: No, no I think it must be  
 3 09-03, it should be because that was –  
 4 CHAIRPERSON: Yes, obviously, yes you  
 5 would have required crystal ball qualities in order to  
 6 prepared the presentation of the 3rd of August wouldn't you?  
 7 So that didn't happen. All right so that's the document  
 8 you're referring to.  
 9 COLONEL SCOTT: That's the document.  
 10 Chairperson, there's a slide in there, slide 64 which says  
 11 Operational Overview and that slide has stage 1, 2 and 3.  
 12 That same slide comes from – not during the operation of  
 13 Marikana but when the presentation started –  
 14 MR CHASKALSON SC: Colonel, I'm sorry to  
 15 interrupt again. I gave it the exhibit number prematurely.  
 16 My version of this file which is JJJ155 seems to be a  
 17 version that was saved at a different time with different  
 18 slide numbering, so -  
 19 CHAIRPERSON: I wonder whether it's  
 20 necessary for us to go into this now. You know you've  
 21 given a long answer and I haven't stopped you because I  
 22 understand it's important for you and probably ultimately  
 23 for us that the question of the accuracy of your memory  
 24 should be looked at. Why things were said and so on, but I  
 25 think you've given us a fairly long account of that. It

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1 may well be appropriate to return to it, if you wish, later  
 2 in your evidence, maybe re-examination. But I think, if I  
 3 speak for myself only, it might be appropriate for us to  
 4 move to other matters and then later on when all the  
 5 documents are in and the whole picture is before us perhaps  
 6 we can come back to it if it's necessary. But perhaps you  
 7 can just clarify what it is that you're referring to as  
 8 opposed to the document Mr Chaskalson thinks you're  
 9 referring to, just to get that thinned down as it were now  
 10 and then we'll move on. Do you agree with that?  
 11 COLONEL SCOTT: Yes, yes, Chairperson, it  
 12 was just the stage 3 there, it reads, "Stage 3 Tactical  
 13 option Of encircle, dialogue to disarm or second sub-  
 14 bullet, Disperse into smaller groups, encircle and disarm."  
 15 It's reflecting both of the tactical options in that slide,  
 16 Chair.  
 17 CHAIRPERSON: Mr Chaskalson, do you –  
 18 COMMISSIONER HEMRAJ: May I just seek  
 19 clarity about something please?  
 20 In your statement and you testified to this as  
 21 well in 8.22 about a conversation you have with General  
 22 Annandale. I just need to know exactly when this took  
 23 place please. 8.22 of your statement, it's on page 63 of  
 24 HHH20. You say there when Major-General Annandale and I  
 25 started discussing phase 3 the angle of encircling the

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1 strikers while they were a large group and aware of police  
 2 presence was quickly discounted and you give a whole lot of  
 3 reasons for that. When did that conversation take place?  
 4 COLONEL SCOTT: Ma'am, to the best of my  
 5 recollection it was on the Wednesday sometime after the  
 6 JOCCOM and I tend to think it was still in the morning  
 7 period of the Wednesday.  
 8 COMMISSIONER HEMRAJ: But regardless of  
 9 that discussion the word "encirclement" is still carried  
 10 over into other documents after that discussion.  
 11 COLONEL SCOTT: Yes. What I was trying  
 12 to explain earlier was the JOCCOM of the 15th still had  
 13 encirclement as the tactical option. Going to the 16th I  
 14 was still trying to work on those slides. I don't know if  
 15 I got to completing those slides, but it still reflected  
 16 encirclement on the 16th because of coming from the JOCCOM  
 17 of the 15th.  
 18 CHAIRPERSON: I take it the two of you,  
 19 General Annandale and you, didn't have the power yourselves  
 20 to change the plan.  
 21 COLONEL SCOTT: No.  
 22 CHAIRPERSON: Change could only be made  
 23 by the JOCCOM. Is that right?  
 24 COLONEL SCOTT: That's correct.  
 25 CHAIRPERSON: And that could only have

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1 been on the 16th.

2 COLONEL SCOTT: That's correct.

3 CHAIRPERSON: Theoretically, even if you

4 had come up with a complete plan involved in the

5 abandonment of the encirclement and replacement by

6 something else, even if you had done that on the Wednesday,

7 theoretically the JOCCOM might have said we don't agree.

8 We think that new plan of yours is inherently risky and we

9 think that the encirclement one, if done the way we've seen

10 it so far is less risky. So they might theoretically have

11 done that, whether they would or not is pure speculation

12 but that's a possibility I take it. Is that right?

13 COLONEL SCOTT: That's correct,

14 Chairperson, I think that explains why we didn't go into

15 the detail of the new proposed phase 3, but just the

16 strategic idea of an alternative option was considered. If

17 we couldn't encircle what would we do and then disperse

18 them rather into smaller groups and then try to encircle

19 smaller, more manageable groups for that matter. And that

20 strategy to the best of my recollection now is berthed on

21 the Wednesday.

22 CHAIRPERSON: Only in private discussion

23 between you and General Annandale.

24 COLONEL SCOTT: It was in the JOCCOM, but

25 it wasn't a formalised meeting. I think –

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1 CHAIRPERSON: Decision was taken on it?

2 COLONEL SCOTT: No.

3 COMMISSIONER HEMRAJ: So in that same

4 statement at 8.24 at page 65 when you speak of the

5 alternate suggestion of dispersal into smaller groups,

6 disorganised groups, is that part of the same conversation

7 with Major-General Annandale?

8 COLONEL SCOTT: I think it is,

9 Commissioner, I'm trying to remember but I know that I

10 would have been sparked into considering, the points being

11 highlighted that an encirclement of the larger group is not

12 going to be feasible. Obviously the strategising I would,

13 being there as a strategic planning officer, would need to

14 start coming up with something. I don't remember if this

15 was expressly discussed with him or if it was something

16 that I sat back and did on my own first and then took to

17 him. But it was definitely, if I look at how we briefed

18 the phase 2 for the Thursday morning, it was already then

19 being discussed for that matter.

20 COMMISSIONER HEMRAJ: Thank you.

21 CHAIRPERSON: The section to which my

22 colleague has referred you in your statement HHH20 the Para

23 she's just referred you is introduced essentially by

24 paragraph 8.22 where you talk about the discussion that you

25 had with General Annandale. And the points raised were –

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1 and then you set the points out in sub-paragraphs and then

2 the statement continues essentially elaborating on what

3 appears in the very sub-paragraph 8.22. So it does appear

4 as if you're only talking about a discussion with General

5 Annandale, as I read it. If I'm wrong you must correct me.

6 COLONEL SCOTT: Well I remember the

7 discussion being predominantly between the two us,

8 Chairperson, but I know it was in the JOC which means – and

9 the JOC was never empty where it was only the two of us

10 there, there would have been other permanent role players

11 sitting around the table. But I do recall it being an

12 informal meeting, it wasn't something sat down and spoken

13 to. Brigadier Engelbrecht does refer to what seems to be a

14 little bit more of a formalised meeting when we reviewed

15 the actual phase 3 where I gave a presentation on that.

16 But he doesn't speak to the points afterwards which were

17 definitely – General Annandale and myself, I can only

18 remember the two of us sort of brainstorming against each

19 other, coming up with why this thing couldn't work. I

20 don't remember any other inputs though, or from other

21 people.

22 COMMISSIONER HEMRAJ: But there was

23 consensus reached between you and Major Annandale, Major-

24 General Annandale at that stage as to how you would

25 progress with the matter the following day?

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1 COLONEL SCOTT: I think that I can say

2 that the consensus was reached that an encircling of that

3 larger crowd and this is why I alluded yesterday to the

4 picture which showed the razor wire being positioned

5 against the power station was - I think was still looked at

6 to see whether that could be feasible. Did we have enough

7 razor wire, but I really can't remember the rationale

8 around that, but it was definitely then seen that

9 encircling that larger group is not going to be feasible.

10 COMMISSIONER HEMRAJ: You do speak to

11 that in paragraph 8.26 on page 67, is that your

12 recollection of how it was resolved at that meeting, was

13 that during that discussion?

14 COLONEL SCOTT: That's 8.27 or 8.26?

15 COMMISSIONER HEMRAJ: 8.26 that's going

16 over the page.

17 COLONEL SCOTT: I see what I've said

18 there and this was again the best of my recollection, I

19 don't think we would have left the point hanging. I think,

20 while during those discussions we would have actually said

21 well what are the alternatives then. But what I do

22 pertinently recall is that there wasn't detail at all put

23 to that new strategy. It remained basically a sentence of

24 this is the next option that we must look at.

25 COMMISSIONER HEMRAJ: Thank you.

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1 MR CHASKALSON SC: Colonel, it's –  
 2 CHAIRPERSON: Sorry, before you carry on,  
 3 Mr Chaskalson, one question I'd like to ask you before he  
 4 proceeds. It follows on the question that my colleague,  
 5 Advocate Hemraj, put to you. It's 8.23 of your statement,  
 6 at the foot of page 64 where you make the point, I take it  
 7 you still adhere to it, that "for many good reasons  
 8 encirclement could only be feasible for an early morning  
 9 deployment where a small number of less than 55 were on the  
 10 koppie." So encirclement as planned was only a viable  
 11 option early in the morning, first light basically,  
 12 possibly before sunrise.  
 13 COLONEL SCOTT: Chairperson, that's  
 14 correct. As it was envisioned for the Tuesday morning  
 15 initial –  
 16 CHAIRPERSON: I know, but you're now  
 17 talking, as I understand it, in 8.23 about –  
 18 COLONEL SCOTT: Yes, yes as I mean, we  
 19 couldn't do it Tuesday, I envisioned it possible for  
 20 Wednesday –  
 21 CHAIRPERSON: You couldn't do it for  
 22 Wednesday, subject to what you're now telling us, it could  
 23 hold over until Thursday, but according to what you say  
 24 there was no formal decision at the JOC to abandon that  
 25 idea –

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1 COLONEL SCOTT: Yes.  
 2 CHAIRPERSON: - before Thursday morning.  
 3 Thursday morning you had a problem because there was still  
 4 the possibility, although the intelligent people didn't  
 5 believe it –  
 6 COLONEL SCOTT: That's correct.  
 7 CHAIRPERSON: - that the arms could be  
 8 laid down, put down. So if the encirclement was going to  
 9 be proceeded with it could only be done on Friday.  
 10 COLONEL SCOTT: Yes.  
 11 CHAIRPERSON: That's right. Whether it  
 12 was still feasible on Friday is a matter that you  
 13 presumably will be questioned about.  
 14 COLONEL SCOTT: Yes.  
 15 CHAIRPERSON: But that's the position is  
 16 it not?  
 17 MR CHASKALSON SC: Colonel, 45 minutes  
 18 down the line I have to say I think we've been a little at  
 19 cross purposes, you and I because the exchanges have been  
 20 very helpful but they've really gone to a question which is  
 21 a different question from the question I was interested in.  
 22 The exchanges that have taken place have gone to the  
 23 question of when the encirclement plan was abandoned. Was  
 24 it Wednesday afternoon, Thursday morning or was it still on  
 25 the table at the JOC, coming out of the JOC on the Thursday

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1 morning and abandoned later? And in that context you were,  
 2 I think, explaining why some of the documents that you  
 3 produced after the event suggested that the abandonment  
 4 took place later on the Thursday. My question was in fact  
 5 a slightly question, my question related to the fact that  
 6 as between us now it's common cause that the plan wasn't  
 7 abandoned on the Tuesday, it wasn't abandoned on the  
 8 Wednesday morning either. And was at least on the table  
 9 until the JOCCOM meeting at 6 o'clock on the Thursday. Is  
 10 that correct?  
 11 COLONEL SCOTT: That's correct.  
 12 MR CHASKALSON SC: And yet if we go to  
 13 four different elements of the SAPS version that were  
 14 presented earlier, they all suggest that the plan was  
 15 abandoned on the Tuesday. And I was asking you to explain  
 16 why that would be the case. Why would four different  
 17 aspects of the SAPS version, the presentation, the  
 18 narrative, your first two statements, Major-General  
 19 Annandale's evidence, why would they all suggest that the  
 20 plan was abandoned on the Tuesday when we know now that  
 21 that's not the case? It was at best abandoned on the  
 22 morning of the 16th, at the Thursday 16th 6:00am JOC  
 23 meeting. So why the different version from SAPS to begin  
 24 with?  
 25 COLONEL SCOTT: I think that what you're

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1 saying in abandoned, I can't speak for General Annandale  
 2 and the comments that he made, but what we were trying to  
 3 convey in the presentation and in my statements was simply  
 4 that that was the stages as they were for the operation.  
 5 We didn't see the importance or we didn't see at that time  
 6 that it was important to mention something that we didn't  
 7 do or continue with. That's the best I can answer to it,  
 8 it was never looked at in the depth that you're looking at  
 9 it now that it could be a controversial issue. So as I  
 10 say, we tried to work on what we did do and what we did  
 11 want to have in place on the Thursday for that matter.  
 12 Although it's mentioned on the Tuesday and as I said  
 13 yesterday and as I was explaining a moment ago, that the  
 14 slides which deal with the planning, barring the Google  
 15 pictures which were initially put onto each of the days,  
 16 the Tuesday, Wednesday, Thursday were brought back to the  
 17 Tuesday because it was felt that in the presentation and  
 18 possibly speaking for the narrative too it would be  
 19 difficult to have a plan which was segmented over the days.  
 20 And it wouldn't give the reader or the audience the  
 21 continuity of what the stages were having to deal with a  
 22 lot of information between the deployment as such.  
 23 CHAIRPERSON: In fact what is in the  
 24 presentation is inaccurate is it not? I mean, it creates  
 25 an impression that this was the position -

