

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 137 15 OCTOBER 2013 PAGES 14543 TO 14730



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Page 14543

1 [PROCEEDINGS ON 15 OCTOBER 2013]
 2 [09:07] CHAIRPERSON: The Commission resumes.
 3 Will everyone please follow my example and switch off your
 4 cell phones. Mr Mpofu, good to see you back.
 5 MR MPOFU: Chairperson, thank you very
 6 much. Yes, we are back. Thank you very much. We –
 7 CHAIRPERSON: Temporary or permanent?
 8 MR MPOFU: I didn't get that -
 9 CHAIRPERSON: I say temporary or
 10 permanent?
 11 MR MPOFU: Semi-permanently, Chairperson.
 12 That's as ambiguous as it can get. Chairperson, on a
 13 serious note, yes we are back. As everyone knows now the
 14 judgment was given yesterday in the North Gauteng High
 15 Court –
 16 CHAIRPERSON: In Johannesburg?
 17 MR MPOFU: Sitting in Johannesburg, yes,
 18 and it just confused a lot of things. It just so happens
 19 [mechanical disturbance]. What happened to the [inaudible]
 20 Chairperson knows that we had asked for either the
 21 President or the Minister of Justice or, that they provide
 22 funding and the court did finally say that one of them
 23 [inaudible] Legal Aid Board should provide us funding, and
 24 the good news is that the court order stated that that must
 25 be forthwith done immediately. So barring the possibility

Page 14544

1 of an appeal, we are anticipating that we will be sitting
 2 around the table with the Legal Aid South Africa to work
 3 out the practicalities, but in the interest of speed and
 4 ensuring that our participation is not disturbed any
 5 further, our clients gave us the necessary instructions,
 6 Chair, that while those practical arrangements are being
 7 done we should come back forthwith as well, which we have
 8 done. Thank you, Chairperson, with your permission I would
 9 just like to express my thanks to you, Chairperson, and
 10 your Commissioners, and all the people who supported us in
 11 this difficult task, and just to reiterate that as you
 12 yourself has appreciated before, our intention was always
 13 to cause minimal, if any, disruption to the Commission,
 14 which is why in the first place the application was brought
 15 during the recess. But as we all know, litigation grows
 16 its own legs once it is started. So, and that is one of
 17 the reasons why we came back with such speed. We
 18 anticipate that those practical arrangements would be
 19 finalised hopefully within the next week or so, in which
 20 case we'll then remove the semi-permanence of our return,
 21 but as far as we are concerned, we are back now,
 22 Chairperson, and I think that goes for, even for the other
 23 parties who had supported us in our quest for justice, as
 24 it were. Thank you.
 25 CHAIRPERSON: Thank you. I see, Ms

Page 14545

1 Lewis, you are back as well, representing the families who
 2 of course have been getting legal aid all the time, but you
 3 were away in solidarity. Is that correct? I see other
 4 people here who I presume are members of the families, and
 5 also some of the victims, so we're pleased to see you back
 6 as well. Colonel, you're still under oath.
 7 DUNCAN GEORGE SCOTT: s.u.o.
 8 CHAIRPERSON: Mr Chaskalson.
 9 CROSS-EXAMINATION BY MR CHASKALSON (CONTD.):
 10 Thank you, Chairperson. Colonel, I'm starting to make a
 11 habit of beginning the day by having to clarify ambiguity
 12 in where I left off the night before, but today it's very
 13 important that I clarify the ambiguity because it seems
 14 that I may have been seriously misunderstood. I clarified
 15 it with you and your counsel after yesterday's session, but
 16 I'd like to clarify it in open Commission so nobody else is
 17 left in any doubt. Yesterday I stated, and I'll quote what
 18 I stated yesterday, I said, I stated, "The obvious flaw in
 19 the plan was that it was calculated to shift the problem
 20 from koppies 1 and 2 to koppie 3, which was terrain from
 21 which it would be more difficult to dislodge the strikers
 22 and in respect of which there was no plan for dislodging
 23 them."
 24 The ambiguity relates to my use of the word
 25 "calculated." I was wanting to use it in an objective

Page 14546

1 sense, not a subjective sense. What I intended to convey
 2 is that if one looks at your plan it was objectively likely
 3 to have the result that the problem would be shifted from
 4 koppies 1 and 2 to koppie 3. I didn't mean, and I
 5 certainly had no intention of conveying that you
 6 deliberately intended to shift the problem from koppies 1
 7 and 2 to koppie 3. In fact, my point was exactly the
 8 opposite. My point was that you didn't intend to create
 9 the situation, but if we look at your plan, it was
 10 something that was inherent in your plan. So from that we
 11 can infer that if you had any reasonable opportunity to
 12 reflect on your plan, you'd have picked up that it had this
 13 inherent problem and you would have done something about
 14 it, and the conclusion that we draw from that is that by
 15 virtue of the fact that you didn't do something about it,
 16 we can infer that your plan was prepared in such haste that
 17 you didn't have any reasonable opportunity to reflect on
 18 it. That was the proposition I was putting to you, not
 19 that you deliberately intended it – precisely the opposite,
 20 and from the opposite we infer that the plan was prepared
 21 in such haste that you didn't have an opportunity to
 22 reflect on it to remove what we see as a fairly obvious
 23 inherent flaw.
 24 So after that clarification, you've heard my
 25 lengthy address on the evidence that led us to have certain

<p style="text-align: right;">Page 14547</p> <p>1 views on what the likely facts are. You've considered that 2 evidence overnight, and I said to you yesterday that when 3 we came back I would ask you three questions, and I'd like 4 to start with those three questions.</p> <p>5 CHAIRPERSON: Let's just make sure of one 6 thing. Did you have an opportunity last night, Colonel, to 7 go through the material that was put to you by Mr 8 Chaskalson, and are you therefore ready to answer the three 9 questions, whatever they may be?</p> <p>10 COLONEL SCOTT: I have, and I have put 11 out the three questions' answers, as well as a bit of a 12 foundational background to my justification –</p> <p>13 CHAIRPERSON: I'm not quite sure if I 14 know what the questions are yet, so let's hear the 15 questions first, then you can give us the answers.</p> <p>16 COLONEL SCOTT: Okay.</p> <p>17 CHAIRPERSON: Do you want to put them one 18 by one, or all together?</p> <p>19 MR CHASKALSON SC: Maybe I should ask 20 them, I'll list them all together. I did list them 21 yesterday evening, but it was a bit hurried at the end of 22 the day. The three questions were, when was the tactical 23 phase of the plan revised from an encirclement plan to a 24 plan to disperse and disarm? That was the first question. 25 The second question was, who took the decision to move to</p>	<p style="text-align: right;">Page 14549</p> <p>1 option was not finalised, and the detail thereof was 2 therefore not dealt with until the 13:30 meeting, and I say 3 this because of looking at the slides, trying to put 4 together, piece back together what could have been. But 5 I'm relatively sure that that meeting where we spoke about 6 the encirclement not going to be feasible for a larger 7 crowd took place on the Wednesday, but again understanding 8 how General Annandale would have worked, he would not want 9 to have made the decisions without a JOCCOM being briefed 10 and the relevant operational commanders, etcetera, having 11 an input into a final decision being made, thus the actual 12 encirclement strategy still on the Thursday morning with 13 the proposal of a dispersion to arrest strategy dealt with 14 at that meeting.</p> <p>15 MR CHASKALSON SC: Okay, if we can take 16 all three of your answers and then I can possibly engage 17 with you on –</p> <p>18 CHAIRPERSON: To make it easy for the 19 witness, put the second question to him again and the third 20 one also.</p> <p>21 MR CHASKALSON SC: Certainly. The second 22 question was, who took the decision to move to the tactical 23 phase on the Thursday afternoon.</p> <p>24 COLONEL SCOTT: And my response to that 25 is I believe that the Provincial Commissioner communicated</p>
<p style="text-align: right;">Page 14548</p> <p>1 the tactical phase on the Thursday afternoon? And the 2 third question was, why was SAPS not able to wait until 3 Friday morning to move to the tactical phase by using the 4 original encirclement plan, which strikes us as being far 5 less risky than the plan ultimately implemented.</p> <p>6 CHAIRPERSON: Yes, you did give those 7 yesterday. I'd forgotten.</p> <p>8 MR CHASKALSON SC: So if we can start 9 with the first question, when was the tactical phase of the 10 plan revised from an encirclement plan to a plan to 11 disperse and disarm?</p> <p>12 COLONEL SCOTT: I've pondered over the 13 evidence as I've seen it and I still believe that on 14 Wednesday the encirclement was not seen as feasible. It 15 was discussed on the Wednesday for the larger crowd, but 16 the decision to move the dispersion and, to move to a 17 dispersion and arrest strategy was possibly only confirmed 18 after deliberation of all present at the JOCCOM on the 19 Thursday morning. It is possible that no finalisation was 20 given to what the tactical option would be that morning at 21 the JOC, and I say this because I'm aware that the generals 22 were called out of the JOCCOM meeting towards the end to 23 accompany the Provincial Commissioner to a media briefing, 24 and that may give explanation as to why the deliberation is 25 still on encirclement, or were they going to the tactical</p>	<p style="text-align: right;">Page 14550</p> <p>1 that decision to us. I don't think that I would be 2 accurate in saying that she took the decision herself. It 3 could have been her or it could have been a selective 4 decision taken, but she did communicate the decision to go 5 to the tactical option on the Thursday.</p> <p>6 MR CHASKALSON SC: And the third question 7 was, why was SAPS not able to wait until Friday morning to 8 move to the tactical phase by using the encirclement plan, 9 which strikes us as being far less risky than the plan 10 ultimately implemented, subject of course to the proviso 11 that it's implemented early in the morning?</p> <p>12 COLONEL SCOTT: I was under the 13 impression that it was due to the defiance of the laying 14 down of the weapons, which automatically moved the strikers 15 to choose a path of resistance towards the law, compounded 16 by the fact that the threats were being made that day to 17 the police on the ground. I accepted that through all the 18 input I was hearing around the JOC concerning the threats 19 and the atmosphere which was reported from the koppie, an 20 attitude changing, that the police had to act and that 21 there was going to be violence before the end of the day, 22 or possibly through that night, as I had picked up from 23 personnel, security personnel who were present at the 24 Impala Platinum incidents earlier in the year, as this 25 would be one of the strategies that the strikers may use to</p>

Page 14551

1 intimidate the mine, or to influence decision making to go
 2 their way to stop the violence, as it seemed to have worked
 3 at the Impala Platinum situation earlier that day – earlier
 4 that year, sorry. In saying that, that’s why there were –
 5 and besides the fact, I’m not at a level to question the
 6 instructions given from senior management, but I think that
 7 was the reasoning behind why the decision was taken then to
 8 go forward that afternoon.
 9 MR CHASKALSON SC: I’m not entirely sure
 10 what the SAPS case is at the moment, but I don’t understand
 11 that to be the SAPS case from what my learned friend Mr
 12 Semanya was saying yesterday, but that is something that we
 13 will clarify and deal with in due course. You’re not at
 14 the level of – you’re saying you’re not at a level of
 15 senior management to be able to answer that question
 16 though?
 17 COLONEL SCOTT: That’s correct, yes.
 18 MR CHASKALSON SC: Maybe if we can start
 19 with the last question, because if you can’t give us the
 20 actual reason, then I don’t want to question you on the
 21 actual reason, but what I would like to put to you is
 22 certain aspects of the, or certain passages from the
 23 statement of Gary White, which has been the final – I think
 24 it’s the final statement, anyway the second statement of
 25 Gary White –

Page 14552

1 CHAIRPERSON: May I ask the witness, have
 2 you had an opportunity to read what Mr White has said in
 3 his “final” statement?
 4 COLONEL SCOTT: I have, Chairperson.
 5 It’s extensive, but I’m sure the Advocate will either read
 6 it or bring it up on screen.
 7 CHAIRPERSON: - 127 pages, but there’s
 8 quite a lot of material which is repetition and statement
 9 of the facts as he understands them, and so on. The
 10 criticism isn’t so lengthy, I don’t think.
 11 MR CHASKALSON SC: The passages to which
 12 I will be referring you to, Colonel, are from pages 74 to
 13 79, and I’ll give you an opportunity. It may be useful if
 14 you can read from paragraph 6.5.4 to 6.5.11, and then we
 15 can take them one by one for your response. Chairperson,
 16 we don’t have an exhibit number for Mr White’s statement.
 17 Can it be JJJ178?
 18 CHAIRPERSON: JJJ178, final statement by
 19 Mr White, MBE. It’s an enormous file, exhibit JJJ178.
 20 MR CHASKALSON SC: Yes, Chairperson, part
 21 of the bulk relates, or comes from annexures.
 22 CHAIRPERSON: Yes, I understand.
 23 MR CHASKALSON SC: And if we can go to
 24 page 74 where Mr White addresses this issue; Colonel, if we
 25 can take Mr White’s expert opinion from 6.5.4, he starts

Page 14553

1 off by saying, “Although Lieutenant-Colonel Scott claims a
 2 move to an offensive tactical option would only be
 3 considered if all other options to resolve the situation
 4 without force were exhausted, there is no convincing
 5 evidence as to why less risky options were not considered
 6 or adopted before implementing the final stage 3.” Can we
 7 start with the opening proposition; do you accept that a
 8 move to an offensive tactical option should be considered
 9 only if all other options to resolve the situation without
 10 force were exhausted?
 11 COLONEL SCOTT: I agree with that.
 12 CHAIRPERSON: It’s actually a quote from
 13 your consolidated statement.
 14 COLONEL SCOTT: Yes, Chairperson.
 15 MR CHASKALSON SC: Then he lists what he
 16 sees as a number of alternatives. The first is,
 17 “Maintaining the stage 2 position and seeking to re-engage
 18 with negotiations. Between 10 and 14 August 10 people had
 19 been killed at Marikana. On the afternoon of 14 August a
 20 significant police presence was placed at the koppie and
 21 negotiations commenced. From that time until the afternoon
 22 of 16 August there had been no further deaths and no
 23 significant violence.” Let’s stop at that point. You
 24 accept that from the point at which the police negotiators
 25 moved in to the point at which the tactical phase was

Page 14554

1 implemented, there had been no further deaths and no
 2 significant violence?
 3 COLONEL SCOTT: From the time they moved
 4 in, yes. On that Tuesday obviously we know Mr Twala was
 5 killed near the koppie, but I understand that was probably
 6 the period the police were not there. But I must just say
 7 in what he’s saying here as well that stage 2, part of
 8 stage 2 was still to seek dialogue; it was not just a show
 9 of force, it was to continue with dialogue, albeit with a
 10 show of force to dissuade any violent action towards the
 11 police.
 12 MR CHASKALSON SC: I understand him to be
 13 recognising that. Then he refers to an annexure and I
 14 don’t want to get into the annexure. The annexure shows,
 15 or suggests that the numbers of people at the koppie had
 16 actually declined from a peak of about 2 800 around 11:20
 17 on the 16th of August to only 1 600 on the afternoon, but
 18 that’s not for us to comment on. The second point that I
 19 would put to you was the point that he makes at 6.5.5 where
 20 he first quotes you as saying that the police presence was
 21 working and became a barrier to more violence by an
 22 organised group moving with a planned target in mind, as
 23 had seemingly happened in the days leading up to 14th
 24 August, and this is the point I’d put to you. “Moreover,
 25 Lieutenant-Colonel Scott confirms the SAPS’ view that the

Page 14555

1 congregation of the protesters on the koppie was a positive
 2 factor, given that they would not be a threat to life and
 3 property for so long as they remained there." You still
 4 stand by that view?
 5 COLONEL SCOTT: Yes.
 6 [09:27] MR CHASKALSON SC: So while you had the
 7 protesters at the koppie there was relative peace?
 8 COLONEL SCOTT: Yes. But one must state
 9 that obviously we know at night time they did move away but
 10 from the Tuesday to the Thursday there was the hope of
 11 dialogue and resolution through dialogue which I think was
 12 even in the mind of the strikers at that time. I think by
 13 Thursday it had become clear that dialogue was no longer an
 14 option and that, from what I understand, it was too
 15 dangerous for the mine management to go to the koppie and
 16 if I've heard the video displayed yesterday on the
 17 sentiments of the ETV reporter who states that the strikers
 18 wanted the R12 500, it was not negotiable. That's what
 19 they wanted to hear from mine management that they would be
 20 getting it and by when. And I'm not sure that one could
 21 force mine management's hand into making decisions in that
 22 way. So I think these are the factors that the police were
 23 also considering that where was it going to lead after
 24 Thursday when dialogue had seemed to come to an end.
 25 MR CHASKALSON SC: Well let's go to the

Page 14556

1 next point of Mr White. He runs through certain statements
 2 or extracts from the evidence of Major-General Mpembe at
 3 6.5.6. It says in paragraph C it refers to – we pretty
 4 much traversed anyway. In C "the alleged threats made to
 5 police that they would die at Marikana that day should have
 6 been cause for circumspection and should redoubled attempts
 7 to avoid rather than seek conflict. A decision to move to
 8 an offensive tactical option in circumstances where the
 9 police believed that a large group of armed protesters
 10 wanted to kill them, where there was no carefully developed
 11 plan for such an option. And where that does not appear to
 12 have been an urgent requirement for the police to take such
 13 offensive tactical action was counter intuitive." Let's
 14 take those propositions one by one. Do you accept first of
 15 all that there was in relation to the disperse and disarm
 16 plan no carefully developed plan for such an option on the
 17 16th?
 18 COLONEL SCOTT: I think one must and I
 19 don't mean to insult by saying this, but one must
 20 understand the workings of planning and operational
 21 deployments. Again the strategies put in place, when you
 22 speak to public order policing officials and you tell them
 23 to disperse, you wouldn't explain to them how to disperse.
 24 So I think sometimes the mindset is there, maybe amongst
 25 even in the Commission, that one would need to have gone to

Page 14557

1 the finest of detail to explain to the POPs members how to
 2 do their job, which is not the case. They actually respond
 3 in many, many impromptu operations by arriving on scene in
 4 ongoing fluid operations or incidents where they need to
 5 respond automatically. Now in saying that, at the level we
 6 were dealing with at the JOCCOM being the operational
 7 level, strategic to operational level, we would give the
 8 strategy and the operational expectation outcome of what we
 9 desired, approved by the JOCCOM and generals in charge.
 10 And then the operational commanders below that would go and
 11 execute that. Now it's about co-ordinating those forces,
 12 but not necessarily having to explain to each and every
 13 force how to do their job. You would tell them where you
 14 would want it done and what the expected outcome was and
 15 how to co-ordinate the forces between each other if there
 16 were multiple forces, as there were on the day, that were
 17 part of the operation. So in some ways I think that the
 18 point of pushing it to there was insufficient briefing,
 19 etcetera, specifically with regard to what the expectations
 20 were of the operation is not so. What I can say is that if
 21 there was more time we would have looked more in depth at
 22 the what ifs but the what ifs can become infinite in saying
 23 that as well. You can plan for a worst case scenario which
 24 takes you into multiple different ways of doing things.
 25 And we do, do this in the unit I'm in, we go as far as we

Page 14558

1 can in the time that we're given. But again, at Marikana
 2 and rightfully so time was an issue. We did as best as we
 3 could with what we did. But the briefing of the operation
 4 on how it was supposed to have rolled out, without
 5 anticipating that the strikers would advance towards the
 6 police, that was not anticipated, towards the actual safe
 7 area of the police is something that threw the plan off its
 8 rails initially. Although the members tried to bring it
 9 back on track as best they could as they went along.
 10 MR CHASKALSON SC: Colonel, I will, in
 11 due course, deal with whether that could have been
 12 anticipated, should have been anticipated, whether it did
 13 in fact throw the plan off the rails and to what extent it
 14 did. But I'd like, at this stage, to focus on the crisp
 15 issue that Mr White is addressing here which is was it
 16 appropriate to move to the tactical phase at the time that
 17 that decision was taken. You've mentioned quite a few
 18 different issues in your response but let's take the
 19 briefing for a start. You say that the criticism of the
 20 briefing is possibly a little bit misplaced because POPs
 21 people know what to do when you tell them to disperse. Let
 22 me ask you, we've been through how the briefing took place,
 23 the SAPS view in this Commission is that the situation that
 24 you faced on the koppie was and unprecedented situation, do
 25 you accept that?

Page 14559

1 COLONEL SCOTT: Yes.

2 MR CHASKALSON SC: The briefing that you

3 gave we've already established was a briefing without any

4 written documents at all.

5 COLONEL SCOTT: Yes, apart from the hand-

6 outs that the members had from the early morning JOCCOM,

7 their deployment aerial grid plans which they –

8 MR CHASKALSON SC: Yes, but the situation

9 – firstly that was a stage 2, it was to describe a stage 2

10 situation, we are now moving to stage 3 which was

11 completely different. Do you accept that?

12 COLONEL SCOTT: Yes.

13 MR CHASKALSON SC: And secondly the

14 configuration on the ground had changed very significantly

15 since those hand-outs were handed out. Nyala 6 had been

16 moved at right angles to its original position so that the

17 configuration both of the barbed wire line and of the

18 police area behind it was now very different from what it

19 had been in the morning. Do you accept that?

20 COLONEL SCOTT: The movement of one

21 Nyala, yes.

22 MR CHASKALSON SC: But you say it's the

23 movement of one Nyala, we have actually discussed this

24 before, the movement of that one Nyala changes the

25 geography of the operation significantly because it opens

Page 14560

1 up Nkaneng from the koppie. Do you accept that?

2 COLONEL SCOTT: We understand that now in

3 hindsight and one must understand if the plan was going to

4 roll out the way it was expected to, the razor wire would

5 have been closed off. And the police would have moved out

6 and formed up where that Nyala would have been placed for

7 that matter anyway, blocking the route for any armed

8 advance into Nkaneng.

9 MR CHASKALSON SC: Well maybe it's not

10 possible to compartmentalise this question then. You say

11 we understand that with hindsight. In your plan you

12 contemplated that the barbed wire would be rolled out

13 simultaneously.

14 COLONEL SCOTT: Yes.

15 MR CHASKALSON SC: Why did you want it to

16 be rolled out simultaneously?

17 COLONEL SCOTT: For the speed thereof

18 because it was part of the contingency planning for the

19 stage 2, or phase 2 so that if the police felt that they

20 were under threat during phase 2 that they needed to do

21 that automatically. And for that matter for moving to a

22 tactical option of a phase 3 obviously it would be the fact

23 that the police had taken the decision and it just made

24 sense to me that doing it simultaneously would make it

25 happen faster and more fluidly allowing the police to form

Page 14561

1 up. So any response from the crowd would have been dealt

2 with more effectively.

3 MR CHASKALSON SC: You see it seems to me

4 that the key to this plan was that the barbed wire, there

5 were two keys really, the one was that the barbed wire had

6 to be rolled simultaneously. Or at least very, very

7 quickly because the longer you dwelled on rolling out the

8 barbed wire the more likelihood there was that people on

9 the mountains seeing what appears to be a cage being rolled

10 out in front of them will try and break out of the cage.

11 Do you accept that?

12 COLONEL SCOTT: No, it's difficult

13 because the cage was the police cage at this time and not a

14 cage –

15 MR CHASKALSON SC: You knew that, you

16 knew that, well people on the mountain didn't know that.

17 COLONEL SCOTT: It was, in essence, a

18 barrier line between the police and them. At the end it

19 was a straight line between the police and them curving

20 back towards the police. So I don't see how the protesters

21 could have seen themselves being encaged for that matter

22 when the cage turns back on the police.

23 MR CHASKALSON SC: Well the point at

24 which the protesters moved off the koppie, what they had

25 seen is the roll out of a barbed wire line that hadn't yet

Page 14562

1 turned. Do you accept that?

2 COLONEL SCOTT: A straight line?

3 MR CHASKALSON SC: A straight line

4 between them and Nkaneng from their perspective or between

5 them and the police, that a straight line separating them

6 from the hostels and this informal settlement where they

7 lived.

8 COLONEL SCOTT: I can't speak from their

9 perspective, I can speak from the police's perspective.

10 MR CHASKALSON SC: And are you saying

11 that as a planner you didn't foresee that if the barbed

12 wire rolled out intermittently and slowly that there was a

13 risk that people would move off the koppie in an easterly

14 direction, be that to the police or to Nkaneng?

15 COLONEL SCOTT: Wait, let me just get the

16 grasp of your question again.

17 MR CHASKALSON SC: If the barbed wire

18 rolled out slowly, stutteringly so that people on the

19 mountain knew the barbed wire was coming but it didn't come

20 quickly are you saying that in that situation it wasn't

21 foreseeable? Let's not speak about what you subjectively

22 foresaw, let's speak about what's objectively foreseeable,

23 that in that sort of situation where the barbed wire is

24 rolling out but not quickly, the people on the mountain

25 might not try to get to the other side of the barbed wire?

Page 14563

1 Either to go back to Nkaneng and Wonderkop hostels or if
 2 you thought that they were going to attack the police to
 3 attack the police before the barrier was up?
 4 COLONEL SCOTT: I think it must viewed in
 5 the – what was said at the phase 2 deployment and as the
 6 contingency plan it was supposed to be a rapid deployment
 7 of razor wire otherwise it wouldn't have much effect if
 8 they were going to roll it out one at a time knowing that
 9 the police as imminently going to be under threat. Now by
 10 the time that the phase 3 that we're speaking about, the
 11 detail thereof is discussed at the 13:30. The threats have
 12 been made towards the police already so in my mind I at
 13 that time, if we're going to go now to phase 3 it's amongst
 14 others because there are threats against the police from my
 15 understanding. And that we needed to do that rapidly as
 16 well, so it is so that I didn't want the strikers to see
 17 that the police are starting to roll out the barbed wire
 18 slowly and then start building contingency plans against
 19 what the police were doing, to try and counter what the
 20 police were doing.
 21 CHAIRPERSON: What do you think they
 22 might do if the wire was uncoiled to slowly?
 23 COLONEL SCOTT: Chairperson, I don't
 24 particularly remember considering that in detail. I more
 25 considered that the wire would just be rolled out, that was

Page 14564

1 my opinion.
 2 CHAIRPERSON: I understood you to say
 3 that part of your plan was it be rolled out quickly.
 4 COLONEL SCOTT: Yes.
 5 CHAIRPERSON: And you must have a reason
 6 for that and that must have been based, I would think, upon
 7 what you thought they might get up to if they saw it was
 8 being rolled up, when it was being rolled out too slowly.
 9 Isn't that right?
 10 COLONEL SCOTT: Yes. I'm trying to
 11 recall –
 12 CHAIRPERSON: I want you to answer my
 13 question.
 14 COLONEL SCOTT: - but I think it's also
 15 based on the fact that the threat that was made to Nyala 6
 16 when it was position, that these razor wired Nyalas must be
 17 removed etcetera, etcetera. I don't quite recall the full
 18 reasoning behind it but I know that I wanted to – well it
 19 was my opinion that they needed to roll it out as quickly
 20 as possible to prevent any movement towards the police or
 21 into the police's safe area at that time.
 22 CHAIRPERSON: Are you finished? I want
 23 to put a follow up question to you. Don't let me interrupt
 24 you.
 25 COLONEL SCOTT: What I did anticipate,

Page 14565

1 though, was once the wire was rolled out that if there
 2 would be weak points between the actual trailer and the
 3 Nyala, that those would need to be defended because I
 4 foresaw that there's a possibility that if they did
 5 approach at that stage or during the actual dispersion
 6 action to try to come through to the police's side that
 7 there would be weak points. Either through those gaps or
 8 possibly even underneath the vehicles themselves and that
 9 would be obviously defended by the POP's members firstly.
 10 And if necessary then backed up the TRT and one water canon
 11 which was to remain behind.
 12 CHAIRPERSON: I must put my prima facie
 13 view on the first part to you so you can deal with it. I
 14 would have thought that one of the reasons why you wanted
 15 the wire rolled out quickly was you were afraid, didn't
 16 want the strikers to move towards the area which was not
 17 yet covered by uncoiled wire. If the strikers, for
 18 example, moved off in the other direction you wouldn't have
 19 had a problem would you?
 20 COLONEL SCOTT: No, that's right.
 21 CHAIRPERSON: So it seems to me logical
 22 to assume that you would have wanted the wire uncoiled
 23 rapidly because you didn't want the strikers to move in the
 24 direction where the wire was going to be uncoiled but
 25 hadn't yet been uncoiled. That seems logical doesn't it?

Page 14566

1 COLONEL SCOTT: Yes.
 2 CHAIRPERSON: So therefore a movement by
 3 the strikers forwards was foreseeable and probably
 4 foreseen, would that be fair?
 5 COLONEL SCOTT: In that case,
 6 Chairperson, speaking about – one could say that but my
 7 mindset was on the fact that it was going to be rolled out
 8 quickly and that that was covered.
 9 CHAIRPERSON: No, no I did understand you
 10 to say that part of your plan was that it should be
 11 uncoiled quickly.
 12 COLONEL SCOTT: Yes.
 13 MR CHASKALSON SC: Again, we're going
 14 somewhere from where we started but I think let's run with
 15 this topic rather than deal with it piecemeal now and then
 16 later. You say your idea was that it had to be done
 17 quickly.
 18 COLONEL SCOTT: Yes.
 19 MR CHASKALSON SC: Your initial plan was
 20 that it would be done simultaneously.
 21 COLONEL SCOTT: Yes.
 22 MR CHASKALSON SC: Do you recall the
 23 distances that each Nyala had to travel or should we – I
 24 mean they're set out on slide 191 but we don't need to call
 25 it up if you recall.

<p style="text-align: right;">Page 14567</p> <p>1 COLONEL SCOTT: I think I tried to place 2 them at a maximum of 100 metre distances. My understanding 3 was that the wire could stretch at maximum to about 120 4 metres. 5 MR CHASKALSON SC: We can call up 191 if 6 you want to but what 191 shows is that the distance between 7 where Nyala 1 started and where Nyala 5 started was 330 8 metres. So Nyalas 1 to 4 had to cover a distance of 330 9 metres, just over 80 metres each. 10 COLONEL SCOTT: Okay. 11 MR CHASKALSON SC: To begin with. The 12 distance from Nyala 5 to Nyala 6 according to slide 191 is 13 less than 80 metres. 14 COLONEL SCOTT: The actual positioning, 15 ja. 16 MR CHASKALSON SC: In starting positions. 17 COLONEL SCOTT: Okay. 18 MR CHASKALSON SC: And Nyala 6 on your 19 plan had the least distance, we've got the slide up. Nyala 20 6 on your plan isn't visible on this slide but you will 21 remember that Nyala 6 had the least distance of anyone to 22 travel because it just had to travel from its position that 23 we see on the left-hand side of the picture on slide 191, 24 to a position just past the kraal. We've done a rough 25 estimate of the distance it had to travel and it was</p>	<p style="text-align: right;">Page 14569</p> <p>1 MR CHASKALSON SC: What would you have 2 estimated that time to be? 3 COLONEL SCOTT: Well that would literally 4 be the same. I mean we're talking instruction. I mean 5 instruction goes out and people start moving immediately. 6 MR CHASKALSON SC: So two minutes is what 7 you thought it should have taken. 8 COLONEL SCOTT: Yes. 9 MR CHASKALSON SC: Now Brigadier Calitz 10 apparently chose to roll out sequentially, not 11 simultaneously. I mean this is ultimately a question for 12 Brigadier Calitz but as the planner can you see any 13 benefits of a sequential roll out in this situation? 14 [09:47] COLONEL SCOTT: It's possibly only that 15 they didn't want the wire to, or gaps to form through wire 16 getting stuck. There have been incidents apparently in the 17 past where the wire can be knotted. I think that was part 18 of the reasoning, as well as the terrain, from what I've 19 heard from their side. I have asked the question as well. 20 MR CHASKALSON SC: You say "as well as 21 the terrain." What is the relevance of the terrain? 22 COLONEL SCOTT: I'm not sure if there are 23 ditches, etcetera, that you've got to consider that the 24 wire has to be placed so that it can take the shape of the 25 ground, whereas when we look at it from photographic level</p>
<p style="text-align: right;">Page 14568</p> <p>1 certainly not more than 50 metres. So none of the vehicles 2 had to roll out more than 90 metres. 3 COLONEL SCOTT: I accept that, yes. 4 MR CHASKALSON SC: If they were going to 5 roll out simultaneously how much time would you have 6 thought would have been reasonable for that exercise? 7 COLONEL SCOTT: I estimated from time of 8 instruction to unhooking the A frames a minute and a half 9 to two minutes. 10 MR CHASKALSON SC: Sorry, from time of 11 instruction to unhooking the A frames – 12 COLONEL SCOTT: To completion. 13 MR CHASKALSON SC: Time of instruction, 14 what happens on time of instruction? 15 COLONEL SCOTT: When the instruction is 16 given to the razor line commander, tell your Nyalas to 17 start deploying the razor wire which means all Nyalas are 18 working simultaneously which means that within 19 approximately a two minute period the razor line should 20 have been complete. 21 MR CHASKALSON SC: And of course, in 22 terms of the element of surprise the issue is not really 23 from time of instruction as opposed to from time of visible 24 action to start deploying barbed wire. 25 COLONEL SCOTT: Yes.</p>	<p style="text-align: right;">Page 14570</p> <p>1 it just looks flat to us. There may be certain ravines or 2 small ditches or, that they need to cover. I'm not sure. 3 As I say, I'm speaking from hearsay from their side. 4 MR CHASKALSON SC: We'll raise that with 5 Brigadier Calitz, but assuming you've now taken the 6 decision to roll out sequentially, not simultaneously, the 7 distance that was ultimately covered by the barbed wire, 8 which didn't follow exactly the – well, the distance that 9 was meant to be covered was 450 metres approximately. If 10 you're rolling out sequentially with six Nyalas, how long 11 do you think that should take? 12 COLONEL SCOTT: Well, I presume - we're 13 getting mathematical, but you'd probably take off 15 or 20 14 seconds. If that was the case, if the deployment is 15 shorter, obviously then it would be – 16 MR CHASKALSON SC: No, no, I'm asking the 17 question – 18 COLONEL SCOTT: Oh, sequentially now? 19 MR CHASKALSON SC: If you're rolling out 20 sequentially, not simultaneously, and you're doing 450 21 metres. 22 COLONEL SCOTT: Well, you would just – 23 are we talking about the actual rollout of the four now? 24 MR CHASKALSON SC: We're not talking 25 about the actual rollout of the four; we're talking about</p>

Page 14571

1 an effective rollout, a sequential rollout -
 2 COLONEL SCOTT: Then we could –
 3 MR CHASKALSON SC: - of 450 metres.
 4 COLONEL SCOTT: - probably look from 10
 5 to 12 minutes.
 6 MR CHASKALSON SC: 10 to 12 minutes?
 7 COLONEL SCOTT: Well, if we're talking
 8 two minutes per Nyala, this is why I say we're talking
 9 mathematical equations now in essence. That was my
 10 estimation, but if it takes two minutes for a Nyala to roll
 11 out effectively from time of unhooking to rolling out its
 12 wire effectively, that could be the time period if all six
 13 Nyalas were to roll out the wire.
 14 MR CHASKALSON SC: Do you know how long
 15 the rollout took in this case?
 16 COLONEL SCOTT: I'm not sure.
 17 MR CHASKALSON SC: It was actually
 18 quicker than what you thought a sequential rollout would
 19 take. It was, the easiest way to measure it is to look at
 20 the time gap between slides 191, which we've got up there,
 21 and if you look closely at Nyala 1 there you can see it's
 22 already moved away from the fence –
 23 COLONEL SCOTT: Yes, yes.
 24 MR CHASKALSON SC: - to the starting
 25 position. So that's shortly after the start, and if we

Page 14572

1 look at slide 194 where Nyala 4 has already gone maybe
 2 halfway from, has deployed half of its wire and is halfway
 3 between where it starts deploying wire to where it reaches
 4 the kraal, that time difference we can show from exhibit
 5 JJJ64, which is the agreed times on these slides, is 9
 6 minutes and 12 seconds. If we go back to where we started
 7 on this line, you thought that it would happen
 8 simultaneously and that it would take approximately two
 9 minutes.
 10 COLONEL SCOTT: Yes.
 11 MR CHASKALSON SC: From start to finish.
 12 Were you aware of any of the dangers of simultaneous
 13 rollout at the time?
 14 COLONEL SCOTT: Well, I never considered
 15 the depth of the detail with the experience that the POPs
 16 members have on the wire maybe getting stuck on the cart,
 17 or knotting. To my understanding that's why the members
 18 are there, to assist the wire to come off and to shake it
 19 when it does tend to knot with the razor wires hooking onto
 20 each other, and so on, but I don't have the experience with
 21 the actual razor wire itself.
 22 CHAIRPERSON: I want to ask you, have you
 23 ever in the course of your experience been involved in an
 24 actual rollout such as the one that took place, or was
 25 going to take place at Marikana? Have you ever had

Page 14573

1 practical experience of that in the past?
 2 COLONEL SCOTT: I've been in operations
 3 where wire has been rolled out, but I have not been part of
 4 the actual teams, or part of that unit or – no.
 5 MR CHASKALSON SC: So when you designed a
 6 plan, you were designing a plan that would put up a barbed
 7 wire barricade between the police and the strikers, which
 8 you thought could be put in place within two minutes?
 9 COLONEL SCOTT: Yes.
 10 MR CHASKALSON SC: And when you made that
 11 design you weren't aware of the fact that POPs members
 12 might want to take 10 minutes on that rollout, 12 minutes
 13 on that rollout?
 14 COLONEL SCOTT: No, and again, you know,
 15 if it's mentioned one would expect maybe at the time that
 16 I'm briefing for it to be mentioned back to me, the
 17 alternative, which wasn't the case.
 18 MR CHASKALSON SC: Did you communicate to
 19 POPs members that it would be important to roll out the
 20 barbed wire quickly?
 21 COLONEL SCOTT: I don't know about
 22 emphasising the importance, but I did mention the
 23 simultaneous deployment thereof.
 24 MR CHASKALSON SC: And nobody came back
 25 to you and said we can't do simultaneous?