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1 [10:05] COLONEL SCOTT: I understand that,  
 2 Chairperson, yes.  
 3 CHAIRPERSON: So surely inaccuracy can't  
 4 be preferred to something which the reader will have  
 5 difficulty in following which will ultimately presumably  
 6 with guidance be able to follow. That must be so, surely,  
 7 or am I overstating it?  
 8 COLONEL SCOTT: Chairperson, as I say,  
 9 there was no malicious intent to because –  
 10 CHAIRPERSON: No, no, no, I'm not  
 11 suggesting malice.  
 12 COLONEL SCOTT: Ja.  
 13 CHAIRPERSON: I'm just saying effectively  
 14 you want him to be saying, I don't think you thought it out  
 15 properly, but really an inaccurate statement you seem to be  
 16 suggesting is better than a statement which is more  
 17 difficult to understand.  
 18 COLONEL SCOTT: Yes.  
 19 CHAIRPERSON: You don't mean that, do  
 20 you?  
 21 COLONEL SCOTT: No.  
 22 MR CHASKALSON SC: Colonel, in your  
 23 explanation you said something along the lines that it was  
 24 never anticipated that this would be controversial. I  
 25 think the word you used was 'controversial,' but I must put

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1 to you that SAPS must have anticipated that this would be  
 2 an important issue before the Commission, because SAPS  
 3 implemented a plan on the 16th. Things went horribly wrong,  
 4 for whatever reason, and 34 people ended up dead. Now one  
 5 of the things that SAPS must have known that they would  
 6 have to explain at this Commission is that the death of 34  
 7 people was not caused by a plan that had been put together  
 8 without sufficient care. That much you must have known.  
 9 Would you accept that?  
 10 COLONEL SCOTT: Yes.  
 11 MR CHASKALSON SC: And you were the  
 12 primary planner, so that must have weighed quite heavily  
 13 with you in particular.  
 14 COLONEL SCOTT: Well, I didn't see it the  
 15 way you're seeing it because if what you're saying, you  
 16 know, why would I have given all my evidence, all my  
 17 PowerPoint presentations which speak to encirclement,  
 18 etcetera, over if this was the case?  
 19 MR CHASKALSON SC: Colonel, no, I must  
 20 accept that you of all the people in SAPS have played open  
 21 cards with us and have given us access to contemporaneous  
 22 documents that we hadn't received through the official SAPS  
 23 channels, and I must place on record our gratitude for  
 24 that. But I've been dealing with the version that was put  
 25 up before we got to see those documents, and you and SAPS

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1 must have known that you were going to have to show to this  
 2 Commission that the plan that was ultimately implemented  
 3 was one that had been designed with all of the care  
 4 required of a reasonable police force dealing with the  
 5 situation with which you were confronted at Marikana. Will  
 6 you accept that?  
 7 COLONEL SCOTT: I think that the view I  
 8 had – and I can only speak for myself, not for others – was  
 9 that although the plan was created and there was the stages  
 10 that were there and the strategy to me was sound, the fact  
 11 that it never got to roll out the way it was envisioned to  
 12 roll out was to me, and unless it's proven otherwise still  
 13 my belief that there was an intention from those strikers  
 14 to confront the police with aggression. So there was  
 15 never, and that was my point of view from what I'd seen and  
 16 from the evidence I was shown, and so as I say, there was  
 17 no, the planning as itself never got to roll out. I never  
 18 had a reason to – I believe that if the plan that its  
 19 chance to have been effectively rolled out the way that it  
 20 was envisioned to roll out, there would have possibly been  
 21 far fewer injuries for that matter, or incidents that would  
 22 have occurred.  
 23 MR CHASKALSON SC: Well, Colonel, that's  
 24 a completely different chapter of this cross-examination,  
 25 which we're unlikely to reach before we break today, but we

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1 will have to discuss that, but my present concern is  
 2 something slightly different. It's you and SAPS must have  
 3 realised that you were going to have to show this  
 4 Commission that you put all of the appropriate care into  
 5 the plan, into designing the plan that was ultimately  
 6 implemented. Would you accept that much?  
 7 COLONEL SCOTT: Well, what I can accept  
 8 is – and as I say, time was a limiting factor. So if one  
 9 takes this and thrashes it out, as we've had a year to do  
 10 now, it's not, or the saying goes 20/20 hindsight now. At  
 11 the time, and what we knew at the time, the limited things  
 12 we knew at the time, the limited time we had to prepare  
 13 what we did, I feel we did as best as we could, and what  
 14 we've put onto paper thereafter is only what we could have  
 15 done and that's the reflection of what we have done. So to  
 16 try and make it look better than what we have is just not  
 17 what was there at the time.  
 18 MR CHASKALSON SC: Well, you said a short  
 19 while earlier you can only speak for yourself, you can't  
 20 speak for SAPS, but we can see what the SAPS position was,  
 21 broader than your own, from the opening statement, and  
 22 paragraph 25 of the opening statement puts the SAPS case in  
 23 these terms. "You will hear of the fluidity of the  
 24 situation at Marikana on Thursday, 16 August 2012, a  
 25 situation that got out of control and tragic unintended



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1 consequences resulted" - and this is the passage I would  
 2 emphasise - "despite meticulous scenario planning by  
 3 experienced generals and other officers at the joint  
 4 operational centre to achieve the object of dispersing and  
 5 disarming over 3 000 protesters." Now you also said that  
 6 time is the limiting factor, and that's why this shift in  
 7 the version from an original version which we now know  
 8 wasn't true, or wasn't correct, that the dispersal and  
 9 disarm plan had been put on the table on Tuesday and was  
 10 there from Tuesday through Wednesday to Thursday when it  
 11 was ultimately implemented. From that version to the  
 12 current version, which is it was only first adopted in  
 13 principle by the JOC at 6 in the morning, seems to me quite  
 14 an important shift because if it had been there for two  
 15 days, it starts looking much more like a plan that was the  
 16 subject of meticulous scenario planning by generals in the  
 17 JOC. In fact, it wasn't there for two days. Let's look at  
 18 what your version says about it now. It originated in  
 19 discussions at the JOC on Wednesday, but that wasn't  
 20 anything meticulous because you make clear in your  
 21 statement that the detail of phase 3 as to how the action  
 22 would take place was not discussed. That's page 67 para  
 23 8.26, and you've reconfirmed that today, and in fact in  
 24 answer to the Chairperson you candidly said if there was  
 25 going to be a change of strategy it would be the JOCCOM

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1 that would have to adopt that formally, and in advance of  
 2 any formal adoption by the JOCCOM, you wouldn't go into  
 3 detail because until the JOCCOM had formally adopted there  
 4 wasn't a strategy to flesh out in detail. Is that a fair –  
 5 COLONEL SCOTT: I wouldn't say that I  
 6 wouldn't go into detail. As I say that I think the thought  
 7 processes for me were triggered already then, but it  
 8 wasn't, it was an open point discussion to consult with  
 9 others on.  
 10 MR CHASKALSON SC: I think your words  
 11 were, "It was only an outline of the strategic option,  
 12 there wasn't any detail at all." I think that was in  
 13 response to Commissioner Hemraj.  
 14 COLONEL SCOTT: Yes.  
 15 MR CHASKALSON SC: So there wasn't any  
 16 detail on the Wednesday. We then get to the 6AM JOCCOM on  
 17 the Thursday, and you discuss that at page 74, paragraph  
 18 9.4 of your statement, and you say, "When I was asked to  
 19 show the deployment, I briefed the commanders by showing  
 20 the mission and strategic guidelines and then speaking  
 21 directly to the Google Earth satellite photo with icons  
 22 arranged on it. In explaining phase 2 I mentioned the  
 23 outline of phase 3 as phase 2 was in essence also a  
 24 prepositioning in case phase 3 was to be implemented." So  
 25 again you're not providing any detail of phase 3 in the

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1 morning.  
 2 COLONEL SCOTT: Ja, that's correct.  
 3 MR CHASKALSON SC: And there's certainly  
 4 not going to be any detailed debate within the JOCCOM, at  
 5 the formal JOCCOM meeting of the details of phase 3 in the  
 6 morning.  
 7 COLONEL SCOTT: No, but I think one must  
 8 also understand that some of the principles mentioned, if  
 9 you say to the POPs commanders 'dispersal,' there's a whole  
 10 host of prerequisites to a dispersal which they immediately  
 11 understand. If you talk about a defensive line of razor  
 12 wire, they understand what that is too, to isolate a  
 13 specific area or target, or to cordon off an area. So I'm,  
 14 but it's true what you're saying, that it wasn't discussed  
 15 in detail and I'm just mentioning that when you do speak to  
 16 commanders, they have the techniques, the tactics, and the  
 17 procedures already embedded through their training. It's  
 18 not necessary always then to flash out, or to thrash the  
 19 actual detail with them.  
 20 MR CHASKALSON SC: I'm not going to take  
 21 issue with you on that, but the first point at which detail  
 22 emerges in the JOCCOM is at the 1:30 JOCCOM. Is that  
 23 correct?  
 24 COLONEL SCOTT: Yes.  
 25 MR CHASKALSON SC: And that you describe

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1 at page 80, paragraphs 12.4 and 12.5 of your statement, and  
 2 if I can just get that passage. Maybe it's better to start  
 3 the previous page, on page 79, to contextualise it,  
 4 paragraph 12.3. "The question was asked by Major-General  
 5 Annandale to the JOCCOM representatives at the outset how  
 6 we were going to execute phase 3." So at that stage how  
 7 phase 3 was going to be executed was still something that  
 8 had to be debated.  
 9 COLONEL SCOTT: The detail, yes.  
 10 MR CHASKALSON SC: "To my understanding,  
 11 clarity was sought on the actual application of the  
 12 strategy with regards to the implementation, which had not  
 13 been discussed at that point."  
 14 COLONEL SCOTT: Yes.  
 15 MR CHASKALSON SC: So you had a dispersal  
 16 and disarm strategy, but detail hadn't entered the picture  
 17 in the JOCCOM.  
 18 COLONEL SCOTT: That's right.  
 19 MR CHASKALSON SC: "I asked if I may  
 20 suggest a course of action, to which I was given the floor  
 21 to brief the JOCCOM. I explained on the Google Earth  
 22 satellite photo which I'd printed out for the commanders  
 23 that morning for the phase 2 deployment where I felt the  
 24 dispersion should take place, with the different units in  
 25 their different roles and areas of responsibility. On

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1 conclusion, Major-General Annandale requested any further  
 2 inputs and whether the concept was acceptable." So even at  
 3 that stage the concept was up for debate.  
 4 COLONEL SCOTT: Yes.  
 5 MR CHASKALSON SC: "There were no  
 6 objections to the operational concept." So the concept was  
 7 accepted. Were there any further inputs in relation to the  
 8 detail that you'd suggested?  
 9 COLONEL SCOTT: No, and I think maybe  
 10 I'm, or we're misunderstanding the operational concept, but  
 11 the concept, there's the strategy; the strategy was to  
 12 disperse smaller groups, disarm, etcetera. The concept is  
 13 now speaking to the, how we're going to do it in broad  
 14 terms, in other words the direction to where we would want  
 15 them to go, the stop and reorganise line, how the teams  
 16 would be lined up and formed up. That's speaking to the  
 17 concept here. So there was no objection to that concept,  
 18 which is, it's not down to the lower level detail. There  
 19 was more detail given at the actual forward holding area 2  
 20 briefing, which was more at a tactical level than it was at  
 21 this level.  
 22 MR CHASKALSON SC: Okay, can we just go  
 23 to exhibit EE, which are the minutes of the 1:30 JOCCOM,  
 24 and I'd like you to look at that attendance list. I don't  
 25 see any POPs officers there.

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1 COLONEL SCOTT: No, they were deployed in  
 2 the field.  
 3 MR CHASKALSON SC: Okay, so the first  
 4 time that any detail is given to the plan is at the 1:30  
 5 meeting where the plan, where an order to implement the  
 6 plan is given and where there are no POPs officers present  
 7 to inform what the plan is going to look like.  
 8 COLONEL SCOTT: There are no current  
 9 serving POPs officers there, but we have people like  
 10 Brigadier Tsiloane, who was, I think spent much of his  
 11 career in a Public Order Policing unit and if I'm not  
 12 mistaken, was a commander I think at the Welkom unit for  
 13 that matter as well, as being an NIU member he's called,  
 14 his members are called around South Africa to help re-  
 15 establish order where there's been public violence and  
 16 unrest –  
 17 CHAIRPERSON: So you've got one ex-POP  
 18 member there.  
 19 COLONEL SCOTT: That's to the only one to  
 20 my knowledge, Chairperson.  
 21 CHAIRPERSON: What we see in 12.5 is, "On  
 22 conclusion, Major-General Annandale requested any further  
 23 inputs and whether the concept was acceptable. There were  
 24 no objections to the operational concept." That's I take  
 25 it correct.

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1 COLONEL SCOTT: That's correct.  
 2 CHAIRPERSON: But there was no current  
 3 POP member there to make inputs.  
 4 COLONEL SCOTT: No.  
 5 CHAIRPERSON: There was no current POP  
 6 person there to raise an objection.  
 7 COLONEL SCOTT: No.  
 8 CHAIRPERSON: Only one person who's an  
 9 ex-POP member. Is that right?  
 10 COLONEL SCOTT: That's right.  
 11 CHAIRPERSON: I see.  
 12 MR CHASKALSON SC: And the detail that  
 13 you're giving, well the detail that's given at the meeting  
 14 seems to come primarily, if not exclusively, from you. Is  
 15 there any detail that comes from anybody else at the  
 16 meeting?  
 17 COLONEL SCOTT: No.  
 18 MR CHASKALSON SC: And you've already  
 19 confirmed that you had no knowledge of Standing Order 262,  
 20 which was the SAPS standing order dealing with Public Order  
 21 Policing.  
 22 COLONEL SCOTT: I had no knowledge of  
 23 that specific standing order. As I say, I had successfully  
 24 completed a course before that standing order was  
 25 implemented. I think it was implemented in about 2003/4.

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1 I'd done my course in, somewhere around 2001/2, which dealt  
 2 predominantly with the Public Order Policing arena, based  
 3 on what happened at the Ellis Park tragedy. So the  
 4 training was embedded through that, as well as the tactical  
 5 options of POPs, what they stand for, because we had to  
 6 plan those into scenarios during that course. So to say  
 7 that I did, I had no knowledge of the specific, as you say,  
 8 Standing Order 262, but what's embedded in 262 is not newly  
 9 thought out. It comes with a long process. So it would be  
 10 incorrect to simply just say that what's inside there,  
 11 because one thing that struck me when we did have a meeting  
 12 to look at Standing Order 262 and how it compared to how we  
 13 planned, it very much, and if we do that you'll find very  
 14 much of the principles in the plan are reflected in  
 15 Standing Order 262, although I was not aware of 262's  
 16 contents, but simply the principles of policing and the  
 17 previous training I had ensure that those principles are  
 18 still met.  
 19 MR CHASKALSON SC: We will have that  
 20 debate at a later stage when we come to look more closely  
 21 at the plan itself. For now I want to look at how the plan  
 22 was designed. The next stage in the process is the  
 23 briefing to the commanders in the field. Major-General  
 24 Annandale instructs you to go out into the field to brief  
 25 the commanders. Now these are the people who are going to

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1 have to implement the plan.

2 COLONEL SCOTT: Yes.

3 MR CHASKALSON SC: And this is the very

4 first briefing that they will receive on how this new phase

5 3 is going to be implemented.

6 COLONEL SCOTT: It's the very first

7 detailed briefing where it's actually told to them the

8 concept as I have mentioned earlier, the more detailed

9 version of what was meant earlier when said dispersion into

10 smaller groups.

11 MR CHASKALSON SC: Well, what was said

12 earlier? What briefing without detail had they received at

13 6AM at the JOC?

14 COLONEL SCOTT: Well, I'm going to need

15 to speak now from deductive logic, but in explaining –

16 MR CHASKALSON SC: Colonel, I'd ask you

17 not to speak from deductive logic, and I'd ask you to speak

18 about what you can remember that you actually said to

19 people at 6AM at the JOC, and if I might just explain why;

20 you said to us yesterday, and I've looked at the

21 transcript, when we were discussing when the first plan was

22 abandoned, your words were, and that conversation about the

23 problems with encirclement, your words were -

24 CHAIRPERSON: Perhaps you'd give us the

25 reference to the transcript so that when we read it later,

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1 read this passage later, we'll understand what you're

2 referring to.

3 MR CHASKALSON SC: Sorry, Chairperson,

4 it's page 14246. 14246, line 7 to 12. I'm afraid we don't

5 have an electronic version of it available yet. "Initially

6 I thought that that happened on Thursday, and for many

7 months in fact I thought that that was part of the Thursday

8 discussion, and then it was only in this year around, later

9 this year, a couple of months back that, or more recently,

10 I realised it had to have been on the Wednesday." That was

11 your first attempt to date that discussion about the

12 shortcomings of the encirclement plan. Then lower down,

13 from line 20, "As I say, I also recall that happening on a

14 Thursday, and I for a long time thought that that was

15 actually the Thursday discussion, but it didn't make sense

16 to me because of the fact that when I looked at the photos

17 that I handed out on the 16th in the morning that the Nyalas

18 were prepositioned for phase 3."

19 [10:25] And then later on at page 14251, lines 6 to 8

20 when you were talking – when I asked you – my question was,

21 "Colonel, if I heard you correctly you said that these

22 discussions about the difficulties of the encirclement

23 tactical option, the cattle, the humanitarian risks, the

24 risk that protesters might just step outside the

25 encirclement and so on, that discussion you thought for

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1 many months had taken place on the Thursday, is that what

2 you said?" And then your response was "ja, it may have

3 been until we got to Roots or somewhere around there when

4 it was more put into context about what had happened." So

5 your memory, well let me go back a step, the decision to

6 move away from the encirclement plan, formally to abandon

7 the encirclement plan couldn't have taken place before

8 those discussions about cattle and humanitarian risks and

9 so on. Is that correct?

10 COLONEL SCOTT: That's correct.

11 MR CHASKALSON SC: So your memory about

12 an issue as important as when that plan was abandoned was,

13 at least until Roots, sufficiently cloudy that you thought

14 that that plan had been abandoned only after an informal

15 discussion in the JOC about cattle and humanitarian risks

16 after a JOCCOM meeting that had happened on the Thursday.

17 Is that correct?

18 COLONEL SCOTT: No, I said that the – for

19 a long time looking back at my documents, from that time

20 which shows encirclement still on the Thursday morning as

21 part of the JOCCOM slides, it was only later in this year

22 where something was triggered that actually got my memory

23 but – and I'll come back to something in a moment – that

24 actually got me to realise that these were the reasons that

25 we actually abandoned trying to encircle a larger group.

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1 Or when we looked at the idea of doing it, it was not

2 feasible. I don't want to say encirclement was abandoned,

3 it could have still been feasible for an early morning. So

4 even after and with all the taskings I received, after the

5 initial Marikana event, coming back to try to recollect, I

6 was re-looking at my own slides and that was my foundation

7 for what I'd thought had happened over that time. I

8 mentioned this whole time period felt almost as though

9 there was a day missing for me. As though it wasn't only

10 three days there should have been more, but what brought me

11 back to actually realising that it was on the Wednesday was

12 only in this year. However, at Roots I can already see

13 that there are documents there that I've created, where

14 I've gone back to actually realising at Roots already that

15 dispersion was on the table already from the early morning

16 because of the photographs that were provided. So

17 something wasn't making sense to me, but there was always

18 something niggling that something's out of place. And it

19 was put into place this year when I actually – the cattle

20 issue with the rest of why we couldn't deploy the razor

21 wire, as well as the Brigadier Engelbrecht meeting, as well

22 as the Colonel Merafe meeting which I also placed on the

23 Thursday for that matter initially.

24 MR CHASKALSON SC: All that I'm saying in

25 this context is I would caution you in answering – I would

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1 ask you in answering to rely on what you actually remember  
 2 briefing people about because what the uncertainty around  
 3 the date reveals is that if you start looking at documents  
 4 that have been created around the time later and then  
 5 inferring, you may end up remembering something which has  
 6 the wrong details in it. I mean you're saying to us that  
 7 for many months you remembered all of this happening on the  
 8 Thursday but you now think it happened on the Wednesday.  
 9 COLONEL SCOTT: I think the short answer  
 10 is that I can't remember much of the 6 o'clock Thursday  
 11 morning briefing at all. I know that I did give a  
 12 briefing, I know that it would have been me that gave the  
 13 briefing of the photographs that you see that were given  
 14 out to the – the handouts to the commanders. I know  
 15 inherently through my past and how I would have worked on a  
 16 briefing I would have always tried to start with a mission  
 17 because it's something we try to emphasise, that's how I've  
 18 been trained. So I would have given that and when speaking  
 19 to phase 2 I know I would have spoken to the purpose and  
 20 the reasoning of the razor wire. Why it was there and then  
 21 I would have also alluded to the fact that it was there as  
 22 prepositioning for phase 3. And then, as I say, it's  
 23 deductive reasoning, but I would have said what phase 3 is.  
 24 CHAIRPERSON: With no recollection of  
 25 this is it all reconstruction, is that right?

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1 COLONEL SCOTT: Yes.  
 2 CHAIRPERSON: I'm not putting anything to  
 3 you, it may be accurate reconstruction but I just want to  
 4 identify it is reconstruction.  
 5 COLONEL SCOTT: Yes.  
 6 COMMISSIONER HEMRAJ: Colonel, I just to  
 7 clarify something, Mr Chaskalson – Mr Chaskalson referred  
 8 you to 12.3. In 12.2 of your statement you say that the  
 9 phase 3 strategy to eliminate the concept of encirclement  
 10 and adopt the strategy, the hybrid plan to disperse was  
 11 clarified in the JOC. Now what are you referring to there?  
 12 COLONEL SCOTT: That's the meeting with  
 13 General Annandale.  
 14 COMMISSIONER HEMRAJ: The informal  
 15 meeting?  
 16 COLONEL SCOTT: Yes.  
 17 COMMISSIONER HEMRAJ: And you don't know  
 18 who else was there.  
 19 COLONEL SCOTT: No, I think there may  
 20 been Brigadier Fritz, Brigadier Tsiloane, they were  
 21 permanent JOC members, The Crime Intelligence personnel I  
 22 know did move out to work on the crime intelligence issues  
 23 and then I think Mr Dirk Botes would have been permanently  
 24 seated there at that time.  
 25 CHAIRPERSON: What do you mean by saying

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1 the phase 3 strategy had already been clarified? I can  
 2 understand discussions about it if we abandon the  
 3 encirclement we have to have something in its place,  
 4 etcetera, I can understand all that, but clarified is a  
 5 rather strong word isn't it?  
 6 COLONEL SCOTT: I think clarified in a  
 7 sense that an encirclement of a large group was not going  
 8 to work and that, as I say, then just as the strategy that  
 9 we need to look at rather dispersing because dispersing is  
 10 not just the physical action, it starts with a verbal  
 11 action which means that many of these people can then leave  
 12 knowing that the police are going to carry something out.  
 13 So when the police generally in terms may speak dispersion,  
 14 speaking to another policeman that understand dispersion  
 15 you understand the whole flow of what's being said behind  
 16 the word. So in saying clarifying there he's clarifying  
 17 that an encirclement of a large group that size is not  
 18 going to work.  
 19 CHAIRPERSON: I'll tell you my problem  
 20 with that, I don't understand you now. As I understand you  
 21 encirclement of a large group had never been a plan.  
 22 Encirclement according to the passage we discussed earlier  
 23 had always involved encircling a small group, 50 or less,  
 24 first light, possibly even before sunrise.  
 25 COLONEL SCOTT: That's correct.

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1 CHAIRPERSON: There was never, as I  
 2 understand, if I'm wrong you must please correct me, there  
 3 was never a plan to encircle a large group. In fact one  
 4 just has to think about it, it wouldn't have worked would  
 5 it? Encirclement of a large group wasn't on ever, was it -  
 6 COLONEL SCOTT: No.  
 7 CHAIRPERSON: - a feasible plan? So I  
 8 don't understand what you're now telling us. Please help  
 9 me to understand.  
 10 COLONEL SCOTT: Chairperson, it was  
 11 looked at whether that encirclement could take place with a  
 12 large group. The same strategy of trying to encircle  
 13 whether that was still feasible for a larger group and as I  
 14 say, it was determined not to be so. But before moving to  
 15 a dispersion strategy we first took the initial strategy  
 16 which was for a first light, had a look at whether there  
 17 would be sufficient wire for instance or would it take and  
 18 all the options about that, and what were the counter-  
 19 productive aspects to that and that's how that briefing  
 20 process took place to say but if we try to take the  
 21 encirclement concept and include it for a larger group how  
 22 would we try to do that and would it be feasible and it  
 23 turned out to be no. It wouldn't be feasible, so what is  
 24 the option, what is the other option to that?  
 25 MR CHASKALSON SC: But, Colonel, if we

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1 can go back to the briefing that the POPs commanders  
 2 receive in the field at 2:30, it's certainly the first  
 3 detailed briefing they're going to receive on how the new  
 4 phase 3 is to be implemented. And what they'd know from  
 5 the morning JOCCOM on your version is that the old  
 6 encirclement plan has been replaced and there's now a new  
 7 plan that involves dispersal and disarming.  
 8 COLONEL SCOTT: That's correct.  
 9 MR CHASKALSON SC: What more would they  
 10 have known from the morning JOCCOM meeting in terms of  
 11 detail?  
 12 COLONEL SCOTT: Well I think in your  
 13 words I don't want to put deductive reasoning in place so I  
 14 don't particularly recall the detail of what being said.  
 15 MR CHASKALSON SC: Now when you see them  
 16 at 1:30 you don't give them anything on paper, oh 2:30, I  
 17 beg your pardon, thank you, Chairperson. You don't give  
 18 them anything on paper and the only paper that they were  
 19 given in the morning were the gridded maps that were handed  
 20 out to deal with phase 2.  
 21 COLONEL SCOTT: That's correct.  
 22 MR CHASKALSON SC: But those gridded maps  
 23 no longer describe the situation on the ground because the  
 24 movement of Nyala 6 has changed matters significantly.  
 25 COLONEL SCOTT: That's right.