Page 14574

1 COLONEL SCOTT: No.
 2 CHAIRPERSON: So they in effect deviated
 3 from your plan without telling you that they were intending
 4 to do so?
 5 COLONEL SCOTT: Chairperson, yes, but –
 6 CHAIRPERSON: That's correct, isn't it?
 7 COLONEL SCOTT: Yes.
 8 CHAIRPERSON: The consequences of that we
 9 can debate later, but that's a fact.
 10 COLONEL SCOTT: But you know, again we're
 11 speaking about one piece of a briefing. I'm sure when they
 12 get briefed they have a lot to consider and then as going
 13 back and pondering over it with their own members, they
 14 maybe make the decision, look, that's not going to work.
 15 CHAIRPERSON: Yes, but if they decide in
 16 the course of pondering, as you put it, considering to
 17 deviate from the plan, then it's a significant factor.
 18 They should go back to the plan and say look here, we've
 19 decided not to do what you've told us to do for these
 20 reasons; we're doing it slightly differently.
 21 COLONEL SCOTT: Yes.
 22 CHAIRPERSON: It gives you an opportunity
 23 to say hang on a second, I put that in for a particular
 24 reason, and that didn't happen.
 25 COLONEL SCOTT: No, but again,

Page 14575

1 Chairperson, the time constraints where we were at that
 2 time on that day –
 3 CHAIRPERSON: If Mr Chaskalson doesn't
 4 ask you, I've got a lot of questions about the time
 5 constraints, but we'll get there later either if he asks
 6 you or I do.
 7 MR CHASKALSON SC: Hopefully I'll get
 8 there first, Colonel, but not yet.
 9 CHAIRPERSON: We won't do it
 10 simultaneously.
 11 COMMISSIONER HEMRAJ: Could I just ask
 12 something before that, Mr Chaskalson? If the operational
 13 commander decides to change some part of the plan that you
 14 suggested, is he normally required to discuss it with you?
 15 Practically is that done?
 16 COLONEL SCOTT: Madam, this was in
 17 essence a strange setup. We had a Public Order function
 18 which need to occur, with Public Order officers more senior
 19 than myself, more experienced than myself, and the strategy
 20 was delivered, which was what I do; I tend to think,
 21 strategise, look in-depth at things. Obviously if they'd
 22 told me at the time that's not going to work operationally
 23 because these are the reasons, I would have obviously said
 24 to them what my reasons would have been to deploy quickly
 25 and they would have been left with that, but I could not

Page 14576

1 override an operational commander for instance of the
 2 Public Order Policing who's going to carry out a public
 3 order option, but if it was then decided that okay, they're
 4 going to do it sequentially, one would look further then
 5 into okay, what do we do then should the crowd stand up and
 6 move towards you, noticing that you are now closing off the
 7 police area.
 8 COMMISSIONER HEMRAJ: Thank you.
 9 MR CHASKALSON SC: But I suppose the
 10 general direction of your testimony is that that kind of
 11 feedback loop just didn't happen on the day because of time
 12 constraints?
 13 COLONEL SCOTT: I believe it to be so,
 14 yes.
 15 MR CHASKALSON SC: Well, let's –
 16 COLONEL SCOTT: And if I may just
 17 elaborate on that; I also think that when you've briefed
 18 people, they're sitting listening to you in essence and
 19 there are times where they need to go away, discuss it
 20 amongst their sub-commanders as to the best way forward,
 21 and you're possibly not there any longer, and in essence
 22 that's what would happen in a JOCCOM; it would be thrown
 23 open for a discussion and the different views would have
 24 been listened to, to determine what would be the final way
 25 forward.

Page 14577

1 MR CHASKALSON SC: Let's look at what
 2 would have happened if your plan had been implemented as
 3 you thought it would have been. SAPS doesn't allege that
 4 there was any attempt by the crowd to break into the SAPS
 5 zone until Nyala 4 started, or attempted starting to deploy
 6 its barbed wire. That's what we see in the presentation.
 7 COLONEL SCOTT: That's what I understand
 8 from the commanders, yes.
 9 MR CHASKALSON SC: In fact at slide 195
 10 it's stated fairly clearly. Can we go to 195? "Incident
 11 1, protesters first attempt, protesters approach police
 12 line the first time as Nyala 4 starts deploying barbed
 13 wire." So it was when Nyala 4 started deploying barbed
 14 wire that the protesters first approached Nyala 4. Now
 15 Nyala 4 started deploying its barbed wire only after Nyala
 16 3 reached Nyala 4.
 17 COLONEL SCOTT: That's correct.
 18 MR CHASKALSON SC: You accept that, and
 19 we know from the Rowland headgear camera that Nyala 3 only
 20 reached Nyala 4 at a time on the Rowland headgear camera,
 21 16:12:50, which converts into an eTV time of 15:50:21, and
 22 if we measure that time against the time that the rollout
 23 started, it was 7 minutes and 46 seconds after the rollout
 24 started. So if the barbed wire had been deployed as you
 25 contemplated it would have been deployed, that first

Page 14578

1 approach by the protesters would have taken place more than
 2 five minutes after the barbed wire barricade was in place,
 3 and if that first approach had happened then we wouldn't
 4 have had scene 1. You accept that?
 5 COLONEL SCOTT: We wouldn't have had
 6 scene 1, I agree, at the kraal.
 7 MR CHASKALSON SC: Well, I want to put to
 8 you that we wouldn't have had scene 1 at all in any form
 9 because the SAPS case is that the shootings took place
 10 because members in the TRT line fired at the crowd of
 11 strikers to avert a risk of loss of life, and that risk
 12 couldn't have materialised if there was a barbed wire
 13 barricade between the strikers and the SAPS. Would you
 14 accept that?
 15 COLONEL SCOTT: As I'm saying, my
 16 contemplation when the Public Order dispersion action was
 17 going to occur was that the militant group of strikers were
 18 going to do one of three things, and one of those was
 19 anticipated that on the dispersion action moving towards
 20 them that they would retaliate to the dispersion and attack
 21 the police. That was a reality I had to consider,
 22 considering Monday. Obviously the second one that they
 23 would remove themselves to the top of koppie 1 or to high
 24 areas where the Public Order Policing would not be
 25 effective as a dispersion, and secondly to move into the

Page 14579

1 open fields to regroup and re-gather there after being
 2 dispersed by the water cannon. So to say that scene 1
 3 would never have occurred, I don't know. As I say, I did
 4 anticipate that there could be an attack on the police line
 5 once the dispersion action went forward towards the
 6 remaining strikers that had not left after the warnings
 7 were given.
 8 MR CHASKALSON SC: Yes, but then you made
 9 provision for that, that the police could retreat into the
 10 cover of armoured vehicles.
 11 COLONEL SCOTT: Yes.
 12 MR CHASKALSON SC: So there would never
 13 be a situation where police without armoured protection, or
 14 without access to armoured protection would face a crowd of
 15 charging mineworkers if that barbed wire line had been
 16 rolled out in the two minutes that you contemplated.
 17 COLONEL SCOTT: Again the ideal is that
 18 everybody would get back into their vehicles. It's very
 19 possible, and this is something that I find in the human
 20 element, that people may close the doors of those armoured
 21 vehicles, which are hydraulic, before all members are
 22 inside, for that matter, although some members may have
 23 chosen to stay outside to continue with the dispersion
 24 whilst others started retreating, maybe on the lack of
 25 instruction to retreat. So these are all aspects one has

Page 14580

1 to play with, and that is also why a TRT line was placed
 2 further back for the defence of the life of any of the POPs
 3 members should they be isolated or find themselves stuck
 4 outside the vehicles that had closed doors. And I say this
 5 in anticipation that this is possibly what happened on the
 6 Monday as well.
 7 MR CHASKALSON SC: Well, I stand by my
 8 proposition that absent a failure of the rollout in
 9 accordance with what you planned, we wouldn't have had
 10 scene 1, but it seems to me that your answers are
 11 emphasising how much, how risky an operation this operation
 12 was and how much of a risk of violent confrontation was
 13 inherent in this operation.
 14 COLONEL SCOTT: And I think it would have
 15 been foolhardy of me not to anticipate that. Obviously the
 16 hope, you've got the hope and you have the anticipation.
 17 The hope was that this would all be resolved through
 18 dialogue, and if not, at least then moving to a dispersion
 19 action where people would move off on their own before any
 20 tactical measures needed to be taken, simply on the
 21 warning, but these are the issues of hope, and one has to
 22 look at the reality as well that should it not occur,
 23 you've got to anticipate what would happen on the other
 24 side of that, because that would obviously not be planning
 25 sufficiently the preservation of life of own members for

Page 14581

1 that matter if they were attacked, considering the history
 2 which came in from the Monday.
 3 MR CHASKALSON SC: That's the point that
 4 Mr White in fact makes in his statement. If one goes to
 5 paragraph 6.5.11 at 79, let's start with 6.5.10 –
 6 CHAIRPERSON: Page 78?
 7 MR CHASKALSON SC: At page 78, where he
 8 starts off by saying, "Any proactive tactical option,
 9 whether aimed at 50 or 3 000, would carry risks. However,
 10 the key issue is that engaging a much larger crowd would
 11 carry significantly higher risks. To engage a crowd of
 12 3 000 who are heavily armed and at least some of whom are
 13 potentially prepared to offer violent resistance, created a
 14 high probability that the police would be required to high
 15 levels of force." Would you accept that?
 16 COLONEL SCOTT: I think that's, that
 17 comes from experience and I respect the experience of Mr
 18 White, and he does have a point. I don't know if it can
 19 always be applied, because we're speaking again to the
 20 3 000, and the police's anticipation was that simply on the
 21 warning of a dispersion action, that those who were not
 22 committed to confrontation with the police would move off
 23 on the warning instruction that would be given that a
 24 tactical action was impending.
 25 CHAIRPERSON: Why would they move off?

Page 14582

1 COLONEL SCOTT: Chairperson, those that
 2 obviously didn't want to be confronted with teargas, and as
 3 we understood there was a militant group which was seen
 4 already from the Tuesday. I can only speak for myself in
 5 my anticipations, and I didn't particularly anticipate that
 6 they would choose to move away, but the remainder of the
 7 people behind them seemed to fluctuate in size and many
 8 times a fluctuation was whether somebody was going to
 9 address them or not, and if there was an address coming you
 10 would see the size of the crowd swell, and obviously after
 11 an address it would shrink again, and I'm not saying shrink
 12 totally to the size of the 300, but it would shrink.
 13 People would come and go. So it is evident that there were
 14 people there who were simply spectators to what was going
 15 on in the strike, obviously hoping to benefit from the
 16 strike possibly themselves, but maybe not committed to the
 17 level of the more militant group that were out front.
 18 CHAIRPERSON: What did you think the more
 19 militant group would do?
 20 COLONEL SCOTT: As I say, I anticipated
 21 that they would either, one of three things, approach the
 22 police line with violent intention, go up onto an area
 23 should they see that the water cannons and so on were being
 24 effective and try to withstand, keep their ground but move
 25 out of the dispersion effective range toward them, or move

Page 14583

1 onto the open grounds and regroup there as a group again,
 2 because it's difficult to withstand a water cannon that's
 3 blasting water at you. It's going to disorganise a tightly
 4 compact group, which was my anticipated hope. So those
 5 were the three things I anticipated they would do, but I
 6 didn't necessarily anticipate, I didn't anticipate them
 7 going to disperse on own if one is given that order.
 8 [10:06] CHAIRPERSON: Show of force wasn't likely
 9 to affect them, would it?
 10 COLONEL SCOTT: No –
 11 CHAIRPERSON: And according to your
 12 information they had taken muti.
 13 COLONEL SCOTT: According – they had
 14 taken?
 15 CHAIRPERSON: According to the
 16 information you'd received they had received muti.
 17 COLONEL SCOTT: Yes. Yes.
 18 CHAIRPERSON: And I think you said you'd
 19 been in contact with the people at Implats and Amplats –
 20 COLONEL SCOTT: Security officers –
 21 CHAIRPERSON: There was information about
 22 muti from them too, wasn't it?
 23 COLONEL SCOTT: I don't know about the
 24 Implats –
 25 CHAIRPERSON: You know, the effect on the

Page 14584

1 mood of the strikers.
 2 COLONEL SCOTT: Chairperson, I've worked
 3 in numerous operations before where the people that we
 4 confront also go towards the sangomas and the muti and we
 5 understand what they expect when they do that, and with
 6 that background moving to this scenario, it was the same
 7 information I was hearing. So in general once that's taken
 8 place there is a feeling of defiance in essence towards the
 9 authority that may be trying to confront them.
 10 MR CHASKALSON SC: Well, you say that you
 11 expected that, I suppose a substantial proportion of the
 12 crowd might depart in the face of the show of force. Would
 13 that be what you were expecting?
 14 COLONEL SCOTT: I expected, I was – or
 15 let me put it this way; I was hopeful that a large number
 16 would move off, but again you've got the hope and you've
 17 got the anticipated worst outcome, and that is that should
 18 the majority remain, the dispersion action would need to go
 19 ahead then with who was there.
 20 MR CHASKALSON SC: Well, presumably you
 21 have to plan on worst case scenario within reasonable
 22 possibilities.
 23 COLONEL SCOTT: Yes.
 24 MR CHASKALSON SC: I mean you don't plan
 25 on hypothetically –

Page 14585

1 COLONEL SCOTT: But also being realistic
 2 in that in understanding that a police dispersion action is
 3 going to, through historical data, etcetera, is going to
 4 drive people away and carry out the effect that it should
 5 have, unless somebody is geared and within the mindset that
 6 they are going to approach you and not disperse as is
 7 intended.
 8 MR CHASKALSON SC: But presumably you do
 9 need to plan on the basis that if there's a reasonable
 10 possibility that the worst case scenario eventuates in
 11 terms of people not dispersing, your plan can still be
 12 implemented.
 13 COLONEL SCOTT: What part of the plan?
 14 Because that's why the dispersal –
 15 CHAIRPERSON: I think we should isolate
 16 the worst case. I think you said at one point in your
 17 evidence that the worst case was the 3 000 would stay.
 18 COLONEL SCOTT: Yes.
 19 CHAIRPERSON: But I think you thought
 20 that was highly unlikely.
 21 COLONEL SCOTT: Yes.
 22 CHAIRPERSON: You thought that a
 23 substantial number of them would go.
 24 COLONEL SCOTT: Yes.
 25 CHAIRPERSON: And in fact I take it one

Page 14586

1 considers it in the realm of reasonably foreseeable
 2 possibilities, or foreseeable reasonable possibilities, if
 3 you know what I mean, that one of the things you had to
 4 take seriously was that the militant people might stay.
 5 COLONEL SCOTT: Yes.
 6 CHAIRPERSON: And the militant people
 7 might be defiant and may be buoyed up by false feelings of
 8 invincibility and invulnerability, and so on. Is that
 9 correct?
 10 COLONEL SCOTT: That's correct,
 11 Chairperson.
 12 MR CHASKALSON SC: But beyond the
 13 militant – I just want to establish the parameters of what
 14 you were planning for. If more than the militant people
 15 stay behind, if a thousand people stay behind, you say the
 16 militants were 300, if a thousand people stay behind, was
 17 your plan designed to cater for that?
 18 COLONEL SCOTT: That's why I say what
 19 part of the plan? The dispersal part of the plan, yes.
 20 The dispersal part, but –
 21 MR CHASKALSON SC: Were there any parts
 22 of the plan that weren't designed to cater for that?
 23 COLONEL SCOTT: Again anticipating that
 24 the dispersal was going to have the desired effect other
 25 than on a sort of hardcore group that may take shelter

Page 14587

1 somewhere, that was the role of the arrest teams that would
 2 be following up, but I didn't anticipate that a thousand,
 3 2, 3 000 people would sit tight and withstand water
 4 cannons, teargas, stun grenades, and that ultimately rubber
 5 bullets coming their way, forcing them to move.
 6 MR CHASKALSON SC: And in terms of what
 7 actually happened on the day, how many people do you –
 8 what's your estimate of the people who stayed behind to
 9 withstand the assault by the police?
 10 COLONEL SCOTT: Well, again it's what
 11 you're asking, I don't know if it's accurate because no
 12 dispersal warning had been given by the time they stood up
 13 to approach the police line. So how to answer that
 14 question, I can answer it as I've answered before; if we
 15 had lined up, the police had given the warnings, given a
 16 certain amount of time, 15, 20 minutes, in order to move
 17 off, in that same time period anyway before the police
 18 would actually execute the first tactical options, being
 19 the water cannons, there would have been a warning given
 20 again that dispersal action is about to occur. But that
 21 was now part of – that was how I envisioned the plan
 22 rolling out. The fact that no warnings had been given yet,
 23 that the amount of people still left, I don't think it's
 24 fair to what was envisioned by myself as a planner for that
 25 effect.

Page 14588

1 MR CHASKALSON SC: We wouldn't have got
 2 into that situation if the barbed wire had been rolled out
 3 as you intended. Do you accept that?
 4 COLONEL SCOTT: Well, again I can accept
 5 that, but I must also just state that we can't predict the
 6 response of the strikers, and that is one of the essences
 7 of planning, that you try to, you try to, if you've got the
 8 time to go through the what-ifs and to look at most
 9 scenarios that you could to anticipate, but in this case
 10 the plan that we had was the plan that we put forward, and
 11 we say it didn't get to its fruition.
 12 MR CHASKALSON SC: You see, Colonel,
 13 we're now on the implementation of the plan and a long way
 14 from those three questions, but I do want to finish this
 15 section of the cross-examination. It seems to us that the
 16 key to your plan was a quick rollout of the barbed wire so
 17 that there would be a barrier between the police and the
 18 protesters, so that you could get your vehicles into
 19 position and start your dispersal action without a risk of
 20 an attack from the protesters to the police in what you
 21 called the safe zone, where your police people were not
 22 protected. Would you accept that?
 23 COLONEL SCOTT: Yes.
 24 MR CHASKALSON SC: And if that had
 25 happened, your plan may have stood a greater likelihood of

Page 14589

1 succeeding in some level, in some way. We certainly
 2 wouldn't have had scene 1. You accept that?
 3 COLONEL SCOTT: You know if I, it's
 4 difficult because if I agree with you – I wasn't there on
 5 the ground to experience the conditions, but theoretically
 6 I accept that.
 7 MR CHASKALSON SC: But once your
 8 instruction for a simultaneous rollout was overridden
 9 without reference to you, the plan became much, much
 10 riskier because there was now going to be a period of 10
 11 minutes where there wouldn't be a barricade, where the
 12 protesters would see that the police are preparing tactical
 13 action against them and they would be likely to respond.
 14 You accept that?
 15 COLONEL SCOTT: Yes.
 16 MR CHASKALSON SC: And from your
 17 perspective as a planner you wanted that barricade up
 18 quickly to prevent the protesters crossing the barricade.
 19 COLONEL SCOTT: That is correct, yes.
 20 MR CHASKALSON SC: So you anticipated
 21 that there was a risk that if there wasn't a barricade the
 22 protesters would cross it, for whatever reason, be it to
 23 attack the police or just to go home to Wonderkop and
 24 Nkaneng.
 25 COLONEL SCOTT: Yes.

Page 14590

1 MR CHASKALSON SC: So once a decision is
 2 taken, without reference to you as planner, to change what
 3 is in fact an important piece of your plan, the risk in
 4 implementation of the plan is dramatically increased. You
 5 accept that?
 6 COLONEL SCOTT: Yes.
 7 MR CHASKALSON SC: Maybe if we can go now
 8 to the question of time pressure and threats. Yesterday we
 9 referred you to the JOC OBN and pointed out that there was
 10 in the period between the morning of the 16th and the 1:30
 11 JOCCOM where the decision to implement was taken, there was
 12 only one threat recorded in the contemporaneous documents,
 13 which is the threat at, I think it was 11:30, of the –
 14 COLONEL SCOTT: I understand it to be
 15 possibly the threat towards Nyala 6, if I look at the
 16 timeframe, resulting in the removal of Nyala 6, bringing it
 17 back towards the police line.
 18 MR CHASKALSON SC: It may or may not be.
 19 We can find out. My sense from reading the statement is
 20 that it may in fact have been a communication, it was a
 21 verbal communication allegedly –
 22 COLONEL SCOTT: Yes.
 23 MR CHASKALSON SC: - from Mr Noki to
 24 people inside a police Nyala, and my understanding was that
 25 that exchange took place between Mr Noki and Papa1. We've

<p style="text-align: right;">Page 14591</p> <p>1 seen no record of any exchange between Mr Noki and Nyala 6. 2 COLONEL SCOTT: Nyala 6. Again I know 3 you're referring to the contemporaneous documents. I don't 4 think that the threats were limited to what was captured 5 though, because if we look at the statements of probably 6 McIntosh, Calitz, and I'm not sure, others, we would see 7 that there were – and probably Adriaio as well, reflecting 8 the view of the media at the time, but – 9 MR CHASKALSON SC: Well, let's look at 10 Adriaio. The rendition of Captain Adriaio's reported threat 11 in your statement is that it was one of the issues on which 12 the JOCCOM acted at 1:30. Our problem with that is that if 13 you go to the presentation, that threat is reported as 14 having been made after 3:30; I think it's 3:35, not – in 15 fact that's after the rollout had started, and if I can get 16 my reference – 17 CHAIRPERSON: Mr Chaskalson, there are 18 two. What you're looking for is slide 192 of the 19 presentation, exhibit L. It talks about a threat at 15:40, 20 which is set out in the first bullet of that slide, but it 21 talks about the earlier comment at 13:40, which of course 22 was 10 minutes after the 13:30 meeting had started. 23 MR CHASKALSON SC: That's not the Captain 24 Adriaio threat with which we are concerned at the moment. 25 That's slide 189, the Captain Adriaio threat.</p>	<p style="text-align: right;">Page 14593</p> <p>1 allegation enters exhibit L to the end of exhibit L it 2 stays constant as being timed at 15:35. 3 COLONEL SCOTT: Yes. 4 MR CHASKALSON SC: There's no suggestion 5 in any of the earlier drafts that it happened at another 6 time, and I would put to you on that basis that if it was 7 alleged to have happened at another time, that would have 8 been conveyed to you in the process. 9 COLONEL SCOTT: I understand. 10 MR CHASKALSON SC: Now then there is the 11 threat at slide 118, if we can go back to slide 118, and 12 this appears in the sequence between 10:15 and 11:30, and 13 the representatives were informed that a request would be 14 forwarded to the – 15 CHAIRPERSON: I'm sorry, Mr Chaskalson, 16 this is on [microphone off, inaudible]. Sorry, this is the 17 Wednesday; the threat had come and gone, elicited no 18 proactive operations on the Wednesday, or even early on the 19 Thursday morning, but you can put it to the witness, but 20 don't put it as if that was on Thursday; it's Wednesday. 21 MR CHASKALSON SC: I beg your pardon. 22 I'm putting the wrong threat. If we can go to 192, and 23 Chairperson, that's the threat to which you referred us a 24 little earlier. "Brigadier Calitz gave a command to 25 Colonel Makhubela to start with the deployment of the</p>
<p style="text-align: right;">Page 14592</p> <p>1 CHAIRPERSON: The Adriaio one is slide 2 170. There he talks about the video operators and the 3 advice he gave them, as a result of which they left the 4 scene completely and went to the JOC and didn't do anymore 5 videography work for the rest of the day. That's slide 6 170. 7 MR CHASKALSON SC: That's the video 8 operators being identified as police members, but at slide 9 189 there is a reference to the threat that I think Colonel 10 Scott is addressing now, which is Captain Adriaio's report 11 of reporters leaving the scene because they feared for 12 their safety, and this report of a firearm in the blanket. 13 CHAIRPERSON: That's 15:35 according to 14 slide 189, long after the 1:30 meeting had started and 15 finished. 16 MR CHASKALSON SC: And indeed after the 17 operation, the deadline for the operation to commence had 18 taken place. So that couldn't have been a threat that 19 motivated the decision to act; it was too late. 20 COLONEL SCOTT: If it's correct where 21 it's been placed in exhibit L, yes, I agree with you. 22 MR CHASKALSON SC: You see, Colonel, 23 you've talked about the process of how exhibit L grew over 24 time and we've been through – gosh, possibly 15 different 25 drafts of exhibit L, and from the point at which this</p>	<p style="text-align: right;">Page 14594</p> <p>1 barbed wire. When the first Nyala started to deploy the 2 barbed wire, one of these representatives came to the front 3 window of the negotiation Nyala and stated, 'These Hippos 4 would not leave this place and you will all die today 5 (interpreter) and not be returning again.' This followed 6 his earlier comments made at about 13:40 where he 7 approached the Nyala and said that we can see that SAPS are 8 now making ready for war. He informed Lieutenant-Colonel 9 McIntosh that we must sign a paper so that the world can 10 see how we will kill one another today." That's alleged to 11 have happened at 13:40. No, the first threat, 15:40 is 12 "These Hippos would not leave this place and you will all 13 die today." That of course is once the operation is 14 already rolling out, so that doesn't explain why the 15 operation rolls out, and then the alleged earlier threat is 16 that at 13:40 on the day, "We must sign a paper so the 17 world can see how we will kill one another today." Now 18 we've managed in one of the very early drafts of the 19 presentation, which is JJJ34 – can we call up JJJ34? 20 CHAIRPERSON: Is this an exhibit yet, or 21 must I – 22 MR CHASKALSON SC: It will be an exhibit, 23 JJJ34. It hasn't been exhibited yet. 24 CHAIRPERSON: JJJ34, how do I describe 25 it? Early draft of SAPS presentation. Must I describe it</p>

<p style="text-align: right;">Page 14595</p> <p>1 more particularly than that?</p> <p>2 MR CHASKALSON SC: Last saved on 27</p> <p>3 August 2012.</p> <p>4 CHAIRPERSON: 27 August?</p> <p>5 MR CHASKALSON SC: 27 August 2012.</p> <p>6 CHAIRPERSON: Last saved. Was that the</p> <p>7 first day of the Roots meeting?</p> <p>8 MR CHASKALSON SC: Indeed, Chairperson.</p> <p>9 CHAIRPERSON: Thank you. Now Colonel,</p> <p>10 this draft is a draft that – well, we assume that you</p> <p>11 prepared. Do you recognise the document?</p> <p>12 COLONEL SCOTT: Yes.</p> <p>13 MR CHASKALSON SC: And its date is 27</p> <p>14 August. That was the first day of Roots.</p> <p>15 COLONEL SCOTT: Okay, yes.</p> <p>16 MR CHASKALSON SC: Did you present it at</p> <p>17 Roots on the first day?</p> <p>18 COLONEL SCOTT: I don't recall.</p> <p>19 CHAIRPERSON: Did you compile it?</p> <p>20 COLONEL SCOTT: I would have,</p> <p>21 Chairperson. I know I started already the week before</p> <p>22 Roots with the police presentation, so I was working on it</p> <p>23 from then.</p> <p>24 CHAIRPERSON: Based upon not only your</p> <p>25 own knowledge obviously, but information received from</p>	<p style="text-align: right;">Page 14597</p> <p>1 and they're agreeing with each other that they won't lay</p> <p>2 down their arms and they're willing to die there, no</p> <p>3 turning back. Is that right?</p> <p>4 COLONEL SCOTT: Yes, I understand that,</p> <p>5 Chairperson.</p> <p>6 MR CHASKALSON SC: Now in this draft of</p> <p>7 27 August, I stand subject to correction, but I think</p> <p>8 that's the only threat that is contained within the</p> <p>9 document.</p> <p>10 COLONEL SCOTT: Well, like I say again,</p> <p>11 it's a draft document, so this was how the document grew</p> <p>12 because as we had access to getting more inputs from more</p> <p>13 members, and as you've rightfully said, this was made</p> <p>14 before we got to Potchefstroom where the commanders were</p> <p>15 called together, so one would need to see whether somebody</p> <p>16 like Lieutenant-Colonel McIntosh, who was the negotiator</p> <p>17 who was dealing with most of, and giving the inputs on what</p> <p>18 the threats were, was even present after the operation.</p> <p>19 I'm not sure that his services were still needed, until he</p> <p>20 got to Roots to give further input.</p> <p>21 MR CHASKALSON SC: I have two responses</p> <p>22 to that. The first is that somebody told you that Mr Noki</p> <p>23 conveyed to Brigadier Calitz – and here's the quotation –</p> <p>24 "The protesters have made a contract that they would not</p> <p>25 lay down their arms and were willing to die there that day</p>
<p style="text-align: right;">Page 14596</p> <p>1 others?</p> <p>2 COLONEL SCOTT: Yes.</p> <p>3 MR CHASKALSON SC: Because in this</p> <p>4 document there's a very different rendition of the threat.</p> <p>5 If one goes to page 31, can we scroll up to page 31 of the</p> <p>6 document?</p> <p>7 [10:26] There what you said is this; "At 15:37 the leader</p> <p>8 of the militant group approached the police armoured</p> <p>9 vehicle line, telling Brigadier Calitz the protesters have</p> <p>10 made a contract that they would not lay down their arms and</p> <p>11 were willing to die there that day - there was no turning</p> <p>12 back," and that's put in inverted commas. That's very</p> <p>13 different from a contract that we must all kill each other,</p> <p>14 is it not?</p> <p>15 COLONEL SCOTT: Like I say, the inputs in</p> <p>16 the documents are what I received from the members, so –</p> <p>17 CHAIRPERSON: The question that he put to</p> <p>18 you is there's a significant difference between the</p> <p>19 statement in L that there will be a contract, as it were,</p> <p>20 with two parties, the one side the police, the other side</p> <p>21 the strikers, and they will sign a paper and agree they'll</p> <p>22 kill one another today, which is what appears in slide 192</p> <p>23 in exhibit L. That's very different from what we see here</p> <p>24 in this new exhibit, JJJ34 at page 31, I think you said.</p> <p>25 There it's only a contract among the strikers themselves</p>	<p style="text-align: right;">Page 14598</p> <p>1 – there was no turning back," because you put that in</p> <p>2 there. You accept that?</p> <p>3 COLONEL SCOTT: Yes.</p> <p>4 MR CHASKALSON SC: Who was that person?</p> <p>5 Who reported Mr Noki's statements in these terms?</p> <p>6 COLONEL SCOTT: Well look, you're asking</p> <p>7 a question now of over a year ago, but I can only imagine</p> <p>8 it would have been somebody from that vehicle, possibly</p> <p>9 Brigadier Calitz himself.</p> <p>10 MR CHASKALSON SC: Indeed. So the</p> <p>11 operational commander, if your supposition is correct,</p> <p>12 believed that what the threat was, to the extent that it</p> <p>13 was a threat, was not that people were going to kill the</p> <p>14 police; it was that they had decided that they weren't</p> <p>15 going to lay down their arms and were willing to die there</p> <p>16 today, there was no turning back. That would have</p> <p>17 reflected what the operational commander believed at the</p> <p>18 time.</p> <p>19 COLONEL SCOTT: That is so. I'm just</p> <p>20 trying to read into how you're interpreting that they were</p> <p>21 not willing to lay down their arms and were willing to die</p> <p>22 there that day. That has to be them anticipating that the</p> <p>23 police are going to take action against them and that they</p> <p>24 would resist that action to the degree that the police</p> <p>25 would need to defend themselves. Why else would the</p>

Page 14599

1 police –

2 CHAIRPERSON: Colonel, according to this

3 it looks as if Brigadier Calitz must have told you that

4 because it's, you say they told Brigadier Calitz and then

5 the quotation marks appear, but the time is interesting;

6 15:37. Now 15:35 gives us the context. The previous

7 bullet, "The AMCU president left the group of protesters

8 after asking them to refrain from continuing with their

9 planned action as they were going to die." So according to

10 this Mr Mathunjwa had said to them - and we know, he gave

11 evidence about what he told them – "You must leave,

12 otherwise you're going to die," and their response

13 according to this document was once he'd gone to say to

14 Brigadier Calitz, "Well, we've made a contract. We're not

15 going to lay down our arms and we're willing to die.

16 There's no turning back." That's the context in which that

17 statement appears, isn't it?

18 COLONEL SCOTT: Yes.

19 CHAIRPERSON: Whether it's right or

20 wrong, we don't know yet, but that was an early version of

21 the police version. Is that right?

22 COLONEL SCOTT: Yes.

23 MR CHASKALSON SC: But Colonel, I have a

24 second point to put to you, which is that this whole line

25 of questioning started with issues around time constraints

Page 14600

1 and the need to act in the face of a threat. Now this is

2 the 27th of August when you produced this document. It is

3 11 days after the event, and the only trace of a threat

4 that required immediate response in the document is that

5 statement that we see on the third bullet point of the

6 slide. Surely if there were material threats that had been

7 conveyed and that had essentially been the cause of the

8 police decision to move to phase 3 and to move to phase 3

9 quickly, there'd have been some trace of them in this

10 document that you prepared.

11 COLONEL SCOTT: I hear you, and again I

12 can only put in what I'm given, so I was aware on the day,

13 as I say, being in the JOC and just hearing the chatter in

14 the JOC, that there were threats that were made towards the

15 police. That much I can say I was aware, and this was

16 still mid-late morning when that was the case. Maybe it is

17 the one that is commented in the OB, I'm not sure.

18 MR CHASKALSON SC: There definitely was a

19 threat of sorts in the morning round about 11:30 with the

20 OB entry where it was reported that Mr Noki wanted the

21 barbed wire trailers removed and that he was very

22 aggressive. But it's reported in terms that don't

23 approximate anything that emerges in these later renditions

24 in the presentation. You accept that?

25 COLONEL SCOTT: Yes.

Page 14601

1 MR CHASKALSON SC: And if you were

2 putting together a presentation that was designed to

3 explain how and why the police acted when they did, and how

4 they did, 11 days after the event when events were still

5 fairly fresh in your memory, surely if there were a range

6 of threats that had been material in a causal sense, you

7 would have included them in this presentation.

8 COLONEL SCOTT: Again being the, part of

9 the compiler at this stage of some of the written inputs,

10 it's a draft document which is in working. So you're not

11 looking at a completed document, and as I get access to

12 more information so the information gets included. So we

13 can't look at this as something that was in a finalised

14 state by the 27th of August. It grew slowly and it grew

15 over time, right up until, as we know, probably the first

16 week of November.

17 MR CHASKALSON SC: I can understand that

18 answer in relation to facts that were not within your

19 knowledge, but in relation to –

20 COLONEL SCOTT: But if I can just then

21 say to where you're going, it's not to me - if we look

22 there it's almost verbatim, if that was Brigadier Calitz

23 giving his explanation, for me to have worked on a

24 perception because we worked through obviously a similar

25 hierarchy. The commanders would speak to the members, the

Page 14602

1 members would speak to their commanders, give them their

2 inputs. The commanders would verify what they've

3 experienced and they would bring it back to the compilers

4 of the presentation. So over time obviously we were going

5 to get what the threats were possibly, if they were made to

6 Nyala 6, knowing that there were more junior members inside

7 Nyala 6 who would speak to their commanders, speak to

8 Colonel Makhubela, to Calitz, etcetera, and come to us.

9 This was only at a time period afterwards where not

10 everything has been collated at this time, yes, thus the

11 beginning of Roots because we're still going to get most of

12 the inputs at Roots, and again, even if I was hearsay aware

13 of some of the threats, it was not my place to out of my

14 hearsay go and place them into a presentation at that time.

15 They needed to be put in or given as input by the actual

16 people that experienced them.

17 MR CHASKALSON SC: I still put it to you

18 that it is very odd that in this draft of the presentation

19 on the 27th of August you saw fit to mention only one

20 threat, which is a threat that is in very different terms

21 from the threat that is later conveyed, and there is

22 nothing in this presentation to suggest a causally relevant

23 threat at any stage prior to, never mind the decision to

24 move to the tactical phase, in fact the actual rolling out

25 of the tactical phase. You can respond to that if you want

Page 14603

1 to, or we can move further.

2 COLONEL SCOTT: No, I think I've

3 exhausted the topic. But I think maybe –

4 CHAIRPERSON: Mr Chaskalson, are you

5 going to deal with the 11:30 threat, or aggressive

6 behaviour or however one chooses to describe it?

7 MR CHASKALSON SC: We have traversed –

8 CHAIRPERSON: The reason I ask is there's

9 a question I want to ask, but if you're going to cover the

10 topic, I won't.

11 MR CHASKALSON SC: I don't intend to

12 revisit it. I've made –

13 CHAIRPERSON: Alright, maybe I must ask

14 my question. You originally, as I understand it, you had

15 various members of the service in the forward holding areas

16 out of sight of the people on the koppie. That's right,

17 isn't it?

18 COLONEL SCOTT: That's correct,

19 Chairperson.

20 CHAIRPERSON: And one of the reasons for

21 that I think in one of your plans is you thought that if

22 they were visible that might be provocative in a way. Is

23 that correct?

24 COLONEL SCOTT: In a phase 1 deployment,

25 yes.

Page 14604

1 CHAIRPERSON: Yes, that's right. Now I

2 notice from slide 159 of exhibit L that something

3 interesting happened at 11:30, roughly the time when that

4 aggressive action that we heard about took place. Firstly

5 we know already - this is not in slide 159, but we know

6 that the Nyalas with the wire trailers were brought onto

7 the scene.

8 COLONEL SCOTT: Yes.

9 CHAIRPERSON: They were repositioned.

10 COLONEL SCOTT: Yes.

11 CHAIRPERSON: But secondly, according to

12 159, slide 159, "On request from the operational commander

13 in the neutral area" – that I take it is Calitz.

14 COLONEL SCOTT: Yes.

15 CHAIRPERSON: - "additional armoured

16 vehicles were deployed by the JOC from the reserve reaction

17 groups at forward holding area 1 and 2. 21 TRT members

18 from forward holding area 1 and 41 POP members in armoured

19 vehicles from forward holding area 2."

20 COLONEL SCOTT: That's correct,

21 Chairperson.

22 CHAIRPERSON: So you had not brought them

23 onto the scene previously for fear that that might have

24 some kind of provocative effect.

25 COLONEL SCOTT: They were supposed to –

Page 14605

1 one always has to maintain a reserve -

2 CHAIRPERSON: Yes.

3 COLONEL SCOTT: - always in case

4 something happens elsewhere.

5 CHAIRPERSON: Yes, yes, yes.

6 COLONEL SCOTT: So they were as part of

7 the reserve, the ideal was again to bring on a show of

8 force that day, but I do understand that they were

9 positioned at the forward holding areas and they were

10 requested at the request of Brigadier Calitz, who was

11 feeling volatile – oh, he was feeling vulnerable at the

12 time.

13 CHAIRPERSON: Thank you.

14 COMMISSIONER HEMRAJ: Colonel, the

15 changing of the narrative with regard to what was said by

16 Mr Noki to the members inside the Nyala, would you have

17 been responsible for changing that narrative?

18 COLONEL SCOTT: No, Ma'am.

19 COMMISSIONER HEMRAJ: Who would have?

20 COLONEL SCOTT: It would have been inputs

21 directly from commanders. I've also been pondering that,

22 looking at that, wondering whether maybe Brigadier Calitz

23 didn't consult with people in his Nyala, like Colonel

24 McIntosh, when they got together at Roots at get a more

25 accurate version. I can't say. I'm speculating now, but

Page 14606

1 we wouldn't put something in myself out of hearsay and

2 hereafter it's mostly Colonel Visser that started dealing

3 with the members themselves, gaining the inputs from

4 members.

5 COMMISSIONER HEMRAJ: So the version as

6 it appears in exhibit L before us would have been drafted

7 by Colonel Visser?

8 COLONEL SCOTT: He would have typed it

9 in, but he would have got the input definitely from the

10 commanders, Ma'am.

11 COMMISSIONER HEMRAJ: Yes, thank you.

12 MR CHASKALSON SC: Colonel, I'd like to

13 pick up on something flowing from the Chairperson's

14 question. If we can maybe go to slide 149, which shows

15 your planned deployment for phase 2, and what I note from

16 this deployment is that your plan for where the Nyalas were

17 going to position in phase 2 was to put them at quite a

18 distance away from the koppie. Was there a reason for

19 this?

20 COLONEL SCOTT: Again it was part of a

21 non-conflict strategy. It made no sense to have the police

22 positioned closer to the strikers or the crowd than would

23 be necessary, and I'm not sure if you can see the first red

24 vehicle at the bottom which is on the corner of the power

25 station. Now in the planning thereof, making use already

Page 14607

1 of the power station as a natural boundary to the south,
 2 that would also gain ground, which would extend the line
 3 further around to help block off the advance towards
 4 Nkaneng settlement. It's those small type of things that I
 5 would consider when placing vehicles and so on, and how I
 6 know they didn't follow that and that they went to the
 7 inside, but from what I understand, where the vehicles are
 8 standing now is actually where the police was deployed,
 9 the, monitoring the negotiation group, and they wanted
 10 them, obviously the razor wire to be in front. Also I
 11 believe that the power pylons played a role, that Brigadier
 12 Calitz had to move certain of his forces, his own line
 13 because of the radio communication problem standing
 14 directly underneath some of the pylons, that they couldn't
 15 transmit.

16 MR CHASKALSON SC: Well, you partially
 17 addressed the question that's coming later, but can I ask
 18 you to look at exhibit JJJ91, which is where the diagram –
 19 I emphasise it's a rough diagram, we don't maintain that
 20 it's absolutely accurate – where we've tried to map onto
 21 this grid the actual deployment of the barbed wire Nyalas
 22 on the day, and there are two features of this that I would
 23 want to raise with you. The first is that in terms of your
 24 rationale of keeping the barbed wire Nyalas away from the
 25 protesters on the koppie so as not to provoke an

Page 14608

1 unnecessary confrontation, the barbed wire Nyalas deployed
 2 a great deal closer to the koppie than was your plan. You
 3 accept that?

4 COLONEL SCOTT: Well –

5 MR CHASKALSON SC: Or let's start at the
 6 beginning. Do you accept that we've plotted these vehicles
 7 broadly correctly?

8 COLONEL SCOTT: Yes. I'm just wonder the
 9 word "great deal" is maybe, if I can see 40, possibly 50
 10 metres closer at the furthest point.

11 MR CHASKALSON SC: Well, if we go back to
 12 what I think was slide 181 of the presentation, we'll see
 13 that 40 metres is a substantial distance in that context.
 14 Can we go to slide 191? So the total distance between the
 15 protesters and the negotiation group according to this
 16 diagram of yours is roughly 80 metres.

17 COLONEL SCOTT: Yes.

18 MR CHASKALSON SC: And your barbed wire
 19 Nyalas ended up being deployed as much as 50 metres, you
 20 said, closer to the mountain than you had intended.

21 COLONEL SCOTT: At the furthest point.
 22 Obviously it narrows as it gets closer to the top of the
 23 line, but I agree with you, there is distance obviously,
 24 they are closer.

25 MR CHASKALSON SC: Again, was any of this

Page 14609

1 deviation from your plan discussed with you?

2 COLONEL SCOTT: No. The positioning of
 3 the vehicles as you can see them there – no, it wasn't. It
 4 wasn't discussed to move to a closer positioning, no.

5 MR CHASKALSON SC: Did you not notice it
 6 during the day?

7 COLONEL SCOTT: I, well by the time I
 8 needed to brief the commanders I'd got aerial photography
 9 which showed the new deployment positions and from my
 10 recollection I'd replaced where the Nyalas were now for a
 11 better briefing for the phase 3 by that late stage, yes.

12 MR CHASKALSON SC: You say replaced, you
 13 mean replaced on your Google Earth map?

14 COLONEL SCOTT: On the Google map, yes.

15 [10:46] MR CHASKALSON SC: Can we go back to
 16 JJJ91? You see and again we're leaping forward to one of
 17 the pieces of evidence that we raised with you yesterday
 18 but I do want to raise it now once we've got it up in front
 19 of you, It does strike us as odd that the particular place
 20 where Nyalas 2, 3, 4, sorry, 3, 4, 5 and 6 chose to
 21 position themselves was on the blue line that on your
 22 koppie plan, your encirclement plan was the barbed wire
 23 cordon. Do you have any answer to that?

24 COLONEL SCOTT: No. I think that Colonel
 25 Makhubela would need to answer that.

Page 14610

1 MR CHASKALSON SC: And we know from
 2 Colonel Makhubela's statement three days after the event
 3 that he thought what he was supposed to do is to encircle
 4 the koppie with barbed wire.

5 COLONEL SCOTT: I understand his first
 6 statement says that, yes. Chairperson, I don't know if I
 7 can elaborate on that as well.

8 CHAIRPERSON: You have the fullest right
 9 to do so if you consider it necessary.

10 COLONEL SCOTT: Yes, it's just when we
 11 talk encirclement, encirclement in general means you
 12 encircle, close a circle around something and it's evident
 13 from the positioning of those vehicles that they're in a
 14 straight line. There is approximately, maybe just short of
 15 180 degrees of movement still available to the strikers.
 16 And I do believe that in his second statement he did
 17 mention it's a matter of terminology and possibly maybe not
 18 being a first language, etcetera, possibly even in his
 19 briefings when he'd take it over, I'm speculating now, but
 20 what is evident though is that that's definitely not
 21 prepositioning for encirclement.

22 MR CHASKALSON SC: Well let's got to
 23 Colonel Makhubela's statement, GGG9, if we can call up
 24 GGG9. You see it's not just in one place that Colonel
 25 Makhubela talks about what he thought the plan was. If we

Page 14611

1 go to paragraph 2 he says "during the said operation my
2 task was to surround the said employees with barbed wire at
3 the place they'd gathered at a small hill near Wonderkop
4 village." That to our minds speaks to the encirclement
5 plan but it's really put beyond doubt by paragraph 6. "I
6 also state that the aim to use the barbed wire was to can
7 manage to control the said employees to be searched as only
8 one entrance or exit was to be made for the weapons they
9 were having." Now a feature of your encirclement plan was
10 that there was going to be a processing zone with only one
11 exit for the miners to come out and be disarmed. Is that
12 correct?

13 COLONEL SCOTT: That's correct.

14 MR CHASKALSON SC: Was it any feature of
15 your dispersal plan, dispersal and disarm plan that only
16 one entrance or exit was to be made for the weapons that
17 the miners were having?

18 COLONEL SCOTT: No. Again, I don't want
19 to speculate but I think we are speculating without his
20 presence on what he's meaning but the flushing out of the
21 greater amount of protesters towards the west is also, in
22 essence, channelled through a wider area. Because if he's
23 made this statement after prepositioning his vehicles the
24 way he did surely he has to understand that he's not
25 encircling, closing -

Page 14612

1 CHAIRPERSON: If you have only one exit,
2 the two words that are relevant, firstly the word surround
3 which we find in Para 2 and then in Para 6 there's talk
4 about only one entrance or exit. Now you could only have
5 only one entrance or exit as I assume if you've got a
6 circle, or a little hole or a little space at some point.
7 Isn't that right?

8 COLONEL SCOTT: Yes, Chairperson.

9 CHAIRPERSON: Well if words have any
10 meaning that's what they mean isn't it?

11 COLONEL SCOTT: That's why I'm -

12 CHAIRPERSON: This isn't speculation,
13 that's what he says.

14 COLONEL SCOTT: Well that's I've said I'm
15 not sure if he's understanding or he's translating it back
16 into the English language properly has done justification
17 to his understanding because I don't see how that could
18 happen with the positioning of his vehicle. And he knows
19 that too because you could not make Nyala 6 stretch from
20 where it was, all the around to the bottom. It was just
21 never going to happen.

22 MR CHASKALSON SC: But, Colonel, remember
23 we're talking about phase 2 here, not phase 3. That
24 positioning was a phase 2 positioning, not a phase 3
25 positioning.

Page 14613

1 COLONEL SCOTT: Yes.

2 MR CHASKALSON SC: And a phase 2
3 positioning had two purposes. One was a prepositioning and
4 the other was a show of force.

5 COLONEL SCOTT: Yes.

6 MR CHASKALSON SC: And if we go back to
7 your slide, 149 -

8 COLONEL SCOTT: But just in saying that
9 that is why - that's one of the reasons why the dispersal
10 to arrest plan has to have been in place by that morning
11 because with my laying out of the vehicles the way they
12 were, they were pre-positioned, as a contingency plan but
13 also as the deployment for a phase 3. If that was going to
14 occur.

15 MR CHASKALSON SC: Indeed, Colonel, you
16 did raise this at one stage earlier in September but you'll
17 recall we had an exchange and ultimately you did concede
18 that this layout was not in any material respect different
19 from what the phase 2 layout would have been on the Tuesday
20 version of the plan. Do you recall that exchange?

21 COLONEL SCOTT: I believe, yes and the
22 Chairperson did also raise it that it may have been
23 hindsight from my side that I had actually gone too far
24 back with the strategising that the strategy of this done
25 on the Wednesday was brought back onto the Tuesday in the

Page 14614

1 statements.

2 MR CHASKALSON SC: We're at cross
3 purposes, Colonel, we were talking specifically about the
4 passage in your statement where you talk about the phase 2
5 version of the encirclement plan. In the statement when
6 you talk about phase 2 Tuesday version, I can find the
7 references, I don't have them at my fingertips, you're
8 talking very much about phase 2 of the encirclement plan.
9 And you'll recall we had a lengthy exchange using SS3 and
10 the plan, the phase 2 plan in SS3 at encirclement stage
11 which matched that diagram and you did concede. The record
12 will speak for itself that this diagram that we see up here
13 is not in any material respects different from what phase 2
14 the Tuesday version would have been on the encirclement
15 plan.

16 COLONEL SCOTT: I fail to understand
17 where you're going because the diagram we've got up now has
18 elements in it that were created from the outset. But the
19 actual diagram as we see it there was only created on the
20 Thursday morning.

21 MR CHASKALSON SC: I know it was only
22 created on the Thursday morning. What I want to put to you
23 is that's neutral in relation to whether the plan on
24 Thursday morning was encirclement or disperse and disarm.
25 You've already conceded that it is at least possible that

Page 14615

1 at the end of the JOCCOM meeting on Thursday whether it was
 2 going to be encirclement or disperse and disarm was still
 3 in the air.
 4 COLONEL SCOTT: There's a possibility
 5 that it was in the air, yes.
 6 MR CHASKALSON SC: Yes, now that being –
 7 and we know that that is what you handed to people at the
 8 Thursday JOCCOM as the phase 2 deployment.
 9 COLONEL SCOTT: Yes and we were talking
 10 about it this morning, when I was speaking this morning.
 11 MR CHASKALSON SC: This morning, never
 12 mind the September exchange on whether this was –
 13 COLONEL SCOTT: Yes and I was giving a
 14 basic synopsis that a possibility exists that because the
 15 generals were removed from the JOCCOM before the end of the
 16 JOCCOM was concluded that there was no hard decision taken
 17 on – and again I was working out of a possibility of what
 18 could have occurred. And that the fact there was actually
 19 that encirclement was brought to the JOCCOM still as well
 20 as the new strategy of disperse to arrest. But that the
 21 decision to go tactical for that matter on which one or the
 22 detail thereof was not laid out before the JOC for deep
 23 input, etcetera. But the fact that this document exists to
 24 me is proof that there was a stage 2, as we can see it
 25 obviously and I know that I placed those vehicles with a

Page 14616

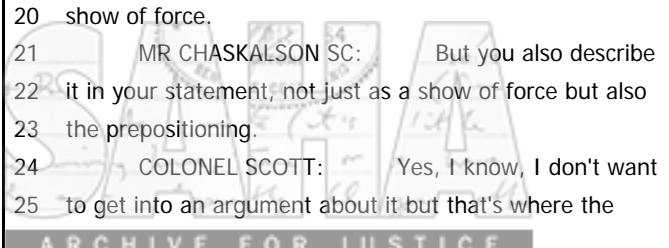
1 prepositioning for a stage 3. It's one of the reasons to
 2 actually have put them in place, that should a stage 3 be
 3 called for and that it would be necessary to have them
 4 there because it complimented the stage 3 plan.
 5 MR CHASKALSON SC: Well, Colonel, I don't
 6 want to go back to a topic that we spent the better part of
 7 a morning on a month ago but that cross-examination ended
 8 up with you accepting that this diagram did not differ in
 9 any material respects from a diagram that would have
 10 described the phase 2 version for encirclement on the
 11 Tuesday.
 12 COLONEL SCOTT: But what I'm failing to
 13 understand is there was no phase 2 encirclement on Tuesday.
 14 MR CHASKALSON SC: The phase 2 plan, what
 15 would have been a phase 2 plan had it been put in place on
 16 Tuesday. This is what you say in your statement.
 17 COLONEL SCOTT: Tuesday is show of force.
 18 MR CHASKALSON SC: Tuesday is phase 2.
 19 COLONEL SCOTT: Which was also still the
 20 show of force.
 21 MR CHASKALSON SC: But you also describe
 22 it in your statement, not just as a show of force but also
 23 the prepositioning.
 24 COLONEL SCOTT: Yes, I know, I don't want
 25 to get into an argument about it but that's where the

Page 14617

1 Chairperson rightfully said are you not maybe considering
 2 something that you thought of later and you've mentioned it
 3 now on Tuesday where you hadn't yet considered it on the
 4 Tuesday, which I conceded to saying yes.
 5 MR CHASKALSON SC: I think we'll have to
 6 leave the record to speak for itself on that one.
 7 COMMISSIONER HEMRAJ: Can I just ask you
 8 something, Colonel, about what Colonel Makhubela said about
 9 that positioning on slide 149 being part of an
 10 encirclement? Now to do an encirclement of that area would
 11 you have needed more Nyalas with barbed wire?
 12 COLONEL SCOTT: You would have, ma'am.
 13 COMMISSIONER HEMRAJ: And who would have
 14 been in command of those extra Nyalas for the encirclement?
 15 COLONEL SCOTT: It would have still been
 16 Colonel Makhubela. If he was there, ideally he would have
 17 been the razor wire or encirclement group for that matter
 18 and if it was still going to be an encirclement strategy
 19 again it would have been a dual roll out at least. Or a
 20 simultaneous roll out if one could manage that and then
 21 obviously would have given the instruction. If it was a
 22 dual roll out you may have had two commanders he would have
 23 spoken to, if it was simultaneous he would have got in
 24 touch with all his commanders per vehicle to give the
 25 instruction to do so.

Page 14618

1 COMMISSIONER HEMRAJ: Yes, thank you.
 2 CHAIRPERSON: I remember from the
 3 diagrams we saw earlier there were, as far as I remember,
 4 two semi-circles were joined. The one was blue I think and
 5 the other one was orange. So obviously one set of Nyalas
 6 would have gone in one direction from the top of the circle
 7 down to the bottom of the circle and the other would have
 8 gone from the bottom of the circle on the other side.
 9 COLONEL SCOTT: Yes.
 10 CHAIRPERSON: From the bottom of the
 11 circle to the top of the circle.
 12 COLONEL SCOTT: Yes.
 13 CHAIRPERSON: Is that right? Now
 14 presumably, well perhaps presumably is too strong a word
 15 but would it be correct to say that one person would have
 16 been in charge of the upward group, upward moving group of
 17 Nyalas and another the downward moving group of Nyalas? If
 18 you understand what I mean.
 19 COLONEL SCOTT: Chairperson, yes.
 20 Ultimately that would be what would occur. Of course being
 21 the first light plan the initial smaller –
 22 CHAIRPERSON: Yes, yes, yes I understand.
 23 The circle would have been smaller. Do you know who the
 24 two people would have been, would Makhubela have been in
 25 charge of the whole operation or would he have been in



<p style="text-align: right;">Page 14619</p> <p>1 charge of – but also in charge of one of the semi-circle 2 creating groups of Nyalas? 3 COLONEL SCOTT: Chairperson, it wasn't 4 planned to that detail because it didn't occur but if it 5 was I would imagine that him being a full colonel he would 6 have had two lieutenant-colonels which were within his 7 ranks and he would have instructed them on taking a side of 8 the koppie each with the responsibility to each. Or 9 possibly himself taking one of the sides with another 10 lieutenant-colonel taking the opposite side. 11 CHAIRPERSON: From what I understand the 12 result of plotting slide 152 and 149 is that one semi- 13 circle in fact, it is doing what we see what you planned on 14 149. We see one of the two semi-circles, do I understand 15 that correctly? Not the other one but one of them. 16 COLONEL SCOTT: Yes, we're seeing more or 17 less one of them, yes. 18 CHAIRPERSON: Ja. Mr Chaskalson, is this 19 a convenient stage for us to take the adjournment or is 20 there some other question you wish to ask before we do 21 that? 22 MR CHASKALSON SC: Not on this topic, 23 Chairperson. 24 CHAIRPERSON: Alright we'll take the tea 25 adjournment at this stage.</p>	<p style="text-align: right;">Page 14621</p> <p>1 Friday morning because it wasn't your decision and those 2 reasons weren't conveyed to you, but if you were to 3 speculate as it were you would suggest that it had to do 4 with the threat that was placed on the Thursday, is that a 5 broadly an accurate summary of what your answers were? 6 COLONEL SCOTT: Yes, or the anticipated 7 action that was to come, possibly. 8 MR CHASKALSON SC: We've dealt with 9 issues of threat and it's not, they're not your reasons so 10 I don't want to traverse the third question in any detail 11 or in fact any more, any further. The second question you 12 say it was communicated by the provincial commissioner but 13 you don't know who took the decision. 14 COLONEL SCOTT: That's correct. 15 MR CHASKALSON SC: Can I assume from that 16 then that the decision wasn't taken at the JOCCOM, it was 17 reported at the JOCCOM? 18 COLONEL SCOTT: Well from what I 19 understand and obviously having the hindsight now of the 20 media videos the provincial commissioner is speaking to the 21 situation being resolved that day. So it's out of that 22 hindsight that I make that call and acknowledgement that 23 there was OB entries made as you pointed out yesterday that 24 the decision was made by the provincial commissioner. 25 MR CHASKALSON SC: But if the decision</p>
<p style="text-align: right;">Page 14620</p> <p>1 [COMMISSION ADJOURNS COMMISSION RESUMES] 2 [11:27] CHAIRPERSON: The commission resumes. 3 Colonel you're still under oath. Mr Chaskalson. 4 MR CHASKALSON SC: Thank you, 5 Chairperson. 6 CHAIRPERSON: Do you want to move onto 7 your next topic? 8 MR CHASKALSON SC: Yes, Chairperson. 9 Colonel, we've gone fairly far and wide since I asked you 10 those three questions and we will cut down on what would 11 have been traversed later in the cross-examination but I 12 would like to get back to those three questions and take 13 them, well in response to the first question your answer 14 was you still are fairly sure that the encirclement plan 15 was replaced as, replaced with a dispersal plan at the 6 am 16 JOCCOM and that the difficulties with the encirclement plan 17 had been identified on the Wednesday. But you accept that 18 it was possible that both plans might still have been on 19 the table after the 6am JOCCOM. Your second answer was you 20 can't say who took the decision to move to the tactical 21 phase but it was communicated by the provincial 22 commissioner, is that correct? 23 COLONEL SCOTT: It's correct. 24 MR CHASKALSON SC: And your third answer 25 was you can't speak to the reasons of not waiting until</p>	<p style="text-align: right;">Page 14622</p> <p>1 had been taken at the 1:30 JOCCOM you would have known, you 2 were there, you would've known who took it, whether the 3 whole JOCCOM took it, it wouldn't have been something that 4 was communicated by the provincial commissioner, it would 5 have been taken in your presence? 6 COLONEL SCOTT: Yes. Again I don't 7 recall the full, I've read the minutes of the 1:30 JOCCOM. 8 I can't identify specifically with them, I don't recall all 9 that the provincial commissioner said. I have relied on 10 consulting colleagues that were there and they verified 11 that the provincial commissioner did open and did speak to 12 the JOCCOM. So it's with that hindsight as well that I or 13 that interaction that I say as I've said as well. 14 MR CHASKALSON SC: But my question is 15 slightly different. Its, you say you don't know who took 16 that decision, is it safe for us to say then that it wasn't 17 taken at the JOCCOM where you were present, the decision 18 wasn't taken. 19 COLONEL SCOTT: Well what I've said is I 20 don't recall the wording used by the provincial 21 commissioner. From what I'm understanding she carried it 22 over at the JOCCOM and I'm not, I'm in no way trying to 23 protect anybody but there was no mention there of a 24 national management forum, etcetera. 25 MR CHASKALSON SC: Colonel, I'm not</p>

Page 14623

1 asking you to speculate as to who did take the decision.
 2 You've said you don't know who took –
 3 COLONEL SCOTT: Ja.
 4 MR CHASKALSON SC: I'm asking a simple
 5 question can we accept that it wasn't taken at the JOCCOM,
 6 it had already been taken whether by Major General
 7 Annandale, Major General Mpembe as he has testified the
 8 provincial commissioner, anybody but it had been taken by
 9 the time the 1:30 JOCCOM convened?
 10 COLONEL SCOTT: Yes.
 11 MR CHASKALSON SC: You see my concern
 12 with that is that it was only at the 1:30 JOCCOM that any
 13 detail was given to the tactical phase of the plan. We
 14 dealt with that I think the last, on the last day before we
 15 broke. Do you recall that?
 16 COLONEL SCOTT: Yes, that's my
 17 recollection. I can't speak as to what others may have
 18 experienced at the 6 o'clock JOCCOM. There may be those
 19 that say that it was not discussed in depth or detail but
 20 mentioned there and there may have been one or two
 21 comments. But I don't recall them.
 22 MR CHASKALSON SC: But from what you
 23 recall and if we put together what you recall a decision
 24 was taken to move to a phase 3 dispersal and disarmament
 25 tactical phase before any detail to that phase had been

Page 14624

1 communicated in the JOC, is that correct?
 2 COLONEL SCOTT: The detail, that's
 3 correct.
 4 MR CHASKALSON SC: So the high risk
 5 tactical intervention was ordered or decided before the
 6 decision makers knew how it would be implemented?
 7 COLONEL SCOTT: Well I'm not –
 8 MR SEMENYA SC: Who are the decision
 9 makers?
 10 COLONEL SCOTT: I'm not sure what they
 11 knew at their level. As I say I reported to General
 12 Annandale what was communicated from that time forward he
 13 could have on Wednesday already being communicating that
 14 there was an issue and we were looking to clear it with the
 15 JOCCOM for instance that a dispersal action would be the
 16 order of the day and not an encirclement. But I wasn't
 17 privileged to obviously the higher level communications and
 18 decision making processes based on communications that were
 19 going on.
 20 MR CHASKALSON SC: But you –
 21 CHAIRPERSON: Sorry, Mr Semenya, you
 22 indicated that I think you wish to say something?
 23 MR SEMENYA SC: Well I say the witness
 24 has already answered, I don't know the decision makers, I
 25 was trying to establish which decision makers Mr Chaskalson

Page 14625

1 was referring to.
 2 MR CHASKALSON SC: My question is
 3 independent of the identity of the decision makers.
 4 CHAIRPERSON: He made his comment for the
 5 record, carry on.
 6 MR CHASKALSON SC: But your testimony was
 7 that the first time detail was given to the tactical phase
 8 that was implemented was at the 1:30 JOCCOM, by you.
 9 COLONEL SCOTT: That's correct.
 10 MR CHASKALSON SC: And that no aspects of
 11 the detail that you put forward were rejected or changed in
 12 any material respects by any of the people present there?
 13 COLONEL SCOTT: That's correct.
 14 MR CHASKALSON SC: And the decision had
 15 been taken before that took place?
 16 COLONEL SCOTT: That's correct.
 17 MR CHASKALSON SC: If we can then move
 18 back to the first question, because here there is quite a
 19 lot of detail that I do need to canvas with you just to
 20 clarify the basis for your testimony that you still think
 21 it was on Thursday morning and you'll recall there were, I
 22 forget how many, I gave you a printout of them last night,
 23 of what led us to believe that this took place later on the
 24 Thursday. Can we now take them one by one and if we start
 25 with your testimony. On your own admission for many months

Page 14626

1 you recalled that conversations relating to the
 2 difficulties of the encirclement plan had took place only
 3 on Thursday, if not for many months then at least until you
 4 went to Roots.
 5 COLONEL SCOTT: That's the best that I
 6 can recall, yes.
 7 MR CHASKALSON SC: Now at, I want to
 8 explore how it could be possible that that would be your
 9 memory up to Roots and it would be an incorrect memory.
 10 The Marikana operation left 34 people dead. It, as I've
 11 said already that, in this cross-examination that's more
 12 people that have been killed by the SAPS in a single
 13 operation since Sharpeville. It dominated local news and
 14 international news for days. You were the primary planner
 15 of the operation that had these consequences and the plan
 16 that was ultimately implemented that ended up with these
 17 unfortunate tragic consequences, was one that had been
 18 changed because difficulties were identified with an
 19 earlier plan. That's your testimony, is that correct?
 20 COLONEL SCOTT: That's correct.
 21 MR SEMENYA SC: Chair?
 22 CHAIRPERSON: Mr Semenya?
 23 MR SEMENYA SC: I object to that
 24 proposition. We are still yet to establish whether those
 25 consequences are a result of the flaw in the plan. To put

Page 14627

1 it as a proposition to the witness that you are the
2 planner, primary planner that resulted in those
3 consequences it's a subject yet to be explored.
4 MR CHASKALSON SC: Chair, my, what I put
5 to the witness was that he was the primary planner of the
6 operation that had these consequences. Why the
7 consequences flowed from the operation, whether they were
8 direct result of his plan or not is not part of my
9 question.
10 CHAIRPERSON: I take it provided that
11 that point is clear Mr Semenya will not persist in his
12 objection. But he had made his point, he's put his marker
13 down on the ground and we'll know that what his attitude
14 will be if its approached again.
15 MR CHASKALSON SC: So, to get back to my
16 sequence you only started thinking about the new plan that
17 was ultimately, at least attempted to be implemented after
18 you had identified difficulties with the old plan.
19 COLONEL SCOTT: Yes.
20 MR CHASKALSON SC: And you say for many
21 months or at least until Roots your recall was that those
22 difficulties with the old plan had only been identified on
23 the Thursday morning, not on the Wednesday morning.
24 COLONEL SCOTT: I said that and what I've
25 also mentioned was that that time period felt like an

Page 14628

1 extended time period where I was actually quite sure we
2 were missing a day. Maybe it was due to the long hours
3 being worked but it actually felt as though we were one day
4 short.
5 CHAIRPERSON: You did say that. One of
6 the questions we may have to decide at the end of the day
7 is whether your original memory was right and your later
8 reconstruction is wrong or vice versa. But the two
9 possibilities are on the table.
10 COLONEL SCOTT: Yes.
11 CHAIRPERSON: And it's something we have
12 to think about very carefully in the light of all the
13 evidence.
14 COLONEL SCOTT: Yes, Chairperson, I've
15 prepared a, almost a something that, last night that speaks
16 to these type of incidents which I'm not sure if I must, I
17 can share or not share. I have mentioned it before. But
18 it was just due to the fact of after the day of the 16th
19 immediately trying to prepare a plan to reflect,
20 understanding that I would have senior police officers
21 coming through to want to know what had gone on and so on
22 but that just being the beginning immediately being tasked
23 and thereafter tasked with nine taskings before the end of
24 that week, the following week. Some of them which were, as
25 I say pretty extraneous taskings briefings to the

Page 14629

1 President, brief letters to be sent to the President,
2 ministerial committees, portfolio committee. So my time of
3 actually being able to go back and reflect accurately was
4 mostly taken up with having to address a number of, in fact
5 nine other taskings that I had received.
6 CHAIRPERSON: Yes. What was put to you
7 amongst other things was your presentation to the President
8 or the Minister, I can't remember which it was, and that
9 was obviously very important task that you had to perform
10 and you had to the best of your ability put the facts
11 correctly to the President and the Minister, is that right?
12 COLONEL SCOTT: Yes, well with respect to
13 the President, he, if he goes to the plan that got saved
14 with the plan in it is, his original presentation but saved
15 later he never got to see the plan in his presentation, he
16 saw the same plan the media saw.
17 CHAIRPERSON: Prepared for him and shown
18 to the minister, is that right?
19 COLONEL SCOTT: No, I didn't prepare the
20 plan for the President.
21 CHAIRPERSON: No, no, no. Not the plan,
22 the slide where he was, you prepared a presentation?
23 COLONEL SCOTT: Yes.
24 CHAIRPERSON: For the minister, for the
25 President, do I understand you correctly, you didn't give

Page 14630

1 him the whole presentation but you did in due course give
2 that presentation to the Minister?
3 COLONEL SCOTT: I did also brief the
4 President.
5 CHAIRPERSON: Yes, I know, you say you
6 did. But I thought you said you didn't show him
7 everything.
8 COLONEL SCOTT: No.
9 CHAIRPERSON: I may have misunderstood.
10 I'm trying to find out what I should –
11 COLONEL SCOTT: I showed him the same
12 presentation as was shown to the media that day. After
13 that I started building in the plan from what I had tried
14 to reconstruct from the Thursday night.
15 CHAIRPERSON: Thank you, now I
16 understand.
17 MR CHASKALSON SC: At an appropriate
18 point and it may be when I'm taking you to the individual
19 documents you must feel free to put on record what you,
20 what you prepared last night or whatever's relevant to the
21 question. But I do just want to emphasise what our
22 difficulty is so that you can confront it. It is if the
23 difficulties in the encirclement plan were identified only
24 on the Thursday morning that would mean that you started
25 thinking about the new plan only sometime on the Thursday

Page 14631

1 morning which would be at best a few hours before it was
 2 adopted at the 1:30 JOCCOM and that would mean that your
 3 memory on the, say the 19th which is when you produced some
 4 of these documents that you had only spent a few hours
 5 between first thinking about that plan and the 1:30 JOCCOM
 6 and another two hours before it was implemented was out by
 7 a full 24 hours, it wasn't a plan that had been germinating
 8 in total for say five hours. It was a plan that had been
 9 germinating for a day and five hours.
 10 COLONEL SCOTT: Yes.
 11 MR CHASKALSON SC: And that seems quite a
 12 substantial difference to us, quite a substantial
 13 difference to get wrong when you're trying to remember it
 14 barely a couple of days after the event. So that's our
 15 concern. Do you want to respond to that now or should be
 16 take, do you want to respond to that now or do you, should
 17 we take the specific documents so that you can respond to
 18 them.
 19 COLONEL SCOTT: Maybe we can move through
 20 them. As I say I mentioned it before, as I say I can
 21 remember these incidents and the conversations we had and
 22 so on but to have placed them on what specific day was
 23 difficult for me and was only due to the presence of
 24 members that were either there on that day or not there the
 25 next day that I actually got to see that I was out by a day

Page 14632

1 or, so I'm relying on that. Whether there was another
 2 conversation without, for instance Brigadier Engelbrecht
 3 being present then it may have been on the Thursday but if
 4 Brigadier Engelbrecht is part of that it has to have been
 5 when he was there which would have been on a Wednesday and
 6 then thereafter stimulated my thinking in the processes.
 7 MR CHASKALSON SC: You see what Brigadier
 8 Engelbrecht describes in his statement is not a discussion
 9 about the weaknesses of the plan.
 10 COLONEL SCOTT: Yes.
 11 MR CHASKALSON SC: Was merely a
 12 discussion about the detail of the encirclement plan.
 13 COLONEL SCOTT: Yes.
 14 MR CHASKALSON SC: So it's quite possible
 15 we can canvas this further with Brigadier Engelbrecht but
 16 he was not party to any discussion about the weaknesses.
 17 COLONEL SCOTT: I understand that and as
 18 I'm saying I'm quite happy to, either way, if the full
 19 processes were on the Wednesday then that's when it did
 20 happen. If it was only on the Thursday then that's when it
 21 did happen. I know that it did happen, I just have a
 22 difficulty in placing it to which day specifically.
 23 MR CHASKALSON SC: I mean the evidence is
 24 there and maybe we should just leave it at that. You
 25 accept it's possible that it happened on the Thursday, not

Page 14633

1 on the Wednesday, you can't recall –
 2 COLONEL SCOTT: It could be possible
 3 because if I look at the contemporaneous notes from the
 4 JOCCOM of the 6 o'clock of the Thursday if it was mentioned
 5 there that today something has to happen because we can't
 6 continue I don't, as I say I don't recall that but it's
 7 possible that I would then have gone into the thinking mode
 8 which I'm describing in my statement.
 9 MR CHASKALSON SC: From my perspective
 10 I'm happy to leave it at, on that and unless there is
 11 anything, I mean you've had the full text of what I recited
 12 last – yesterday afternoon. If there's anything there
 13 that's clearly wrong and that we need, I don't want to make
 14 submissions to the Chairperson and the Commissioners that
 15 are clearly wrong. So if there's anything to respond to in
 16 that, to draw my attention to an obvious error or something
 17 like that please do. Otherwise lets leave it on that
 18 basis.
 19 COLONEL SCOTT: Okay. I don't think
 20 there is at this time. I was, the only thing I could work
 21 out as to why I still looked at encirclement for the
 22 Thursday morning was because at that time with all the
 23 other taskings as I'm saying which did play a role in what
 24 took up my time and my energy was the fact that I had to go
 25 back to some form of contemporaneous note which would have

Page 14634

1 been the JOCCOM or the plan at that time that was coming
 2 from the Thursday morning and if that was still speaking to
 3 encirclement, although dispersion could have been discussed
 4 on the Wednesday already but waiting for a JOCCOM decision
 5 to amend I would have been thinking that encirclement went
 6 all the way. But I do know that the detail as I said of
 7 that encirclement plan was for the 1:30 meeting.
 8 MR CHASKALSON SC: Colonel, I'm happy to
 9 leave it on that basis. But there is unfortunately one
 10 issue which I do need to canvas with you because it's a
 11 material issue, that the commission may have to consider
 12 and that is what I've identified as what I say the obvious
 13 flaw in the plan.
 14 [11:47] And can we go there and let's, you've seen what
 15 my reasoning is in that regard and I do want to emphasise,
 16 I'm not suggesting that this was a deliberate setup in the
 17 plan, I'm suggesting on the contrary that this was a flaw
 18 in the plan that you would have picked up if you had a
 19 reasonable amount of time to consider it and the fact that
 20 you didn't pick it up gives rise to a strong inference that
 21 the plan was prepared in such a haste, but you couldn't
 22 reflect, you didn't have time to reflect on it, but let's
 23 go through it or maybe let's ask at this start, do you
 24 accept that that was a flaw in the plan?
 25 COLONEL SCOTT: I accept that it was not

<p style="text-align: right;">Page 14635</p> <p>1 covered maybe in the detail that it should have been, but 2 again myself as the planner and not having the privilege of 3 actually being there to see, I was relying on verbal 4 feedback amongst others from some of my teams that hadn't 5 been able to get too close to koppie 3 for that matter, but 6 I think if we go through it, I don't necessarily agree with 7 everything that you are saying because I – 8 MR CHASKALSON SC: Then I think we must 9 go through it. 10 COLONEL SCOTT: Ja. 11 MR CHASKALSON SC: So let's take it step 12 by step. Do you accept that objectively the terrain on 13 koppie 3 is such that it would be very difficult to clear 14 that terrain if the striking miners entrenched themselves 15 in koppie 3? 16 COLONEL SCOTT: Obviously this is a 17 hindsight question now and not what I knew at the time. 18 CHAIRPERSON: The question is, as Mr 19 Chaskalson explained in the very beginning, not intended to 20 suggest what, anything about what you subjectively thought 21 at the time, the word calculator you used yesterday was 22 used in the objective sense. So it is a hindsight question 23 in the sense that one has to consider not what you intended 24 at the time, but looking at it now with hindsight which we 25 all know is 20:20, whether you now see things that you</p>	<p style="text-align: right;">Page 14637</p> <p>1 would be no easier to clear than the terrain on koppies 1 2 and 2? 3 COLONEL SCOTT: Yes. 4 MR CHASKALSON SC: Do you accept that it 5 would be more difficult to clear than koppies 1 and 2 6 because it is less exposed? 7 COLONEL SCOTT: No, I think that the 8 heights advantage on koppie 1 poses a bigger threat to, 9 koppie 1 had similar bushes, trees and the height affect 10 going on to the southern, south western side and that's 11 specifically why I moved the Special Task Force and the NIU 12 to doing that koppie 1 in the plan. 13 MR CHASKALSON SC: Now it is a subjective 14 question, do you accept that you knew – 15 CHAIRPERSON: I think, - oh, subjective? 16 MR CHASKALSON SC: Subjective, do you 17 accept that you subjectively knew about the terrain on 18 koppie 3 because you'd received a report on the 19 difficulties at that terrain from the STF observation team 20 on Tuesday? 21 COLONEL SCOTT: Yes, and that, on the 22 Tuesday when I'd sent them there I'd done the Google Earth 23 map lookouts and I had expected that to be a similar koppie 24 to 1 and 2, but one of the difficulties and when I speak 25 difficulties for an observation post, it is a difficulty</p>
<p style="text-align: right;">Page 14636</p> <p>1 didn't see at the time. I think that's the basis for the 2 question, is that correct, Mr Chaskalson? 3 MR CHASKALSON SC: Where I refer to 4 subjective knowledge at the time I will make that 5 absolutely clear, unless I do, assume that we're talking 6 about objective facts, not what your subjective knowledge 7 was at the time. So the first question is objectively do 8 you accept, not did you know at the time, but objectively 9 do you accept that the terrain on koppie 3 is such that it 10 would be very difficult to clear if striking miners 11 entrenched themselves there? 12 COLONEL SCOTT: What I would say to that 13 is, for units that are not trained to do that amongst 14 others, I don't know if all the public or the policing 15 units are trained to do that, there could be public order 16 policemen from maybe a decade or more ago that would have 17 been trained in similar techniques, but today's POPS is not 18 taught to necessarily go and clear areas like that, but for 19 a unit such as TRT, NIU and STF, they are taught in their 20 training curriculums how to move through environments like 21 that to sweep through, to look for perpetrators, suspects 22 and to enforce arresting in environments like that. 23 MR CHASKALSON SC: Yes, I'm not 24 suggesting it is impossible, but let's put the question 25 differently. Do you accept that the terrain on koppie 3</p>	<p style="text-align: right;">Page 14638</p> <p>1 because there wasn't sufficient heights and with an 2 observation post you would want heights. That was one of 3 the difficulties and the other was the human movement 4 through or backwards and forwards that they had picked up, 5 so there was too much human movement for them to have 6 established an observation post there which is supposed to 7 be more in a clandestine role. 8 MR CHASKALSON SC: And if we go to your 9 statement, what they also reported to you is that there 10 were small trees, bushes and large rocks on koppie 3. 11 COLONEL SCOTT: Yes. 12 MR CHASKALSON SC: Which would also post 13 difficulties in terms of terrain for clearing people? 14 COLONEL SCOTT: Well, obviously that's 15 more difficult to clear than open ground, yes. 16 MR CHASKALSON SC: And you've already 17 accepted that from the same report you knew that there was 18 movement between koppie 1 and koppie 3, and that the 19 strikers at any rate moved between or some of the strikers 20 moved to koppie 3, they were moving between 3 and 1. 21 COLONEL SCOTT: That was the report I 22 received, yes. 23 MR CHASKALSON SC: Now this is not a 24 subjective question now and now we're back to the 25 objective. Do you accept that the structure of your</p>

Page 14639

1 dispersion plan was such that a likely effect of it, if it
 2 was successful in relation to koppies 1 and 2, not overall,
 3 but just in relation to koppies 1 and 2, is that striking
 4 miners would be driven west off koppies 1 and 2 inter alia
 5 in the direction of koppie 3.