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1 MR CHASKALSON SC: And can we just  
 2 illustrate that for the Commissioners by calling up slides  
 3 149 and 50 of exhibit L? So that's what they got from the  
 4 morning that was one and if we can go to 150. Those were  
 5 the two maps that they had from the morning.  
 6 COLONEL SCOTT: That's correct.  
 7 MR CHASKALSON SC: And what they now have  
 8 to implement is what is described in slide 181, if we can  
 9 go down to 181. And 181 describes what's going to have to  
 10 be implemented but for present purposes what I'd focus on  
 11 is it also shows the new configuration of the barbed wire  
 12 Nyalas now that Nyala 6 has been moved to the East.  
 13 COLONEL SCOTT: Yes.  
 14 MR CHASKALSON SC: Now the movement of  
 15 Nyala 6 has very serious implications for your plan would  
 16 you accept? Well let me put them to you, you don't need to  
 17 accept it baldly. First of all it has implications for  
 18 your positive and negative attraction points. If we go  
 19 back to slide 150, can we go back to slide 150? Now the  
 20 negative attraction point is Nkaneng which marked in red  
 21 there as greater squatter camp is that correct?  
 22 COLONEL SCOTT: That is one of the  
 23 lesser, the initial is the Wonderkop hostels, the NUM  
 24 offices and so on behind the police lines to the direct  
 25 east.

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1 MR CHASKALSON SC: But Nkaneng is  
 2 certainly a negative attraction point.  
 3 COLONEL SCOTT: It is also for us, yes.  
 4 MR CHASKALSON SC: And it's a negative  
 5 attraction point of some significance because quite apart  
 6 from the fact that you want to keep the strikers out of  
 7 Nkaneng it's also where they're most likely to go to  
 8 because that's where a lot of them live.  
 9 COLONEL SCOTT: Well you're calling the  
 10 strikers now as one group and –  
 11 CHAIRPERSON: - a lot of them.  
 12 COLONEL SCOTT: Ja, a lot of them. Well  
 13 it was picked up that a lot of them had walked out, those  
 14 specifically that were not in the militant group for that  
 15 matter. I'm not sure where the militant group came from  
 16 but the coming and goings of a lot of people from Nkaneng  
 17 settlement yes walked from there to the koppie.  
 18 MR CHASKALSON SC: Now on the morning  
 19 that negative attraction point is covered quite nicely by  
 20 the barbed wire line. If you look at that barbed wire  
 21 line it screens the entire access route to Nkaneng and it  
 22 is designed to funnel protesters to the west which is your  
 23 positive attraction point.  
 24 COLONEL SCOTT: That's correct.  
 25 MR CHASKALSON SC: If we can cut back to

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1 181, now if you look at where the barbed wire line is going  
 2 to go, Nkaneng is being exposed.  
 3 COLONEL SCOTT: It's being exposed  
 4 because the razor wire line now is a protection wire for  
 5 all assets inside what we call the police safe zone.  
 6 There's still a line of police officials as you can see  
 7 with the vehicles and the red and green depicting TRT and  
 8 IUSDF. Remembering again that once that razor wire line  
 9 has been deployed and the police move out to form up  
 10 there's first going to be a verbal command given, or  
 11 warning given of an impending tactical action of dispersion  
 12 which means that whoever wanted to leave was going to  
 13 leave. And those that wanted to leave were going to be  
 14 permitted to leave. So they would have been able to walk  
 15 either past or even through the police line for that  
 16 matter, those that wanted to leave. And the rationale  
 17 behind that was is this is why we had a phase 6, so that  
 18 once what had been cleared around the koppie area it was  
 19 envisioned that after this, that evening, the public order  
 20 policing and TRT and necessary groupings were going to the  
 21 hostels to go and do cordon and searches there to remove  
 22 the arms of those who had possibly walked away from the  
 23 koppie itself because of the verbal impending warning.  
 24 CHAIRPERSON: Wasn't the informal  
 25 settlement also included in the area covered by the cordon

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1 and search authorisation –

2 COLONEL SCOTT: It was –

3 CHAIRPERSON: - by the Provincial

4 Commissioner?

5 COLONEL SCOTT: Yes, it was, Chairperson,

6 but it was a bit optimistic to – I think that would have

7 taken a lot personnel to have to cover that, it would have

8 been a literal house to house and in my opinion been very

9 dangerous for that matter for the police members involved.

10 MR CHASKALSON SC: But you will agree

11 that the new configuration of the barbed wire creates a new

12 dimension, that until you can get your police armoured

13 vehicles out around the barbed wire into the position that

14 we see at slide 181, Nkaneng is exposed.

15 COLONEL SCOTT: It is.

16 MR CHASKALSON SC: And if we go down to

17 slide 193 which is just at the start of the operation, we

18 see that you illustrate it's the start of the operation.

19 Nyala 1 has moved out, it's barbed wire Nyala 2, you see

20 that some of the protesters are – if I can just identify –

21 there's Nyala 1, I'm marking Nyala 1 for record purposes,

22 it's the Nyala just above the long red arrow with the

23 dotted line behind it. You have marked on this slide

24 "protester organised group remain with others on the koppie

25 while a number of the protesters are departing." And the

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1 protesters who are departing are departing to Nkaneng along

2 this line of the white arrow that I am flagging with my

3 laser pointer.

4 COLONEL SCOTT: That is so. But if you

5 look carefully there are other protesters walking along the

6 road to the north as well. I'm just highlighting with that

7 white arrow that there are some already leaving.

8 MR CHASKALSON SC: But what you've

9 highlighted with the white arrow is that there are

10 protesters moving to Nkaneng and it's a feature of the new

11 configuration that it's possible to move Nkaneng.

12 COLONEL SCOTT: Well even if the old

13 configuration was still in place they would still have been

14 able to move to Nkaneng as long as the razor wire wasn't

15 deployed.

16 MR CHASKALSON SC: Well even with the

17 razor wire deployed they can move to Nkaneng in this

18 configuration because if you look at Nyala 6 over there –

19 COLONEL SCOTT: Yes, I don't dispute

20 that.

21 MR CHASKALSON SC: - the razor wire is

22 going to run from 5 to 6 and the route the Nkaneng, this

23 main path which is picked up by the white arrow is in fact

24 outside the razor wire line.

25 COLONEL SCOTT: I see that, yes.

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1 CHAIRPERSON: The plan seems to have been

2 to block off that main route before Nyala 6 was moved.

3 COLONEL SCOTT: Chairperson, I think the

4 initial – the concept behind the plan was, as I say, to

5 bring out, to give a warning, to allow those that want to

6 leave to move off and that simply to prevent violent or

7 aggressive, emotional strikers from running into the

8 Nkaneng settlement. Thus the police's action to move

9 towards the south and sweep towards the west so we could

10 push anyone that was emotional, violent or wanting

11 confrontation away from areas where there would be innocent

12 people.

13 CHAIRPERSON: - I don't understand you to

14 be disagreeing with me, you're actually agreeing with me

15 but giving the reasoning why.

16 COLONEL SCOTT: Yes.

17 CHAIRPERSON: Ja.

18 MR CHASKALSON SC: And we know that in

19 due course when the militant protesters did decide to move

20 the direction in which they moved was towards Nkaneng.

21 COLONEL SCOTT: Well that's debatable,

22 there's the direction they could have moved was towards the

23 police line. So I'm not going to agree to the fact that

24 they were trying to go to Nkaneng.

25 MR CHASKALSON SC: Well objectively the

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1 direction in which they moved was the direction of Nkaneng.

2 It was to the east.

3 CHAIRPERSON: They weren't necessarily

4 intending to go to Nkaneng. They may have been intending

5 to implement threats that was apparently and allegedly

6 being made earlier to attack the police.

7 MR CHASKALSON SC: Well can we agree that

8 they moved East?

9 [10:45] COLONEL SCOTT: Yes, they moved east.

10 MR CHASKALSON SC: And that the

11 difference in the barbed wire configuration once Nyala 6

12 had been moved is that it was possible to move east without

13 being screened out by the barbed wire.

14 COLONEL SCOTT: Yes, it would be.

15 MR CHASKALSON SC: So to get back to

16 where all of this started, the paper that the commanders on

17 the ground have describes a configuration that has changed

18 materially between 6 o'clock and 1:30. You'll accept that

19 much?

20 COLONEL SCOTT: The only vehicle that's

21 changed is Nyala 6. So if we look at what's displayed in

22 the slide now, you can see that the interpretation even of

23 what I'd presented on the slide is slightly different to

24 their initial operational deployments on ground, but from

25 my, from what I can see from their first deployment to this

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1 deployment, the only Nyala that has moved has been Nyala 6.  
 2 MR CHASKALSON SC: But that movement has  
 3 significant implications to the plan.  
 4 COLONEL SCOTT: Yes.  
 5 MR CHASKALSON SC: Now you don't brief  
 6 them with any new paper; you brief them by showing the plan  
 7 on your laptop in the back of a Mercedes Vito.  
 8 COLONEL SCOTT: That's correct.  
 9 MR CHASKALSON SC: Can you just describe  
 10 the situation a bit more clearly to us? Where were you  
 11 sitting?  
 12 COLONEL SCOTT: I sat just inside the  
 13 seat, so that I was under the roof, so that there was a  
 14 little bit of darkness for the computer screen so that  
 15 people could see it better, with the audience standing just  
 16 outside the Vito.  
 17 MR CHASKALSON SC: And does the Vito have  
 18 a sliding door that opens on the side?  
 19 COLONEL SCOTT: That's correct.  
 20 MR CHASKALSON SC: So you're sitting  
 21 inside the Vito with the sliding door open on the side.  
 22 The Vito is parked in the open air.  
 23 COLONEL SCOTT: Yes.  
 24 MR CHASKALSON SC: And you've gone inside  
 25 to get some shade so that your screen is visible.

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1 COLONEL SCOTT: Yes.  
 2 MR CHASKALSON SC: And are you sitting  
 3 with the laptop facing you or facing the people outside?  
 4 COLONEL SCOTT: It's facing the people  
 5 outside. It's, I'm sitting to the side of it with them – I  
 6 can actually clearly remember that the Vito was facing  
 7 towards the east, the open door was towards the south, and  
 8 the people that were standing were standing to the south of  
 9 the Vito, with me sitting just inside the Vito with my  
 10 laptop and explaining to them on the laptop screen.  
 11 MR CHASKALSON SC: How many people were  
 12 receiving this explanation?  
 13 COLONEL SCOTT: I can't give the exact  
 14 amount, but there were a number of – probably 10, 15.  
 15 MR CHASKALSON SC: I just want to go to  
 16 your statement because I seem to remember a number of 20,  
 17 but –  
 18 COLONEL SCOTT: Yes, it does say there  
 19 were about 20 persons at the briefing.  
 20 MR CHASKALSON SC: So you've got 20  
 21 people who are being briefed on the basis of an image on a  
 22 laptop by you sitting inside a Mercedes Vito, and that is  
 23 the sum total of the visual aid to the presentation.  
 24 There's no writing. There's just what they can make out on  
 25 the screen with your instruction.