6 COLONEL SCOTT: I think koppie 3 was
 7 maybe, and maybe we can bring up slide 181 of the
 8 presentation now, and this is just to show the positioning
 9 of the vehicles and where the expected dispersion flanks
 10 were supposed to move towards, and maybe if I speak
 11 subjectively for a moment, it was envisioned that they
 12 would move between koppie 3 and the power station into the
 13 wider open area because persons that are being dispersed
 14 and that are now voluntarily moving, whether through the
 15 warning or through the dispersal force continuum, would be
 16 trying to move further away from the police and not
 17 necessarily trying to move to a rendezvous point or to
 18 bunker down to set up an advantage point against police
 19 moving towards them.

20 I didn't anticipate that they would go towards
 21 koppie 3, as I say I thought the militant group would take
 22 up refuge either on koppie 1 or be broken into smaller
 23 groups and try to regroup somewhere in the open fields
 24 further to the west.

25 MR CHASKALSON SC: But do you accept that

Page 14640

1 objectively if you push people to the west they're either
 2 going to, from that situation, they're either going to end
 3 up to the south of koppie 3 or in koppie 3?

4 COLONEL SCOTT: Objectively yes, but as I
 5 say my questioning is why they would want to necessarily go
 6 to koppie 3 unless they had a modus operandi setup against
 7 the police again.

8 MR CHASKALSON SC: Well, if you're
 9 dealing at least with a group of militant protestors who
 10 you anticipated would not just simply disperse, there is
 11 real risk that if you push them off koppies 1 and 2, unless
 12 you cut them off from koppie 3 they will regroup in koppie
 13 3, do you accept that?

14 COLONEL SCOTT: Yes.

15 MR CHASKALSON SC: And we know that your
 16 plan provided very detailed measures for how the tactical
 17 forces were to be deployed to ensure that if strikers
 18 entrench themselves on 1 and 2 the tactical forces who had
 19 the necessary training would go in and would be able to get
 20 them out of there.

21 COLONEL SCOTT: That's correct.

22 MR CHASKALSON SC: But your plan included
 23 no measures of that nature for koppie 3?

24 COLONEL SCOTT: No, if I speak
 25 subjectively again or back to the time period my

Page 14641

1 anticipation was that once the initial drive had taken
 2 place to disperse and there would be a follow up action of
 3 arrest teams behind the public or the dispersion line, that
 4 would be seen as an operation in itself because from there
 5 we wouldn't be sure what the strikers would be doing,
 6 whether they would be moving specifically, we were hoping
 7 again towards the west into the open ground, but that was
 8 why to lay down a specific plan at that stage, not knowing
 9 what the strikers would do and again as you quite rightly
 10 have stated, with more time, more what if's I get involved
 11 and you start considering the what if's, but it wasn't at
 12 that stage anticipated that they would move to koppie 3 for
 13 that matter.

14 MR CHASKALSON SC: Well, it goes a little
 15 bit further than that, Colonel, because if we go to slide
 16 229, can we just go through to 229? That's the slide which
 17 describes your reorganisation's line.

18 COLONEL SCOTT: That's correct.

19 MR CHASKALSON SC: So your plan in fact
 20 required the SAPS forces to stop at that yellow line
 21 between koppies 1 and 2 on the right hand side to the east
 22 and koppie 3 to the west.

23 COLONEL SCOTT: That's correct.

24 MR CHASKALSON SC: So at least for a
 25 period of maybe some minutes people who had been forced off

Page 14642

1 koppies 1 and 2 would have a time period where SAPS was no
 2 longer advancing on them and they weren't fleeing away from
 3 SAPS, they were now choosing how they were going to respond
 4 to the situation.

5 COLONEL SCOTT: Yes, and that's what so
 6 unpredictable about this, is that that line is created for
 7 the police to regroup, to reassess what the strikers have
 8 done, to re-plan what is the next move or to re-organise
 9 the forces before moving again forward to either re-
 10 dispersing to smaller groups should they be regrouping, or
 11 to go forward with the isolation or re-encircling of
 12 smaller groups, disarming and arresting.

13 MR CHASKALSON SC: I understand the
 14 purpose of the reorganisation line, but at this point I
 15 just want to emphasise its geography.

16 COLONEL SCOTT: Yes.

17 MR CHASKALSON SC: It is on the eastern
 18 side of koppie 3.

19 COLONEL SCOTT: Yes.

20 MR CHASKALSON SC: So it is not going to
 21 stop any regrouping of the protestors or a militant section
 22 thereof inside koppe 3.

23 COLONEL SCOTT: That's correct.

24 MR CHASKALSON SC: In fact it is going to
 25 afford them a breather in which to take a decision whether

Page 14643

1 or not to regroup inside koppie 3.
 2 COLONEL SCOTT: As for the police to do
 3 the similar –
 4 MR CHASKALSON SC: Indeed.
 5 COLONEL SCOTT: Ja.
 6 MR CHASKALSON SC: And if the protestors
 7 regroup inside koppie 3 you're now faced with a situation
 8 of having to clear people out of difficult terrain.
 9 COLONEL SCOTT: Yes, that would be so.
 10 MR CHASKALSON SC: But at that point your
 11 plan leads everything, your plan essentially runs out in
 12 your own words, at that point everything is left to the
 13 discretion of the operational commander.
 14 COLONEL SCOTT: If you actually, if we're
 15 talking about koppie 3 and we consider that we had a
 16 Brigadier Fritz in the area and we had a Brigadier Calitz
 17 on the ground, both responsible for different elements,
 18 they knew what the plan was and in essence a structured
 19 secondary plan could be drawn for koppie 3 at that time if
 20 the protestors didn't move there, but if not, as I say, I
 21 can't speak to what they did, I wasn't there, I didn't
 22 experience what they experienced, but it was a matter of
 23 just applying what they've been briefed to do already on
 24 the previous to koppie, going forward again.
 25 MR CHASKALSON SC: It is slightly

Page 14644

1 different this time, Colonel, because on the first two
 2 koppies you've given detailed briefing instructions as to
 3 which unit is to go where and how and so each unit knows
 4 where it has to go.
 5 COLONEL SCOTT: That's correct.
 6 MR CHASKALSON SC: Now you're depending
 7 on an operational commander on the ground and an aerial
 8 commander in the air, Brigadier Fritz, to guide tactical
 9 forces to clear difficult terrain.
 10 COLONEL SCOTT: That's correct.
 11 MR CHASKALSON SC: And you yourself have
 12 given no indications as to which forces must be deployed in
 13 any position.
 14 COLONEL SCOTT: No, that was at the
 15 discretion of the commanders on ground.
 16 MR CHASKALSON SC: And the operational
 17 commander, let's talk about the operational commander
 18 before we get to the aerial commander, the operational
 19 commander is going to be dealing with a situation that's
 20 much more fluid and less predictable than the starting
 21 situation on koppies 1 and 2 for which you've planned, do
 22 you accept that?
 23 COLONEL SCOTT: Well, obviously he is
 24 going to have to wait to see what the strikers have done
 25 after the dispersion to decide on his follow up action.

Page 14645

1 MR CHASKALSON SC: Yes.
 2 COLONEL SCOTT: Yes.
 3 MR CHASKALSON SC: And he is going to
 4 have no way of seeing what's going on in koppie 2, he is on
 5 the ground, he can't see around the whole koppie, he can't
 6 see inside the koppie.
 7 COLONEL SCOTT: That's correct, but again
 8 that's why there was a smaller helicopter with Colonel
 9 Vermaak which they had linked up to be able to speak to one
 10 another. Initially I thought that Brigadier Fritz would be
 11 carrying out that role, but Colonel Vermaak took over the
 12 role in speaking directly to Brigadier Calitz during the
 13 operation.
 14 MR CHASKALSON SC: Ja, well, we'll get to
 15 Brigadier Fritz in a minute, so you have an operational
 16 commander on the ground who has to deal ad hoc with the
 17 more fluid situation than you had to deal with planning at
 18 the beginning, who is going to depend on scene descriptions
 19 that are given to him from a helicopter, from what he hears
 20 on a helicopter, he doesn't have a visual picture of
 21 anything, and he is going to be constrained by a radio
 22 system that you knew had flaws in it, or had weaknesses in
 23 it.
 24 COLONEL SCOTT: I think the weakness at
 25 that time was one channel. The fact that the communication

Page 14646

1 was a problem earlier in the operation where the radio was
 2 breaking up at times, was either due to the power lines or
 3 due to the fact that the operational commander didn't have
 4 a powerful enough radio system which was installed in his
 5 vehicle before they actually commenced the operation.
 6 MR CHASKALSON SC: But one channel for
 7 this situation is quite a weakness and let me put to you
 8 why I say that it is so. All of the information that the
 9 operational commander needs to receive is going to have to
 10 come along that channel.
 11 COLONEL SCOTT: That is so.
 12 MR CHASKALSON SC: All of the orders that
 13 he is going to have to issue on the basis of that
 14 information are also going to have to come along the same
 15 channel.
 16 COLONEL SCOTT: That's correct.
 17 MR CHASKALSON SC: So when he is issuing
 18 orders he can't get information at the same time.
 19 COLONEL SCOTT: That is so, a pace of
 20 this operation will run at the pace that you drive it at.
 21 MR CHASKALSON SC: And if anybody else
 22 wants to provide feedback in the course of the operation
 23 they can only do so at the expense of shutting down both
 24 the information to the operational commander and the
 25 operational commander's capacity to issue orders –

Page 14647

1 COLONEL SCOTT: Well, -
 2 MR CHASKALSON SC: - for as long as they
 3 convey their information.
 4 COLONEL SCOTT: But again you're
 5 anticipating that the radio frequency needs to be jammed at
 6 all times. I'm not saying that is necessarily the case,
 7 and I'm trying to be careful not to infringe upon what
 8 these men were experiencing at the time because I think
 9 that's unfair for me to comment on that, but the fact that
 10 one channel is only available with this, I think there may
 11 have been a secondary channel for emergency, if the channel
 12 went down, is not ideal. As we know there should have been
 13 more but there were restrictions with regard to the actual
 14 repeaters available to the police to be used in that area.
 15 MR SEMENYA SC: Chair, just to help us to
 16 follow what case you had to meet, is the one channel
 17 weakness a function of saying there were more channels than
 18 available or is it a theory that is regardless of the
 19 reality?
 20 MR CHASKALSON SC: It is saying, the case
 21 that SAPS have to meet on this front is that they have had
 22 a plan which, at least insofar as scene 2 was concerned,
 23 contained no directions, no provisions at all to begin
 24 with, and so in fact it wasn't a plan. What it was, was a
 25 plan for scene 2 that the operational commander and

Page 14648

1 hopefully an aerial commander and maybe an eye in the sky,
 2 will control scene 2 on a radio and there is an inherent
 3 weakness in that plan if there is only one radio channel
 4 available, that's the relevance of one radio channel. It
 5 is not saying you should have arranged for 40 radio
 6 channels, it is saying that if you only have one radio
 7 channel this is a very big problem for this plan.
 8 MR SEMENYA SC: I'm afraid that's
 9 precisely my difficulty, Chair. Is the case being made
 10 that because there is only one radio channel in that
 11 environment an operation of this kind should not have
 12 undertaken.
 13 [12:06] MR CHASKALSON SC: No, the case has been
 14 made that if people like Colonel Scott had enough time to
 15 reflect on this plan, they would have anticipated that
 16 there wasn't a plan for scene 2 and that there was a very
 17 real risk that a scene 2 would eventuate, and in that
 18 context they would have taken a range of possible steps.
 19 The one is they might possibly not have planned for a
 20 reorganisation line at the point that we see it there.
 21 They might have planned for a different reorganisation line
 22 that was designed to cut off access to koppie 3 and to
 23 remove the threat of a re-entrenchment of the strikers at
 24 koppie 3. Another is that they may have made provisional
 25 tactical plans for the scene of koppie 3. A third is that

Page 14649

1 they would have taken much greater care to ensure that the
 2 aerial commander of the tactical forces, Brigadier Fritz,
 3 was in position to exercise control over the tactical
 4 forces at koppie 3. Instead, as we know from cross-
 5 examination a month ago, Brigadier Fritz wasn't at koppie 3
 6 or scene 2 at any stage exercising aerial command until all
 7 but one of the victims at koppie 3 had already been killed.
 8 So that is the case that SAPS has to meet.
 9 But I've heard your responses, Colonel, but I
 10 also in this context want to take issue with the refrain
 11 that was fairly familiar in Major-General Annandale's
 12 evidence and that is familiar from my learned friend Mr
 13 Semenya, which is the suggestion that the plan would have
 14 worked had it not been disrupted, because in my submission
 15 that can never be an explanation for what happened at scene
 16 2. It can possibly account for some of what happened at
 17 scene 1 – we'll get to that later – but it can never
 18 account for what happened at scene 2, and I want to take
 19 you to some slides in this respect which I submit show that
 20 nothing that happened at scene 2 was affected by the
 21 disruption of the plan at scene 1, and the first slide is
 22 slide 181 which shows what your plan was. So this is what
 23 your plan was on the assumption that it wouldn't be
 24 disrupted, and we can see – I'm going to try and flag on
 25 the – we can see the barbed wire line running up as I'm

Page 14650

1 marking it, it's – I forget we had an argument about the
 2 colour of these Nyalas; how would you describe the colour
 3 of those Nyalas?
 4 COLONEL SCOTT: As red.
 5 MR CHASKALSON SC: Yes, the orange line
 6 running between the six red Nyalas. We have the armoured
 7 dispersion forces set up to the north cum north-east of
 8 koppie 2. We have the TRT in support behind those armoured
 9 forces, and we have directions as to where those armoured
 10 forces are to move once the dispersion action takes place,
 11 the blue arrows. Now if we move to slide 223 we see what
 12 the situation was after scene 1. If we can just go to 223?
 13 And now if I can mark, we have the barbed wire line running
 14 from the right-hand side through the barbed wire Nyala
 15 trailer, which is Nyala 2, on a line to the barbed wire
 16 Nyala trailer 3 and all the way through to the western edge
 17 of the small kraal where Nyala 4 is. Is that correct?
 18 COLONEL SCOTT: That's correct.
 19 MR CHASKALSON SC: It should have run for
 20 maybe another 30 metres to the east in accordance with your
 21 plan. Is that correct?
 22 COLONEL SCOTT: Yes.
 23 MR CHASKALSON SC: But for the purposes
 24 of what's happening now - that has major consequences for
 25 scene 1, but scene 1 is history now. For the purposes of

Page 14651

1 what is happening now it's not going to have any
2 consequence, the failure of the barbed wire to stretch
3 another 30 metres at the small kraal. Will you accept
4 that?

5 COLONEL SCOTT: What I maybe must just
6 highlight is that what we see in place now is the Public
7 Order Policing line. The briefing was that they were to
8 exit their vehicle and they were to be on foot between the
9 vehicles, for instance. That never happened; they remained
10 in their vehicles. What was supposed to behind that Public
11 Order Policing line if it were going to go according to
12 plan would have been a TRT line and the, just behind them
13 the STF and NIU line.

14 MR CHASKALSON SC: We have STF forces
15 here.

16 COLONEL SCOTT: They've joined the – ja,
17 the line of armoured vehicles at this stage.

18 MR CHASKALSON SC: Indeed, but this line
19 over here, are you saying there is –

20 CHAIRPERSON: I'm sorry, but over here
21 and over there is going to mean a hang of a lot to people
22 who have to read this record in due course. It will mean
23 absolutely nothing to them in fact.

24 MR CHASKALSON SC: This line of Casspirs
25 and, of a Casspir, a water cannon and one, two, three,

Page 14652

1 four, five, six Nyalas to the north of koppie 2 on the
2 left-hand side of this picture, north-east of koppie 2, in
3 what material respects was that line compromised from doing
4 its job that you had anticipated for it?

5 COLONEL SCOTT: I think the only thing
6 that differs from what I'd envisioned, as I say besides
7 members being out their vehicles so the force continuum
8 could be exercised that way, was just that the strikers are
9 obviously not in a position that they were envisioned to be
10 in for the dispersal action, but other than that – and I
11 think I mentioned it earlier, the police kept on trying to
12 bring the plan back onto the rails as they'd understood it,
13 and this was probably one of those attempts, albeit not
14 according to the letter.

15 MR CHASKALSON SC: Well, let's look at
16 those attempts, because you describe them in your statement
17 from paragraph 84, of what the plan should look like. "The
18 police dispersion line would form up north of the koppies
19 and push from north to the south, turning the dispersion
20 line towards the west towards the open fields." Well,
21 we've got a dispersion line formed up to the north here,
22 and we're about to see it move from the north to the south.
23 The next stage of your plan was, "The dispersion line would
24 need to be split into three parts to take three different
25 paths as was determined by the terrain; the left path going

Page 14653

1 around the bottom of koppie 1" – sorry, I'm reading from
2 page 84, paragraph 13.11 – "the middle path turning between
3 koppie 1 and 2 and the right path being to the right of
4 koppie 2." And then in paragraph 85, page 85, 13.12, "I
5 showed a geographical feature, a dry riverbed running from
6 north to south on the western side of koppies 1 and 2 where
7 the police dispersion line had to stop the dispersion
8 action and reorganise." Now what you describe in those two
9 paragraphs of your plan is broadly what took place. Would
10 you accept that?

11 COLONEL SCOTT: Yes.

12 MR CHASKALSON SC: So if we go to slide
13 223, which we've just looked at, we see the dispersion line
14 formed up to the north, and the unfolding of the plan,
15 broadly in accordance with your description, is described
16 in slides 225 to 229. So let's go to 225, and on 225 we
17 see the push from north to south, the beginnings of the
18 push from north to south. So you have a split in the
19 dispersion line. The dispersion line, it was planned that
20 the dispersion line would split into three parts. In fact
21 it only splits into two parts because there are no longer
22 any protesters on koppie 1, so there's no need for the
23 dispersion line, the third arm of the dispersion line to
24 split to go around to the south of koppie 1 between koppie
25 1 and the power station. So that split doesn't take place

Page 14654

1 because there's no longer a need for it. Instead you get
2 it split into two, the one split running to the north of
3 koppie 1, which I'm highlighting now, and the other running
4 – sorry, to the north of koppie 2, and the other running
5 between koppies 1 and 2, which were two splits that you had
6 designed.

7 Then if we go to 226, again we see the two
8 splits, and now we see some of the dispersion action with a
9 water cannon, which is the vehicle with the blue streak
10 ahead of it because it's splashing blue water being used to
11 disperse the mineworkers who'd gathered behind koppie 2.

12 If we move on to 227, it's more of the same.
13 It's two arms and the dispersion action taking place,
14 through 228 and on to 229, and what happens at 229 is
15 exactly in accordance with your plan. All of the strikers
16 have been dispersed from koppies 1 and 2 in a westerly
17 direction, and now the police line is going to reform along
18 the dotted yellow line, which is your reorganisation line.
19 At this point – and I emphasise, at this point – is it not
20 fair to say that the plan is back on track as you had
21 originally conceived it?

22 COLONEL SCOTT: The physical manoeuvring
23 of the police at this stage, yes. The anticipation of what
24 the strikers were doing, not necessarily so. I expected a
25 dispersion as in widely spread smaller groups. What they

<p style="text-align: right;">Page 14655</p> <p>1 did do was remain together and move predominantly to koppie 2 3, although a number of them had already retreated to 3 koppie 3 after scene 1. 4 MR CHASKALSON SC: Yes, but I'm talking 5 about what the instructions were about what your plan was 6 to do. 7 COLONEL SCOTT: Yes. 8 MR CHASKALSON SC: Not about – there is 9 nothing that your plan was designed to do differently than 10 what we see there. Is that not correct? 11 COLONEL SCOTT: That's correct. They 12 were to get to that line, stop, as I say wait for the 13 forces that were behind them to catch up, or to see who was 14 coming through that didn't have arrested persons in their 15 possession, and then relook forward at what was going on in 16 front of them and take decisions on how to further go ahead 17 with the phase 3 of – 18 MR CHASKALSON SC: Indeed, and by this 19 point whatever disruption the events that led to scene 1 20 have caused, has now been overcome by SAPS; they're back on 21 track with your plan. 22 COLONEL SCOTT: Well, again the TRT is 23 missing. The NIU's taken up the role of the STF. So 24 although vehicle-wise and so on they're not 100% according 25 to plan, but they're trying to keep the strategy going</p>	<p style="text-align: right;">Page 14657</p> <p>1 MR CHASKALSON SC: I forget my station 2 from time to time, Chairperson. Now we've just recounted 3 how your plan didn't have specific provisions for scene 2 4 at all because in the circumstances, and I want to 5 emphasise, I'm not wanting to apportion blame for you; on 6 the contrary, I'm wanting, you've heard what I've said 7 earlier, I'm suggesting that this is something that you 8 would have picked up had you had reasonable time to reflect 9 on the matter, but your plan had no provisions for koppie 10 3. That's correct? You – 11 COLONEL SCOTT: Not in the planning, no. 12 MR CHASKALSON SC: Not in the plan, but 13 the purpose of the plan was to disperse the protesters into 14 the open areas to the west. 15 COLONEL SCOTT: That's correct, yes. 16 MR CHASKALSON SC: So if protesters got 17 holed up in koppie 3, that was a problem for the plan and 18 it was important for the logic of the plan to get them out 19 of koppie 3 as quickly as possible. Would you accept that? 20 COLONEL SCOTT: It depends. I mean we 21 can't dictate the actions of the strikers again. Again it 22 would have been in my point of view the role not of 23 necessarily POPs to have to move into the bushes, but 24 similarly to koppies 1 and 2 to have tactical teams move 25 through that are more proficient at carrying out high-risk</p>
<p style="text-align: right;">Page 14656</p> <p>1 according to how they were briefed. 2 MR CHASKALSON SC: And it's at this point 3 that the plan runs out. At this point there's a handover 4 to the operational commander. 5 COLONEL SCOTT: Yes. 6 MR CHASKALSON SC: And from this point on 7 your plan has no detail at all. 8 COLONEL SCOTT: No, from here on it's at 9 the discretion of the operational commanders, both of them, 10 depending on the response of the strikers. 11 MR CHASKALSON SC: So I want to put to 12 you that scene 2 and what happened at scene 2 is in no 13 material respects causally linked to the disruption of the 14 plan at scene 1. Do you accept that? 15 COLONEL SCOTT: Yes, I can accept that. 16 MR CHASKALSON SC: I then want to move on 17 and maybe answer some questions about why what happened at 18 scene 2 did happen at scene 2. Hopefully you'll be able to 19 help us answer them. 20 CHAIRPERSON: [Microphone off, inaudible] 21 the witness is going to give the answers and you're going 22 to give the questions, Mr Chaskalson. Is that right? 23 MR CHASKALSON SC: It is correct. 24 CHAIRPERSON: Or the other way around, 25 you want to –</p>	<p style="text-align: right;">Page 14658</p> <p>1 arrests. 2 MR CHASKALSON SC: But the tactical teams 3 - high-risk arrests need some planning. You accept that? 4 Planning and organisation. 5 COLONEL SCOTT: It's something which, and 6 I can speak from experience, in something like this is what 7 us as tactical officers can do, can arrange immediately on 8 ground because you've got standard operating procedures 9 where we either work in twos or we go up to working in 10 fours, sixes, or more, and we are taught to clear areas 11 like that specifically when coming across suspects or 12 perpetrators, specific tactics on how to approach and how 13 to deal with them. So it's not something that one would 14 need to sit down and to brief people on extensively. It 15 would simply be a briefing of positioning again and a quick 16 expectation from the commander, and then he would need to 17 keep the organisation, or the coordination of those forces 18 moving through that environment. 19 MR CHASKALSON SC: Well, let me go back a 20 step. The purpose of the plan was to encircle – or what 21 the plan hoped to achieve was that isolated protesters 22 having been dispersed could then be encircled by small 23 groups of SAPS members and arrested and disarmed. 24 COLONEL SCOTT: Yes. 25 MR CHASKALSON SC: Now for that purpose</p>

Page 14659

1 to be achieved it's much easier and more convenient for
 2 SAPS if the protesters are out in open areas than if they
 3 are holed out in, or dug in, in koppie 3.
 4 COLONEL SCOTT: That's true.
 5 MR CHASKALSON SC: So if protesters get
 6 to koppie 3, for the purposes of the plan it seems to me
 7 that it would be most advantageous to try to flush them out
 8 of koppie 3 into the open areas, rather than to try to
 9 engage them in koppie 3.
 10 COLONEL SCOTT: You know again I've got
 11 to watch how I answer because I mean I can put commanders
 12 who were on the ground and under pressure at the time, I
 13 have the benefit of hindsight and I possibly would have
 14 done things slightly differently to what they would, having
 15 a different background, a different experience, but – and
 16 I'm hesitant to mention that because it could be used
 17 against them, why didn't they think of this and why didn't
 18 they do that and so I'm not sure where to draw the line,
 19 Chairperson, with responding to certain, and in the same
 20 time not trying to withhold anything from the Commission
 21 either, because it would simply be my point of view.
 22 MR CHASKALSON SC: Well, Colonel, I'm
 23 only asking you for your opinion as a planner of these
 24 sorts of operations. Obviously you can't speak to the
 25 individual choices that were faced by individual members on

Page 14660

1 the ground and the individual circumstances that they
 2 faced. You don't even know that. But in broad principle
 3 would you agree with my proposition that in terms of the
 4 logic of the plan, if strikers entrenched themselves in
 5 koppie 3, it would be easier to deal with that situation if
 6 it was possible to flush them out of koppie 3 into the open
 7 fields, than to try to deal with that situation in koppie 3
 8 itself?
 9 COLONEL SCOTT: It would be, yes.
 10 MR CHASKALSON SC: And consistent with
 11 that, if one is wanting to flush strikers out of koppie 3,
 12 it's important to leave the strikers an exit route from
 13 koppie 3 as opposed to surrounding them in koppie 3?
 14 [12:26] COLONEL SCOTT: If it was a flushing
 15 action that would be the case, yes. But I must also maybe
 16 just emphasise, because again I'm probably anticipating
 17 where you're going, but the police members were briefed
 18 from that side that besides protecting the informal
 19 settlement that they needed to have a filtering line that
 20 was not necessarily to do anything to people who were
 21 unarmed. Only people who were armed with sharp edged
 22 weapons and possibly looking like they had firearms, needed
 23 to be apprehended. So again, I don't see that team coming
 24 in from the west as necessarily a blocking team, they were
 25 a filtering line. Anybody that had no issue, was laying

Page 14661

1 down their arms was permitted to walk straight past.
 2 MR CHASKALSON SC: Well let's take them
 3 one at a time because it was actually two teams, not one
 4 team. You're talking about Captain Kidd as I understand
 5 it.
 6 COLONEL SCOTT: Yes.
 7 MR CHASKALSON SC: Now what was his job
 8 in terms of the plan and in terms of the briefing? Can you
 9 describe that to the Commission?
 10 COLONEL SCOTT: He had with him public
 11 order policing members that didn't have armoured vehicles
 12 thus they were not utilised in the dispersion action
 13 because they would have nowhere to have gone. As well as a
 14 couple of canine members, I think without dogs and he had
 15 TRT members. So they were sort of a conglomerate of units
 16 that were with him and he was tasked to move from forward
 17 holding area 2 to the informal settlement to the south-west
 18 of the koppies, small informal settlement. And for the
 19 same purposes that we didn't want emotional or possibly
 20 violent strikers running into Nkaneng. We didn't want the
 21 same effect at the small settlement to the south-west and
 22 he was tasked to set up a type of filtering line around
 23 that to protect it and to not permit violent groupings
 24 moving into that settlement.
 25 MR CHASKALSON SC: Colonel, if we go to

Page 14662

1 your slides of operational deployments and we go to slide
 2 144 and I must emphasise at the outset that this is a phase
 3 2 briefing and not a phase 3 briefing. But as I understand
 4 it, Captain Kidd's group was the remnants of the group that
 5 was originally Lieutenant-Colonel Pitsi's group.
 6 COLONEL SCOTT: That's correct.
 7 MR CHASKALSON SC: And Lieutenant-Colonel
 8 Pitsi along with a detachment from that group had joined, I
 9 think it was some of the armoured – I mean he brought
 10 armoured vehicles into the support lines if I remember
 11 correctly.
 12 COLONEL SCOTT: Yes, they formed the
 13 northern flank of armoured vehicles.
 14 MR CHASKALSON SC: Those four vehicles on
 15 the northern side of the negotiation group. So the tasking
 16 of Captain Kidd for phase 2 is set out in this slide which
 17 doesn't spill over onto the next page. In what respect had
 18 that tasking changed, if any, by phase 3? If you can look
 19 at what's set out on the slide.
 20 COLONEL SCOTT: Well again – are we
 21 talking about the comments block now?
 22 MR CHASKALSON SC: The comments block
 23 indeed.
 24 COLONEL SCOTT: The deploying of the
 25 reserve tactical forces on command of the JOC to the

Page 14663

1 neutral area to assist the operational commander.
 2 MR CHASKALSON SC: That's already
 3 happened with Lieutenant-Colonel Pitsi going up to –
 4 COLONEL SCOTT: The remainder of them at
 5 forward holding area 2 or if that contingent was still
 6 there they will be responsible for the defence of – initial
 7 protection of vulnerable targets to the west of the
 8 protestor gatherings and this was actually considering
 9 targets possibly like, I think it's K3 –
 10 MR CHASKALSON SC: The Karee mine.
 11 COLONEL SCOTT: Ja, the mine
 12 infrastructure to the west.
 13 MR CHASKALSON SC: But also the informal
 14 settlement, is that correct?
 15 COLONEL SCOTT: Well if that became a
 16 threat. We didn't see it in phase 2 necessarily as a
 17 threat.
 18 MR CHASKALSON SC: But I'm asking you how
 19 it changed into phase 3.
 20 COLONEL SCOTT: Oh yes, it changed phase
 21 3, the tasking specifically became the informal settlement.
 22 CHAIRPERSON: Didn't we see that in 182?
 23 If you look at slide 182 of exhibit L, this is now a stage
 24 3 briefing to commanders and the second bullet is commander
 25 of the teams at SH2 TRT, POP and the canine unit, that's

Page 14664

1 Captain Kidd's group isn't it?
 2 COLONEL SCOTT: Correct, Chairperson.
 3 CHAIRPERSON: And then we are told what
 4 they had to do.
 5 COLONEL SCOTT: Yes.
 6 CHAIRPERSON: That was their briefing.
 7 COLONEL SCOTT: That was their briefing
 8 at phase 3, stage 3.
 9 MR CHASKALSON SC: Thank you,
 10 Chairperson.
 11 CHAIRPERSON: Is there anything about
 12 going to, taking action at scene 2 or to disperse people or
 13 disarm people, anything of that kind?
 14 COLONEL SCOTT: No, I didn't brief them
 15 to do that.
 16 CHAIRPERSON: No, it wasn't their task
 17 was it?
 18 COLONEL SCOTT: It was not tasked to them
 19 in the planning, yes.
 20 CHAIRPERSON: No.
 21 MR CHASKALSON SC: Can we move then to
 22 Major Naidoo's tasking?
 23 CHAIRPERSON: I think you'll find he was
 24 a general.
 25 MR CHASKALSON SC: Major-General Naidoo,

Page 14665

1 I apologise Major-General Naidoo. Major-General Naidoo's
 2 tasking, can you describe what Major-General Naidoo's
 3 tasking was in relation to phase 3?
 4 COLONEL SCOTT: Again, to the best of my
 5 recollection he was to move what was the forwarding holding
 6 area 1 grouping which was made up of numerous units within
 7 SAPS as well as units of the emergency medical services.
 8 Closer to initially where the immediate reaction area 1 was
 9 so that should there be a requirement for medical
 10 attention. For that matter it's just out of planning, I
 11 commonly do it anyway to have fire brigades as part of that
 12 etcetera so that he would be closer and he was essentially
 13 to be, if I can explain it in his terms, it's like a boom
 14 gate as commanders on the front would call for medical
 15 attention so he would release the medical personnel who
 16 would go to meet at a specific place. If there was
 17 obviously danger toward them and the groupings that were
 18 dealing with danger couldn't come to get the medical
 19 personnel because we had to consider their safety, he would
 20 send an escort with them and they would go to meet at a
 21 specific point where they would be received and taken to –
 22 this is again from the planning perspective that I have.
 23 And then obviously he was holding onto the crime scene
 24 analysis and those type of after the fact, phase 4 or stage
 25 4 as it became to release them at a opportune time.

Page 14666

1 MR CHASKALSON SC: So it wasn't his
 2 function to get involved in the encirclement and dispersion
 3 action, it was his function to protect, shall we call it
 4 support services or ancillary services that may have to
 5 perform functions in the course of the operation?
 6 COLONEL SCOTT: That is the briefing
 7 given to him and again I just want to emphasise that I know
 8 that these officers went beyond their briefings. But it's
 9 at their discretion and they would obviously need to give
 10 the reasoning why they did that because I don't want to put
 11 it onto record or into place now that Colonel Scott has
 12 said you shouldn't have and I wasn't there to experience
 13 what they experienced or saw or made their decision based
 14 on.
 15 MR CHASKALSON SC: I appreciate that,
 16 Colonel and the officers in question will have the
 17 opportunity, if they so desire, to explain their choices.
 18 CHAIRPERSON: Sorry to interrupt, I take
 19 it, am I correct in thinking that Major-General Naidoo's
 20 briefing is contained in the third bullet in slide 184?
 21 COLONEL SCOTT: Obviously for our
 22 presentation just a small bullet as part of it, yes,
 23 Chairperson.
 24 CHAIRPERSON: Part of it, what else was
 25 there? What part of his briefing isn't reflected here?

Page 14667

1 COLONEL SCOTT: Well and I think it shows
 2 in my statement, but specifically he had dog handlers who
 3 did have dogs in their possession. He had the mounted unit
 4 and what I'd envisioned the role was for each of these,
 5 utilising the dogs to help between rocks to find possibly
 6 firearms or weapons that had been hidden. If there were
 7 specific difficult arrest scenarios which were dangerous to
 8 approach, the dogs could be utilised for those as well.
 9 And of course then the roles of the mounted units in
 10 dominating areas that had already been cleared as such and
 11 being fast response to other areas if there were isolated
 12 policemen that were in trouble. So as I say, he had a
 13 numerous grouping of people under his control that he would
 14 need to have released at certain times on the call of the
 15 operational commanders at the front.
 16 MR CHASKALSON SC: I mean it's a question
 17 that we can put to Brigadier Calitz in due course, but are
 18 you aware of any call from Brigadier Calitz or from the JOC
 19 for that matter for either Captain Kidd or Major-General
 20 Naidoo to come to the front?
 21 COLONEL SCOTT: I can only speak to
 22 obviously what I heard on the radio and I didn't hear any
 23 call but I have to also state that, this is based on
 24 memory, it's also based on the fact that there was a time
 25 period during the operation for about four minutes odd that

Page 14668

1 at least us in the JOC, I'm not sure if it was throughout
 2 the whole operation, but we were cut off totally from radio
 3 comms from the field. It sounded as though somebody was
 4 keying their radio and holding it in so that nobody else
 5 could speak.
 6 MR CHASKALSON SC: Well we're unaware of
 7 any for Captain Kidd. We are aware of one for Major-
 8 General Naidoo but that relates to a call to bring medical
 9 personnel to scene 1, after the scene 1 shootings. We're
 10 certainly not aware of any call either to Captain Kidd or
 11 Major-General Naidoo to take forces to participate in the
 12 encirclement and dispersion action. In fact we're aware of
 13 an instruction to the contrary and if I can take you there
 14 to Brigadier Fritz's first statement, GGG8. GGG8 and if we
 15 can go down to paragraph 6. There Brigadier Fritz
 16 describes an incident which we've seen both on the videos
 17 of Captain Nel in CC29 approximately 10 seconds in and on
 18 Colonel Botha's video approximately 6 minutes 38 seconds in
 19 when he gestures to Captain Kidd's line and he says "about
 20 10 minutes into our flight I told the ALEO to instruct the
 21 police on the ground to go in a northerly direction so as
 22 to prevent the protestors from running towards the Karee
 23 mine." So he wanted Captain Kidd's line to move up to the
 24 north, to cut off the route to the Karee mine. "I did so
 25 because the protesters were running with weapons in their

Page 14669

1 hands and the mission there was to disarm them. I was not
 2 aware of what was going on and why they were running. I
 3 thought they might create a problem for members of the
 4 public in the Karee mine especially if they were violent.
 5 The ALEO and that would be Sergeant Venter did so." And do
 6 you recall on those videos there's images of Sergeant
 7 Venter going out in a harness waving at Captain Kidd's
 8 line?
 9 COLONEL SCOTT: Yes.
 10 MR CHASKALSON SC: "The police ran
 11 instead in a north-easterly direction" and now Captain Kidd
 12 running in a north-easterly direction is going to take him
 13 where?
 14 COLONEL SCOTT: Obviously to koppie 3.
 15 MR CHASKALSON SC: Yes, to koppie 3. " I
 16 did not know why they went there" says Brigadier Fritz.
 17 Now Brigadier Fritz was the aerial commander.
 18 COLONEL SCOTT: Yes.
 19 MR CHASKALSON SC: And his function was
 20 to issue commands to people on the ground. Is that not so?
 21 COLONEL SCOTT: Yes. Again, he would
 22 probably explain why he spoke to the Kidd group but the
 23 Kidd group had a specific tasking. The groups that he was
 24 to command was specifically the STF, NIU and the TRT lines
 25 that were following the POPs dispersion line.

Page 14670

1 MR CHASKALSON SC: I'm not at this stage
 2 questioning Brigadier Fritz's decision to try to command
 3 Captain Kidd to cut off the access route to the Karee mine
 4 by moving to the north. What I'm wanting you to confirm is
 5 that it was Brigadier Fritz's function to issue orders
 6 about the movement of troops like Captain Kidd's troops.
 7 COLONEL SCOTT: But again, forward
 8 holding area 2's people had a specific tasking so to say
 9 like Captain Kidd's troops, Captain Kidd had a specific
 10 tasking of what to do.
 11 MR CHASKALSON SC: What authority would
 12 the aerial commander have had and everybody starts off with
 13 a tasking? What authority does the aerial commander have
 14 to issue orders that will deviate from that tasking?
 15 COLONEL SCOTT: Well again, if he was
 16 going to remove a function from the operation we could be
 17 sitting in a different scenario today if that happened and
 18 people had moved through and that little informal
 19 settlement was attacked or people therein were attacked
 20 that were felt not to be supporting the cause there would
 21 be a different role. So the briefing which was given to
 22 specific groupings of people, in other words the forward
 23 holding area 2 people in my view fell outside of the
 24 authority of Brigadier Fritz's jurisdiction.
 25 MR CHASKALSON SC: So in terms of the

<p style="text-align: right;">Page 14671</p> <p>1 operation this was an order that Captain Kidd was - or an 2 attempted instruction that Captain Kidd was free to ignore. 3 COLONEL SCOTT: Well it's one that at 4 best maybe he should have just requested but again, we're 5 talking now from a room where these men are on ground and 6 they're watching and experiencing and seeing what's going 7 on. So for me to sit here again and to make judgement 8 calls on them I think is unfair on their behalf. 9 MR CHASKALSON SC: Well that's a matter 10 we can take up with Brigadier Fritz or Captain Kidd but for 11 present purposes you've agreed earlier that in terms of the 12 taskings in the plan neither Captain Kidd and his group nor 13 Major-General Naidoo and his group were intended to 14 participate in the encirclement and dispersal action. 15 COLONEL SCOTT: That's correct. Other 16 than, as I say, the filtering line, protection line for, in 17 front of that which ultimately may have led to certain 18 arrests in that environment of Captain Kidd's group.' 19 MR CHASKALSON SC: But if I understand 20 the primary function of Captain Kidd it's to protect the 21 informal settlement. 22 COLONEL SCOTT: That's right. 23 MR CHASKALSON SC: And the informal 24 settlement is approximately, well it's more than a 25 kilometre away from koppie 3.</p>	<p style="text-align: right;">Page 14673</p> <p>1 MR CHASKALSON SC: So Captain Kidd's 2 group essentially straddled almost a semi-circle from the – 3 in fact some of them were almost due south in the bushes. 4 Due south of koppie 3, all the way on the western side of 5 koppie 3 to the north. 6 COLONEL SCOTT: Yes. 7 MR CHASKALSON SC: Is that correct? Now 8 I want to put that these acts and decisions by Major- 9 General Naidoo and Captain Kidd had two very unfortunate 10 results. The first is that it had the result that koppie 3 11 was surrounded by SAPS forces. So there was then no route 12 out of koppie 3 by strikers inside the koppie and it wasn't 13 possible, despite valiant efforts by the north-west water 14 canon to flush them out because there was no escape route. 15 Would you accept that? 16 COLONEL SCOTT: But I think we must also 17 move from the premise that the very people that are 18 surrounding them are not intending to use any lethal force. 19 They are standing there simply as police officials wanting 20 to do their job. It's not a military ring who are planning 21 to commit – 22 MR CHASKALSON SC: Well, Colonel, you've 23 got to put yourself for a moment into the mind of a 24 mineworker who's just seen 16 people killed by – of five 25 rifle shots at scene 1, several other people killed in a</p>
<p style="text-align: right;">Page 14672</p> <p>1 COLONEL SCOTT: I don't think it's far 2 but – 3 MR CHASKALSON SC: It's a long distance 4 from koppie 3. 5 COLONEL SCOTT: Yes. 6 MR CHASKALSON SC: And if he's going to 7 be able to perform his primary function any filtering line 8 that he sets up will have to be set up relatively close to 9 the informal settlement. 10 COLONEL SCOTT: That's correct. 11 MR CHASKALSON SC: You see both Major- 12 General Naidoo and Captain Kidd took their forces into 13 koppie 3 and you'll recall that Major-General Naidoo took 14 his forces or the armed forces, not the support forces into 15 the south-east of koppie 3. 16 COLONEL SCOTT: Yes. 17 MR CHASKALSON SC: And Captain Kidd took 18 his forces into the south-west of koppie 3. 19 COLONEL SCOTT: They extended further 20 than that. 21 MR CHASKALSON SC: And up along the 22 western side. 23 COLONEL SCOTT: Ja, some of his members 24 were involved in the arrests which were made by Brigadier 25 Calitz's group way to the north.</p>	<p style="text-align: right;">Page 14674</p> <p>1 hale of bullets, hundreds of bullets at scene 1. They may 2 not know what Captain Kidd's intentions are. What they'd 3 seen is a lot of their colleagues have been shot dead and 4 others injured in a massive gunfight, well not a gunfight, 5 in a massive volume of gunfire from the police at scene 1. 6 [12:46] So if they see themselves surrounded by police at 7 koppie 3 I think it's fair to assume that they are going to 8 be much less likely to run out into the open veldt then if 9 there is an open exit route but that's a matter for 10 argument. But the second consequence is the one that is 11 one that I do want to take up with you. Which is that the 12 second consequence is that the bulk of the lethal and 13 potentially lethal shooting it seemed to was done by 14 members of SAPS who in terms of your plan shouldn't have 15 been there or weren't intended to be there and for that I'd 16 like to go to slide 257 of exhibit L. Now this is your 17 slide of munitions expended at scene 2 and you've broken it 18 up between warning shots which are split between nine 19 millimetre and R5 and shots towards which are the category 20 that I will describe as the lethal or potentially lethal 21 shots which are split between nine millimetre and 5.6 and 22 then there's less then lethal weaponry in the right, on the 23 right hand side and we, my learned friend Mr Budlender 24 canvassed this slide a little with Major General Annandale 25 and in the course of that cross-examination the Major</p>

Page 14675

1 General picked up an arithmetical error and the
 2 arithmetical error is that if you add up the nine
 3 millimetre shots under towards which has a subtotal of 49,
 4 in fact you get to 52. That threw out Mr Budlender's
 5 percentages somewhat and that then makes the total under
 6 towards 123 and we're now talking about shots that are
 7 aimed at people, that's towards, is that correct, you're
 8 nodding your head.
 9 COLONEL SCOTT: Yes.
 10 MR CHASKALSON SC: Major-General.
 11 CHAIRPERSON: He's still a Colonel -
 12 kindly pointed out, but it just needs to be accurate.
 13 MR CHASKALSON SC: I'm sorry, Colonel.
 14 Maybe I shouldn't apologise. Colonel, in terms of the
 15 training within SAPS and expertise for shooting at people,
 16 taking the decision of when it's necessary to shoot and
 17 executing that decision the most trained department of SAPS
 18 is the STF, is that not right?
 19 COLONEL SCOTT: That is correct.
 20 MR CHASKALSON SC: Then it would be the
 21 NIU?
 22 COLONEL SCOTT: That's correct.
 23 MR CHASKALSON SC: Then it would be the
 24 TRT?
 25 COLONEL SCOTT: Yes, that's correct.

Page 14676

1 MR CHASKALSON SC: And now we're getting
 2 to a choice between POPS and K9 which is sort of a tricky
 3 choice but I would put to you that, I would suspect that
 4 the POPS personnel have more training and expertise in
 5 deciding when is necessary to use lethal force and to
 6 execute that decision then the K9, would you agree with
 7 that?
 8 COLONEL SCOTT: I think that's going to
 9 be a grey area. We have K9 members who have done tactical
 10 courses within SAPS.
 11 MR CHASKALSON SC: I don't need to push
 12 that issue. But if we were to sort of create a pyramid of
 13 who would you want to be taking your lethal shots at the
 14 top of the pyramid you would have the STF.
 15 COLONEL SCOTT: Yes.
 16 MR CHASKALSON SC: Then you'd have the
 17 NIU?
 18 COLONEL SCOTT: Yes.
 19 MR CHASKALSON SC: Then you'd have the
 20 TRT?
 21 COLONEL SCOTT: Yes.
 22 MR CHASKALSON SC: And then at the bottom
 23 of the pyramid you'd have let's say K9 and POPS together.
 24 COLONEL SCOTT: All the rest, ja.
 25 MR CHASKALSON SC: The rest. Because if

Page 14677

1 we look at who took the lethal shots at scene 2, the first
 2 thing that we notice is that pyramid is directly inverted.
 3 The STF were there at scene 2 and fired no shots at all.
 4 So the people who were best trained to take the decision
 5 whether there should be a lethal shot, fired none at all.
 6 COLONEL SCOTT: I agree with you and
 7 maybe just to interrupt we have to also understand that we
 8 had units in different positions and I'm not saying this
 9 would be the case but if the STF maybe found themselves in
 10 the position of the NIU they have been people engaging from
 11 that point of view or if they found themselves further back
 12 to where the K9 members were positioned, because they could
 13 see more then the STF could see or the STF being so close
 14 up against the bushes the STF didn't identify a firearm
 15 where according to the K9 members they did identify firearm
 16 and shooting towards them.
 17 MR CHASKALSON SC: Yes, but if you're
 18 talking about planning an operation to get entrench -
 19 CHAIRPERSON: Before you carry on with
 20 the question, Mr Semenya has turned his light on.
 21 MR SEMENYA SC: Chair, I don't follow
 22 this line of cross-examination. The people were not fired
 23 as a result of the police operation, where you choose the
 24 best trained to execute a specific function. The case of,
 25 of SAPS is that all shots were fired in private or self

Page 14678

1 defence. So there is no hierarchy or judgment that is
 2 relative to police training.
 3 MR CHASKALSON SC: That then maybe takes
 4 us back to the plan itself. If you're going to end up in a
 5 situation where mine workers are entrenched at koppie 2,
 6 koppie 3 and you have to remove the mine workers from, well
 7 get the mine workers out of koppie 3 and where necessary in
 8 extreme circumstances fire lethal shots or potentially
 9 lethal shots you would want the STF to be taking a leading
 10 role in that, would you not?
 11 COLONEL SCOTT: If we're going to the
 12 hypothesis that there was this situation, I was on ground
 13 and I had to make a decision with the forces I had with me
 14 I would utilise the STF but considering the numbers that
 15 were available versus the numbers of strikers that we
 16 perceived to be inside koppie 3 at that time as well but
 17 first choice like you say and simply because they may have
 18 more in their tool box of tactics to utilise towards
 19 ensuring a resolution without having to go to utilising
 20 sharp point ammunition.
 21 CHAIRPERSON: Mr Chaskalson, isn't there
 22 to some extent a bit of fallacy the point you're putting.
 23 If its correct, obviously this is a matter for debate, if
 24 its correct that the shots that were fired by the members
 25 of the police service at koppie 2 were fired in self

Page 14679

1 defence or people report they were defending themselves or
 2 defending others, if that's so which is the case of the
 3 police then the fact that more shots were fired by Naidoo,
 4 Brigadier Naidoo's group or Captain Kidd's group then the
 5 others may simply be the result of the fact that those
 6 groups felt themselves to be under attack and were trying
 7 to defend themselves so that, in other words, if no shots
 8 were fired at the STF group, no shots were fired at the NIU
 9 group but lots of shots were fired or attacks were directed
 10 at the dog handlers then you'd expect the dog handlers to
 11 shoot back. So unless you can show with more precision
 12 then you've done so far that that was not the case then I
 13 don't think the questions are helpful. It may well be that
 14 there is something further you've got that eliminates the
 15 problem I put to you but absent something of that sort
 16 there is a problem which I don't think can be ignored.

17 MR CHASKALSON SC: Well I will come to
 18 that sort of evidence after the lunch break because it will
 19 involve setting up a different exhibit but -

20 CHAIRPERSON: One thing, if you want to
 21 proceed with this line now you really should put that,
 22 those facts in place. Perhaps if you can either, we've got
 23 about three minutes left before lunch. You can either move
 24 onto something else or we'll take the adjournment now and
 25 start three minutes earlier.

Page 14680

1 MR CHASKALSON SC: Chairperson, I don't
 2 want to leave this topic and, so if we have to adjourn for
 3 lunch we can now. But there are two propositions that I
 4 would like, just like to put to this witness. The first is
 5 that if we analyse these shots, the potentially lethal
 6 shots we talked about the inverted pyramid that may or may
 7 not be a fair comment, we can argue about that later. But
 8 I would like to break up that inverted pyramid a little bit
 9 more because if we look at the total number of lethal shots
 10 or potentially lethal shots, shots fired at people at scene
 11 2 72 of the 123 come from the K9 unit under the command of
 12 Major General Naidoo. 23 of 123 come from POPS and if you
 13 go to FF8 which is the report, the spreadsheet of who fired
 14 we can see that every POPS member who fired at scene 2 with
 15 the exception possibly of Captain Makukule, I think that
 16 may be Maluleka and Captain, Constable Tsibangu all of
 17 those POPS members were part of the Captain Kidd group or
 18 the Major General Naidoo group and all of the TRT members
 19 who fired at scene 2 were part of a TRT group under Captain
 20 Kidd. So we have a 112 out of 123 potentially lethal shots
 21 at scene 2 being fired by members of Captain Kidd's group
 22 or Major General Naidoo's group who in terms of the plan
 23 shouldn't be there, were not intended to be there. So that
 24 is the point that I want to put to you now. There is a
 25 second point I want to put to you now which is the shooting

Page 14681

1 at scene 2 lasted for a lengthy period of time and I want
 2 to put to you that in circumstances where there is at least
 3 a perception, because it's not clear to us that the
 4 perception was an accurate perception. That the police are
 5 coming under fire from suspects the appropriate response of
 6 an operational commander in those circumstances is to try
 7 to ensure that all forces that are not trained for tactical
 8 engagement withdraw to a safe position so that the shooter
 9 can be taken out by the people who are trained to do that
 10 job, would you accept that proposition?

11 COLONEL SCOTT: I think in an ideal world
 12 that's something that could be considered. But if we do go
 13 back to the Marikana situation we know that the operational
 14 commander was sitting far north of the koppie and didn't
 15 even know who was surrounding the koppie at that time while
 16 he was busy with his arrests.

17 MR CHASKALSON SC: That may be so Colonel
 18 but that then speaks to I'm afraid a problem in the plan.
 19 That your operational commander whose going to have to take
 20 all of these planning decisions in the midst of a situation
 21 like scene 2, is in fact not in a position where he can do
 22 so.

23 COLONEL SCOTT: Well I'll have to ask how
 24 does that be a problem with the plan or with decision
 25 making.

Page 14682

1 MR CHASKALSON SC: Well the plan didn't
 2 include any details for a situation like scene 2 and left
 3 everything to the discretion of the operational commander
 4 and in that respect my submission is and again I want to
 5 put to you that it comes back to where we started today.
 6 That this is a flaw in the plan that I submit you would
 7 have picked up if you had time to reflect on it. That the
 8 whole of scene 2 was left to the discretion of an
 9 operational commander who was never going to be in a
 10 position to exercise appropriate decision making power over
 11 a scene like that. Having regard to the need to preserve
 12 human life.

13 COLONEL SCOTT: Again, Chairperson, I
 14 don't want to be put into a position where I need to
 15 answer, but we are all individuals and obviously under
 16 pressure and in the circumstances he found himself he made
 17 the decisions he made with the knowledge he had at that
 18 time. It's not to say that every person would have reacted
 19 that way. But I don't want to put myself into that
 20 position to say how I or Major General Annandale or anybody
 21 else would have done it because we were not there and to
 22 have it utilised as criticism against the operational
 23 commanders who found themselves in those difficult
 24 circumstances.

25 MR CHASKALSON SC: Well at this point,

Page 14683

1 Chairperson, I don't have any further questions that I can
 2 put without an adjournment for lunch.
 3 CHAIRPERSON: We'll take the lunch
 4 adjournment at this stage. I'd like us to be back within
 5 half an hour. Sometimes these things run over a little
 6 bit. But let's try to adjourn for half an hour. Mr
 7 Burger, you've got your hand up.
 8 MR BURGER SC: It's very difficult for
 9 us, within half an hour to go to town and come back.
 10 CHAIRPERSON: What time do you want,
 11 three quarters?
 12 MR BURGER SC: When -
 13 CHAIRPERSON: Alright we'll adjourn then
 14 until quarter to.
 15 MR BURGER SC: Thank you.
 16 [COMMISSION ADJOURNS COMMISSION RESUMES]
 17 [13:48] CHAIRPERSON: The Commission resumes.
 18 Colonel, you're still under oath.
 19 DUNCAN GEORGE SCOTT: s.u.o.
 20 CHAIRPERSON: Mr Chaskalson.
 21 MR CHASKALSON SC: Chairperson, I'm told
 22 that Mr Mpofo and Ms Lewis both would like to address you
 23 for a moment or two.
 24 CHAIRPERSON: Well, Mr Mpofo we can't
 25 hear for the moment because he's not here, but Ms Lewis,

Page 14684

1 what do you have to say?
 2 MS MOTLOENYA: Chair, it's Motloenya, and
 3 I'm just putting on record that both the families and AMCU
 4 are represented at the Commission today, and I appear with
 5 Ms Lewis.
 6 CHAIRPERSON: Thank you. Yes, I think I
 7 did welcome the families already at the beginning, but
 8 insofar as I didn't and there's more of them here, welcome
 9 back; we're pleased to see you back. Mr Mpofo has already
 10 addressed us and put himself back on record.
 11 MS LEWIS: Mr Chair, sorry, that was just
 12 to confirm that AMCU is also back as a party at the
 13 Commission as of today.
 14 CHAIRPERSON: And are you appearing also
 15 for AMCU?
 16 MS LEWIS: Yes, Mr Chair.
 17 CHAIRPERSON: So is Ms Barnes going to be
 18 coming back or not?
 19 MS LEWIS: She is. She's ill today,
 20 but -
 21 CHAIRPERSON: Oh, I'm sorry to hear that.
 22 MS LEWIS: - she will be returning.
 23 CHAIRPERSON: Thank you. Now that we've
 24 got the recent absentees back on record, we can carry on.
 25 Mr Chaskalson.

Page 14685

1 MR CHASKALSON SC: Chairperson, I'm
 2 afraid I don't have a photograph that I'm going to put up
 3 now because on reflection it struck me that it's several
 4 photographs that would be needed because it's dealing with
 5 a passage of time. A single moment in time showing whether
 6 K9 forces were where the TRT forces were and where the STF
 7 vehicles were is obviously going to be insufficient, so
 8 it's a much bigger exercise than I had imagined and if I
 9 tried to do it now I'll just end up wasting time.
 10 CHAIRPERSON: As far as I remember
 11 Colonel Gaffley deals with this aspect in his statement to
 12 some extent, but perhaps you can deal with that when you
 13 have the photographs.
 14 MR CHASKALSON SC: Indeed, Chairperson.
 15 CHAIRPERSON: Those people who are
 16 talking, if they want to go on talking they must go
 17 outside. Carry on, Mr Chaskalson.
 18 CROSS-EXAMINATION BY MR CHASKALSON (CONTD.):
 19 Chairperson, there are a few other issues that I would like
 20 to address on this topic, and the first requires us to go
 21 to the statement of Mr White again; it's JJJ178 at page
 22 119, at the bottom of that page, little paragraph 2, and
 23 there Mr White is commenting on a passage in the radio
 24 dialogue that's visible on the helicopter video and he
 25 says, "At 14:45 in the dialogue Brigadier Calitz is heard

Page 14686

1 saying, 'Live fire.' It appears to be a report of live
 2 fire rather than an order. I would have expected that such
 3 a report of live fire in an operation would have
 4 immediately been followed by asking all call signs take
 5 hard cover where possible, and then questions to clarify
 6 did any call sign see where exactly the shooting came from,
 7 are you able to see the gunmen. This is in order to be
 8 able to provide for the protection of officers."
 9 CHAIRPERSON: Sorry, may I just interpose
 10 before you move further. He's referring to a video which I
 11 think is exhibit GGG35, which is the Protea Coin chopper
 12 video. Is that correct?
 13 MR CHASKALSON SC: That is correct,
 14 Chairperson.
 15 CHAIRPERSON: And the reference at 14:45
 16 is a reference to that particular section, or a particular
 17 clip on that particular video. Is that correct?
 18 MR CHASKALSON SC: Yes, it's the audio at
 19 14:45 of the video. But my interest is in what Mr White
 20 describes as what he would have expected to follow a report
 21 of live fire, which is, "I would have expected that such a
 22 report of live fire in an operation would have immediately
 23 been followed by asking all call signs take hard cover
 24 where possible, and then questions to clarify did any call
 25 sign see where exactly the shooting came from, are you able

<p style="text-align: right;">Page 14687</p> <p>1 to see the gunmen." Now what Mr White is suggesting in 2 this paragraph is when there is live fire in the operation, 3 the immediate responsibility of the operational commander 4 is to take whatever steps to ensure that his troops are 5 safe, and also to ensure that the location of the fire can 6 be identified, if possible. Would you recognise that as a 7 desirable practice? 8 COLONEL SCOTT: I'm just trying to 9 reflect back, I'll get, answer you in a moment. I'm not 10 sure, it wasn't obviously Brigadier Calitz that called live 11 fire; it was a, sort of a voice coming out of the 12 deployment that called live fire. So one would need to 13 clarify firstly whether Brigadier Calitz actually 14 acknowledges hearing that before going on. Secondly, the 15 standard way that we would work, if there was live fire of 16 some sort there would be a radio silence because what you 17 typically find in environments where people are not used to 18 this, everybody wants to ask who's shooting, where is it 19 coming from, and when everybody asks it becomes a problem. 20 You normally leave it for the people that are involved in 21 the live fire to give a situation report as quickly as they 22 can and if one is not forthcoming within a short period of 23 time, your operational commander would get on the radio to 24 ask I need a situation report from the people that are 25 engaging, or that are being engaged upon, and then</p>	<p style="text-align: right;">Page 14689</p> <p>1 The paragraph B on page 119 begins with the following, "At 2 key points during the operation there is a lack of clarity 3 and a lack of leadership in the communication, for 4 instance," and then something is said about what was said 5 at 11:20 in the video, and then we have the paragraph that 6 we're busy with now. Now would you agree with Mr White's 7 opinion that there is a lack of clarity, there's a lack of 8 leadership in the communication, as far as one can hear on 9 the audio transcript, or one can see on the audio 10 transcript? 11 COLONEL SCOTT: Chairperson, I think that 12 the radio communication ultimately starts reflecting the 13 coordination and all the operation on ground. If Brigadier 14 Calitz was not aware obviously of what was going on 15 specifically around koppie 2, maybe not being aware of the 16 approach of K9 or maybe of the TRT members for that matter, 17 he may have a different view in his mind of who he left 18 going in that direction. So, but lack of – generally when 19 it's going wild on the radio I would suggest that somebody 20 needs to just slow things down, take control – 21 CHAIRPERSON: And that would be a 22 leadership function. 23 COLONEL SCOTT: Yes. 24 CHAIRPERSON: Or a leadership reaction to 25 the situation.</p>
<p style="text-align: right;">Page 14688</p> <p>1 obviously the relevant information would flow from that. 2 But to tell people to take hard cover, I think that's a 3 given. When you're being shot at you don't need to 4 instruct people to take hard cover, they take hard cover. 5 MR CHASKALSON SC: Well, two further 6 questions; the first is, we're not aware of any exchanges 7 over the radio system that are audible at scene 2 and that 8 are recorded in the Protea Coin helicopter video that 9 covers the whole period at scene 2, of any instructions of 10 this nature. Are you aware of any? Maybe I should clarify 11 what "this nature" means; of the nature that Mr White is 12 suggesting, or of the nature that you are suggesting. 13 COLONEL SCOTT: I didn't, I think he's 14 correct in saying somebody does shout out "live fire," but 15 immediately the conversation is cut over with other people 16 obviously talking, which goes to the bringing in of 17 canters, and that's why I'm just making mention, I'm not 18 sure that whoever was next on the microphone specifically 19 heard, because as we know human nature, when you're about 20 to talk you're thinking about what you're going to say, not 21 necessarily trying to absorb what's coming in towards you. 22 So I just want to put that in context, but as I've stated, 23 my opinion of what should occur is how I've put it forward. 24 MR CHASKALSON SC: And are you – 25 CHAIRPERSON: Sorry, can I interpose?</p>	<p style="text-align: right;">Page 14690</p> <p>1 COLONEL SCOTT: Yes. But again in 2 Brigadier Calitz's defence possibly, the majority of 3 conversation is occurring between him and Vermaak, and as I 4 say, this is a shout that sort of comes through which I 5 can't verify was heard by him for that matter, being the 6 operational commander. 7 MR CHASKALSON SC: You see, Colonel, 8 there is a period of approximately 10 minutes from that 9 photograph that we all know with the blue dye and the white 10 water being shot at scene 2, which is the arrival of SAPS 11 at scene 2, to the point at which victim C is shot, who is 12 the last victim at scene 2, and during that period of 10 13 minutes we're unaware of any communications on the radio 14 that are an attempt by the operational commander or any 15 other SAPS commander to exercise some control over shooting 16 at scene 2. Are you aware of any? 17 COLONEL SCOTT: I think that Colonel 18 Gaffley makes mention that he at some stage tries to call a 19 ceasefire, and I think he does mention he tries to do that 20 over the radio, but what I must also maybe just state for 21 the record is that as we know, the amount of radios to be 22 distributed were very limited and mostly limited to one per 23 vehicle or one per commander. So even people finding 24 themselves in the situation of being shot at and so on 25 would not necessarily have the ability to respond, having</p>

Page 14691

1 the necessary radio available for them to respond on.
 2 MR CHASKALSON SC: I take that response,
 3 but my question was directed at commanders, not at –
 4 COLONEL SCOTT: Yes, I understood that.
 5 MR CHASKALSON SC: I must correct what
 6 I've put to you because there is at 17:26 on the helicopter
 7 video a communication that you hear, saying, "Don't shoot
 8 him. Cease fire." "Don't shoot him. Cease fire." So
 9 it's not none at all, but it appears to be that one, and
 10 that occurs, that in fact, as we understand it, is a
 11 communication made in relation to the first dash of victim
 12 C, so that's at a stage where 17 of the 18 people – well,
 13 maybe not 17 out of 18, that's shortly before victim C is
 14 in fact killed. But there is a second issue flowing from
 15 Mr White's statement, which is that shooting back in self-
 16 defence in circumstances where you come under fire is of
 17 course only one of a range of options and is the option of
 18 last resort. You'd accept that?
 19 COLONEL SCOTT: Yes.
 20 MR CHASKALSON SC: And the other options
 21 include withdrawing.
 22 COLONEL SCOTT: That would be an option.
 23 MR CHASKALSON SC: Taking cover, if there
 24 is cover to be taken.
 25 COLONEL SCOTT: Yes.

Page 14692

1 MR CHASKALSON SC: Can you think of any
 2 other options?
 3 COLONEL SCOTT: Initial response is if
 4 you're caught in the open, you're found in the open and you
 5 feel your life at that stage is obviously in danger to the
 6 point where your life could be taken, then obviously that
 7 last resort would be to utilise your firearm to defend
 8 yourself, or for that matter an attack which could be
 9 happening on a colleague that he's not aware of. But
 10 ultimately, as you're saying, that is the last resort at
 11 the highest end. If you've got the opportunity to take
 12 cover, but we must also understand what cover is and what
 13 concealment is, and whether the cover that's taken needs to
 14 be cover against sharp point ammunition, because if you're
 15 simply behind the concealment of a vehicle or a vehicle
 16 door, police officials are quite aware that rounds can pass
 17 through vehicles, through the bodywork of vehicles.
 18 MR CHASKALSON SC: And I presume that's
 19 one of the reasons why groups like Major-General Naidoo and
 20 Captain Kidd's groups that wouldn't have any armoured
 21 vehicles for protection were not anticipated to be involved
 22 in the dispersion and encirclement operation. Would that
 23 be correct?
 24 COLONEL SCOTT: They had primary taskings
 25 of another nature. Let me put it that way, because for the

Page 14693

1 same reasoning the TRT, NIU and STF would also have been in
 2 the open. STF had two armoured vehicles, only one of which
 3 could actually house occupants. The other one is a very
 4 enlarged type of double-cab, so they would have been
 5 exposed, but obviously those vehicles also provide a
 6 sufficient amount of cover to hide behind because they are
 7 armoured for firearm use.
 8 MR CHASKALSON SC: There's a further
 9 issue about self-defence in a crowd situation, because in a
 10 crowd situation not everybody in the crowd poses an
 11 imminent risk. You accept that?
 12 COLONEL SCOTT: Yes.
 13 MR CHASKALSON SC: So unlike for instance
 14 a cash-in-transit heist situation, you've got to
 15 distinguish between the person posing the imminent risk and
 16 other people who don't pose the imminent risk.
 17 COLONEL SCOTT: In any situation, even in
 18 a cash-in-transit situation.
 19 MR CHASKALSON SC: So would it be fair to
 20 say that in order to shoot in self-defence you first of all
 21 have to be able to identify the shooter who is shooting at
 22 you?
 23 COLONEL SCOTT: If we're talking at a
 24 distance, a shooter obviously shooting at you is at issue,
 25 because what he's using as means of weaponry can close the

Page 14694

1 distance on you. If we're talking in very, very close
 2 quarter where somebody jumps out with a panga or a spear at
 3 you and you may need to defend your life in that
 4 circumstance, then obviously – so I don't want to see that
 5 the proportionality is necessarily always going to be
 6 firearm to firearm; it's life threat to life threat.
 7 MR CHASKALSON SC: I take your point in
 8 that respect, but let's speak at this stage in respect of
 9 firearm to firearm because in I think a majority of the
 10 cases with which we are dealing with at scene 2, that is
 11 the alleged case of self-defence, alleged basis for self-
 12 defence.
 13 COLONEL SCOTT: Well, at least from I
 14 think K9 and possibly the initial approach of NIU.
 15 MR CHASKALSON SC: Yes, well certainly
 16 from K9.
 17 COLONEL SCOTT: Ja, because I think maybe
 18 just to clarify, because I'm not sure that necessarily most
 19 of the bodies have been linked to specific firearms or to
 20 shooters for that matter, so to say that it was K9 that in
 21 fact had the effect of the deceased, where it may have been
 22 other members coming through from different directions
 23 still needs to be obviously ballistically or –
 24 CHAIRPERSON: Most bodies have been
 25 linked to – you're talking about the deceased. Most bodies

<p style="text-align: right;">Page 14695</p> <p>1 have been linked to types of weapons, not – 2 COLONEL SCOTT: That's – 3 CHAIRPERSON: I'm not aware of any case 4 where it was possible to link a specific weapon with a 5 deceased person. I think that's – 6 COLONEL SCOTT: That's why I'm just 7 trying to keep an open mind, Chairperson, that maybe every 8 round that the K9 did fire missed for that matter and 9 people that were in close vicinity, I know that's probably 10 unlikely, but you know, it's to place the blame squarely 11 for instance on the K9 members – 12 CHAIRPERSON: If a K9 member fired 13 towards the persons on the koppie in circumstances where 14 the doctrine of self-defence or private defence doesn't 15 apply, then prima facie that member would be guilty of 16 attempted murder. So blame could be put, but not blame for 17 homicide because you'd need the causal connection, which is 18 absent. That's right, isn't it? 19 COLONEL SCOTT: Yes. 20 MR CHASKALSON SC: Maybe we should go to 21 what the presentation says about the victims who were 22 killed at scene 2, and for that I think we need to turn to 23 incidents, what you describe as incidents 1 to 11 at scene 24 2, from slides 231 to 247. Now we know that 18 people were 25 killed at scene 2.</p>	<p style="text-align: right;">Page 14697</p> <p>1 significant about slide 241 which is the detail slide is 2 that there is no suggestion that anybody was killed in the 3 incident that you described in slide 241, which is the only 4 possible detail slide that might expand upon incident 6 on 5 slide 231. So – 6 CHAIRPERSON: What about 243, it also 7 deals with the events on the eastern side? 8 MR CHASKALSON SC: Yes, I accept that, 9 Chairperson, but neither 241 nor 243 mention any deaths, so 10 in the detail slides there is no description of anybody 11 being killed. So of the 18 people who were killed by 12 police gunfire at scene 2 SAPS has been able to provide 13 clear detail of only 2 people, C and N, possibly also some 14 detail in respect of A and B, and that leaves 14 people who 15 were killed by police gunfire in respect of which, at least 16 in the presentation there is no explanation for the 17 circumstances in which these people were killed. Are you 18 aware of any explanation for anybody other than victims A, 19 B and/or C? 20 COLONEL SCOTT: No, as I say we, again 21 I'm not sure if the members have mentioned it in detail 22 statements at all, but I would expect that then 23 specifically stating who they shot, they may have felt that 24 they were incriminating themselves, but we only placed in 25 here what we were spoken to or told.</p>
<p style="text-align: right;">Page 14696</p> <p>1 [14:08] COLONEL SCOTT: At scene 2 or thereafter 2 – 3 MR CHASKALSON SC: Well, - 4 COLONEL SCOTT: - I think there were 14. 5 MR CHASKALSON SC: 14 were killed, 14 6 died at scene 2, another 4 who had been wounded at scene 2 7 died in hospital after the event, or on route to hospital. 8 COLONEL SCOTT: Yes. 9 MR CHASKALSON SC: But 18 people were 10 killed in the shooting that took place at scene 2. 11 COLONEL SCOTT: Yes. 12 MR CHASKALSON SC: As a result of 13 shooting that took place at scene 2. 14 COLONEL SCOTT: Yes. 15 MR CHASKALSON SC: Now at slides 231 to 16 233 you provide a synopsis of your 11 incidents and in the 17 case of incident 11 we have some video footage from Captain 18 Ryland's cell phone that serves as evidence for what you 19 described in respect of incident 11 which is the death of 20 victim C, and in the case of incident 2 which is to be read 21 on slide 231 which is to be read with slide 236, you 22 provide a version of the killing of victim N and it is 23 possible to read incident 232, - sorry, incident 6 on slide 24 232 with the detail on slide 241 as the beginnings of a 25 description of the killing of victims A and B, but what's</p>	<p style="text-align: right;">Page 14698</p> <p>1 MR CHASKALSON SC: So you were given no 2 versions for the killing of 14 of 18 people at scene 2? 3 COLONEL SCOTT: Well, let's put it this 4 way, there was no police official that put his hand in the 5 air and said, I specifically killed this person, other than 6 I think maybe some of those that you've mentioned, no. 7 CHAIRPERSON: - complicated than that, I 8 can understand you would have a situation where a policeman 9 or a police member says, I fired, shot someone who fell 10 down and when I went over to him he who was dead, I can 11 understand that, that will be a clear case where that 12 member knows or should know that he killed someone and 13 actually knows who he killed because he will know where it 14 was, but there can also be cases, I suppose, where shots 15 were fired into the bushes as it were. 16 COLONEL SCOTT: Yes. 17 CHAIRPERSON: And people were found dead 18 but a number of shots were fired in that direction by a 19 number of people and in the absence of ballistic evidence 20 linking a dead body to a firearm, it is not possible to say 21 who was responsible, but one could say, I suppose, dead 22 body found at this particular spot in the bushes, the 23 people who fired there were members A, B, C, so they would 24 be the group from which one say the fatal shot was fired 25 although it may not be possible to identify which of them</p>

Page 14699

1 did it. Now I understood you to say that no one put his
2 hand up and said, I fired, I'm talking about the 14 now, I
3 fired the shots that killed the other 14, but were there no
4 cases where it was possible to establish with perhaps
5 lesser degree of precision, but nevertheless deceased
6 number 13 must have been killed by either policeman A, B or
7 C, because they are the only three who shot at that spot,
8 or did the investigation not even extend that far?
9 COLONEL SCOTT: In essence that's almost
10 a restructuring of the scene and I don't know if I'm the
11 right person to speak to that, Chairperson, I have a basic
12 knowledge of who was positioned where and who fired in what
13 direction, but I'm not sure it is a professional opinion
14 worthy of the Commission or not.
15 MR SEMENYA SC: Chair, my understanding,
16 Chair is, we do have ballistic reports who have been unable
17 to come to the –
18 CHAIRPERSON: No, that's –
19 MR SEMENYA SC: - inferences that you
20 draw.
21 CHAIRPERSON: Ja, that's the point I
22 made, you've understood me precisely the wrong way around.
23 What I said was, my understanding is we have no ballistic
24 evidence identifying any deceased with any firearm. The
25 reason is apparently that the bullets disintegrated on

Page 14700

1 contact, so it is not possible, as it is sometimes in a
2 homicide case, to say this bullet is fired from this
3 particular firearm. There is no evidence of that kind, so
4 it is not possible to link any shotist with a dead body by
5 means of ballistic evidence, that was the point that I
6 made.
7 MR SEMENYA SC: But I'm making –
8 CHAIRPERSON: You misunderstood it.
9 MR SEMENYA SC: I'm making a different
10 point, Chair, that even the area of the possibility of it
11 coming from a cluster of A or B or C, it is a ballistic
12 expert opinion. It is not one we just draw from
13 commonsense.
14 CHAIRPERSON: No, it wouldn't be a
15 ballistic opinion, if three policemen come along and say,
16 we all fired into that particular bush and there is no
17 other policeman who says, I fired into that bush, you can
18 then say in that bush is a dead body that had been shot.
19 You can then say, that whoever fired the fatal shot must
20 have been A, B or C, you can't take it any further than
21 that, but I'm interested to know whether there was any
22 evidence of that kind and that's the point I was exploring,
23 but –
24 MR SEMENYA SC: With 3 is doable, Chair,
25 with respect, with 53 people who have fired at scene 2, I

Page 14701

1 would contend it is not a matter of commonsense to arrive
2 at those conclusions.
3 CHAIRPERSON: The question I asked is,
4 was there no evidence of that kind? The answer is, there
5 was no evidence of that kind, well, then that's the end of
6 it.
7 COLONEL SCOTT: But, Chairperson, as I
8 say I've been to scene 2 where we did a very informal
9 reconstruction, told people to go and stand where they were
10 positioned and asked them just to explain to us, but it is
11 not, as we've said a scientific process, so –
12 CHAIRPERSON: Because there is the other
13 possibility which my colleague, Commissioner Hemraj points
14 out, that there were some people who were shot by friendly
15 fire, you know there were policemen on the eastern side of
16 the hill who fired and the bullet may have done, may have
17 gone to the western side. So people actually fired from
18 near the western side into the bush, but they might not be
19 the only people who fired because it may have been
20 policemen who fired from the other way, that's another
21 possibility which makes it even more complicated.
22 COLONEL SCOTT: Yes.
23 MR CHASKALSON SC: Colonel, I want to
24 move on to one last topic about, in relation to the
25 implementation of the plan and I should probably have dealt

Page 14702

1 with it earlier when we were dealing with the rollout of
2 the barbed wire because it takes us back to scene 1 and
3 what happened there, but you'll recall we discussed the
4 rollout of the barbed wire and that your plan was that it
5 should have taken 2 minutes to rollout simultaneously.
6 That was changed from the ground to a sequential rollout
7 and sometime after 7 minutes after the rollout started
8 there was an attempt by the strikers to breach the police
9 line.
10 Now I put to you this morning that if the rollout
11 had been implemented as you had imagined it would have been
12 implemented or you had intended it should have been
13 implemented, we wouldn't have had scene 1, and I now want
14 to look at what happened having regard to the rollout of
15 the barbed wire that actually took place, and you recall
16 that what SAPS have described as incident 1 is alleged to
17 have taken place just when Nyala 4 started rolling out the
18 barbed wire.
19 COLONEL SCOTT: Yes.
20 MR CHASKALSON SC: And then what SAPS
21 have described as incident 2 took place a little while
22 later that was thwarted by Nyala 2, accelerating with the
23 barbed wire to the kraal.
24 COLONEL SCOTT: Yes.
25 MR CHASKALSON SC: Now when we reconvene