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1 COLONEL SCOTT: It's right what you're  
 2 saying, but I have a problem with how you're putting it.  
 3 You're making it, or trying to make it sound as though  
 4 there are people that are standing that can visually not  
 5 see, or I'm somewhere deep inside a Vito and maybe only  
 6 four or five can see the screen, which is not the case.  
 7 MR CHASKALSON SC: We may have to have an  
 8 inspection in loco with a Vito.  
 9 COLONEL SCOTT: Yes.  
 10 MR CHASKALSON SC: But it does seem to me  
 11 that the possibility of some of the 20 not seeing the  
 12 screen seems to be quite a high possibility in those  
 13 circumstances, or not being able to make out what is being  
 14 depicted on the screen.  
 15 COLONEL SCOTT: No, I can't speak to  
 16 that. I can't agree with you on that either.  
 17 CHAIRPERSON: I take it your point would  
 18 be that if someone couldn't see and wanted to know what was  
 19 being shown, he could have raised his hand and said please  
 20 give me a chance to see it as well.  
 21 COLONEL SCOTT: This is –  
 22 CHAIRPERSON: And that didn't happen, I  
 23 take it. Is that right?  
 24 COLONEL SCOTT: Yes. Yes, Chairperson.  
 25 MR CHASKALSON SC: Now according to your

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1 statement your briefing lasts approximately 45 minutes.  
 2 You say it started at 2:30 sharp and you got back to the  
 3 JOC at 15:15.  
 4 COLONEL SCOTT: No, there's travel time  
 5 involved on the return. So it was about at most half an  
 6 hour.  
 7 MR CHASKALSON SC: After that briefing,  
 8 the commanders have to go and brief their troops. Do you  
 9 know how much time was left for them to do that?  
 10 COLONEL SCOTT: Well, I would have left  
 11 at about 15:00, give or take a couple of minutes, so they  
 12 would have gone back. That would have given them, counting  
 13 travel time in, again about 20 minutes until the half past  
 14 time that they would have had to brief their troops, about  
 15 20 minutes.  
 16 MR CHASKALSON SC: Well, half past was  
 17 when the operation had to begin.  
 18 COLONEL SCOTT: Ja.  
 19 MR CHASKALSON SC: So presumably the  
 20 briefing would have to end some time before operation  
 21 commenced because –  
 22 COLONEL SCOTT: We're in hypothetical  
 23 areas now because I can't speak for the, how long those  
 24 briefings took place. I'm not sure if they went on beyond.  
 25 I know that it was scheduled to begin at 15:30. We know it

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1 didn't. Whether the briefings were even concluded by 15:30  
 2 I can't say.  
 3 MR CHASKALSON SC: Colonel, if we can  
 4 then just recap the details, recap. We're talking about a  
 5 plan now, the details of which were designed on the day,  
 6 the 16th.  
 7 COLONEL SCOTT: Yes.  
 8 MR CHASKALSON SC: By yourself.  
 9 COLONEL SCOTT: Yes.  
 10 MR CHASKALSON SC: And from what we can  
 11 work out, without material input from anybody else. Is  
 12 that correct?  
 13 COLONEL SCOTT: Pretty much, yes.  
 14 MR CHASKALSON SC: And in particular  
 15 without input from commanders with crowd management  
 16 expertise.  
 17 COLONEL SCOTT: No, but they did have the  
 18 opportunity even whilst I was briefing them in forward  
 19 holding area 1 to have given inputs for that matter.  
 20 MR CHASKALSON SC: Well, let's  
 21 interrogate that. The decision had already been taken to  
 22 implement the plan at that stage.  
 23 COLONEL SCOTT: To implement the, or  
 24 dispersion with, as we know the strategy and the concept of  
 25 moving them off towards the west, smaller groups, encircle

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1 them as smaller groups, isolate and arrest - disarm and  
 2 arrest, yes.  
 3 MR CHASKALSON SC: You had an operation  
 4 that was going to commence at 15:30.  
 5 COLONEL SCOTT: It was supposed to  
 6 commence at 15:30, yes.  
 7 MR CHASKALSON SC: You arrived for this  
 8 briefing at 14:30.  
 9 COLONEL SCOTT: 14:30.  
 10 MR CHASKALSON SC: You had to explain the  
 11 briefing to people.  
 12 COLONEL SCOTT: I had to explain it to  
 13 them.  
 14 MR CHASKALSON SC: You had to leave them  
 15 with enough time to get back to their troops to communicate  
 16 it to their troops.  
 17 COLONEL SCOTT: That's correct.  
 18 MR CHASKALSON SC: What realistic  
 19 opportunity was there for them within that context to make  
 20 any material changes to your details?  
 21 COLONEL SCOTT: Well, this is something,  
 22 they need to be questioned, or asked; if they at that stage  
 23 felt that there was something untoward, they could have  
 24 brought it up, and again with them being the operational  
 25 experts on ground, it would have been left to them,

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1 remembering that speaking at the operational level, they  
 2 are going to execute it at the tactical level on ground.  
 3 So this is why when you talk to those commanders and you  
 4 say we want you to deploy the razor wire and close it, as  
 5 it was mentioned earlier at the 6 o'clock meeting that that  
 6 would be something to form a barrier line between the  
 7 police for that matter, the negative and positive, or  
 8 negative attraction points and to where the strikers were  
 9 seated, there's not much more in detail that you need to  
 10 explain to them on that, other than what I've mentioned in  
 11 my statement. When you say to the dispersion line that you  
 12 need to come out and disperse in this direction, you don't  
 13 explain dispersion to POPs, Public Order Policing members;  
 14 they understand dispersion through their training. So it's  
 15 a matter of where do you want me and where do you, and how  
 16 do you want me to disperse in what direction, and that's  
 17 what actually occurs there. There were slight amendments  
 18 to that plan because what I did explain to them was start  
 19 with water cannons, where necessarily water cannons  
 20 wouldn't be the first way of starting a physical dispersion  
 21 - I'm talking outside of the actual pre-warning phase -  
 22 because I was trying not to have police members close to  
 23 strikers. I was trying to keep a gap between them so that  
 24 there would not be conflict for that matter. So those were  
 25 the small changes made for instance in that force

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1 continuum, which is not a major, if you consider that the  
 2 water is simply water and used to disperse people. It's a  
 3 non-lethal means. So that type of small tweaking was what  
 4 was mentioned there, and then one or two small suggestions  
 5 given to them. As I say, the second water cannon had  
 6 arrived, which I initially wasn't aware of, and when it had  
 7 arrived I suggested placing it in the police safe area to  
 8 assist with the dispersion from that side and also helping  
 9 to protect the razor wire line. So I was giving small  
 10 suggestions on tactical advice, but again this is all  
 11 subject to the operational commanders who, many of which  
 12 were higher in rank than me and more experienced in the  
 13 public order domain. So they would have heard the  
 14 dispersion strategy and concept and then gone out to  
 15 operationalise it themselves in a tactical arena of the  
 16 environment they were working in.  
 17 MR CHASKALSON SC: Well, Colonel, I do  
 18 want to put to you that the facts of what we now agree  
 19 happened in relation to the design and detailed description  
 20 of this plan, do present a picture that is quite a far cry  
 21 from the meticulous scenario planning that SAPS conveyed to  
 22 us in its opening statement. Meticulous scenario planning  
 23 that involved experienced generals and other senior  
 24 officers at the JOC. What's your response to that?  
 25 COLONEL SCOTT: I'm not sure how I can



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1 respond. I've given you my version of my experiences while  
 2 I was there.  
 3 MR CHASKALSON SC: Well, in relation to  
 4 this particular plan, what meticulous scenario planning  
 5 took place involving generals and other senior officers at  
 6 the JOC?  
 7 COLONEL SCOTT: Well, the best I can  
 8 explain it is that when I'm explaining to them strategies  
 9 and presenting possible solutions to them, they were  
 10 sitting absorbing what I'm saying and if there are going to  
 11 be inputs or if there are going to be any changes or,  
 12 that's where it would be done. So the fact of the matter  
 13 was that the generals were involved in that sense. They  
 14 were briefed, they were made aware, as were most of the  
 15 commanders that were there, if not all the commanders at  
 16 least in the morning JOCCOMS. So I can't speak beyond  
 17 that.  
 18 MR CHASKALSON SC: But in terms of the  
 19 detail of this plan, which emerged for the first time at  
 20 13:30, the role of the generals was at best passive. It  
 21 was listening to what you had to say and identifying  
 22 whether there were any flaws that they wanted to – flaws or  
 23 additions that they wanted to add and deciding that there  
 24 weren't.  
 25 COLONEL SCOTT: Yes.

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1 MR CHASKALSON SC: And this whole line of  
 2 cross-examination started with the strange anomaly that the  
 3 SAPS case as we first saw it suggested very strongly that  
 4 the plan that was ultimately implemented was a plan that  
 5 had really been on the table for more than two days inside  
 6 the JOC, which wasn't the case.  
 7 COLONEL SCOTT: No, and I've mentioned  
 8 that it was never meant to be taken that way. It was just  
 9 a, of that period, Operation Marikana over three days, this  
 10 was the strategy that was used.  
 11 MR CHASKALSON SC: Well, Colonel, I want  
 12 to shift to a different issue now, but it may be a  
 13 convenient time to take the –  
 14 CHAIRPERSON: Convenient stage to take  
 15 the tea adjournment, I think you're moving to another area,  
 16 another aspect. We're expecting a visit from someone from  
 17 the department who we'll be meeting over the tea  
 18 adjournment. So we may take a bit longer in coming back  
 19 than is usual the case. But we'll take the adjournment for  
 20 tea and we'll come back as soon as we can after quarter  
 21 past 11.  
 22 [COMMISSION ADJOURNS COMMISSION RESUMES]  
 23 [11:35] CHAIRPERSON: The Commission resumes. As  
 24 I anticipated, we took some time with the meeting that I  
 25 mentioned, so I'm sorry that we can only come back now.

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1 Before we proceed with the evidence, I want to say that we  
 2 received a letter from the legal representatives of the  
 3 South African Human Rights Commission who wanted a meeting  
 4 with us to discuss certain rulings that I gave in the  
 5 course of the cross-examination, I think it was of Major-  
 6 General Mpmembe, by counsel appearing for the Human Rights  
 7 Commission. We indicated we didn't think it appropriate  
 8 for us to meet parties, discuss rulings outside the  
 9 Commission. What we'll do is we would address the  
 10 questions raised in the letter in an open sitting of the  
 11 Commission so that all the parties would know what the  
 12 questions were that were raised and what our answers are in  
 13 respect thereof.  
 14 The first question related to the question of  
 15 whether there was an onus of proof to be satisfied by a  
 16 cross-examiner in respect of questions that were asked, and  
 17 the comment we make in respect of this query is the  
 18 following. There's no onus of proof in the proceedings of  
 19 the Commission. The Commission will evaluate all of the  
 20 available evidence and come to a view as to the  
 21 probabilities on the facts. It's permissible for a cross-  
 22 examiner to put a proposition to a witness on the basis of  
 23 a hypothesis as to what the facts before the Commission  
 24 will reveal. A cross-examiner is not required to prove the  
 25 correctness of that hypothesis before putting that

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1 proposition to the witness. The witness may respond by  
 2 asserting that the hypothesis is false and the question  
 3 therefore falls away, by answering the question on a  
 4 provisional basis in the sense that the answer is given  
 5 without admitting the correctness of the hypothesis, or by  
 6 answering the question without reservation. When all of  
 7 the evidence has been led, the Commission will determine on  
 8 the balance of probabilities whether the hypothesis was  
 9 correct.  
 10 It also is the case that a witness may in certain  
 11 circumstances decline to answer a hypothetical question,  
 12 but then as I indicated to one of the witnesses who adopted  
 13 that stance, the fact that the witness declined to answer  
 14 the question may be taken into account in assessing the  
 15 evidence on that point. While the Commission is not a  
 16 court, it will apply the usual test in assessing the  
 17 evidence and in deciding what inferences may reasonably be  
 18 drawn from the evidence.  
 19 The second topic raised in the letter from the  
 20 Human Rights Commission's lawyers related to cross-  
 21 examination based on instructions from Mr White and certain  
 22 practical problems which the representatives of the  
 23 Commission were experiencing in that regard, and our  
 24 comment in regard to those questions is as follows, or that  
 25 question is as follows. An expert witness performs two

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1 functions; he or she gives evidence and he or she advises  
 2 the cross-examiner in respect of evidence which has been  
 3 given or is to be given by other witnesses. Where it is  
 4 put to a witness that another witness, including an expert  
 5 witness, will give certain evidence or has expressed  
 6 certain opinions, a statement incorporating that version  
 7 ought in ordinary circumstances to have been provided in  
 8 advance to the Commission and to the parties. Where a  
 9 party has received advice from an expert witness who is yet  
 10 to give evidence, the party may in cross-examination put  
 11 propositions to a witness in accordance with the advice  
 12 which has been received.

13 It should, however, ordinarily not be identified  
 14 as the opinion or advice of the expert who is yet to give  
 15 evidence, unless it is contained in a statement by that  
 16 witness which has been distributed. This will not prevent  
 17 the expert witness from in due course making a written  
 18 statement and giving evidence which reflects the view which  
 19 he or she has expressed to the party instructing him or  
 20 her, subject to the Commission's general approach to the  
 21 desirability of early distribution of statements by  
 22 witnesses.

23 Specifically in relation to Mr White, the  
 24 Commission recognises that Mr White has not yet submitted a  
 25 final statement. The reason for that is that the South

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1 African Human Rights Commission was awaiting a response by  
 2 Mr De Rover to the questions raised by Mr White, asking for  
 3 clarification of certain matters in Mr De Rover's  
 4 statement. That response was received a few days ago. A  
 5 final statement by Mr White is expected to be available  
 6 shortly. That final statement will, however, be subject to  
 7 the qualification that it is based on the statements thus  
 8 far made available by the SAPS and the evidence which has  
 9 thus far been given. Mr White will necessarily have to  
 10 review his opinions in the light of any further statements  
 11 made available by the SAPS and by further evidence.

12 The last question in respect of which we consider  
 13 it appropriate to give a response to the Human Rights  
 14 Commission relates to the weight to be attached to warning  
 15 statements. Warning statements are taken from suspects or  
 16 accused persons when they are informed of a charge pending  
 17 against them. At that stage they are informed of their  
 18 various rights, amongst which is the right to remain silent  
 19 and the right not to incriminate themselves. A cross-  
 20 examiner cannot attach any weight to the fact that such  
 21 statement is silent about an issue as the maker of the  
 22 statement might have done so in the exercise of one of his  
 23 or her rights. Those are our comments in respect of the  
 24 questions that were raised. Colonel, you're still under  
 25 oath.