<p style="text-align: right;">Page 14703</p> <p>1 on Thursday I'll deal with incidents 1 and 2 and the SAPS 2 description of the presentation in some detail because we 3 have difficulties with that, but for present purposes 4 that's the SAPS version. Now I want to put to you that 5 even after the protestors had attempted to breach the 6 police line and after they had been cut off by Nyala 4 7 there was still a possibility through appropriate 8 operational command to stop scene 1 and for that purpose I 9 would like you to look at a document which we will hand in 10 as JJJ109.1, JJJ109.1, and – 11 CHAIRPERSON: How do I describe it? 12 MR CHASKALSON SC: It is a plan of scene 13 1 prepared by the South Africa Human Rights Commission with 14 the position of all SAPS vehicles at the time of the scene 15 1 shootings and I speak subject to correction by my learned 16 friend, but as I understand it SAPS accepts that the 17 position of the vehicles, - SAPS broadly accepts this 18 document. It accepts that the positions of the vehicles 19 are correct and it has minor quibbles with the 20 identification of one or two of the vehicles. I think it 21 is one, when I say one or two I don't mean it in a 22 figurative sense, I mean it in a literal sense. It is 23 either one or two. 24 COLONEL SCOTT: Ja, just, the STF vehicle 25 at the top of the picture behind the red line, I don't</p>	<p style="text-align: right;">Page 14705</p> <p>1 until they came around was 2 minutes? 2 MR CHASKALSON SC: From there until the 3 shootings was 2 minutes. 4 MR SEMENYA SC: No, Chair, again I don't 5 know whether this is the witness to be testifying on events 6 to which he was not present, but also I don't understand 7 where that counting starts. Is it at the point that they 8 are now at the front of the gate or does he know that they 9 are coming there, all of these things are hypotheses, so 10 that must be tested with the right witnesses. 11 MR CHASKALSON SC: Chairperson, we have 12 an agreed document that sets out the time reconciliation 13 between different cameras and also the time of the 14 shooting. 15 CHAIRPERSON: Did I understand you to say 16 that Nyala 4 got to the, would it be the south western 17 corner of the kraal, the south western corner of the kraal 18 at a time which is according to the agreed timetable, as it 19 were, it was 2 minutes before the shooting began, is that 20 what you're putting? 21 MR CHASKALSON SC: No, I'm saying this 22 shot that we see is 2 minutes and 3 seconds before the 23 shooting according to the green timetable. 24 CHAIRPERSON: Oh, the shot that we now 25 see?</p>
<p style="text-align: right;">Page 14704</p> <p>1 think was positioned there, I think it was positioned to 2 the far, as we look at the line or the photograph far 3 right, not necessarily behind the line. I know that, I 4 think it was Captain Loest's white vehicle, it was parked 5 more or less in line with the direction that the strikers 6 were moving between the kraal and the vehicles. As we see 7 there were two policemen to the front of that vehicle, one 8 of which is shouting, cease fire, but in general I accept 9 that the, as you say that the positioning otherwise are 10 correct. 11 MR CHASKALSON SC: If we go back, if we 12 go back for a moment to slide 194 of the presentation, 13 that's the slide of Nyala 4 making for the west corner of 14 the kraal. That slide is taken at ETV time, 15:51:47, 15 15:51:47. The shootings took place more than 2 minutes 16 later at 15:53:50, and what I want to put to you is that 17 once Nyala 4 reached the corner of the kraal and had cut 18 off the mine workers on the western edge of the kraal 19 Brigadier Calitz had 2 minutes to block the gap on the 20 eastern edge of the kraal as the miners moved clockwise 21 round the kraal broadly in the direction of your red arrow 22 on this diagram, 2 minutes. Do you accept that's correct? 23 COLONEL SCOTT: It sounds a bit slow from 24 what I've picked up from what the commanders on the ground 25 were saying. What you're literally saying is from there</p>	<p style="text-align: right;">Page 14706</p> <p>1 MR CHASKALSON SC: The shot that we now 2 see. 3 CHAIRPERSON: Alright? 4 MR CHASKALSON SC: And that, I don't 5 have, I can bring the photograph from one of those CCTV 6 cameras and give you an exact point at which Nyala 4 gets 7 to the kraal, but it is going to be, if it is not 2 minutes 8 it is going to be 1 minute, 58 seconds. I can bring that 9 tomorrow. It may well be – 10 CHAIRPERSON: But tomorrow you won't find 11 anybody here. 12 MR SEMENYA SC: Chair, - 13 CHAIRPERSON: The direction taken is 14 twofold. Firstly, there is a lack of clarity in what 15 precisely you were putting in relation to the timetable, 16 which you may well have cleared up now, but the second 17 point relates to the question whether this is the 18 appropriate witness to ask this question of. Is that your 19 objection, Mr Semanya? 20 MR SEMENYA SC: And to that to say 21 Brigadier Calitz had so many minutes to close it, he must 22 have known that's where they are going to make use of any 23 knowledge of that kind. 24 [14:28] MR CHASKALSON SC: But that I can put to 25 this witness, Chairperson, because I can put to this</p>

Page 14707

1 witness what the logic of his plan was in terms of creating
 2 a barricade between the strikers and the police, and what
 3 the only gap that was left for the strikers to pass through
 4 to reach the police –
 5 CHAIRPERSON: Sorry, I need to put a
 6 general abstract question, as it were, relating to the time
 7 available on the plan to be implemented, but I think we can
 8 leave Brigadier Calitz out of it for the time being because
 9 he's not relevant, directly relevant to the point you're
 10 making.
 11 MR CHASKALSON SC: Indeed, Chairperson.
 12 If we can go back to JJJ109.1, now Colonel, would you agree
 13 that once Nyala 4 has reached the south-western edge of the
 14 kraal, the only remaining gap for the strikers to come into
 15 the police safe zone is that narrow channel between the
 16 eastern edge of the kraal and the fence that is marked in
 17 white on this diagram?
 18 COLONEL SCOTT: Yes.
 19 MR CHASKALSON SC: Do you know how wide
 20 that gap is?
 21 COLONEL SCOTT: No, I can estimate it,
 22 but I'm sure you've measured it.
 23 CHAIRPERSON: We don't have to rely on
 24 his estimation. It's something that can be scientifically
 25 ascertained.

Page 14708

1 MR CHASKALSON SC: We've measured it on
 2 Google Earth. We haven't gone out and paced it.
 3 MR MPOFU: Chairperson, if it makes any
 4 difference, I've repeatedly suggested, and the Chairperson
 5 called it "Mpofo paces," that I had paced it and it was
 6 about 20 paces.
 7 CHAIRPERSON: So 20 Mpofo paces is how
 8 many yards or metres?
 9 MR CHASKALSON SC: What that tells is Mr
 10 Mpofo probably strides a little longer than a metre,
 11 because Google Earth has that gap at its narrowest point as
 12 23 metres, just under 23 metres.
 13 MR MPOFU: I can live with that,
 14 Chairperson.
 15 MR SEMENYA SC: Chair, I really must
 16 raise this objection. Brigadier Calitz says in his
 17 statement, "There was no option to close that gap because I
 18 would be having some of my members the other wrong side of
 19 the crowd and I would have exposed them to danger." So a
 20 hypothesis that seeks to say it could and should have been
 21 closed is inconsistent with the evidence.
 22 CHAIRPERSON: I would imagine the way
 23 forward is let us let Mr Chaskalson establish the facts in
 24 the sense of the time that is available. Whether something
 25 should have been done in that time, whether there are

Page 14709

1 reasons why it wasn't done, are matters that can be dealt
 2 with later. Obviously this witness can't deal with that
 3 aspect anyway, but so –
 4 MR CHASKALSON SC: With respect,
 5 Chairperson, I think this witness –
 6 CHAIRPERSON: You have a limited defined
 7 space to proceed, Mr Chaskalson.
 8 MR CHASKALSON SC: Well, I think this
 9 witness can deal –
 10 CHAIRPERSON: 23 metres, in fact.
 11 MR CHASKALSON SC: 23 metres. Now that
 12 gap of 23 metres, do you know how many Nyalas lined up
 13 length-wise would block that gap?
 14 COLONEL SCOTT: I would estimate possibly
 15 more than four, with a Nyala, I would estimate being at
 16 about five metres in length, so you'd probably need five.
 17 MR CHASKALSON SC: And if we look at that
 18 sketch plan we see that there are well more than five
 19 Nyalas lined up, creating almost a concentric semi-circle
 20 around the kraal.
 21 COLONEL SCOTT: I see that, and if I can
 22 speak on what I've heard the strategy was to be from
 23 numerous of the commanders on the ground, that they were
 24 going out to line up, line abreast, but the place to do
 25 that that they had identified, and it was possibly in the

Page 14710

1 timeframe you were talking about, was around the kraal,
 2 just outside of the kraal to try and block.
 3 MR CHASKALSON SC: Well, we'll hear from
 4 Brigadier Calitz in due course, but my learned friend
 5 suggested that it wouldn't have been possible to block that
 6 off because that would have cut off the members from
 7 support. That's what Brigadier Calitz will say.
 8 COLONEL SCOTT: But it depends what type
 9 of blocking you're talking. If you're talking simply
 10 blocking with the vehicles themselves, it's different to
 11 trying to get out and deploy the next razor wire with a
 12 perceived threat that's metres away from you.
 13 MR CHASKALSON SC: Indeed. So blocking
 14 with vehicles wouldn't have posed that risk. You accept
 15 that?
 16 COLONEL SCOTT: Yes, or members were
 17 inside vehicles that, and I do understand that that was
 18 actually the option that they were initially moving
 19 towards, or at least maybe not Brigadier Calitz, but I
 20 think it may have been Colonel Mere that got his group, or
 21 it might have been Pitsi, one of the two, who got his group
 22 together and had that strategy in mind to go forward and to
 23 form a blockade with these vehicles. I think it was from
 24 the north of the kraal more or less in a line moving to the
 25 north.

Page 14711

1 MR CHASKALSON SC: Now this snapshot that
 2 we see in this scene, it's not a snapshot of a moving
 3 process. In fact, that configuration of vehicles was
 4 static and had been more or less stationery, maybe with one
 5 or two exceptions, for at least 15 seconds. Will you
 6 accept that?
 7 COLONEL SCOTT: Well, looking at the
 8 video footage which was taken by the open-source media, at
 9 the time of the shooting you can still see the last vehicle
 10 still coming into position. I'm not sure if they were
 11 waiting for that vehicle as one of them to go forward, so
 12 again I can't speak to what the strategy was or what the
 13 commanders were thinking at the time, but I do know that at
 14 the time of the shooting, I think that's what catches one
 15 of the Public Order members by surprise, is that he's
 16 walking behind the Nyala; when the Nyala moves out of view
 17 he's confronted with the approaching strikers.
 18 MR CHASKALSON SC: Yes, the fence that we
 19 see there, it's a fence that will stop pedestrian traffic.
 20 You accept that?
 21 COLONEL SCOTT: Is it the three-wire –
 22 MR CHASKALSON SC: It's a barbed wire
 23 fence with wooden poles.
 24 COLONEL SCOTT: Well, I think sometimes
 25 these fences are put up there as a demarcation of this is a

Page 14712

1 marked area, but if you're going to say stop pedestrian
 2 traffic, if it's a three-wired fence for instance, you can
 3 climb through that quite easily. I'm not trying to be
 4 difficult; I'm just stating that if your intention is to go
 5 there, you're going to go there.
 6 MR CHASKALSON SC: Yes, but you can't
 7 have a crowd charging through that fence.
 8 COLONEL SCOTT: Not in that context, yes.
 9 MR CHASKALSON SC: It's not the sort of
 10 fence that will stop vehicle traffic if vehicles, or
 11 armoured vehicle traffic, if armoured vehicles need to get
 12 through it.
 13 COLONEL SCOTT: That's correct.
 14 MR CHASKALSON SC: And Brigadier Calitz
 15 himself took his own Nyala through that fence to get to the
 16 position where he was. Is that correct?
 17 COLONEL SCOTT: I believe so, yes.
 18 MR CHASKALSON SC: I think the rest of
 19 these issues are issues for us to raise with Brigadier
 20 Calitz. I want to move to a completely different topic
 21 now, which is what information was available to members in
 22 the JOC, and the version of SAPS as we understand it is
 23 that the JOC found out about the scene 1 shootings only at
 24 approximately half past 4. Is that our correct
 25 understanding of the version?

Page 14713

1 COLONEL SCOTT: I don't know who actually
 2 got to hear first or who started spreading the news within
 3 the JOC, but if that's when it was said, it, I'm presuming
 4 the person that heard it must have been somehow considering
 5 time around that time.
 6 CHAIRPERSON: I take it by 4:30 all the
 7 shooting was over, both scenes.
 8 COLONEL SCOTT: I think by 4:20 it was
 9 over, yes.
 10 CHAIRPERSON: Yes, so my understanding of
 11 the case that's put on behalf of the SAPS - if I'm wrong Mr
 12 Semenya will correct me – was the evidence was that he only
 13 heard, I think Major-General Annandale for example says he
 14 only really knew about it at about 4:30 after the last shot
 15 had been fired. So it doesn't really matter really whether
 16 it was 4:25 or 4:30; if you concentrate on "after the last
 17 shot was fired," then I think one can move forward. Is
 18 that right, Mr Chaskalson?
 19 MR CHASKALSON SC: Yes, Mr Chairperson,
 20 in fairness to SAPS, there's a slightly different version
 21 in the presentation and maybe we can put up a slide,
 22 because the presentation refers to medics being called to
 23 scene 2, I think by 4:29.
 24 CHAIRPERSON: You weren't listening to
 25 the exchange between me and the Colonel. I said whether

Page 14714

1 it's 4:25, 4:30, doesn't really matter. What seems to be
 2 the SAPS case is that the people in the JOC only became
 3 aware of what had happened at scene 1 and 2 after the last
 4 shot was fired, and the Colonel said he understood the last
 5 shot was fired at scene 2 about 4:20, so that's what he and
 6 I were discussing. Whether that helps or hinders the way
 7 forward, you must tell me.
 8 MR CHASKALSON SC: Yes, the last shot at
 9 scene 2 was shortly after 20 past 4 on the eTV clock, and
 10 the SAPS version is some time after that the JOC became
 11 aware of the fact that people had been shot at scene 1.
 12 Now the eTV live broadcast –
 13 MR SEMENYA SC: Chair –
 14 CHAIRPERSON: Mr Chaskalson, Mr Semenya
 15 wants to say something.
 16 MR SEMENYA SC: Chair, I don't want to be
 17 pedantic. I think the evidence of General Annandale is
 18 knowing that those people have been killed, because there
 19 would have been earlier radio comments about bodies laying
 20 there.
 21 CHAIRPERSON: Ja, it has been suggested
 22 that people were lying down to avoid being shot at.
 23 MR SEMENYA SC: Yes, they would have been
 24 shot, but not dead. The point I'm making is the
 25 proposition that we only came to know of the shooting after

<p style="text-align: right;">Page 14715</p> <p>1 it had all happened is not quite accurate, given the fact 2 that we were told that there were bodies lying down at an 3 earlier stage. 4 CHAIRPERSON: I seem to remember General 5 Annandale said something along the lines of they heard 6 "bodies down," but he assumed the persons who's bodies were 7 down were actually lying on the ground to avoid being shot 8 at, rather than that they'd actually been shot. But I 9 don't know – anyway, you've made the point. 10 MR CHASKALSON SC: Well, if the SAPS case 11 is that it knew that people had been shot at scene 1 when 12 the – 13 MR SEMENYA SC: We knew there was 14 shooting. 15 MR CHASKALSON SC: Shooting and bodies 16 down. 17 COLONEL SCOTT: Chairperson, I was in the 18 JOC and I heard, I think it's Colonel Vermaak on the radio, 19 and from the helicopter he was counting, literally counting 20 one, two, three – I think he got to 16 or 20-odd, he said 21 there's bodies lying down, something to those words, or 22 people lying, or bodies lying on the ground, something to 23 that effect. But understanding where the people are inside 24 the JOC at that time, we're not even aware of what's going 25 on at, that this is all at scene 1. I'm trying to position</p>	<p style="text-align: right;">Page 14717</p> <p>1 COLONEL SCOTT: Yes. 2 CHAIRPERSON: - than the other perception 3 which I put to you a moment ago. 4 COLONEL SCOTT: Yes. 5 CHAIRPERSON: But anyway, Mr Chaskalson 6 will take it forward, I should imagine, as long as one 7 understands, keeps in mind the distinction, so we don't 8 talk at cross purposes to each other. 9 MR CHASKALSON SC: Well, Colonel, eTV was 10 broadcasting footage of the shootings at scene 1 from 11 16:06:09, and were showing bodies in visuals which left 12 little doubt that there had been people killed, from 13 16:06:46. 14 COLONEL SCOTT: Okay. 15 MR CHASKALSON SC: So there was a 16 national broadcast of apparently dead bodies at scene 1 17 from 16:06:46, and the SAPS version is that the police 18 commanders in the JOC whose operation was being implemented 19 only found out that people had been killed in that 20 operation approximately 20 minutes later. 21 COLONEL SCOTT: I think I must maybe just 22 mention the TV that you may refer to was not there on the 23 16th; it was brought in when they saw this was going to 24 carry on now. 25 MR CHASKALSON SC: Yes, but the version</p>
<p style="text-align: right;">Page 14716</p> <p>1 this according to how I've briefed and understanding that 2 possibly they've gone out already and part of the approach 3 and the dispersion action is happening, and so I think it's 4 going to come down to until there was a verified 5 conversation with somebody at the front, General Annandale, 6 myself, Brigadier Pretorius and others are going to have 7 created their own perceptions in their minds of what was 8 going on at the front, because there was at no stage 9 mentioned death, wounded, stuff like that, on the radio 10 that I heard. It was just about people lying down. It was 11 mostly coming from the helicopter, and I wouldn't imagine 12 from his height that he would have been able to necessarily 13 see clearly what the condition of the people on the ground 14 were. 15 CHAIRPERSON: Part of the debate I think 16 is about whether you knew for sure that people were killed, 17 or whether you'd received information over the radio and so 18 on which would have led you to believe that it was highly 19 probably that persons had been shot and wounded and 20 possibly died. There's a distinction, you understand, 21 between the two. 22 COLONEL SCOTT: Yes. 23 CHAIRPERSON: Now I could understand 24 actual absolute certainty that people were dead is one 25 thing; that presumably came later -</p>	<p style="text-align: right;">Page 14718</p> <p>1 goes a bit further because Brigadier Calitz's later 2 statement seems to suggest that he only found out about the 3 shootings at scene 1 from the JOC. So you have the eTV 4 viewership learning about it at 16:07; the commanders in 5 the JOC whose operation is involved, learning about it 20 6 minutes later, and the actual operational commander himself 7 finding out even after that. That's the SAPS version. 8 You're nodding your head. 9 COLONEL SCOTT: I just – well, I can't 10 comment on the individuals that have given the timeframes 11 obviously. I can speak for my own perception. 12 CHAIRPERSON: Did you have a cell phone? 13 COLONEL SCOTT: I had a cell phone. 14 CHAIRPERSON: Did other people in the JOC 15 have cell phones? 16 COLONEL SCOTT: Yes, they did. 17 CHAIRPERSON: Did nobody phone in and 18 say, "What on earth's going on? We've just seen this on 19 TV." 20 COLONEL SCOTT: Chairperson, no, well I – 21 no, I wasn't phoned. I think I tried to call Colonel 22 Gaffley, who didn't answer, at some stage. I think that 23 was after I heard him shouting "cease fire," and I think he 24 phoned me back. 25 CHAIRPERSON: Someone in the rest of the</p>

Page 14719

1 country seeing this on TV, saying "What on earth's going on
2 there?", phoning people in the JOC saying, "What's going
3 on?", you say that didn't happen at all?
4 COLONEL SCOTT: Ja, I understand where
5 you're coming from, Chairperson, but I'm not sure who was
6 all watching TV at 3 o'clock in the afternoon or 4 o'clock
7 in the afternoon necessarily that's not at work or –
8 MR CHASKALSON SC: 16:07 in the
9 afternoon.
10 COLONEL SCOTT: Or 16:07, that's not at
11 work or – but I can't speak for others. I wasn't phoned.
12 MR CHASKALSON SC: Would you accept that
13 it's a faintly embarrassing proposition for SAPS to put
14 that anybody who was watching television found out that
15 SAPS has killed people 20 minutes before the commanders of
16 the operation?
17 COLONEL SCOTT: Well, SAPS members on
18 ground obviously knew. It was simply the command at the
19 JOC that were listening to the flow of radio speech and
20 trying to put the picture together from that.
21 MR CHASKALSON SC: Not just the command
22 on the JOC; apparently also the commander in the field.
23 Now it strikes me as quite an extraordinary proposition,
24 and something one would ordinarily have expected to, well,
25 to have to explain in this Commission, unless possibly one

Page 14720

1 was trying to hide it to avoid embarrassment. You weren't
2 trying to hide it to avoid embarrassment, were you?
3 COLONEL SCOTT: No.
4 MR CHASKALSON SC: You personally, no.
5 COLONEL SCOTT: No.
6 MR CHASKALSON SC: Because when we go to
7 exhibit L it's striking that there is no mention at all of
8 this extraordinary ignorance of what's taking place on the
9 part of the JOC and Brigadier Calitz, just not mentioned in
10 exhibit L. Is there a reason why you didn't see fit to
11 mention it in exhibit L?
12 COLONEL SCOTT: Well, for that matter, as
13 I said we could have built an exhibit, or presentation of
14 500 slides. Where do we draw the line? And is it, you
15 know at that time the police putting forward the version
16 that they understand, I'm not sure if Brigadier Calitz
17 mentioned it to us then, but whether it was seen as
18 necessary to say that he knew that at the time - I know
19 it's come up in cross, or police experts and the parties
20 wanting to know this now, but –
21 MR CHASKALSON SC: You're not sure that
22 Brigadier Calitz mentioned it at the time. Is this not
23 something that was raised with Brigadier Calitz immediately
24 by officers in the JOC? It's not something you would
25 expect JOC officers to have felt quite concerned about,

Page 14721

1 that their operational commander hadn't informed them that
2 14 people had been killed while they sat by in ignorance
3 while an operation unfolded, and other 18 were killed.
4 COLONEL SCOTT: Well, I've always held
5 the opinion what is, is what is; what was, is what was, and
6 if the Brigadier truly didn't know, then the fault can't be
7 with him, but surely with somebody that was back at the
8 scene that should have taken the time to start informing.
9 MR CHASKALSON SC: No, but my question
10 went to a different issue. You said you're not sure
11 whether Brigadier Calitz had informed people that he didn't
12 know at the time. Well, is that not an issue which would
13 have been canvassed with Brigadier Calitz immediately he
14 returned to the JOC that evening?
15 [14:48] COLONEL SCOTT: I don't know. I didn't
16 debrief him, or ask him specifically.
17 MR CHASKALSON SC: And in your
18 conversations with Brigadier Calitz, that was never an
19 issue that –
20 COLONEL SCOTT: No.
21 MR CHASKALSON SC: - that arose prior to
22 exhibit L. So it's not just Brigadier Calitz. There's no
23 mention of this in any of the original statements furnished
24 to us by officers inside the JOC. Nobody from inside the
25 JOC says in their statements that were furnished to us, we

Page 14722

1 didn't know until long after the last, or until after the
2 last shot was fired. Let's go to your statement, your
3 original statement on the 4th of September. It's FFF18, if
4 we can have FFF18.
5 CHAIRPERSON: FFF18 as far as I can see
6 is the 18th of October. Is that right?
7 MR CHASKALSON SC: It was signed on the
8 18th, but it is dated 4 September. I think it is the
9 correct document. It was signed on – can we just go down
10 to the signature line?
11 CHAIRPERSON: Yes, the typed date above
12 the signature is the 4th of September. You're correct.
13 MR CHASKALSON SC: Yes. If we go to
14 paragraph 33, "At about 15:45 I heard over the police radio
15 in the JOC as events unfolded that the police were coming
16 under some form of attack. Colonel Vermaak in the police
17 helicopter was providing periodic situation reports as
18 events unfolded on the ground. At about 15:55 he reported
19 a number of protesters lying on the ground. Throughout a
20 lot of vehicle movement control was ordered by Brigadier
21 Calitz in implementing the dispersion action. Later at
22 about 18:30 reports came in through mine security in the
23 JOC that vehicles were being torched in the mine offices."
24 So what you refer to in the statement is Colonel Vermaak
25 providing situational reports as events unfolded on the

Page 14723

1 ground. Now with the benefit of the hindsight that you had
 2 on the 4th of September 2012, what would you say was the
 3 most significant event that unfolded on the ground at scene
 4 1?
 5 COLONEL SCOTT: Scene 1 is holistically
 6 the shooting incident.
 7 MR CHASKALSON SC: The shooting incident
 8 that –
 9 COLONEL SCOTT: Yes.
 10 MR CHASKALSON SC: Well, the shooting
 11 incident at scene 1. With the benefit of hindsight,
 12 hindsight that you had already on 4 September –
 13 COLONEL SCOTT: Ja.
 14 MR CHASKALSON SC: - you'd identify the
 15 shooting incident at scene 1 as the most significant event
 16 that unfolded on the ground there.
 17 COLONEL SCOTT: But is the purpose of the
 18 statement to try not to apply hindsight to what you're
 19 admitting to know at the time?
 20 MR CHASKALSON SC: No, no, I'm trying to
 21 understand why the statement was framed as it was on 4
 22 September, or possibly 18 October when you signed it. So
 23 you mention situation reports as events unfolded on the
 24 ground. You mention protesters lying on the ground, a
 25 report of protesters lying on the ground, but what you

Page 14724

1 don't mention is that you and the JOC didn't realise from
 2 situation reports that Colonel Vermaak and the report of
 3 bodies lying on the ground, that people had actually been
 4 killed. You don't mention that.
 5 COLONEL SCOTT: Well, as I said, I may be
 6 shown to be wrong elsewhere, but a statement is to show
 7 what you knew at the time and not to show what you didn't
 8 know at the time.
 9 MR CHASKALSON SC: Yes, but this is a
 10 very important piece of information. What you didn't know
 11 at the time is very, very important, because if you did
 12 know that people had been killed at scene 1, this
 13 Commission would have expected, if not from you then
 14 certainly from commanders inside the JOC to have taken some
 15 action that may well have prevented scene 2 from taking
 16 place. So what you knew and what you didn't know in this
 17 context was very important.
 18 COLONEL SCOTT: Is it not by implication,
 19 as I'm saying, because my opinion then and my opinion now
 20 of that time period as well as that hearing what I'd
 21 heard, listening to Brigadier Calitz coordinating and
 22 ordering a Public Order Policing instruction, my initial
 23 thoughts were never to, well the result of a scene 1 that
 24 so many people had died, but simply to, the results of a
 25 Public Order action because, and I say that because

Page 14725

1 normally if something like that has occurred you would
 2 expect somebody at the scene to have phoned, got on the
 3 radio or said something to the fact that listen, we have
 4 had a major shooting, there are bodies down, and in the
 5 absence of that happening you consider it to be a result of
 6 the Public Order Policing action.
 7 MR CHASKALSON SC: Again my question goes
 8 to a slightly separate issue, which is why you didn't see
 9 fit to make clear in your original statement that you and
 10 the JOC weren't aware of what had happened at scene 1,
 11 because when one reads this original statement, that's not
 12 the impression that's created.
 13 COLONEL SCOTT: I think, as I've said, to
 14 the best of how I can answer your question for you was if
 15 it didn't happen, I didn't mention it. You know, I was
 16 there to mention what I was experiencing and felt at the
 17 time. I didn't see when putting the statement together
 18 that it would be important for me to state that I only
 19 after so much time got to know about that incident.
 20 MR CHASKALSON SC: Well, we're going to
 21 get stuck in a loop here. I've put my concern about that
 22 answer to you already.
 23 CHAIRPERSON: May I ask, when did you
 24 learn that there were deaths? At what time?
 25 COLONEL SCOTT: I can't put myself to a

Page 14726

1 time specifically, Chairperson, but – and again it would
 2 have been perception because I would have been hearing
 3 Colonel Vermaak also mention two bodies down behind the
 4 koppie, and again, you know, one is trying to picture where
 5 he's talking about now. With the benefit of hindsight we
 6 know it's koppie 3. Standing in the JOC, you're trying to
 7 put the mental picture together of what's happening on the
 8 outside, but I think it was possibly when Colonel Gaffley
 9 spoke to me over the phone, or even maybe before or
 10 slightly after that when somebody else in the JOC
 11 mentioned, listen, there's been shooting.
 12 CHAIRPERSON: You see, from whom did you
 13 receive feedback when you were in the JOC, you and the
 14 other people in the JOC? You were listening, there was a
 15 radio, wasn't there? You could hear what was happening.
 16 From whom did you receive feedback?
 17 COLONEL SCOTT: Well, if it was mentioned
 18 on the radio, Chairperson, we would have – and been
 19 mentioned clearly about this is the situation, obviously we
 20 would have heard that and immediately –
 21 CHAIRPERSON: From whom? My question is,
 22 from whom?
 23 COLONEL SCOTT: Well, in the absence of
 24 the operational commander being there and knowing about it,
 25 as I say somebody that remained at that scene should then

Page 14727

1 have called it in.

2 CHAIRPERSON: Yes, you're not

3 understanding. From whom did you receive feedback?

4 COLONEL SCOTT: I can't recall. But as I

5 say, it was probably somebody inside the JOC that had got –

6 CHAIRPERSON: Was it only one – no, no,

7 people outside the JOC radioing in. I understand the radio

8 was on; you all could hear it in the JOC. Is that right?

9 COLONEL SCOTT: Yes.

10 CHAIRPERSON: Right, now which people, or

11 which person was heard on the radio giving feedback of what

12 was going on?

13 COLONEL SCOTT: I could hear Brigadier

14 Calitz when he was speaking. I heard Lieutenant-Colonel

15 Vermaak, who did the majority of the talking. I heard

16 Colonel Gaffley's voice at one stage. That's all I can

17 definitely recall.

18 CHAIRPERSON: You see, the reason I ask

19 you the question is paragraph 5 of your, I think it's your

20 second statement GGG39, says this, "The Commission will

21 also note that I say nothing about the shooting incident

22 itself both in my original affidavit and in the

23 supplementary affidavit. The simple reason for this is I

24 did not witness the shooting as I was stationed at the JOC

25 throughout since Tuesday, 14 August 2012. The only

Page 14728

1 feedback we received at the JOC in the afternoon of

2 Thursday, 16 August 2012, was from Lieutenant-Colonel

3 Vermaak who was in the police helicopter." The only

4 feedback was from him. "He reported simply that a number

5 of protesters were lying on the ground. I'm thus unable to

6 assist the Commission as regards the shooting incident."

7 That doesn't sound, in the light of what you've just told

8 us, to be entirely accurate.

9 COLONEL SCOTT: Well, feedback,

10 Commissioner, is feedback as in situation reports.

11 Listening to what Brigadier Calitz is saying, I don't

12 recall Brigadier Calitz ever speaking to the JOC.

13 CHAIRPERSON: I see.

14 COLONEL SCOTT: So we're talking

15 feedback. The feedback reports were coming from the air.

16 Calitz for that matter was mostly directing the operation,

17 speaking to people in his vicinity and we were listening to

18 that, and for that matter I don't think that Colonel

19 Vermaak either necessarily spoke to us, but was speaking

20 again to people on the ground, or he quite possibly did

21 give that report through to the JOC. I don't recall

22 specifically.

23 CHAIRPERSON: Alright. Mr Chaskalson, I

24 propose taking the adjournment now. I must tell you that

25 this morning I indicated we would not be sitting on Friday,

Page 14729

1 but the intention was to sit to the end of today and again

2 on Thursday. We couldn't sit tomorrow, because tomorrow is

3 one of the days when the chamber is not available, but

4 circumstances have changed since this morning and in the

5 circumstances I'm going to adjourn now until Monday morning

6 at 9 o'clock. It's not possible for us to sit on Thursday

7 because of the circumstances which have now arisen.

8 MR CHASKALSON SC: Understood.

9 CHAIRPERSON: Mr Mpofu.

10 MR MPOFU: Thank you very much,

11 Chairperson. Particularly in the light of that

12 announcement, if the Chairperson can give me a few minutes.

13 CHAIRPERSON: The reason why I'm

14 adjourning now is because I can't give you a few minutes.

15 If you come and see me afterwards, I'll talk to you in

16 chambers.

17 MR MPOFU: Well, I wanted to answer your

18 question of this morning, Chairperson. It won't take long.

19 CHAIRPERSON: No, I haven't got the time,

20 I'm afraid, at this stage, because of the circumstances.

21 MR MPOFU: Of the flight.

22 CHAIRPERSON: So if you want to put

23 something on record publicly you can do so on Monday.

24 We'll now adjourn -

25 MR MPOFU: Okay, thank you, Chairperson.

Page 14730

1 CHAIRPERSON: - until Monday at 9

2 o'clock.

3 [COMMISSION ADJOURNED]

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A	acknowledges 14687:14	14560:8 14607:3	ambiguity 14545:11,13 14545:24	14660:25 14682:20 14697:2,10,18 14706:11 14719:14
ability 14629:10 14690:25	act 14550:20 14592:19 14600:1	advancing 14642:2	ambiguous 14543:12	anymore 14592:4
able 14548:2 14550:7 14551:15 14629:3 14635:5 14640:19 14645:9 14656:18 14672:7 14686:7,8,25 14693:21 14697:12 14716:12	acted 14591:12 14601:3	advantage 14637:8 14639:18	AMCU 14599:7	anyway 14551:24 14556:4 14560:7 14587:17 14665:11 14709:3 14715:9 14717:5
abreast 14709:24	action 14554:10 14556:13 14565:6 14568:24 14578:16 14578:19 14579:5 14580:19 14581:21 14581:24 14584:18 14585:2 14587:20 14588:19 14589:13 14598:23,24 14599:9 14604:4 14621:7 14624:15 14641:2 14644:25 14650:10 14652:10 14653:8 14654:8,13 14660:15 14661:12 14664:12 14666:3 14668:12 14671:14 14716:3 14722:21 14724:15 14724:25 14725:6	advice 14592:3	ammunition 14678:20 14692:14	apart 14559:5
absence 14698:19 14725:5 14726:23	actions 14657:21	Advocate 14552:5	amount 14587:16,23 14611:21 14634:19 14690:21 14693:6	apologise 14665:1 14675:14
absent 14580:8 14679:15 14695:18	acts 14673:8	aerial 14559:7 14609:8 14644:7,18 14648:1 14649:2,6 14669:17 14670:12,13	Amplats 14583:19	apparently 14569:10 14569:16 14699:25 14717:16 14719:22
absentees 14684:24	actual 14549:11 14551:20,21 14558:6 14565:2,5 14567:14 14570:23,25 14572:21,24 14573:4 14602:15,24 14607:21 14614:19 14647:13 14716:24 14718:6	affect 14583:9 14637:9	analyse 14680:5	appeal 14544:1
absolute 14716:24	address 14546:25 14582:9,9,11 14629:4 14683:22 14685:20	affidavit 14727:22,23	analysis 14665:24	appear 14556:11 14599:5 14684:4
absolutely 14607:20 14636:5 14651:23	addresses 14552:24	afford 14642:25	ancillary 14666:4	appearing 14684:14 14593:12 14596:22 14599:17 14606:6 14686:1 14691:9
absorb 14688:21	addressing 14558:15 14592:10	afraid 14565:15 14648:8 14681:18 14685:2 14729:20	and/or 14697:19	application 14544:14
abstract 14707:6	ad 14645:16	Africa 14544:2 14703:13	angles 14559:16	applied 14581:19
accelerating 14702:22	add 14675:2	afternoon 14548:1 14549:23 14551:8 14553:19,21 14554:17 14633:12 14719:6,7,9 14728:1	Annandale 14549:8 14623:7 14624:12 14674:24 14682:20 14713:13 14714:17 14715:5 14716:5	apply 14695:15 14723:18
accept 14553:7,24 14556:14 14558:25 14559:11,19 14560:1 14561:11 14562:1 14568:3 14577:18 14578:4,14 14581:15 14588:3,4,22 14589:2 14589:6,14 14590:5 14598:2 14600:24 14608:3,6 14620:17 14623:5 14632:25 14634:24,25 14635:12 14636:8,9 14636:25 14637:4,14 14637:17 14638:25 14639:25 14640:13 14644:22 14651:3 14653:10 14656:14 14656:15 14657:19 14658:3 14673:15 14681:10 14691:18 14693:11 14697:8 14704:8,22 14710:14 14711:6,20 14719:12	additional 14604:15	aggressive 14600:22 14603:5 14604:4	Annandale's 14649:11	approach 14565:5 14577:11 14578:1,3 14582:21 14585:6 14587:13 14658:12 14667:8 14689:16 14694:14 14716:2
accepted 14550:17 14638:17	address 14546:25 14582:9,9,11 14629:4 14683:22 14685:20	ago 14598:7 14616:7 14636:16 14649:5 14717:3	annexure 14554:13,14 14554:14	approached 14577:14 14594:7 14596:8 14627:14
accepting 14616:8	addressed 14607:17 14684:10	agree 14553:11 14578:6 14589:4 14592:21 14596:21 14608:23 14635:6 14660:3 14676:6 14677:6 14689:6 14707:12	annexures 14552:21	approaching 14711:17
accepts 14703:16,17,18	addresses 14552:24	agreed 14572:5 14671:11 14705:12 14705:18	announcement 14729:12	appropriate 14558:16 14630:17 14681:5 14682:10 14703:7 14706:18
access 14579:14 14597:12 14601:11 14648:22 14670:3	addressing 14558:15 14592:10	agreeing 14597:1	answers 14547:8	approved 14557:9
accompany 14548:23	adjoin 14680:2 14683:6,13 14729:5 14729:24	ahead 14584:19 14654:10 14655:16	answer 14547:8 14551:15 14564:12 14587:13,14 14601:18 14609:23 14609:25 14620:13 14620:19,24 14656:17,19 14659:11 14682:15 14687:9 14701:4 14718:22 14725:14 14725:22 14729:17	approximately 14568:19 14570:9 14572:8 14610:14 14668:17,18 14671:24 14690:8 14712:24 14717:20
account 14649:16,18	ADJOURNED 14730:3	aid 14543:23 14544:2 14545:2	answered 14587:14 14624:24	area 14558:7 14559:18 14564:21 14565:16 14576:7 14582:22 14604:13,17,18,19 14611:22 14617:10 14639:13 14643:16 14647:14 14661:17 14663:1,5 14665:6,8 14670:8,23 14676:9 14700:10 14712:1
accurate 14550:2 14587:11 14605:25 14607:20 14621:5 14675:12 14681:4 14715:1 14728:8	adjourning 14729:14	aim 14611:6	answers 14547:11,15 14549:16 14580:10 14621:5 14656:21	areas 14578:24 14603:15 14605:9
accurately 14629:3	adjourning 14729:14	aimed 14581:9 14675:7 14615:3,5 14644:8 14698:5 14728:15	anticipate 14544:18 14564:25 14579:4 14580:15,23 14582:5 14583:6,6 14587:2 14588:9 14639:20	
achieve 14658:21	adjudgment 14619:19 14619:25 14679:24 14683:2,4 14728:24	albeit 14554:9 14652:13	anticipated 14558:6,12 14558:12 14578:19 14582:20 14583:4,5 14584:17 14589:20 14621:6 14640:10 14641:12 14648:15 14652:4 14692:21	
achieved 14659:1	ADJOURNS 14620:1 14683:16	allegation 14593:1	anticipating 14544:1 14558:5 14586:23 14598:22 14647:5 14660:16	
acknowledgement 14621:22	admission 14625:25	allege 14577:3	anticipation 14580:5 14580:16 14581:20 14641:1 14654:23	
	admitting 14723:19	alleged 14556:4 14593:7 14594:10,15 14694:11,11 14702:16	anticipations 14582:5	
	adopted 14553:6 14631:2	allegedly 14590:21	anybody 14622:23 14623:8 14646:21	
	Adriao 14591:7,10,24 14591:25 14592:1	allowing 14560:25		
	Adriao's 14591:10 14592:10	Alright 14603:13 14619:24 14683:13 14706:3 14728:23		
	advance 14558:5	alternative 14573:17		
		alternatives 14553:16		