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1 DUNCAN GEORGE SCOTT: s.u.o.  
 2 CHAIRPERSON: Mr Chaskalson, you're  
 3 wanting to move on to another topic, I understand.  
 4 MR CHASKALSON SC: I do, Chair.  
 5 CHAIRPERSON: I may say that we have  
 6 agreed in advance to sit until 12:30 and I have to make  
 7 some short announcements in respect of future progress of  
 8 the Commission, which will take me about five minutes, so  
 9 the cross-examination itself will end today at about 25  
 10 past 12. I don't think it likely that it will be finished  
 11 by then, so it will have to resume at a later date, but  
 12 that's a matter I'll deal with when we get there. Mr  
 13 Chaskalson.

14 CROSS-EXAMINATION BY MR CHASKALSON (CONTD.):  
 15 Thank you, Chairperson. Colonel, I'm going to move now to  
 16 the reasons for the abandonment of the encirclement plan,  
 17 and I want to take you through the different reasons that  
 18 have been offered by SAPS at different stages. Some of  
 19 this is material we traversed already; we can skim through  
 20 it in cases where we have already addressed it. The first  
 21 reason for not proceeding with the encirclement plan was  
 22 the reason that is given in the presentation, exhibit L,  
 23 slide 63, and was the reason that was offered in your  
 24 second statement, GGG39, page 2, paragraph 3, where it was,  
 25 it's the reason that the plan wasn't proceeded with on

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1 Tuesday because not enough forces were there and oriented  
 2 to be able to proceed on Tuesday.  
 3 Now that of course just explains why the plan  
 4 wasn't proceeded with on Tuesday. It doesn't explain why  
 5 the plan wasn't proceeded with after Tuesday, and in any  
 6 event, if we look at your current statement, it seems not  
 7 to be a reason at all, because if we go to page 20,  
 8 paragraph 6.10, where you discuss your meeting with the  
 9 National Commissioner on Monday night, you say the  
 10 following. "I suggested during the meeting that the  
 11 emotions on both sides were high due to the loss of life  
 12 and that should the police move in to disperse the group  
 13 the next morning, that the intervention could possibly be  
 14 interpreted by the media and the public as retaliation  
 15 instead of enforcement of the law. I said this because  
 16 I've considered there was bound to be conflict again should  
 17 the police use force to defuse the situation with  
 18 protesters that's armed as they were, and with their  
 19 emotions running as high as they did at the time. I  
 20 suggested to the National Commissioner that the police  
 21 should initiate dialogue to defuse the situation by  
 22 introducing police negotiators who could provide the  
 23 strikers with an alternative means to ending the standoff,  
 24 other than having the police to employ a tactical option."  
 25 So on Monday night your clear intention was not to

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1 implement tactical option on Tuesday.  
 2 COLONEL SCOTT: That's correct, of  
 3 dispersal now, of confrontation.  
 4 MR CHASKALSON SC: Would encirclement  
 5 still have remained a possibility on Tuesday morning?  
 6 COLONEL SCOTT: Well, when I'm writing  
 7 this at that time I'm not considering any tactical option  
 8 yet. I'm just of the opinion that any confrontation with  
 9 the strikers is going to result in possible conflict again,  
 10 and that it's not in the interest of the police for that  
 11 matter to do that.  
 12 MR CHASKALSON SC: So if there wasn't  
 13 going to be a tactical option on Tuesday, the  
 14 unavailability of forces to employ the encirclement  
 15 tactical option on Tuesday really doesn't explain why that  
 16 encirclement option was taken off the table.  
 17 COLONEL SCOTT: I'm not clear on where  
 18 you're going, but the encirclement option is only come up  
 19 with as an impromptu plan in the early hours of Tuesday  
 20 morning because of the smaller grouping and it's, and  
 21 understanding that encirclement there is simply putting up  
 22 a barrier again around the few members that are left on the  
 23 koppie, with the idea that once they're encircled they're  
 24 going to be spoken to, dialogue, and requested now to exit  
 25 through a specific point. There at this stage, and even at

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1 the stage of the morning of the Tuesday, in-depth thought  
 2 has not been given yet to should they refuse to come out of  
 3 the encirclement area on request on the dialogue, what the  
 4 options would be then.  
 5 MR CHASKALSON SC: Alright, well at any  
 6 rate, the explanation that troops hadn't been, there  
 7 weren't enough troops who'd been oriented on Tuesday  
 8 morning doesn't really account for Wednesday or Thursday.  
 9 Will you accept that?  
 10 COLONEL SCOTT: That's right. It doesn't  
 11 account for Wednesday or Thursday.  
 12 MR CHASKALSON SC: The next reason was a  
 13 reason that surfaced first in the narrative and was then  
 14 picked up in your evidence. That relates to the  
 15 availability of barbed wire, and that's a topic we  
 16 traversed yesterday, and where we ended yesterday we'd  
 17 agreed that there were eight trailers available to the best  
 18 of your knowledge. Eight would have been enough to  
 19 encircle early in the morning, but not enough if  
 20 encirclement was to take place after a substantial number  
 21 of protesters had gathered.  
 22 COLONEL SCOTT: Correct.  
 23 MR CHASKALSON SC: Now in relation to  
 24 this topic, or on this issue you mentioned in your evidence  
 25 yesterday that Brigadier Calitz had at some stage obtained

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1 barbed wire from Lonmin.  
 2 COLONEL SCOTT: No, I didn't mention he'd  
 3 obtained barbed wire –  
 4 CHAIRPERSON: You didn't say he obtained  
 5 them, but what you said was in relation to the question  
 6 about how much barbed wire there was you talked about  
 7 Lonmin having purchased some barbed wire. That's what you  
 8 said yesterday.  
 9 COLONEL SCOTT: Yes.  
 10 MR CHASKALSON SC: I'm sorry for putting  
 11 it incorrectly. Were you aware of when Lonmin purchased  
 12 this barbed wire?  
 13 COLONEL SCOTT: It arrived, I think it  
 14 arrived, or somewhere in the process of the operation it  
 15 arrived.  
 16 MR CHASKALSON SC: When you say in the  
 17 process of the operation –  
 18 COLONEL SCOTT: Before the end of the  
 19 16th.  
 20 MR CHASKALSON SC: Before the end of the  
 21 16th?  
 22 COLONEL SCOTT: Yes.  
 23 MR CHASKALSON SC: Before the start of  
 24 the 16th?  
 25 COLONEL SCOTT: I would be inaccurate in

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1 trying to pinpoint it, but somewhere in the course of that  
 2 three days. I wouldn't presume it was the first day, but  
 3 somewhere in the course of those days it arrived.  
 4 MR CHASKALSON SC: And do you know how  
 5 much barbed wire there was?  
 6 COLONEL SCOTT: I know it was – I saw it,  
 7 it was placed on the outside of the already wired off area  
 8 where the helicopters were landing. They'd placed it, I  
 9 think on the roadside, on the outer roadside. So it was  
 10 lying in big heaps. I'm not sure what the exact distance  
 11 of it would be if it was rolled out, no.  
 12 MR CHASKALSON SC: Well, possibly if I  
 13 might show you a photograph that Colonel Vermaak took on  
 14 the 16th, it's JJJ86. JJJ86, page 684 to 686, file 3.2.  
 15 CHAIRPERSON: While the picture is being  
 16 found, do you know the circumstances in which Lonmin  
 17 acquired the barbed wire, why they acquired it? Did they  
 18 do it on their own or were they asked to? Do you know  
 19 anything about that?  
 20 COLONEL SCOTT: No, I can't recall it  
 21 specifically. I think Mr Sinclair at some stage was in  
 22 talks with, I'm not sure if I was in the JOC in hearing it,  
 23 but that their, they could make razor wire available if the  
 24 police needed it, but I'm not sure whether, what the reason  
 25 – because I mean even on screen now I think it's the round,

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1 the circle, you know, to operationalise that razor wire you  
 2 still need to put it on some form of a trailer, take it to  
 3 the area and have it deployed in the police's case rather  
 4 rapidly, which I'm not sure how that would have actually  
 5 worked.

6 CHAIRPERSON: Do you know whether Lonmin  
 7 used barbed wire normally, and if so, how they used it?

8 COLONEL SCOTT: I know that around the  
 9 chopper field, I'm not sure if it's shown there, but there  
 10 is Lonmin barbed wire that is cordoning off that chopper  
 11 field, and I would think some of their more sensitive areas  
 12 as well of where maybe the precious metals are smelted and  
 13 so on, that they would want to use it in areas like that to  
 14 prohibit unauthorised access, striking groups possibly from  
 15 trying to access to intimidate workers, that type of thing.  
 16 But I'm guessing at the moment.

17 MR CHASKALSON SC: Colonel, that  
 18 photograph is taken at 9:40, approximately 9:40 in the  
 19 morning. Colonel Vermaak's camera clock was 9:40:32. I  
 20 haven't done a conversion off that.

21 COLONEL SCOTT: The date, sorry?

22 MR CHASKALSON SC: Of the 16th.

23 COLONEL SCOTT: Okay.

24 MR CHASKALSON SC: If we zoom in to the  
 25 next photograph, which is the, it's the same photograph

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1 zoomed in, we see the, what appear to be the six barbed  
 2 wire trailers which were going to be rolled out as part of  
 3 the phase 2 deployment on the 16th in the foreground of that  
 4 zoomed in picture, and inside the square, where we'll zoom  
 5 in a little bit further, is the excess barbed wire, and if  
 6 we can move to the next, it seems that some of it has  
 7 already been loaded onto a trailer which we've circled  
 8 there.

9 CHAIRPERSON: Do you agree with that,  
 10 Colonel?

11 COLONEL SCOTT: I agree there's a trailer  
 12 standing there. Whether it's one the initial eight police  
 13 trailers, I don't know. To say that there has been barbed  
 14 wire loaded onto that, being a police trailer, I'm not  
 15 sure. Or if they're standing in the same vicinity.

16 MR CHASKALSON SC: I don't need to take  
 17 that further with you, Colonel. What we do know is that  
 18 when Brigadier Calitz on the 18th had the plan to encircle  
 19 the koppie, by that stage he'd procured sufficient barbed  
 20 wire to encircle not only koppies 1 and 2, but also koppie  
 21 3, and still to have some barbed wire left over for  
 22 creating channels between the two koppies. Do you recall  
 23 that from the video?

24 COLONEL SCOTT: From –

25 MR CHASKALSON SC: The video that we

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1 showed of Brigadier Calitz's briefing.

2 COLONEL SCOTT: Yes, I recall the  
 3 briefing. I wasn't aware that – well, I didn't know about  
 4 koppie – ja, I heard him say koppie 3, I think was to be a  
 5 base camp or something, but I wasn't aware of channels and  
 6 things between –

7 CHAIRPERSON: Anyway, it did appear from  
 8 what he said the area he was going to encircle was  
 9 substantially larger than the area which was the subject of  
 10 your original encirclement plan. Is that correct? So  
 11 therefore it would seem that more barbed wire would have  
 12 been available, by that stage anyway.

13 COLONEL SCOTT: Yes.

14 MR CHASKALSON SC: But going back to the  
 15 16th, we were agreed earlier that at that stage SAPS had  
 16 enough barbed wire to run an encirclement plan if it was  
 17 going to be run early in the morning with a limited number  
 18 of protesters at the koppie, not if it was going to be run  
 19 later on in the day with a large number of protesters at  
 20 the koppie.

21 COLONEL SCOTT: If my estimations were  
 22 correct, they would have needed about 700 metres, which  
 23 sort of relates to seven trailers. If there were seven  
 24 available still on the morning of the 16th, yes.

25 CHAIRPERSON: Sorry, could I ask you a

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1 question? Looking at the picture we see piles of barbed  
 2 wire. Now how many trailers' worth would you say do we see  
 3 there?

4 COLONEL SCOTT: I see one trailer there.

5 CHAIRPERSON: You see one trailer, but  
 6 trailers' worth of barbed wire.

7 COLONEL SCOTT: Oh ja, the –

8 CHAIRPERSON: You see there are a number  
 9 of piles. Is each pile effectively what you put on one  
 10 trailer, or would you put a couple of piles on a trailer?  
 11 You understand what I'm trying to ask?

12 COLONEL SCOTT: Yes, Chairperson. Well,  
 13 there's a significant amount there. I don't know if each  
 14 of those piles will actually equate to a 100-metre stretch  
 15 if you, you know, pulled it out. I know the police would  
 16 have theirs specifically custom-made or ordered to be  
 17 comfortable at roughly 100 metres, or maybe just before or  
 18 after 100 metres, but I think a round figure of 100 is  
 19 probably accurate. But I don't know with the ones that we  
 20 see in those groupings, I'm not sure how they were ordered,  
 21 in what lengths.