<p>14636:18 14657:14 14658:10 14659:2,8 14667:10,11 argue 14680:7 argument 14616:25 14650:1 14674:10 arisen 14729:7 arithmetical 14675:1,2 arm 14653:23 armed 14556:9 14560:7 14581:12 14660:21 14672:14 armoured 14579:10,13 14579:14,20 14596:8 14604:15,18 14650:6 14650:8,9 14651:17 14661:11 14662:9,10 14662:13 14692:20 14693:2,7 14712:11 14712:11 arms 14596:10 14597:2 14597:25 14598:15 14598:21 14599:15 14654:13 14661:1 arose 14721:21 arrange 14658:7 arranged 14648:5 arrangements 14544:6 14544:18 arrest 14548:17 14549:13 14587:1 14613:10 14615:20 14641:3 14667:7 arrested 14655:14 14658:23 arresting 14636:22 14642:12 arrests 14658:1,3 14671:18 14672:24 14681:16 arrival 14690:10 arrive 14701:1 arriving 14557:3 arrow 14704:21 arrows 14650:11 ascertained 14707:25 asked 14543:20 14569:19 14620:9 14701:3,10 asking 14570:16 14587:11 14598:6 14599:8 14623:1,4 14659:23 14663:18 14686:4,23 asks 14575:5 14687:19 aspect 14685:11 14709:3 aspects 14551:22 14579:25 14625:10 assault 14587:9 assist 14572:18 14663:1 14728:6 assume 14565:22 14595:10 14612:5 14621:15 14636:5 14674:7</p>	<p>assumed 14715:6 assuming 14570:5 assumption 14649:23 atmosphere 14550:19 attack 14563:2,3 14578:20 14579:4 14588:20 14589:23 14679:6 14692:8 14722:16 attacked 14581:1 14670:19,19 attacks 14679:9 attempt 14577:4,11 14690:14 14702:8 attempted 14577:5 14627:17 14671:2 14695:16 14703:5 attempts 14556:6 14652:13,16 attention 14633:16 14665:10,15 attitude 14550:20 14627:13 audible 14688:7 audio 14686:18 14689:9,9 August 14553:18,19,22 14554:17,24 14595:3 14595:4,5,14 14597:7 14600:2 14601:14 14602:19 14727:25 14728:2 authority 14584:9 14670:11,13,24 automatically 14550:14 14557:5 14560:21 available 14610:15 14647:10,14,18 14648:4 14678:15 14691:1 14707:7 14708:24 14712:21 14729:3 avert 14578:11 avoid 14556:7 14714:22 14715:7 14720:1,2 aware 14548:21 14572:12 14573:11 14600:12,15 14602:12 14667:18 14668:7,10,12 14669:2 14688:6,10 14689:14,15 14690:16 14692:9,16 14695:3 14697:18 14714:3,11 14715:24 14725:10</p>	<p>14545:1,5 14547:3 14549:4 14558:9 14561:20,22 14563:1 14572:6 14573:16,24 14574:13,18 14579:18 14580:2 14590:17 14593:11 14596:12 14597:3 14598:1,16 14599:16 14602:3 14608:11 14609:15 14612:15 14613:6,24,25 14616:6 14620:12 14625:18 14627:15 14629:3 14633:25 14638:24 14640:25 14652:12 14654:20 14655:20 14658:19 14677:11 14678:4 14679:11 14681:13 14682:5 14683:4,9 14684:9,9,10,12,18 14684:24 14687:9 14691:15 14702:2 14704:11,12 14707:12 14718:24 14721:7 backed 14565:10 background 14547:12 14584:6 14659:15 backwards 14638:4 ballistic 14698:19 14699:16,23 14700:5 14700:11,15 ballistically 14694:23 barbed 14559:17 14560:12 14561:4,5,8 14561:25 14562:11 14562:17,19,23,25 14563:17 14568:24 14570:7 14573:6,20 14577:6,12,13,15,24 14578:2,12 14579:15 14588:2,16 14594:1,2 14600:21 14607:21 14607:24 14608:1,18 14609:22 14610:4 14611:2,6 14617:11 14649:25 14650:13 14650:14,15 14651:2 14702:2,4,15,18,23 14711:22 barely 14631:14 Barnes 14684:17 barricade 14573:7 14578:2,13 14589:11 14589:17,18,21 14707:2 barrier 14554:21 14561:18 14563:3 14588:17 barring 14543:25 based 14564:6,15 14595:24 14624:18 14666:13 14667:23 14667:24</p>	<p>basic 14615:14 14699:11 basis 14585:9 14593:6 14625:20 14633:18 14634:9 14636:1 14646:13 14694:11 beg 14593:21 began 14705:19 beginning 14545:11 14602:11 14608:6 14628:22 14635:19 14645:18 14684:7 beginnings 14653:17 14696:24 begins 14689:1 behalf 14671:8 14713:11 behaviour 14603:6 believe 14548:13 14549:25 14576:13 14607:11 14610:16 14613:21 14625:23 14712:17 14716:18 believed 14556:9 14598:12,17 benefit 14582:15 14659:13 14723:1,11 14726:5 benefits 14569:13 best 14558:2,9 14576:20 14626:5 14629:10 14631:1 14665:4 14671:4 14677:4,24 14725:14 better 14609:11 14616:6 beyond 14586:12 14611:5 14666:8 big 14648:7 bigger 14637:8 14685:8 bit 14547:11,21 14558:20 14641:15 14678:22 14680:8 14683:6 14704:23 14718:1 blame 14657:5 14695:10,16,16 blanket 14592:12 blasting 14583:3 block 14607:3 14662:21,22 14704:19 14709:13 14710:2,5 blockade 14710:23 blocking 14560:7 14660:24 14710:9,10 14710:13 blue 14609:21 14618:4 14650:11 14654:9,10 14690:9 Board 14543:23 bodies 14694:19,24,25 14714:19 14715:2,6,6 14715:15,21,22 14717:11,16 14724:3 14725:4 14726:3</p>	<p>body 14698:20,22 14700:4,18 bodywork 14692:17 boom 14665:13 Botha's 14668:18 bottom 14606:24 14612:20 14618:7,8 14618:10 14653:1 14676:22 14685:22 boundary 14607:1 box 14678:18 breach 14702:8 14703:5 break 14561:10 14577:4 14679:18 14680:8 breaking 14646:2 breather 14642:25 brief 14609:8 14629:1 14630:3 14658:14 14664:14 briefed 14549:9 14574:12 14576:17 14643:23 14656:1 14660:17 14716:1 briefing 14548:23 14557:18 14558:3,19 14558:20,22 14559:2 14559:3 14573:16 14574:11 14609:11 14644:2 14651:7 14658:15 14661:8 14662:3,3 14663:24 14664:6,7 14666:6,20 14666:25 14670:21 briefings 14610:19 14628:25 14666:8 brigades 14665:11 Brigadier 14569:9,12 14570:5 14593:24 14596:9 14597:23 14598:9 14599:3,4,14 14601:22 14605:10 14605:22 14607:11 14632:2,4,7,15 14643:16,16 14644:8 14645:10,12,15 14649:2,5 14667:17 14667:18 14668:14 14668:15 14669:16 14669:17 14670:2,5 14670:24 14671:10 14672:24 14679:4 14685:25 14687:10 14687:13 14689:13 14690:2 14704:19 14706:21 14707:8 14708:16 14710:4,7 14710:19 14712:14 14712:19 14716:6 14718:1 14720:9,16 14720:22,23 14721:6 14721:11,13,18,22 14722:20 14724:21 14727:13 14728:11 14728:12</p>
--	---	---	---	--

B

B 14689:1 14696:25
 14697:14,19
 14698:23 14699:6
 14700:11,20
back 14543:4,6,13
 14544:7,17,21

<p>bring 14552:6 14558:8 14602:3 14605:7 14639:7 14652:12 14668:8 14706:5,8 bringing 14590:16 14688:16 broad 14660:2 broadcast 14714:12 14717:16 broadcasting 14717:10 broadly 14608:7 14621:5 14653:9,15 14703:17 14704:21 broke 14623:15 broken 14639:22 14674:17 brought 14544:14 14604:6,22 14613:25 14615:19 14662:9 14717:23 Budlender 14674:23 Budlender's 14675:4 building 14563:18 14630:13 built 14720:13 bulk 14552:21 14674:12 bullet 14591:20 14599:7 14600:5 14663:24 14666:20 14666:22 14700:2 14701:16 bullets 14587:5 14674:1,1 14699:25 bunker 14639:18 buoyed 14586:7 Burger 14683:7,8,12 14683:15 bush 14700:16,17,18 14701:18 bushes 14637:9 14638:10 14657:23 14673:3 14677:14 14698:15,22 busy 14681:16 14689:6</p> <hr/> <p style="text-align: center;">C</p> <p>C 14556:3,4 14690:11 14691:12,13 14696:20 14697:13 14697:19 14698:23 14699:7 14700:11,20 cage 14561:9,10,13,13 14561:14,22 calculated 14545:19,25 calculator 14635:21 Calitz 14569:9,12 14570:5 14591:6 14593:24 14596:9 14597:23 14598:9 14599:3,4,14 14601:22 14602:8 14604:13 14605:10 14605:22 14607:12 14643:16 14645:12 14667:17,18</p>	<p>14685:25 14687:10 14687:13 14689:14 14704:19 14706:21 14707:8 14708:16 14710:4,7,19 14712:14,20 14720:9 14720:16,22,23 14721:11,13,18,22 14722:21 14724:21 14727:14 14728:11 14728:12,16 Calitz's 14690:2 14718:1 Calitz's 14672:25 call 14566:24 14567:5 14594:19 14610:23 14621:22 14665:14 14666:3 14667:14,18 14667:23 14668:8,10 14686:4,6,23,24 14690:18 14718:21 called 14548:22 14588:21 14597:15 14616:3 14687:10,12 14708:5 14713:22 14727:1 calls 14671:8 camera 14577:19,20 cameras 14705:13 14706:6 canine 14661:14 14663:25 canon 14579:2 14583:2 14651:25 14654:9 cannons 14582:23 14587:4,19 canon 14565:10 14673:14 canters 14688:17 canvas 14625:19 14632:15 14634:10 canvassed 14674:24 14721:13 can't 14551:19 14573:25 14588:5 14601:13 14605:25 14620:25 14623:17 14643:21 14645:5,5 14646:18 14657:21 14659:24 14683:24 14690:5 14700:20 14709:2 14711:12 14712:6 14718:9 14719:11 14721:6 14725:25 14727:4 14729:14 capacity 14646:25 Captain 14591:10,23 14591:25 14592:10 14661:4 14662:4,16 14664:1 14667:19 14668:7,10,17,19,23 14669:7,11 14670:3,6 14670:9,9 14671:1,2 14671:10,12,18,20</p>	<p>14672:12,17 14673:1 14673:9 14674:2 14679:4 14680:15,16 14680:17,19,21 14692:20 14696:17 14704:4 captured 14591:4 care 14649:1 careful 14647:7 carefully 14556:10,16 14628:12 carried 14622:21 carry 14576:2 14581:9 14581:11 14585:4 14625:5 14677:19 14684:24 14685:17 14717:24 carrying 14645:11 14657:25 cart 14572:16 case 14544:20 14551:10,11 14557:2 14557:23 14566:5 14570:14 14571:15 14573:17 14578:9 14584:21 14585:10 14585:16,17 14588:9 14600:16 14605:3 14647:6,16,20 14648:9,13 14649:8 14660:15 14677:9,24 14679:2,12 14694:11 14695:3 14696:17,20 14698:11 14700:2 14713:11 14714:2 14715:10 cases 14694:10 14698:14 14699:4 cash-in-transit 14693:14,18 Casspir 14651:25 Casspirs 14651:24 catch 14655:13 catches 14711:14 category 14674:19 cater 14586:17,22 caught 14692:4 causal 14601:6 14695:17 causally 14602:22 14656:13 cause 14544:13 14556:6 14600:7 14670:20 caused 14655:20 CCTV 14706:5 CC29 14668:17 cease 14691:8,8 14704:8 14718:23 ceasefire 14690:19 cell 14543:4 14696:18 14718:12,13,15 certain 14546:25 14551:22,22 14556:1 14570:1 14587:16 14607:12 14659:19</p>	<p>14667:14 14671:17 certainly 14546:5 14549:21 14568:1 14589:1 14668:10 14694:15 14724:14 certainty 14716:24 Chair 14544:6 14626:21 14627:4 14647:15 14648:9 14677:21 14684:2,11 14684:16 14699:15 14699:16 14700:10 14700:24 14705:4 14706:12 14708:15 14714:13,16 Chairperson's 14606:13 chamber 14729:3 chambers 14729:16 change 14575:13 14590:2 changed 14559:14 14625:11 14626:18 14662:18 14663:19 14663:20 14702:6 14729:4 changes 14559:24 changing 14550:20 14605:15,17 channel 14645:25 14646:6,10,15 14647:10,11,11,16 14648:3,4,7,10 14707:15 channelled 14611:22 channels 14647:17 14648:6 charge 14557:9 14618:16,25 14619:1 14619:1 charging 14579:15 14712:7 chatter 14600:13 CHCASKALSON 14569:1 choice 14676:2,3 14678:17 choices 14659:25 14666:17 choose 14550:15 14582:6 14677:23 chooses 14603:6 choosing 14642:3 chopper 14686:11 chose 14569:10 14609:20 chosen 14579:23 circle 14610:12 14612:6 14618:6,7,8 14618:11,11,23 14619:13 circumspection 14556:6 circumstance 14694:4 circumstances 14556:8 14657:4 14660:1</p>	<p>14678:8 14681:2,6 14682:16,24 14691:16 14695:13 14697:17 14729:4,5,7 14729:20 claims 14553:1 clandestine 14638:7 clarification 14546:24 clarified 14545:14 clarify 14545:11,13,16 14551:13 14625:20 14686:5,24 14687:13 14688:10 14694:18 clarity 14689:2,7 14706:14 clear 14555:13 14624:14 14627:11 14635:13 14636:5,10 14636:18 14637:1,5 14638:15 14643:8 14644:9 14658:10 14681:3 14697:13 14698:11 14725:9 cleared 14667:10 14706:16 clearing 14638:13 clearly 14577:10 14633:13,15 14716:13 14726:19 clients 14544:5 climb 14712:3 clip 14686:17 clock 14714:9 clockwise 14704:20 close 14579:20 14610:12 14635:5 14672:8 14677:13 14693:25 14694:1 14695:9 14706:21 14708:17 closed 14560:5 14580:4 14708:21 closely 14571:21 closer 14606:22 14608:2,10,20,22,24 14609:4 14665:8,12 closing 14576:6 14611:25 cluster 14700:11 Coin 14686:11 14688:8 collated 14602:10 colleague 14692:9 14701:13 colleagues 14622:10 14674:3 colour 14650:2,2 come 14544:7 14555:24 14562:19 14565:6 14572:18 14582:13 14593:17 14602:8 14611:11 14621:7 14646:10,14 14665:18 14667:20 14679:17 14680:11 14680:12 14683:9 14691:16 14699:17</p>
--	--	---	---	--

<p>14700:15 14707:14 14716:4 14720:19 14729:15 comes 14552:21 14581:17 14682:5 14690:4 coming 14562:19 14582:9 14587:5 14607:17 14628:21 14634:1 14655:14 14658:11 14660:23 14681:5 14684:18 14687:11,19 14688:21 14694:22 14700:11 14705:9 14711:10 14716:11 14719:5 14722:15 14728:15 command 14593:24 14617:14 14649:6 14662:25 14669:24 14670:2 14680:11 14703:8 14719:18,21 commander 14568:16 14575:13 14576:1 14598:11,17 14604:12 14643:13 14644:7,8,17,17,18 14644:19 14645:16 14646:3,9,24 14647:25 14648:1 14649:2 14665:4 14658:16 14663:1,24 14669:17 14670:12 14670:13 14681:6,14 14681:19 14682:3,9 14687:3,23 14690:6 14690:14,15,23 14718:6 14719:22 14721:1 14726:24 commanders 14549:10 14557:10 14577:8 14597:14 14601:25 14602:1,2,7 14605:21 14606:10 14609:8 14617:22,24 14644:15 14656:9 14659:11 14663:24 14665:14 14667:15 14682:23 14691:3 14704:24 14709:23 14711:13 14717:18 14718:4 14719:15 14724:14 commander's 14646:25 commands 14669:20 commas 14596:12 commence 14592:17 commenced 14553:21 14646:5 comment 14554:18 14591:21 14625:4 14647:9 14680:7 14718:10 commented 14600:17</p>	<p>commenting 14685:23 comments 14594:6 14623:21 14662:21 14662:22 14714:19 commission 14543:2 14544:13 14545:16 14556:25 14558:23 14620:1,1,2 14634:11 14659:20 14661:9 14683:16,16,17 14684:4,13 14699:14 14703:13 14719:25 14724:13 14727:20 14728:6 14730:3 commissioner 14548:23 14549:25 14575:11 14576:8 14605:14,19 14606:5 14606:11 14617:7,13 14618:1 14620:22 14621:12,20,24 14622:4,9,11,21 14623:8 14701:13 14728:10 Commissioners 14544:10 14633:14 commit 14673:21 committed 14581:22 14582:16 committee 14629:2 committees 14629:2 commonly 14665:11 commonsense 14700:13 14701:1 comms 14668:3 communicate 14550:4 14573:18 communicated 14549:25 14620:21 14621:12 14622:4 14624:1,12 communicating 14624:13 communication 14590:20,21 14607:13 14645:25 14689:3,8,12 14691:7 14691:11 communications 14624:17,18 14690:13 compact 14583:4 compartmentalise 14560:10 compile 14595:19 compiler 14601:9 compilers 14602:3 complete 14568:20 completed 14601:11 completely 14559:11 14592:4 14712:20 completion 14568:12 complicated 14698:7 14701:21 complimented 14616:4 compounded 14550:15</p>	<p>compromised 14652:3 concealment 14692:13 14692:15 concede 14613:17 14614:11 conceded 14614:25 14617:4 conceived 14654:21 concentrate 14713:16 concentric 14709:19 concern 14623:11 14631:15 14725:21 concerned 14544:21 14591:24 14647:22 14720:25 concerning 14550:18 concluded 14615:16 conclusion 14546:14 conclusions 14701:2 condition 14716:13 conditions 14589:5 configuration 14559:14 14559:17 14711:3 confirm 14670:4 14684:12 confirmed 14548:17 confirms 14554:25 conflict 14556:7 confront 14584:4,9 14630:22 confrontation 14580:12 14581:22 14608:1 confronted 14582:2 14711:17 confused 14543:18 conglomerate 14661:15 congregation 14555:1 connection 14695:17 consequence 14651:2 14674:10,12 consequences 14574:8 14626:15,17,25 14627:3,6,7 14650:24 consider 14569:23 14574:12 14578:21 14607:5 14610:9 14634:11,19 14635:23 14643:15 14665:19 14725:5 considered 14547:1 14553:3,5,8 14563:25 14572:14 14617:3 14681:12 considering 14555:23 14563:24 14574:16 14578:22 14581:1 14617:1 14641:11 14663:8 14678:14 14713:4 considers 14586:1 consistent 14660:10 consolidated 14553:13 Constable 14680:16 constant 14593:2 constrained 14645:21</p>	<p>constraints 14575:1,5 14576:12 14599:25 consult 14605:23 consulting 14622:10 contact 14583:19 14700:1 contained 14597:8 14647:23 14666:20 CONTD 14545:9 14685:18 contemplated 14560:12 14577:25 14579:16 contemplation 14578:16 contemporaneous 14590:12 14591:3 14633:3,25 contend 14701:1 context 14599:6,16 14608:13 14648:18 14649:10 14688:22 14712:8 14724:17 contingency 14560:18 14563:6,18 14613:12 contingent 14663:5 continue 14554:9 14579:23 14633:6 continuing 14599:8 continuum 14639:15 14652:7 contract 14596:10,13 14596:19,25 14597:24 14599:14 contrary 14634:17 14657:6 14668:13 control 14611:7 14648:2 14649:3 14667:13 14689:20 14690:15 14722:20 convened 14623:9 convenient 14619:19 14659:1 conversation 14632:2 14688:15 14690:3 14716:5 conversations 14626:1 14631:21 14721:18 converts 14577:21 convey 14546:1 14647:3 conveyed 14593:8 14597:23 14600:7 14602:21 14621:2 conveying 14546:5 convincing 14553:4 coordinating 14724:21 coordination 14658:17 14689:13 cordon 14609:23 corner 14606:24 14704:13,17 14705:17,17 correct 14545:3 14551:17 14574:6 14577:17 14586:9,10 14589:19 14592:20</p>	<p>14598:11 14603:18 14603:23 14604:20 14611:12,13 14618:15 14620:22 14620:23 14621:14 14624:1,3 14625:9,13 14625:16 14626:19 14626:20 14636:2 14640:21 14641:18 14641:23 14642:23 14644:5,10 14645:7 14646:16 14650:17 14650:18,21 14655:10,11 14656:23 14657:10 14657:15 14662:6 14663:14 14664:2 14666:19 14671:15 14672:10 14673:7 14675:7,19,22,25 14678:23,24 14686:12,13,17 14688:14 14691:5 14692:23 14703:19 14704:10,22 14712:13,16,24 14713:12 14722:9,12 correction 14597:7 14703:15 correctly 14608:7 14619:15 14629:11 14629:25 14662:11 couldn't 14578:12 14592:18 14607:14 14634:21 14729:2 counsel 14545:15 counter 14556:13 14563:19 counting 14705:7 14715:19,19 country 14719:1 couple 14631:14 14661:14 course 14545:2 14550:10 14551:13 14558:11 14568:21 14572:23 14574:16 14591:21 14594:13 14618:20 14630:1 14646:22 14651:22 14666:5 14667:9,17 14674:25 14691:17 14710:4 courses 14676:10 court 14543:15,22,24 cover 14567:8 14570:2 14579:10 14603:9 14686:5,23 14688:2,4 14688:4 14691:23,24 14692:12,12,13,14 14693:6 covered 14565:17 14566:8 14570:7,9 14635:1 covers 14688:9 co-ordinate 14557:15</p>
---	---	---	---	---

<p>co-ordinating 14557:11 create 14546:8 14669:3 14676:12 created 14581:13 14614:18,19,22 14642:6 14716:7 14725:12 creating 14619:2 14707:1 14709:19 crime 14665:23 crisp 14558:14 criticism 14552:10 14558:19 14682:22 cross 14589:22 14614:2 14649:4 14717:8 14720:19 crossing 14589:18 cross-examination 14545:9 14588:15 14616:7 14620:11 14626:11 14674:25 14677:22 14685:18 crowd 14548:15 14549:7 14561:1 14576:5 14577:4 14578:10 14579:14 14581:10,11 14582:10 14584:12 14606:22 14693:9,10 14693:10 14708:19 14712:7 cum 14650:7 curriculums 14636:20 curving 14561:19 cut 14620:10 14640:12 14648:22 14668:2,24 14670:3 14688:15 14703:6 14704:17 14710:6</p> <hr/> <p style="text-align: center;">D</p> <p>danger 14665:17,18 14692:5 14708:19 dangerous 14555:15 14667:7 dangers 14572:12 dash 14691:11 data 14585:3 date 14595:13 14722:11 dated 14722:8 day 14545:11 14547:22 14550:16,21 14551:3 14556:5 14557:16 14575:2 14576:11 14587:7 14592:5 14594:16 14595:7,14 14595:17 14596:11 14597:25 14598:22 14600:12 14605:8 14607:22 14609:6 14621:21 14623:14 14624:16 14628:2,3,6 14628:18 14630:12 14631:9,22,24,25,25 14632:22</p>	<p>days 14554:23 14600:3 14601:4 14610:2 14626:14 14631:14 14729:3 dead 14626:10 14674:3 14698:10,17,20,21 14700:4,18 14714:24 14716:24 14717:16 deadline 14592:17 deal 14551:13 14558:11 14565:13 14566:15 14603:5 14608:2,9 14645:16 14645:17 14658:13 14660:5,7 14685:12 14703:1 14709:2,9 dealing 14557:6 14597:17 14606:2 14640:9 14644:19 14665:18 14685:4 14694:10 14702:1 deals 14685:11 14697:7 dealt 14549:2,13 14561:1 14621:8 14623:14 14701:25 14709:1 death 14696:19 14716:9 deaths 14553:22 14554:1 14697:9 14725:24 debate 14574:9 14678:23 14716:15 debrief 14721:16 decade 14636:16 deceased 14694:21,25 14695:5 14699:5,24 decide 14574:15 14628:6 14644:25 decided 14574:19 14576:3 14598:14 14624:5 decides 14575:13 deciding 14676:5 decision 14547:25 14548:16 14549:11 14549:22 14550:1,2,4 14550:4 14551:1,7 14556:7 14558:17 14560:23 14570:6 14574:14 14590:1,11 14592:19 14600:8 14602:23 14615:16 14615:21 14620:20 14621:1,13,16,24,25 14622:16,17 14623:1 14623:23 14624:6,8 14624:18,24,25 14625:3,14 14634:4 14642:25 14666:13 14670:2 14675:16,17 14676:6 14677:4 14678:13 14681:24 14682:10 decisions 14549:9 14555:21 14655:16</p>	<p>14673:8 14681:20 14682:17 declined 14554:16 deep 14615:22 defence 14580:2 14663:6 14678:1 14679:1 14690:2 14691:16 14694:12 14695:14 defend 14679:7 14692:7 14694:3 defendant 14598:25 defended 14565:3,9 defending 14679:1,2 defiance 14550:13 14584:8 defiant 14586:7 defined 14709:6 definitely 14600:18 14606:9 14610:20 definitively 14727:17 degree 14598:24 14699:5 degrees 14610:15 deliberate 14634:16 deliberately 14546:6 14546:19 deliberation 14548:18 14548:24 delivered 14575:20 demarcation 14711:25 depart 14584:12 department 14675:17 depend 14645:18 depending 14644:6 14656:10 depends 14657:20 14710:8 deploy 14575:24 14577:5 14594:1 14710:11 deployed 14572:2 14577:24,25 14604:16 14607:8 14608:1,19 14640:17 14644:12 deploying 14568:17,24 14572:3 14577:12,13 14577:15 14662:24 deployment 14559:7 14563:5,6 14570:14 14573:23 14593:25 14603:24 14606:15 14606:16 14607:21 14609:9 14613:13 14615:8 14687:12 deployments 14556:21 14662:1 depth 14557:21 14572:15 14623:19 describe 14559:9 14594:24,25 14603:6 14616:21 14650:2 14652:16 14653:8 14661:9 14665:2 14674:20 14695:23</p>	<p>14703:11 described 14616:10 14653:15 14696:19 14697:3 14702:16,21 describes 14632:8 14641:17 14668:16 14686:20 describing 14633:8 description 14653:15 14696:25 14697:10 14703:2 descriptions 14645:18 design 14573:11 designed 14573:5 14586:17,22 14601:2 14648:22 14654:6 14655:9 designing 14573:6 desirable 14687:7 desire 14666:17 desired 14557:9 14586:24 despite 14673:13 detachment 14662:8 detail 14549:1 14557:1 14563:11,24 14572:15 14615:22 14619:4 14621:10 14623:13,19,25 14624:2 14625:7,11 14625:19 14632:12 14634:6 14635:1 14656:7 14696:24 14697:1,4,10,13,14 14697:21 14703:2 detailed 14640:16 14644:2 details 14682:2 determine 14576:24 determined 14652:25 developed 14556:10,16 deviate 14574:17 14670:14 deviated 14574:2 deviation 14609:1 diagram 14607:18,19 14608:16 14614:11 14614:12,17,19 14616:8,9 14704:22 14707:17 diagrams 14618:3 dialogue 14554:8,9 14555:11,11,13,24 14580:18 14685:24 14685:25 dictate 14657:21 didn't 14543:8 14546:4 14546:8,15,17,21 14569:15 14570:8 14574:24 14576:11 14582:2,5 14583:6,6 14587:2 14588:11 14592:4 14605:23 14607:6 14629:19,25 14630:6 14634:20,22 14636:1 14639:20</p>	<p>14643:20,21 14646:3 14655:14 14657:3 14659:17,17 14677:14 14681:14 14682:1 14684:8 14688:13 14718:22 14719:3 14720:10 14721:6,11,15 14722:1 14724:1,7,10 14724:16 14725:8,15 14725:15,17 die 14556:5 14594:4,13 14596:11 14597:2,25 14598:15,21 14599:9 14599:12,15 died 14696:6,7 14716:20 14724:24 differ 14616:8 difference 14572:4 14596:18 14631:12 14631:13 14708:4 different 14557:24 14558:18 14559:11 14559:18 14576:23 14592:24 14596:4,13 14596:23 14602:20 14613:18 14614:13 14622:15 14643:17 14644:1 14648:21 14652:24 14659:15 14659:15 14670:17 14670:21 14677:8 14679:19 14689:17 14694:22 14700:9 14705:13 14710:10 14712:20 14713:20 14721:10 differently 14574:20 14636:25 14655:9 14659:14 differs 14652:6 difficult 14544:11 14545:21 14561:12 14583:2 14589:4 14631:23 14635:13 14636:10 14637:5 14638:15 14643:8 14644:9 14667:7 14682:23 14683:8 14712:4 difficulties 14620:16 14626:2,18 14627:18 14627:22 14630:23 14637:19,24,25 14638:3,13 14703:3 difficulty 14630:22 14632:22 14637:25 14648:9 direct 14627:8 directed 14679:9 14691:3 directing 14728:16 direction 14562:14 14565:18,24 14576:10 14618:6 14639:5 14654:17</p>
---	--	--	--	---

14668:21 14669:11 14669:12 14689:18 14698:18 14699:13 14704:5,21 14706:13 directions 14647:23 14650:9 14694:22 directly 14605:21 14607:14 14645:12 14677:2 14707:9 disarm 14547:24 14548:11 14556:15 14611:15 14614:24 14615:2 14664:13 14669:1 disarmament 14623:24 disarmed 14611:11 14658:23 disarming 14642:12 discretion 14643:13 14644:15 14656:9 14666:9 14682:3,8 discuss 14575:14 14576:19 discussed 14548:15 14559:23 14563:11 14609:1,4 14623:19 14634:3 14702:3 discussing 14714:6 discussion 14576:23 14632:8,12,16 disintegrated 14699:25 dislodge 14545:21 dislodging 14545:22 disorganise 14583:3 dispersal 14585:14 14586:19,20,24 14587:12,20 14588:19 14611:15 14611:15 14613:9 14620:15 14623:24 14624:15 14639:15 14652:10 14671:14 disperse 14547:24 14548:11 14556:15 14556:23,23 14558:21 14583:7 14585:6 14614:24 14615:2,20 14640:10 14641:2 14654:11 14657:13 14664:12 dispersed 14579:2 14639:13 14654:16 14658:22 dispersing 14585:11 14642:10 dispersion 14548:16,17 14549:13 14565:5 14578:16,19,20,25 14579:5,23 14580:18 14581:21 14582:25 14584:18 14585:2 14634:3 14639:1,9 14641:3 14644:25 14650:7,10 14652:18 14652:19,21,23 14653:7,7,13,19,19	14653:20,23,23 14654:8,13,25 14661:12 14666:2 14668:12 14669:25 14692:22 14716:3 14722:21 displayed 14555:16 disrupted 14649:14,24 disruption 14544:13 14649:21 14655:19 14656:13 dissuade 14554:10 distance 14567:6,8,12 14567:19,21,25 14570:7,8 14606:18 14608:13,14,23 14672:3 14693:24 14694:1 distances 14566:23 14567:2 distinction 14716:20 14717:7 distinguish 14693:15 distributed 14690:22 disturbance 14543:19 disturbed 14544:4 ditches 14569:23 14570:2 doable 14700:24 doctrine 14695:14 document 14595:11 14596:4,6 14597:9,11 14597:11 14599:13 14600:2,4,10 14601:10,11 14615:23 14703:9,18 14705:12 14722:9 documents 14559:4 14590:12 14591:3 14596:16 14630:19 14631:4,17 doesn't 14575:3 14577:3 14594:14 14645:20 14653:25 14695:14 14713:15 14714:1 14728:7 dog 14667:2 14679:10 14679:10 dogs 14661:14 14667:3 14667:5,8 doing 14557:24 14560:24 14563:19 14563:20 14570:20 14574:20 14619:13 14637:12 14641:5 14652:3 14654:24 dominated 14626:13 dominating 14667:10 don't 14550:1 14551:10,20 14552:10,16 14554:14 14572:20 14573:21 14579:3 14581:18 14583:23 14584:24 14587:11 14587:23 14591:3	14593:20 14595:18 14599:20 14600:22 14603:11 14607:19 14621:13 14622:6,8 14622:15,20 14623:2 14623:21 14624:24 14633:6,6,13,19 14635:6 14636:14 14660:2 14676:11 14677:21 14679:16 14680:1 14682:14,19 14683:1 14685:2 14688:3 14691:7,8 14693:16 14694:4 14699:10 14703:21 14703:25 14705:4,6 14706:4 14707:23 14713:1 14714:16 14715:9 14717:7 14721:15 14724:1,4 14728:11,18,21 door 14692:16 doors 14579:20 14580:4 dotted 14654:18 double-cab 14693:4 doubt 14545:17 14611:5 14717:12 downward 14618:17 draft 14594:25 14595:10,10 14597:6 14597:11 14601:10 14602:18 drafted 14606:6 drafts 14592:25 14593:5 14594:18 dramatically 14590:4 draw 14546:14 14633:16 14659:18 14699:20 14700:12 14720:14 drawn 14643:19 drive 14585:4 14641:1 14646:20 driven 14639:4 dry 14653:5 dual 14617:19,22 due 14550:13 14551:13 14558:11 14628:2,18 14630:1 14631:23 14646:2,3 14651:22 14667:17 14673:3,4 14710:4 dug 14659:3 DUNCAN 14545:7 14683:19 dwelled 14561:7 dye 14690:9	14657:7 14671:11 14679:25 14702:1 14714:19 14715:3 early 14550:11 14559:6 14593:18 14594:18 14594:25 14599:20 Earth 14609:13 14637:22 14708:2,11 earth's 14718:18 14719:1 easier 14637:1 14659:1 14660:5 easiest 14571:19 easily 14712:3 east 14641:21 14650:20 easterly 14562:13 eastern 14642:17 14697:7 14701:15 14704:20 14707:16 easy 14549:18 edge 14650:16 14704:18,20 14707:13,16 edged 14660:21 effect 14563:7 14574:2 14583:25 14585:4 14586:24 14587:25 14604:24 14639:1 14661:21 14694:21 14715:23 effective 14571:1 14578:25 14582:24 14582:25 effectively 14561:2 14571:11,12 efforts 14673:13 either 14543:20 14552:5 14563:1 14565:7 14575:5 14582:21 14631:24 14632:18 14639:22 14640:1,2 14642:9 14646:2 14658:9 14659:21 14667:19 14668:10 14679:22 14679:23 14699:6 14703:23 14728:19 elaborate 14576:17 14610:7 element 14568:22 14579:20 elements 14614:18 14643:17 elicited 14593:17 eliminates 14679:14 embarrassing 14719:13 embarrassment 14720:1,2 emergency 14647:11 14665:7 emerges 14600:23 emotional 14661:19 emphasise 14607:19 14630:21 14634:15 14642:15 14654:19	14657:5 14660:16 14662:2 14666:7 emphasising 14573:22 14580:11 employees 14611:2,7 engaged 14561:21 encircle 14610:3,12 14658:20 encircled 14658:22 encirclement 14547:23 14548:4,10,14,25 14549:6,12 14550:8 14609:22 14610:11 14610:11,21 14611:4 14611:9 14614:5,8,10 14614:14,24 14615:2 14615:19 14616:10 14616:13 14617:10 14617:10,14,17,18 14620:14,16 14624:16 14626:2 14630:23 14632:12 14633:21 14634:3,5,7 14666:2 14668:12 14671:14 14692:22 encircling 14611:25 ended 14608:19 14616:7 14626:16 energy 14633:24 enforce 14636:22 engage 14549:16 14581:11 14659:9 engaged 14687:25 engagement 14681:8 engaging 14581:10 14677:10 14687:25 Engelbrecht 14632:2,4 14632:8,15 English 14612:16 enlarged 14693:4 enormous 14552:19 ensure 14640:17 14649:1 14681:7 14687:4,5 ensuring 14544:4 14678:19 enters 14593:1 entirely 14551:9 14728:8 entrance 14611:8,16 14612:4,5 entrench 14640:18 14677:18 entrenched 14635:14 14636:11 14660:4 14678:5 entries 14621:23 entry 14600:20 environment 14648:11 14658:18 14671:18 environments 14636:20,22 14687:17 envisioned 14587:21,24 14639:11 14652:6,9 14667:4
E				
14551:10,20 14552:10,16 14554:14 14572:20 14573:21 14579:3 14581:18 14583:23 14584:24 14587:11 14587:23 14591:3	14551:10,20 14552:10,16 14554:14 14572:20 14573:21 14579:3 14581:18 14583:23 14584:24 14587:11 14587:23 14591:3	14551:10,20 14552:10,16 14554:14 14572:20 14573:21 14579:3 14581:18 14583:23 14584:24 14587:11 14587:23 14591:3	14551:10,20 14552:10,16 14554:14 14572:20 14573:21 14579:3 14581:18 14583:23 14584:24 14587:11 14587:23 14591:3	14551:10,20 14552:10,16 14554:14 14572:20 14573:21 14579:3 14581:18 14583:23 14584:24 14587:11 14587:23 14591:3