22 [11:54] MR CHASKALSON SC: Colonel, moving onto  
 23 the other reasons that have been offered. In your  
 24 statement we got three new reasons that surfaced for the  
 25 first time. The first is addressed at page 60 paragraph

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1 8.15 of your statement, that's the cattle risk and the risk  
 2 of a cattle stampede through the barbed wire. The second  
 3 was a concern that you raised at page 63 paragraph 8.22.1  
 4 which is the risk that the mine workers could avoid the  
 5 problem by just walking away from the koppie and putting  
 6 themselves outside the range of what you could encircle.  
 7 The third which you address at page 64, 8.22.3 is the  
 8 potential humanitarian problem that would be created if you  
 9 encircle people who sat it out, as it were and you then  
 10 faced a situation where you had people encircled overnight  
 11 in the cold. If we can take these one by one. The walking  
 12 away problem I want to put to you that again is a problem  
 13 that arises only in the context of encirclement of a large  
 14 crowd.  
 15 COLONEL SCOTT: That was, it was only  
 16 thrashed out there could it could happen even with a  
 17 smaller crowd for that matter. But thus the first light  
 18 and as I said the element of surprise issue. If we could  
 19 deploy an encirclement and from two different directions as  
 20 quickly as we could at first light it was anticipated then  
 21 that we would catch them unawares, they would not have seen  
 22 necessarily groupings come in to do that to them. But as  
 23 the days progressed and they started becoming aware of what  
 24 the police assets were and that obviously, one of the  
 25 things I'm also taught to do is to try to think like my

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1 opponent, what he would be considering we would be doing  
 2 and then counteract that again. So I would be continually  
 3 also thinking what they would be thinking and if I was in  
 4 their shoes how would I be anticipating the response of the  
 5 police. So the encirclement plans started first morning,  
 6 first light encirclement plans started losing favour the  
 7 long the operation went on. With the strikers in my  
 8 opinion being more vigilant to the police and that we would  
 9 be considering some form of a tactical option they would  
 10 more vigilant in us approaching them.  
 11 MR CHASKALSON SC: Well, let's just  
 12 postulate that the strikers see the police coming, the 50  
 13 on the mountain, at first light there are 50 on the  
 14 mountain, they see the police coming and they try to get  
 15 off the mountain so they won't be encircled. It seems to  
 16 me that that's not a problem for the police. If anything  
 17 it's a benefit for the police because once you've a got a  
 18 serious deployment of POPS members in Nyalas 50 individuals  
 19 running into the open area can be rounded up, encircled,  
 20 arrested very simply. So you can still achieve your  
 21 objective encircling the koppie with those who stayed  
 22 behind in cutting off access to the koppie for those who  
 23 haven't yet come. Anyone who wants to try and step outside  
 24 essentially does so at their own peril, is that not a fair  
 25 -

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1 COLONEL SCOTT: Well this is why what  
 2 you're saying now is the exact type of inputs we would have  
 3 been expecting had I briefed that plan on Tuesday morning  
 4 at 6 o'clock. The what ifs, what if we go and that  
 5 happens, then the inputs start coming from commanders well  
 6 what do we do then. But in never getting to official brief  
 7 that at a JOCCOM other than after the JOCCOM on the  
 8 Wednesday where Brigadier Pretorius says in that smaller  
 9 grouping where we had a look at a phase 3 -  
 10 MR CHASKALSON SC: Brigadier Engelbrecht.  
 11 COLONEL SCOTT: Brigadier Engelbrecht,  
 12 ja. So it never got to that level of dealing with the what  
 13 ifs.  
 14 MR CHASKALSON SC: But if we think now  
 15 about the what ifs the first what if may well be a reason  
 16 not to try the plan during the middle of the day or at any  
 17 stage, whether on a large number of mine workers there.  
 18 But for a group of 50 on the mountain it's not a  
 19 particularly problematic what if for SAPS, they can cope  
 20 with that, would you accept that?  
 21 COLONEL SCOTT: That is, in fact that  
 22 it's the culture of the police. Many a police officer  
 23 whether be in a police van or working in the public order  
 24 you're taught to think on your feet in crisis management  
 25 because that is in essence the job of the police member.

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1 You arrive in situations which are ongoing, which are fluid  
 2 and you've got to think on your feet to be able to do what  
 3 you do. Now I'm not saying that that is what actually  
 4 contributes to planning, when you've got the opportunity to  
 5 plan it, to go through the what ifs you need to actually do  
 6 that when the time is made available beforehand.  
 7 MR CHASKALSON SC: Well I want to go to  
 8 your second concern which is the humanitarian concern and I  
 9 want to put to you again that that may well be a concern if  
 10 you have a large number of mine workers at the koppie but  
 11 it's not a problematic concern if you're talking about a  
 12 first light deployment with only 50 on the koppie and I  
 13 want to say so for two reasons. I want to put two reasons  
 14 in this regard to you. The first is almost by definition  
 15 we're dealing with people who've already chosen to spend  
 16 the night out in the cold.  
 17 COLONEL SCOTT: Yes.  
 18 MR CHASKALSON SC: So you're not making  
 19 that situation worse at that, all you're doing is your  
 20 sustaining it. But, and you agree with that?  
 21 COLONEL SCOTT: Yes.  
 22 MR CHASKALSON SC: The second is that if  
 23 it were to become a problem you would have plenty of time  
 24 through the day to deal with the problem, if it was  
 25 anticipated at some stage that these people are going to

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1 sit it out, they're going to stay there the whole night,  
 2 we're not going to resolve the problem, you can send your  
 3 tactical forces in to affect the high risk tactical arrests  
 4 if you think that that risk is not, is outweighed by the  
 5 humanitarian risk of forcing people to stay on the mountain  
 6 overnight.  
 7 COLONEL SCOTT: It's a possibility what  
 8 you're saying but I think we must just understand that the  
 9 points that you're raising now were raised when the  
 10 encirclement plan was discussed to consider whether the  
 11 larger group, whether it was still feasible for a larger  
 12 group, it wasn't in the context of looking at the smaller  
 13 group.  
 14 MR CHASKALSON SC: That's in fact where I  
 15 wanted to end up. Because it seems to me that all of the  
 16 concerns that you're realising are really concerns which  
 17 explain very reasonably why you couldn't run encirclement  
 18 with a larger group.  
 19 COLONEL SCOTT: That's correct.  
 20 MR CHASKALSON SC: But they don't explain  
 21 why you couldn't run encirclement at first light?  
 22 COLONEL SCOTT: That's correct.  
 23 MR CHASKALSON SC: Now as the Chairperson  
 24 has put to you earlier encirclement couldn't have been run  
 25 at first light on Thursday morning or it could have but it

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1 wasn't desirable to run it on first light on Thursday  
 2 morning because Mr Mathunjwa had been sent away essentially  
 3 to try to resolve the problem consensually and while that  
 4 was realistic, all be it not a very likely possibility SAPS  
 5 wanted to explore it or let it run its course.  
 6 COLONEL SCOTT: That's correct.  
 7 MR CHASKALSON SC: And by the time that  
 8 possibility turned out not to be one that would be realised  
 9 it was to late to run encirclement on the Thursday?  
 10 COLONEL SCOTT: That's correct.  
 11 MR CHASKALSON SC: But that still begs  
 12 the question of why it wasn't possible to wait until Friday  
 13 to move to the tactical phase with the encirclement plan  
 14 and that's the topic to which I'd like to turn now and as a  
 15 prelude to that topic I'd like to set out what I understand  
 16 the important sequence of events in this regard to be on  
 17 the 16th and if we can start with the 6 o'clock JOCCOM  
 18 where, Colonel, what I will do I will set up what I see to  
 19 be the important sequences in that process. Listen to me  
 20 first time, I'll give you an opportunity to respond to each  
 21 one of them to say either you've got that step wrong, it  
 22 wasn't like that or there's another step that's missing  
 23 that you should have mentioned.  
 24 COLONEL SCOTT: Okay.  
 25 MR CHASKALSON SC: The first step that I

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1 see as important is that 6 o'clock JOCCOM meeting where on  
 2 the SAPS version is at it stands, General Annandale  
 3 announced the abandonment of the encirclement plan and the  
 4 adoption of a new phase 3. At the same JOCCOM meeting a  
 5 decision was taken to move to phase 2. Call that two  
 6 steps.  
 7 COLONEL SCOTT: If I can maybe just input  
 8 something there. It must be remembered that the initial  
 9 encirclement plan as such, the strategy thereof was never  
 10 understood by the greater group of commanders. They would  
 11 have only seen the word encirclement understanding that  
 12 that would have been our tactical option. As I say there  
 13 was never a full briefing given to them on that. So I'm  
 14 just trying to relate to General Annandale abandoning the  
 15 encirclement plan. So for him speaking to the commanders  
 16 that their opinion has been that the tactical option is  
 17 going to be encirclement should we move there, it's likely  
 18 that their opinion again is going to be that we're  
 19 encircling the larger group, not understanding that it was  
 20 an initial plan drafted for a Tuesday morning, seen for a  
 21 Wednesday morning, evaluated during the day on the  
 22 Wednesday for a larger group. Seen that it's not going to  
 23 be feasible and thus turn over that paper. Because the  
 24 understanding of the commanders that were in the JOCCOM  
 25 having the plan not explained to them but only reading it

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1 and having me saying that the tactical option would be  
 2 encirclement and going on. There could be of the opinion  
 3 that the encirclement meant the larger group.  
 4 MR CHASKALSON SC: But they would have  
 5 known the broad outlines of the encirclement plan from that  
 6 Google Earth slide that was part of the presentations that  
 7 had been shown previously. They may not have realised that  
 8 it was designed for a small group early in the morning but  
 9 the broad outline was the processing zone?  
 10 COLONEL SCOTT: Ja, the photo would have  
 11 been there, the photo was never explained to them though.  
 12 As I said it was an iconic photo just to show the  
 13 operational overview and I would click on the Google Earth  
 14 icon. So if they made their own deductions by looking at  
 15 the photo I wouldn't know. But they were never explained  
 16 in specific at all the envisioned concept for the  
 17 encirclement. They only knew it was part of the strategy.  
 18 CHAIRPERSON: Is that correct, there were  
 19 operational strategy was explained, according to paragraph  
 20 7.25 page 50 you gave a briefing to the, what you described  
 21 as the first briefing to the structure JOC which included  
 22 the different police commanders was on Tuesday at about  
 23 14h00. The commanders were called back from the sector  
 24 patrols to hear the operational strategy based on phases 1  
 25 to 6 and then if one goes a few pages earlier. Paragraph

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1 7.21.6.2 page 46 you explain what the operational strategy  
 2 for a phase 3 deployment was at that stage. Based on the  
 3 initial operational concepts i.e. the plan to encircle the  
 4 koppie and then you enlarge on that in 7.21.6.3. So  
 5 apparently operational strategy which you explained but  
 6 according to what you say here in paragraph 7.25 that was  
 7 conveyed to the commanders at 14h00 hours on Tuesday  
 8 afternoon, is that right?  
 9 COLONEL SCOTT: No, Chairperson.  
 10 CHAIRPERSON: Or am I missing something?  
 11 COLONEL SCOTT: No, no. This is what my  
 12 envisioned, we're talking about 7.2.6.1 or 7.2.1.6 speaking  
 13 of the phase 3. That was my, how I had reasoned out the  
 14 strategy but the briefing of that I think I mentioned it  
 15 elsewhere in my statement, I'm not sure of the paragraph  
 16 now, where I actually say it was carried over to them  
 17 basically in the coordinating instruction slide where it  
 18 just had the names in principle but I specifically  
 19 concentrated on the phase 1 to go into the dialogue.  
 20 CHAIRPERSON: You also say in paragraph  
 21 7.27 on page 51 that you gave a full presentation in  
 22 respect of phase 1 but you also gave, you also referred to  
 23 the other five phases in lesser detail which implies that  
 24 there was a certain degree of explanation, at least a  
 25 sentence of two and all we need is a sentence or two to get

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1 what you have in 7.21.6.3, isn't that right or am I  
 2 misunderstanding it?  
 3 COLONEL SCOTT: No, well, memory is very  
 4 vague from that time, as I mentioned yesterday as well,  
 5 Chairperson. But –  
 6 CHAIRPERSON: I'm relying on what you say  
 7 –  
 8 COLONEL SCOTT: Yes, I understand that  
 9 and I'm just thinking about –  
 10 CHAIRPERSON: - still trying to  
 11 understand your evidence.  
 12 COLONEL SCOTT: If, to what degree but to  
 13 the best of my knowledge I would have just referred to them  
 14 as is this is the strategy and you know if you talk to it  
 15 its again its we're going to do this, it will be a show of  
 16 force, it will go to the tactical option which at this  
 17 stage is an encirclement option on a specific order which  
 18 will be given moving onto the targeted arrests and then to  
 19 a cordon and search strategy.  
 20 CHAIRPERSON: You see the cordon and, the  
 21 targeted arrests of four and five I think are they?  
 22 COLONEL SCOTT: Ja.  
 23 CHAIRPERSON: So if you've already  
 24 explained to them encirclement once they get to four and  
 25 five they'll understand that three must have included

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1 arrests because you've got arrests for four and five.  
 2 COLONEL SCOTT: That's, well ultimately  
 3 if there was going to be a tactical option –  
 4 CHAIRPERSON: No but you explain, you  
 5 explain we're going to do three.  
 6 COLONEL SCOTT: Yes.  
 7 CHAIRPERSON: You thought to.  
 8 COLONEL SCOTT: Yes.  
 9 CHAIRPERSON: You then say we're moving  
 10 out of 4 and 5. 4 and 5 presuppose arrests.  
 11 COLONEL SCOTT: Yes.  
 12 CHAIRPERSON: Alright so therefore  
 13 they'll understand that 3 must include arrests.  
 14 COLONEL SCOTT: Yes.  
 15 CHAIRPERSON: Encirclement.  
 16 COLONEL SCOTT: Yes.  
 17 CHAIRPERSON: And then arrests.  
 18 COLONEL SCOTT: Yes.  
 19 CHAIRPERSON: That at least they know.  
 20 COLONEL SCOTT: Yes and as I say much of  
 21 that comes from the strategy of the early morning. But to  
 22 how much of that I actually discussed with them, I would be  
 23 using deductive reasoning if I had to go there. I can't  
 24 really remember. But I'm sure there must have been some of  
 25 their statements of the members from those days that will

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1 be able to clear that up.  
 2 MR CHASKALSON SC: Colonel, getting back  
 3 to those sequences. You have the 6 am meeting with Major-  
 4 General Annandale indicates that it's no longer  
 5 encirclement its disperse and disarm. At the same meeting  
 6 a decision is taken to move to stage, through to phase 2.  
 7 COLONEL SCOTT: Yes.  
 8 MR CHASKALSON SC: And just to clarify,  
 9 phase 2 is what we could call a holding phase, phase 3 is a  
 10 tactical phase.  
 11 COLONEL SCOTT: Phase 2 was a show of  
 12 force to dissuade any aggressive action and, not just  
 13 towards the police but for that matter to show the strong  
 14 arm of the police is present and to dissuade any violent or  
 15 destructive action from the part of the strikers and then  
 16 of course the, that's actually the first reason for the  
 17 phase 2. The second reason is the, is a pre-placement for  
 18 possible move to a stage 3, a phase 3.  
 19 MR CHASKALSON SC: Okay. But no decision  
 20 was taken to implement phase 3 at the morning JOCCOM  
 21 meeting because in the absence of a material escalation in  
 22 the threat there was no need to move from phase 2 to phase  
 23 3.  
 24 COLONEL SCOTT: At that time obviously  
 25 speaking now to the JOCCOM meeting there was no need yet to

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1 move because remember the JOCCOM happened anyway before 9  
 2 o'clock in the morning. So deciding on a phase 2 at that  
 3 time we're still uncertain as to what will happen at 9  
 4 o'clock. Although information is trickling in that people  
 5 are arriving at the koppie with weapons, there's still a  
 6 hope that something is going to come of it. But there was  
 7 no pertinent decision taken there, I think there was an  
 8 anticipation that possibly that day we could go through a  
 9 tactical option but there was no decision taken at that  
 10 time to, that the one was going to be implemented.  
 11 MR CHASKALSON SC: But assuming the  
 12 version that's been put before this commission in exhibit L  
 13 and through the evidence of Major-General Annandale is that  
 14 the key factor that ultimately determined the move to the  
 15 tactical phase was the escalation in the threat.  
 16 COLONEL SCOTT: I believe so as well,  
 17 yes.  
 18 MR CHASKALSON SC: Did you understand at  
 19 the morning JOCCOM that in the absence of an escalation of  
 20 the threat there would be no move to phase 3?  
 21 COLONEL SCOTT: I understood it to be  
 22 that way, yes.  
 23 MR CHASKALSON SC: Proceeding with the  
 24 sequence of events as I understand it, by midmorning it was  
 25 clear that Mr Mathunjwa was not going to be able to get the

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1 mine workers to leave the koppie?  
 2 COLONEL SCOTT: Well they hadn't as of  
 3 yet but I wasn't out there to experience all that was going  
 4 on but I understood that it wasn't happening, yes.  
 5 MR CHASKALSON SC: Let me not say by  
 6 midmorning.  
 7 CHAIRPERSON: He only saw them after 12  
 8 o'clock.  
 9 MR CHASKALSON SC: The midmorning was  
 10 wrong. By 1 o'clock, by the time that Mr Mathunjwa left  
 11 the koppie shortly after 1 SAPS was of the view that he  
 12 wasn't going to be able to get the mine workers to leave  
 13 the koppie?  
 14 COLONEL SCOTT: I wasn't even aware at  
 15 that stage that he was speaking to the mine workers. Back  
 16 at the JOC, I don't know why but I was not aware that he  
 17 was out there and addressing the mine workers at that time.  
 18 MR CHASKALSON SC: But again setting out  
 19 the sequences in the SAPS case as we understand it some  
 20 time prior to 1:30 it was reported to SAPS or it reached  
 21 the JOC that there had been an escalation of the threat.  
 22 COLONEL SCOTT: Yes.  
 23 MR CHASKALSON SC: And some time prior to  
 24 1:30 as a result of this escalation of the threat the  
 25 decision to move to phase 3 was taken?

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1 COLONEL SCOTT: Well I can assume so  
 2 because as I say I was told probably just before 1:30 come  
 3 and take your seats, we're going to now, we're moving to  
 4 the tactical option.  
 5 MR CHASKALSON SC: And if there hadn't  
 6 been a material escalation in the threat there wouldn't  
 7 have been a move to the tactical option.  
 8 [12:14] COLONEL SCOTT: Well, you're asking for  
 9 my opinion, because obviously I can't speak on behalf of  
 10 the SAPS. I think these decisions are taken above my  
 11 level, but I was of the opinion again that if the strikers  
 12 were going to return to dialogue, continue negotiating with  
 13 their, laying down of their weapons, etcetera, that that  
 14 would still be the order of the day.  
 15 MR CHASKALSON SC: But again on the SAPS  
 16 case there had been this escalation in the threat. The  
 17 decision was taken to move to phase 3 some time before 1:30  
 18 and communicated at the 1:30 JOCCOM.  
 19 COLONEL SCOTT: Yes.  
 20 MR CHASKALSON SC: And then phase 3 was  
 21 implemented some time after 3:30.  
 22 COLONEL SCOTT: Yes.  
 23 MR CHASKALSON SC: Now in terms of that  
 24 sequence, have I left anything out critically? Is there,  
 25 does that describe how we got to phase 3 on the Thursday?

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1 COLONEL SCOTT: I have a strange feeling  
 2 you're going to inform me, but as I say, if I speak  
 3 pertinently to memory now –  
 4 MR CHASKALSON SC: Well, I hate to be so  
 5 predictable, Colonel, but I am going to inform you what I  
 6 see as a crucial step that isn't part of the SAPS case but  
 7 we see as being crucial, and that's the press conference of  
 8 the Provincial Commissioner at 9:30 which we see as being a  
 9 very important event on the day, and can we just play  
 10 AAA13, which is a clip from that press conference?  
 11 [VIDEO SHOWN]  
 12 So that's what the Provincial Commissioner had  
 13 told the world at 9:30, and in fact she went a little bit  
 14 further. There is another clip which needs to be played  
 15 into the record, which is a press conference that she gave  
 16 to eNCA, an interview that she gave to eNCA straight after  
 17 that press conference. That's JJJ92. While we're waiting  
 18 for JJJ92 to be found, would you agree that unless the  
 19 miners left the koppie consensually, it wouldn't be  
 20 possible to "end the matter today" without moving from  
 21 phase 2 to phase 3?  
 22 COLONEL SCOTT: I agree, yes.  
 23 MR CHASKALSON SC: So if what the  
 24 Provincial Commissioner had said at 9:30 was going to be  
 25 implemented, absent a consensual departure from the koppie



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1 by the miners, there would have to have been an  
2 implementation of phase 3 that day?  
3 COLONEL SCOTT: From what she had said, I  
4 understand it that way, yes.  
5 MR CHASKALSON SC: Can we now play JJJ92,  
6 which is an interview that she gave shortly after 9:30.  
7 [VIDEO SHOWN]  
8 So Colonel, the Provincial Commissioner was very  
9 clear at 9:30 that things were going to be "ended today,"  
10 consensually or non-consensually.  
11 COLONEL SCOTT: I hear that, yes.  
12 MR CHASKALSON SC: Now one of the things  
13 that always struck us as –  
14 CHAIRPERSON: At what stage did you  
15 learn, if you ever did learn, in the course of that day  
16 that the Provincial Commissioner had made that  
17 announcement?  
18 COLONEL SCOTT: Chairperson, even up  
19 until the special JOCCOM I was not aware of that media  
20 briefing that had taken place, and I was not aware that, in  
21 this case if there was a pre-decided decision, was made  
22 either. I was of the opinion that a phase 3 was always on  
23 the cards due to the fact that my own opinion was again  
24 that the violence would possibly get worse because all  
25 avenues of dialogue had been exhausted and there was

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1 possibly no other way for the strikers to go other than  
2 what had happened at the Impala Platinum Mine. So, but  
3 that there was a pertinent decision made, I was not aware  
4 of that.  
5 CHAIRPERSON: General Mpembe and General  
6 Annandale were present at the press conference and they  
7 both testified to that effect.  
8 COLONEL SCOTT: Yes.  
9 CHAIRPERSON: Did they not report to  
10 you –  
11 COLONEL SCOTT: No.  
12 CHAIRPERSON: - that that decision had  
13 already been announced to the world at 9:30?  
14 COLONEL SCOTT: No, they didn't,  
15 Chairperson, and why I can say with certainty is because if  
16 I was told phase 3 is a definite going ahead and it's in so  
17 many hours time, I would have spent quite a bit of time in  
18 actually looking at detail and reassessing the situation,  
19 asking for aerial photographs. As I say, when you've got  
20 the time you use it, and when you don't have the time, you  
21 make the best of this little time you have. So I wasn't  
22 aware, no.  
23 MR CHASKALSON SC: Colonel, you spoke of  
24 a – I forget the exact phrase that you used, but of a  
25 decision having been taken already, was the meaning that

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1 you were conveying, and that you weren't aware of that at  
2 the time.  
3 COLONEL SCOTT: Well, listening to the  
4 video material, it's, I think it's objective to say that  
5 they said, or that the Provincial Commissioner mentioned  
6 that if they don't leave on their own today, as you put it  
7 earlier, that the police would need to take steps to ensure  
8 that it came to an end.  
9 MR CHASKALSON SC: We had statements from  
10 the National Commissioner and the Provincial Commissioner  
11 which made clear that the night before the Provincial  
12 Commissioner had informed the National Commissioner that if  
13 SAPS could not persuade the strikers to lay down their  
14 weapons and leave the koppie by negotiation, she would  
15 issue an instruction for the strikers to be dispersed.  
16 None of that was conveyed to you?  
17 COLONEL SCOTT: No.  
18 MR CHASKALSON SC: You see, what's come  
19 to our attention more recently is that the version  
20 described in the statements of the National Commissioner  
21 and the Provincial Commissioner – in fact it goes a little  
22 bit further than that version; it wasn't just a  
23 conversation between the Provincial Commissioner and the  
24 National Commissioner. There was a formal minuted  
25 extraordinary session of the National Management Forum of

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1 SAPS on Wednesday night, attended by the National  
2 Commissioner, all provincial commissioners, deputy national  
3 commissioners, divisional commissioners, and there is a  
4 minuted item - which we would hand in as JJJ177 and it's in  
5 file 4 now.  
6 CHAIRPERSON: Page.  
7 MR CHASKALSON SC: Page 204. I wonder if  
8 we –  
9 CHAIRPERSON: So how do I describe it?  
10 Minutes, National?  
11 MR CHASKALSON SC: The National  
12 Management Forum of the SAPS, and this is an extract from  
13 the minutes. It says "draft," but we're assured by SAPS  
14 that this is in fact the actual minute, or a correct  
15 minute, and it says, "Agenda item 7, extraordinary session.  
16 Attendance, National Commissioner, all provincial  
17 commissioners, Divisional Commissioner Operational  
18 Services, Deputy National Commissioner Operational  
19 Services, and Acting Divisional Commissioner Crime  
20 Intelligence. The National Commissioner opened the meeting  
21 and requested the Provincial Commissioner North West,  
22 Lieutenant-General Mbombo, to brief the attendees on issues  
23 of the labour unrest in Lonmin Mine in Marikana, North  
24 West. After deliberations, the meeting endorsed the  
25 proposal to disarm the protesting masses and further

1 indicated that additional resources must be made available  
 2 upon needs identification by the Provincial Commissioner  
 3 North West." So it seems that the statement that the  
 4 Provincial Commissioner made to the world at 9:30 flowed  
 5 from a decision taken at a meeting of the highest  
 6 management structure of the SAPS. Were you aware of any of  
 7 this?

8 COLONEL SCOTT: No.

9 CHAIRPERSON: Mr Chaskalson, when you  
 10 reach a suitable stage we have to stop, as you know.

11 MR CHASKALSON SC: Mr Chairperson, I have  
 12 quite a long way to go, so I think at this point we would  
 13 do as well to stop now.

14 CHAIRPERSON: The Commission is now going  
 15 to adjourn until the 14th of October. We're taking the  
 16 recess now, a lot of work to be done during the recess,  
 17 reading and consideration of material, but we're adjourning  
 18 till the 14th of October at 9:30. We have already spoken,  
 19 the three of us, three Commissioners, have spoken to the  
 20 President personally and indicated that we need an  
 21 extension; we will not finish our work by the end of  
 22 October. He asked for an estimate, which we gave him,  
 23 which had been prepared by the evidence leaders, as to how  
 24 long we would need. We have not yet had communicated to us  
 25 to what date the further extension will be, but I am

1 authorised by the department to say that we will be getting  
 2 an extension. The full details of it will be announced  
 3 later. We hope to be able to make an announcement around  
 4 about the 14th when we resume. So the Commission will now  
 5 adjourn until 9:30 on the 14th of October, and we'll resume  
 6 the proceedings then on that date at that time. The  
 7 Commission will now adjourn.

8 [COMMISSION ADJOURNED]

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