<p>equations 14571:9 error 14633:16 14675:1,2 escape 14673:14 escort 14665:20 especially 14669:4 essence 14561:17 14571:9 14575:17 14576:18,21 14584:8 14611:22 14643:18 essences 14588:6 essense 14699:9 essentially 14600:7 14643:11 14665:12 14673:2 establish 14586:13 14624:25 14626:24 14699:4 14708:23 established 14559:3 14638:6 estimate 14567:25 14587:8 14707:21 14709:14,15 estimated 14568:7 14569:2 estimation 14571:10 14707:24 etcetera 14549:10 14557:19 14564:17 14564:17 14569:23 14585:3 14602:8 14610:18 14615:23 14622:24 14665:12 eTV 14555:17 14577:21 14704:14 14714:9,12 14717:9 14718:3 evening 14547:21 14721:14 event 14600:3 14601:4 14610:2 14631:14 14696:7 14723:3,15 events 14601:4 14655:19 14697:7 14705:5 14722:15,18 14722:25 14723:23 eventuate 14648:17 eventuates 14585:10 everybody 14579:18 14670:12 14687:18 14687:19 14693:10 evidence 14546:25 14547:2 14548:13 14553:5 14556:2 14585:17 14599:11 14609:17 14628:13 14632:23 14649:12 14679:18 14696:18 14698:19 14699:24 14700:3,5,22 14701:4 14701:5 14708:21 14713:12 14714:17 evident 14582:13 14610:12,20 exact 14706:6 exactly 14546:7</p>	<p>14570:8 14654:15 14686:6,25 examination 14649:5 example 14543:3 14565:18 14713:13 exception 14680:15 exceptions 14711:5 exchange 14590:25 14591:1 14613:17,20 14614:9 14615:12 14713:25 exchanges 14688:6 execute 14557:11 14587:18 14676:6 14677:24 executing 14675:17 exercise 14568:6 14649:3 14682:10 14685:8 14690:15 exercised 14652:8 exercising 14649:6 exhausted 14553:4,10 14603:3 exhibit 14552:16,19 14572:4 14591:19 14592:21,23,25 14593:1,1 14594:20 14594:22 14596:23 14596:24 14604:2 14606:6 14607:18 14663:23 14674:16 14679:19 14686:11 14720:7,10,11,13 14721:22 exhibited 14594:23 exists 14615:14,23 exit 14611:8,11,16 14612:1,4,5 14651:8 14660:12 14674:9 expand 14697:4 expect 14573:15 14584:5 14679:10 14697:22 14720:25 14725:2 expectation 14557:8 14658:16 expectations 14557:19 expected 14557:14 14560:4 14584:11,14 14637:23 14639:9 14654:24 14686:2,20 14686:21 14719:24 14724:13 expecting 14584:13 expended 14674:17 expense 14646:23 experience 14572:15 14572:20,23 14573:1 14581:17,17 14589:5 14643:22 14658:6 14659:15 14666:12 experienced 14575:19 14602:3,16 14623:18 14643:22 14666:13 experiencing 14647:8 14671:6 14725:16</p>	<p>expert 14552:25 14700:12 expertise 14675:15 14676:4 experts 14720:19 explain 14556:23 14557:1,12 14594:14 14601:3 14665:13 14666:17 14669:22 14701:10 14719:25 explained 14635:19 explanation 14548:24 14601:23 14649:15 14697:16,18 explore 14626:8 explored 14627:3 exploring 14700:22 exposed 14637:6 14693:5 14708:19 express 14544:9 extend 14607:2 14699:8 extended 14628:1 14672:19 extensive 14552:5 extensively 14658:14 extent 14558:13 14598:12 14678:22 14685:12 extra 14617:14 extracts 14556:2 extraneous 14628:25 extraordinary 14719:23 14720:8 extreme 14678:8 eye 14648:1</p> <hr/> <p style="text-align: center;">F</p> <hr/> <p>face 14579:14 14584:12 14600:1 faced 14558:24 14643:7 14659:25 14660:2 facie 14565:12 14695:15 fact 14546:7,15 14550:16 14551:5 14558:13 14560:22 14564:15 14566:7 14573:11 14574:9 14577:9 14581:4 14585:25 14587:22 14590:3,20 14591:15 14602:24 14615:18 14615:23 14619:13 14621:11 14628:18 14629:4 14633:24 14634:19 14641:19 14642:24 14645:25 14646:3 14647:9,24 14651:23 14653:20 14665:24 14667:24 14668:12 14673:3 14675:4 14679:3,5 14681:21 14691:10 14691:14 14694:21</p>	<p>14709:10 14711:3 14714:11 14715:1 14725:3 factor 14555:2 14574:17 factors 14555:22 facts 14547:1 14552:9 14601:18 14629:10 14636:6 14679:22 14708:23 fail 14614:16 failing 14616:12 failure 14580:8 14651:2 faintly 14719:13 fair 14566:4 14587:24 14654:20 14674:7 14680:7 14693:19 fairly 14546:22 14577:10 14601:5 14620:9,14 14649:11 fairness 14713:20 fallacy 14678:22 false 14586:7 familiar 14649:11,12 families 14545:1,4 14684:3,7 far 14544:21 14548:4 14550:9 14557:25 14613:23 14618:3 14620:9 14672:1 14679:12 14681:14 14685:10 14689:8 14699:8 14704:2,2 14722:5 fast 14667:11 faster 14560:25 fatal 14698:24 14700:19 fault 14721:6 fear 14604:23 feared 14592:11 feasible 14548:14 14549:6 feature 14611:9,14 14653:5 features 14607:22 feedback 14576:11 14635:4 14646:22 14726:13,16 14727:3 14727:11 14728:1,4,9 14728:10,15,15 feel 14630:19 14692:5 feeling 14584:8 14605:11,11 feelings 14586:7 fell 14670:23 14698:9 felt 14560:19 14627:25 14628:3 14670:20 14679:6 14697:23 14720:25 14725:16 fence 14571:22 14707:16 14711:18 14711:19,23 14712:2 14712:7,10,15 fences 14711:25</p>	<p>FFF18 14722:3,4,5 FF8 14680:13 field 14668:3 14719:22 fields 14579:1 14639:23 14652:20 14660:7 figurative 14703:22 file 14552:19 filtering 14660:19,25 14661:22 14671:16 14672:7 final 14549:11 14551:23,24 14552:3 14552:18 14553:6 14576:24 finalisation 14548:19 finalised 14544:19 14549:1 14601:13 finally 14543:22 find 14579:19 14580:3 14590:19 14612:3 14614:6 14630:10 14664:23 14667:5 14687:17 14706:10 finding 14690:23 14718:7 finest 14557:1 fingertips 14614:7 finish 14572:11 14588:14 finished 14564:22 14592:15 fire 14665:11 14678:8 14681:5 14686:1,2,3 14686:21,22 14687:2 14687:5,11,12,15,21 14688:14 14691:8,8 14691:16 14695:8 14701:15 14704:8 14718:23 firearm 14592:12 14677:14,15 14692:7 14693:7 14694:6,6,9 14694:9 14698:20 14699:24 14700:3 firearms 14660:22 14667:6 14694:19 fired 14578:10 14677:3 14677:5,22,25 14678:24,25 14679:3 14679:8,8,9 14680:10 14680:13,14,19,21 14695:12 14698:9,15 14698:18,23,24 14699:2,3,12 14700:2 14700:16,17,19,25 14701:16,17,19,20 14713:15,17 14714:4 14714:5 14722:2 first 14544:14 14547:15,24 14548:9 14553:16 14554:20 14556:14 14565:13 14575:8 14577:11,12 14577:14,25 14578:3 14587:18 14591:20</p>
--	---	--	---	---

<p>14594:1,11 14595:7 14595:14,17 14597:22 14601:15 14606:23 14607:23 14610:5,18 14618:21 14620:13 14625:7,18 14631:5 14636:7 14644:1 14649:21 14668:14 14673:10 14677:1 14678:17 14680:4 14685:20 14688:6 14691:11 14693:20 14713:2 firstly 14559:9 14565:9 14604:4 14612:2 14687:13 14706:14 fit 14602:19 14720:10 14725:9 five 14578:2 14631:8,9 14652:1 14673:24 14709:16,16,18 flag 14649:24 flank 14662:13 flanks 14639:9 flat 14570:1 flaw 14545:18 14546:23 14626:25 14634:13,17,24 14682:6 flaws 14645:22 fleeing 14642:2 flight 14668:20 14729:21 flow 14688:1 14719:19 flowed 14627:7 flowing 14606:13 14691:14 fluctuate 14582:7 fluctuation 14582:8 fluid 14557:4 14644:20 14645:17 fluidly 14560:25 flush 14659:7 14660:6 14660:11 14673:14 flushing 14611:20 14660:14 focus 14558:14 follow 14543:3 14564:23 14570:8 14607:6 14641:2 14644:25 14647:16 14677:21 14686:20 followed 14594:5 14686:4,23 following 14587:2 14628:24 14669:25 14689:1 foolhardy 14580:15 foot 14651:8 footage 14696:17 14711:8 14717:10 force 14553:4,10 14554:9,10 14555:21 14557:13 14581:15 14583:8 14584:12 14605:8 14613:4</p>	<p>14616:17,20,22 14637:11 14639:15 14652:7 14673:18 14676:5 forced 14641:25 forces 14557:11,15,16 14607:12 14640:17 14640:18 14641:20 14642:9 14644:9,12 14649:2,4 14650:7,9 14650:10 14651:14 14655:13 14658:17 14662:25 14668:11 14672:12,14,14,14,18 14673:11 14678:13 14681:7 14685:6,6 forcing 14587:5 foresaw 14562:22 14565:4 foresee 14562:11 foreseeable 14562:21 14562:22 14566:3 14586:1,2 foreseen 14566:4 forget 14625:22 14650:1 14657:1 forgotten 14548:7 form 14560:25 14569:15 14578:8 14633:25 14652:18 14710:23 14722:16 formed 14560:6 14652:21 14653:14 14662:12 forthcoming 14687:22 forthwith 14543:25 14544:7 forum 14622:24 forward 14551:8 14576:20,25 14579:5 14588:10 14603:15 14604:17,18,19 14605:9 14609:16 14624:12 14625:11 14642:9,11 14643:24 14655:15 14661:16 14663:5 14670:7,22 14688:23 14708:23 14710:22 14711:11 14713:17 14714:7 14717:6 14720:15 forwarded 14593:14 forwarding 14665:5 forwards 14566:3 14638:4 found 14677:9,11 14682:16,23 14692:4 14698:17,22 14712:23 14717:19 14718:2 14719:14 foundational 14547:12 four 14570:23,25 14652:1 14662:14 14667:25 14709:15 fours 14658:10 framed 14723:21</p>	<p>frames 14568:8,11 free 14630:19 14671:2 frequency 14647:5 fresh 14601:5 Friday 14548:3 14550:7 14621:1 14728:25 friend 14551:11 14649:12 14674:23 14703:16 14710:4 friendly 14701:14 Fritz 14643:16 14644:8 14645:10,15 14649:2 14649:5 14668:15 14669:16,17 14671:10 Fritz's 14668:14 14670:2,5,24 front 14561:10 14582:17 14594:2 14607:10 14609:18 14647:21 14655:16 14665:14 14667:15 14667:20 14671:17 14704:7 14705:8 14716:5,8 fruition 14588:11 full 14564:17 14619:5 14622:7 14631:7 14632:18 14633:11 fullest 14610:8 function 14575:17 14647:17 14666:2,3 14669:19 14670:5,16 14671:20 14672:7 14677:24 14689:22 functions 14666:5 funding 14543:22,23 furnished 14721:23,25 further 14544:5 14553:22 14554:1 14576:4 14580:2 14597:20 14603:1 14607:3 14621:11 14632:15 14639:16 14639:24 14641:15 14655:16 14672:19 14677:11 14679:14 14683:1 14686:10 14688:5 14693:8 14700:20 14718:1 furthest 14608:10,21</p>	<p>gate 14665:14 14705:8 gathered 14611:3 14654:11 gatherings 14663:8 Gauteng 14543:14 geared 14585:5 general 14549:8 14576:10 14584:7 14610:11 14623:6,7 14624:11 14664:24 14668:8 14672:12 14673:9 14674:24 14675:1 14680:12,18 14680:22 14682:20 14704:8 14707:6 14714:17 14715:4 14716:5 generally 14689:18 generals 14548:21 14557:9 14615:15 geographical 14653:5 geography 14559:25 14642:15 GEORGE 14545:7 14683:19 germinating 14631:7,9 gestures 14668:19 getting 14545:2 14555:20 14569:16 14570:13 14572:16 14597:12 14676:1 GGG35 14686:11 GGG39 14727:20 GGG8 14668:14,14 GGG9 14610:23,24 give 14547:15 14548:6 14548:24 14551:19 14552:13 14557:7 14597:20 14602:1 14617:24 14629:25 14630:1 14656:21,22 14666:9 14687:21 14706:6 14728:21 14729:12,14 given 14543:14 14548:20 14551:6 14555:2 14558:1 14568:16 14579:7 14581:23 14583:7 14587:12,15,15,19,22 14600:12 14602:15 14617:21 14623:13 14625:7 14644:2,12 14645:19 14666:7 14670:21 14688:3 14698:1 14715:1 14718:10 gives 14574:22 14599:6 14634:20 giving 14597:17 14601:23 14615:13 14727:11 goes 14544:22 14569:5 14581:4 14596:5 14629:13 14641:14 14688:16 14718:1</p>	<p>14725:7 good 14543:4,24 Google 14609:13,14 14637:22 14708:2,11 gosh 14592:24 gasp 14562:16 great 14608:2,9 greater 14588:25 14611:21 14649:1 green 14705:23 grenades 14587:4 grew 14592:23 14597:11 14601:14 14601:14 grey 14676:9 grid 14559:7 14607:21 ground 14550:17 14559:14 14569:25 14582:24 14589:5 14607:2 14627:13 14638:15 14641:7 14643:17 14644:7,15 14645:5,16 14658:8 14659:12 14660:1 14668:21 14669:20 14671:5 14678:12 14689:13 14702:6 14704:24 14709:23 14715:7,22 14716:13 14719:18 14722:18 14722:19 14723:1,3 14723:16,24,24,25 14724:3 14728:5,20 grounds 14583:1 group 14554:22 14556:9 14578:17 14582:3,17,19 14583:1,4 14586:25 14596:8 14599:7 14607:9 14608:15 14617:17 14618:16 14618:16,17 14639:21 14640:9 14662:4,4,5,8,15 14664:1 14669:22,23 14671:12,13,18 14672:25 14673:2 14679:4,4,8,9 14680:17,18,19,21,22 14698:24 14710:20 14710:21 grouping 14665:6 14667:13 groupings 14661:23 14665:17 14670:22 groups 14604:17 14619:2 14639:23 14642:10,12 14654:25 14658:23 14669:23 14679:6 14692:19,20 grows 14544:15 guide 14644:8 guilty 14695:15 gunfight 14674:4,4 gunfire 14674:5</p>
--	--	--	---	--

<p>14697:12,15 gunmen 14686:7 14687:1</p> <hr/> <p style="text-align: center;">H</p> <p>habit 14545:11 hadn't 14635:4 14721:1 hale 14674:1 half 14568:8 14572:2 14683:5,6,9 14712:24 halfway 14572:2,2 hand 14555:21 14559:5 14641:21 14674:23 14683:7 14698:4 14699:2 14703:9 handed 14559:15 14615:7 handlers 14667:2 14679:10,10 handover 14656:3 hands 14669:1 hand-outs 14559:15 hang 14574:23 14651:21 happen 14560:25 14572:7 14574:24 14576:11,22 14580:23 14612:18 14612:21 14632:20 14632:21,21 14633:5 14656:18 14719:3 14725:15 happened 14543:19 14554:23 14577:2 14578:3 14580:5 14587:7 14588:25 14593:5,7 14594:11 14604:3 14632:25 14649:15,16,18,20 14651:9 14656:12,17 14663:3 14670:17 14702:3,14 14714:3 14715:1 14725:10 happening 14650:24 14651:1 14692:9 14716:3 14725:5 14726:7,15 happens 14543:18 14568:14 14605:4 14654:14 happy 14632:18 14633:10 14634:8 hard 14615:16 14686:5 14686:23 14688:2,4,4 hardcore 14586:25 harness 14669:7 hasn't 14594:23 haste 14546:16,21 14634:21 haven't 14708:2 14729:19 head 14675:8 14718:8 headgear 14577:19,20 hear 14547:14 14555:19 14600:11</p>	<p>14667:22 14683:25 14684:21 14689:8 14691:7 14710:3 14713:2 14726:15 14727:8,13 heard 14546:24 14555:16 14569:19 14604:4 14649:9 14657:6 14667:22 14685:25 14688:19 14690:5 14709:22 14713:4,13 14715:5 14715:18 14716:10 14718:23 14722:14 14724:21 14726:20 14727:11,14,15 hearing 14550:18 14584:7 14600:13 14687:14 14724:20 14726:2 hears 14645:19 hearsay 14570:3 14602:12,14 14606:1 heavily 14581:12 height 14637:9 14716:12 heights 14637:8 14638:1,2 heist 14693:14 held 14721:4 helicopter 14645:8,19 14645:20 14685:24 14688:8 14691:6 14715:19 14716:11 14722:17 14728:3 help 14607:3 14647:15 14656:19 14667:5 helpful 14679:13 helps 14714:6 Hemraj 14575:11 14576:8 14605:14,19 14606:5,11 14617:7 14617:13 14618:1 14701:13 here's 14597:23 hesitant 14659:16 he'd 14599:13 he's 14554:7 14627:12 14675:11 14683:25 14686:10 14688:13 14692:9 14693:25 14707:9 14711:15,17 14726:5 hidden 14667:6 hide 14693:6 14720:1,2 hierarchy 14601:25 14678:1 high 14543:14 14578:23 14581:14 14581:14 14624:4 higher 14581:11 14624:17 highest 14692:11 highlight 14651:6 highlighting 14654:3 highly 14585:20</p>	<p>14716:18 high-risk 14657:25 14658:3 hill 14611:3 14701:16 hinders 14714:6 hindsight 14560:3,11 14613:23 14621:19 14621:22 14622:12 14635:17,22,24 14659:13 14723:1,11 14723:12,18 14726:5 Hippos 14594:3,12 historical 14585:3 history 14581:1 14650:25 hoc 14645:16 holding 14603:15 14604:17,18,19 14605:9 14661:17 14663:5 14665:5,23 14668:4 14670:8,23 hole 14612:6 holed 14657:17 14659:3 holistically 14723:5 home 14589:23 homicide 14695:17 14700:2 hooking 14572:19 hope 14555:10 14580:16,16,17,21 14583:4 14584:16 hoped 14658:21 hopeful 14584:15 hopefully 14544:19 14575:7 14648:1 14656:18 hoping 14582:15 14641:6 hospital 14696:7,7 hostels 14562:6 14563:1 hour 14683:5,6,9 hours 14628:2 14631:1 14631:4,6,7,8,9 house 14693:3 human 14579:19 14638:3,5 14682:12 14688:19 14703:13 hundreds 14674:1 hurried 14547:21 hydraulic 14579:21 hypotheses 14705:9 hypothesis 14678:12 14708:20 hypothetically 14584:25</p> <hr/> <p style="text-align: center;">I</p> <p>idea 14566:16 ideal 14579:17 14605:7 14647:12 14681:11 ideally 14617:16 identification 14703:20 identified 14592:8 14620:17 14626:18</p>	<p>14627:18,22 14630:23 14634:12 14687:6 14709:25 identify 14622:8 14677:14,15 14693:21 14698:25 14723:14 identifying 14699:24 identity 14625:3 ifs 14557:22,22 if's 14641:10,11 ignorance 14720:8 14721:2 ignore 14671:2 ignored 14679:16 ill 14684:19 images 14669:6 imagine 14598:7 14619:5 14708:22 14716:11 14717:6 imagined 14685:8 14702:11 immediate 14600:4 14665:8 14687:3 immediately 14543:25 14569:5 14628:19,22 14658:7 14686:4,22 14688:15 14720:23 14721:13 14726:20 imminent 14693:11,15 14693:16 imminently 14563:9 Impala 14550:24 14551:3 impending 14581:24 Implats 14583:19,24 implement 14590:11 implementation 14588:13 14590:4 14701:25 implemented 14548:5 14550:10,11 14554:1 14577:2 14585:12 14624:6 14625:8 14626:16 14627:17 14631:6 14702:11,12 14702:13 14707:7 14717:18 implementing 14553:6 14722:21 implication 14724:18 importance 14573:22 important 14545:13 14573:19 14590:3 14629:9 14657:18 14660:12 14724:10 14724:11,17 14725:18 impossible 14636:24 impression 14550:13 14725:12 impromptu 14557:3 inaudible 14543:19,23 14593:16 14656:20 incident 14577:10 14668:16 14696:17</p>	<p>14696:19,20,23,23 14697:3,4 14702:16 14702:21 14723:6,7 14723:11,15 14725:19 14727:21 14728:6 incidents 14550:24 14557:4 14569:16 14628:16 14631:21 14695:23,23 14696:16 14703:1 include 14682:2 14691:21 included 14601:7,12 14640:22 inconsistent 14708:21 incorrect 14626:9 increased 14590:4 incriminating 14697:24 independent 14625:3 indicated 14624:22 14728:25 indications 14644:12 individual 14630:18 14659:25,25 14660:1 individuals 14682:15 14718:10 infer 14546:11,16,20 inference 14634:20 inferences 14699:19 infinite 14557:22 influence 14551:1 informal 14562:6 14660:18 14661:17 14661:18 14663:13 14663:21 14670:18 14671:21,23 14672:9 14701:8 information 14583:12 14583:16,21 14584:7 14595:25 14601:12 14601:12 14646:8,14 14646:18,24 14647:3 14688:1 14712:21 14716:17 14724:10 informed 14593:13 14594:8 14721:1,11 informing 14721:8 infrastructure 14663:12 infringe 14647:7 inherent 14546:10,13 14546:23 14580:13 14648:2 initial 14566:19 14618:21 14641:1 14663:6 14692:3 14694:14 14724:22 initially 14558:8 14645:10 14665:8 14710:18 injured 14674:4 input 14549:11 14550:18 14597:20 14602:15 14606:9</p>
--	--	---	---	--

14615:23 inputs 14596:15 14597:12,17 14601:9 14602:2,12 14605:20 14606:3 inside 14579:22 14590:24 14602:6 14605:16 14607:7 14642:22 14643:1,7 14645:6 14673:12 14678:16 14710:17 14715:23 14721:24 14721:24 14724:14 14727:5 insofar 14647:22 14684:8 installed 14646:4 instance 14576:1 14624:15 14632:2 14651:9 14689:4 14693:13 14695:11 14712:2 instruct 14668:20 14688:4 instructed 14619:7 instruction 14568:8,11 14568:13,14,15,23 14569:4,5 14579:25 14581:23 14589:8 14617:21,25 14668:13 14671:2 14724:22 instructions 14544:5 14551:6 14644:2 14655:5 14688:9 insufficient 14557:18 14685:7 insult 14556:19 intend 14546:8 14603:11 intended 14546:1,6,19 14585:7 14588:3 14608:20 14635:19 14635:23 14671:13 14674:15 14680:23 14702:12 intending 14574:3 14673:18 intention 14544:12 14546:5 14582:22 14712:4 14729:1 intentions 14674:2 inter 14639:4 interaction 14622:13 interest 14544:3 14686:19 interested 14700:21 interesting 14599:5 14604:3 intermittently 14562:12 international 14626:14 interpose 14686:9 14688:25 interpreter 14594:5 interpreting 14598:20	interrupt 14564:23 14666:18 14677:7 intervention 14624:5 intimidate 14551:1 intuitive 14556:13 inverted 14596:12 14677:2 14680:6,8 investigation 14699:8 invincibility 14586:8 involve 14679:19 involved 14572:23 14641:10 14666:2 14672:24 14687:20 14692:21 14718:5 invulnerability 14586:8 in-depth 14575:21 isn't 14552:10 14574:6 14599:17 14603:17 14678:21 14695:18 isolate 14585:15 isolated 14580:3 14658:21 14667:11 isolation 14642:11 issue 14552:24 14558:2 14558:15 14568:22 14581:10 14624:14 14634:10,11 14646:13,25 14649:10 14660:25 14669:20 14670:5,14 14676:12 14691:14 14693:9,24 14721:10 14721:12,19 14725:8 issues 14558:18 14580:21 14591:11 14599:25 14621:9 14685:19 14712:19 14712:19 issuing 14646:17 I'd 14545:16 14547:3 14548:7 14554:24 14606:12 14609:8,10 14637:22,22 14652:6 14674:15 14683:4 14724:20 I'll 14545:17 14547:20 14552:13 14575:7 14681:23 14685:9 14687:9 14703:1 14729:15 I've 14548:12,13 14569:18 14573:2 14575:4 14584:2 14587:14 14603:2,12 14605:21 14622:7,13 14622:19 14626:10 14627:24 14628:14 14634:12 14649:9 14657:6 14659:10 14688:22,23 14691:6 14701:8 14704:24 14708:4 14709:22 14716:1 14721:4 14725:13,21	J	ja 14567:15 14619:18 14623:3 14635:10 14643:5 14645:14 14651:16 14663:11 14672:23 14676:24 14694:17 14699:21 14703:24 14714:21 14719:4 14723:13 jammed 14647:5 JJJ109.1 14703:10,10 14707:12 JJJ178 14552:17,18,19 14685:21 JJJ34 14594:19,19,23 14594:24 14596:24 JJJ64 14572:5 JJJ91 14607:18 14609:16 job 14557:2,13 14652:4 14661:7 14673:20 14681:10 JOC 14548:21 14550:18 14590:9 14592:4 14600:13,14 14604:16 14615:22 14624:1 14662:25 14667:18 14668:1 14712:22,23 14713:3 14714:2,10 14715:18 14715:24 14717:18 14718:3,5,14 14719:2 14719:19,22 14720:9 14720:24,25 14721:14,24,25 14722:15,23 14724:1 14724:14 14725:10 14726:6,10,13,14 14727:5,7,8,24 14728:1,12,21 JOCCOM 14548:18,22 14549:9 14557:6,9 14559:6 14576:22 14590:11 14591:12 14615:1,8,15,16,19 14620:16,19 14621:16,17 14622:1 14622:3,7,12,17,22 14623:5,9,12,18 14624:15 14625:8 14631:2,5 14633:4 14634:1,4 Johannesburg 14543:16,17 joined 14618:4 14651:16 14662:8 judgement 14671:7 judgment 14543:14 14678:1 jumps 14694:2 junior 14602:6 jurisdiction 14670:24 justice 14543:21 14544:23 justification 14547:12	14612:16 <hr/> K Karee 14663:10 14668:22,24 14669:4 14670:3 keep 14582:24 14655:25 14658:17 14695:7 keeping 14607:24 keeps 14717:7 kept 14652:11 key 14561:4 14581:10 14588:16 14689:2 keying 14668:4 keys 14561:5 Kidd 14661:4 14662:16 14667:19 14668:7,10 14669:11,22,23 14670:3,9 14671:1,2 14671:10,12,20 14672:12,17 14673:9 14680:17,20 Kidd's 14669:7 14679:4 14680:21 14692:20 Kidd's 14662:4 14664:1 14668:19,23 14670:6,9 14671:18 14673:1 14674:2 kill 14556:10 14594:10 14594:17 14596:13 14596:22 14598:13 killed 14553:19 14554:5 14626:12 14649:7 14673:24,25 14691:14 14695:22 14695:25 14696:5,10 14697:2,11,11,15,17 14698:5,12,13 14699:3,6 14714:18 14716:16 14717:12 14717:19 14719:15 14721:2,3 14724:4,12 killing 14696:22,25 14698:2 kilometre 14671:25 kind 14576:10 14604:24 14648:11 14664:13 14700:3,22 14701:4,5 14706:23 kindly 14675:12 knew 14561:15,16 14562:19 14624:6,11 14635:17 14637:14 14637:17 14638:17 14643:18 14645:22 14713:14 14715:11 14715:13 14716:16 14719:18 14720:18 14724:7,16 knot 14572:19 knotted 14569:17 knottting 14572:17 knowing 14563:8 14602:6 14641:8	14714:18 14726:24 knowledge 14595:25 14601:19 14636:4,6 14682:17 14699:12 14706:23 known 14622:1,2 14706:22 knows 14543:13,20 14612:18 14644:3 14698:12,13 koppe 14642:22 koppies 14545:20 14546:4,6 14637:1,5 14639:2,3,4 14640:11 14641:21 14642:1 14644:2,21 14652:18 14653:6 14654:5,16 14657:24 14661:18 kraal 14567:24 14572:4 14578:6 14650:17 14651:3 14702:23 14704:6,14 14704:17,18,20,21 14705:17,17 14706:7 14707:14,16 14709:20 14710:1,2 14710:24 K3 14663:9 K9 14676:2,6,9,23 14677:12,15 14680:11 14685:6 14689:16 14694:14 14694:16,20 14695:8 14695:11,12
		L			
			L 14591:19 14592:21 14592:23,25 14593:1 14593:1 14596:19,23 14604:2 14606:6 14663:23 14674:16 14720:7,10,11 14721:22 lack 14579:24 14689:2 14689:3,7,7,18 14706:14 laid 14615:22 language 14610:18 14612:16 large 14556:9 14584:15 14638:10 larger 14548:15 14549:6 14581:10 lasted 14681:1 late 14592:19 14609:11 law 14550:15 lay 14596:10 14597:1 14597:25 14598:15 14598:21 14599:15 14641:8 laying 14550:13 14613:11 14660:25 14714:19 layout 14613:18,19 lead 14555:23 leader 14596:7		

<p>leadership 14689:3,8 14689:22,24 leading 14554:23 14678:9 leads 14643:11 leaping 14609:16 learn 14725:24 learned 14551:11 14649:12 14674:23 14703:15 14710:4 learning 14718:4,5 leave 14594:4,12 14599:11 14617:6 14632:24 14633:10 14633:17 14634:9 14660:12 14680:2 14687:20 14707:8 leaves 14697:14 leaving 14592:11 led 14546:25 14625:23 14655:19 14671:17 14716:18 left 14545:12,17 14575:25 14579:6 14587:23 14592:3 14599:7 14626:10 14643:12 14652:25 14679:23 14682:2,8 14689:17 14707:3 14717:11 left-hand 14567:23 14652:2 legal 14543:23 14544:2 14545:2 legs 14544:16 length 14709:16 lengthy 14546:25 14552:10 14614:9 14681:1 length-wise 14709:13 lesser 14699:5 lethal 14673:18 14674:12,13,20,20,22 14676:5,13 14677:1,5 14678:8,9 14680:5,9 14680:10,20 letter 14652:14 letters 14629:1 let's 14547:5,14 14553:23 14576:15 14577:1 14581:5 14591:9 14608:5 14634:14,22,23 14635:11 14636:24 14644:17 14652:15 14653:16 14676:23 14683:6 14694:8 14698:3 14722:2 let's 14555:25 14556:13 14558:18 14562:21 14562:22 14566:14 14610:22 14661:2 level 14551:5,14,14 14557:5,7,7 14569:25 14582:17 14589:1 14624:11,17</p>	<p>levels 14581:15 Lewis 14545:1 14683:22,25 14684:5 14684:11,16,19,22 lieutenant-colonel 14553:1 14554:25 14594:8 14597:16 14619:10 14662:5,7 14663:3 14727:14 14728:2 lieutenant-colonels 14619:6 life 14555:2 14578:11 14580:2,25 14682:12 14692:5,6 14694:3,6 14694:6 light 14618:21 14628:12 14677:20 14728:7 14729:11 likelihood 14561:8 14588:25 limited 14591:4 14690:22,22 14709:6 lined 14587:15 14709:12,19 lines 14646:2 14662:10 14669:24 14715:5 link 14695:4 14700:4 linked 14645:9 14656:13 14694:19 14694:25 14695:1 linking 14698:20 list 14547:20,20 listen 14725:3 14726:11 listened 14576:24 listening 14576:18 14713:24 14719:19 14724:21 14726:14 14728:11,17 lists 14553:15 literal 14703:22 literally 14569:3 14704:25 14715:19 litigation 14544:15 little 14558:20 14593:24 14612:6,6 14641:14 14670:18 14674:24 14680:8 14683:5 14685:22 14702:21 14708:10 14717:12 live 14686:1,1,3,21,22 14687:2,10,12,15,21 14688:14 14708:13 14714:12 lived 14562:7 local 14626:13 location 14687:5 Loest's 14704:4 logic 14657:18 14660:4 14707:1 logical 14565:21,25 long 14555:3 14570:10 14571:14 14588:13 14592:14 14628:2</p>	<p>14647:2 14672:3 14717:6 14722:1 14729:18 longer 14555:13 14561:7 14576:21 14642:2 14653:21 14654:1 14708:10 look 14546:9 14569:25 14571:4,19,21 14572:1 14574:14,18 14575:21 14576:4 14577:1 14580:22 14588:8 14590:15 14591:5,9 14598:6 14601:13,21 14607:18 14633:3 14636:21 14652:15 14652:17 14662:18 14663:23 14677:1 14680:9 14702:14 14703:9 14704:2 14709:17 looked 14557:21 14633:21 14653:13 looking 14549:3 14591:18 14601:11 14605:22 14624:14 14635:24 14660:22 14711:7 lookouts 14637:23 looks 14546:2 14570:1 14599:3 loop 14576:11 14725:21 loss 14578:11 lot 14543:18 14552:8 14574:12 14575:4 14625:19 14651:21 14674:3 14722:20 lots 14679:9 lunch 14679:18,23 14680:3 14683:2,3 lying 14714:22 14715:2 14715:7,21,22,22 14716:10 14722:19 14723:24,25 14724:3 14728:5</p> <hr/> <p style="text-align: center;">M</p> <p>Madam 14575:16 maintain 14605:1 14607:19 Maintaining 14553:17 major 14623:6,7 14650:24 14664:22 14668:7 14672:11 14673:8 14674:24,25 14680:12,18,22 14682:20 14725:4 majority 14584:18 14690:2 14694:9 14727:15 Major-General 14556:2 14649:11 14664:25 14665:1,1,2 14666:19 14667:19</p>	<p>14668:11 14671:13 14672:13 14675:10 14692:19 14713:13 makers 14624:6,9,24 14624:25 14625:3 Makhubela 14593:25 14602:8 14609:25 14610:25 14617:8,16 14618:24 Makhubela's 14610:2 14610:23 making 14551:1 14555:21 14594:8 14606:25 14624:18 14681:25 14682:10 14688:17 14700:7,9 14704:13 14707:10 14714:24 Makuleka 14680:15 Maluleka 14680:16 manage 14611:7 14617:20 managed 14594:18 management 14551:6 14551:15 14555:15 14555:19 14622:24 management's 14555:21 manoeuvring 14654:22 map 14607:20 14609:13,14 14637:23 Marikana 14553:19 14556:5 14558:1 14572:25 14626:10 14681:13 mark 14650:13 marked 14707:16 14712:1 marker 14627:12 marking 14650:1 marks 14599:5 massive 14674:4,5 matched 14614:11 material 14547:7 14552:8 14600:6 14601:6 14613:18 14614:13 14616:9 14625:12 14634:11 14652:3 14656:13 materialised 14578:12 mathematical 14570:13 14571:9 Mathunjwa 14599:10 matter 14560:7,21 14561:21 14579:22 14581:1 14610:17 14615:21 14617:17 14635:5 14641:13 14643:22 14657:9 14665:10 14667:19 14671:9 14674:9 14678:23 14689:16 14690:5 14692:8 14694:20 14695:8 14701:1 14713:15</p>	<p>14714:1 14720:12 14728:16,18 matters 14709:1 maximum 14567:2,3 ma'am 14605:18 14606:10 14617:12 MBE 14552:19 McIntosh 14591:6 14594:9 14597:16 14605:24 mean 14546:4 14556:19 14566:24 14569:4,4,11 14584:24 14586:3 14609:13 14612:10 14618:18 14630:24 14631:2 14632:23 14633:11 14651:21 14651:22 14657:20 14659:11 14662:9 14667:16 14703:21 14703:22 meaning 14611:20 14612:10 means 14568:17,18 14610:11 14688:11 14693:25 14700:5 meant 14570:9 measure 14571:19 14577:22 measured 14707:22 14708:1 measures 14580:20 14640:16,23 mechanical 14543:19 media 14548:23 14591:8 14621:20 14629:16 14630:12 14711:8 medical 14665:7,9,14 14665:15,18 14668:8 medics 14713:22 meet 14647:16,21 14649:8 14665:16,20 meeting 14548:22 14549:2,5,14 14591:22 14592:14 14595:7 14615:1 14634:7 member 14680:14 14695:12,15 14698:9 14698:12 members 14545:4 14557:1 14558:8 14559:6 14565:9 14572:16,17 14573:11,19 14574:13 14578:10 14579:21,22 14580:3 14580:25 14592:8 14596:16 14597:13 14601:25 14602:1,6 14603:15 14604:17 14604:18 14605:16 14606:3,4 14631:24 14652:7 14658:23</p>
--	--	---	---	--

14659:25 14660:17 14661:11,14,15 14669:3 14672:23 14674:14 14676:9 14677:12,15 14678:24 14680:17 14680:18,21 14689:16 14694:22 14695:11 14697:21 14698:23 14708:18 14710:6,16 14711:15 14712:21 14719:17 memory 14601:5 14626:9,9 14628:7 14631:3 14667:24 men 14647:8 14671:5 mental 14726:7 mention 14573:22 14602:19 14610:17 14622:23 14659:16 14688:17 14690:18 14690:19 14697:9 14717:22 14720:7,11 14721:23 14723:23 14723:24 14724:1,4 14725:15,16 14726:3 mentioned 14558:17 14573:15,16 14617:2 14623:20 14627:25 14628:17 14631:20 14633:4 14652:11 14697:21 14698:6 14716:9 14720:9,17 14720:22 14726:11 14726:17,19 Mere 14710:20 merely 14632:11 metre 14567:2 14708:10 metres 14567:4,8,9,9 14567:13 14568:1,2 14570:9,21 14571:3 14608:10,13,16,19 14650:20 14651:3 14708:8,12,12 14709:10,11,12,16 14710:12 microphone 14593:16 14656:20 14688:18 middle 14653:2 midst 14681:20 mid-late 14600:16 militant 14578:17 14582:3,17,19 14586:4,6,13,14 14596:8 14639:21 14640:9 14642:21 militants 14586:16 military 14673:20 millimetre 14674:19,21 14675:3 mind 14554:22 14555:12 14563:12 14602:23 14615:12 14673:23 14689:17 14695:7 14710:22	14717:7 minds 14611:4 14716:7 mindset 14556:24 14566:7 14585:5 mine 14551:1 14555:15 14555:19,21 14663:10,11 14668:23,24 14669:4 14670:3 14678:5,6,7 14704:18 14722:22 14722:23 miners 14611:11,17 14635:14 14636:10 14639:4 14704:20 mineworker 14673:24 mineworkers 14579:15 14654:11 minimal 14544:13 minister 14543:21 14629:8,11,18,24 14630:2 ministerial 14629:2 minor 14703:19 minute 14568:8,19 14645:15 14706:8 minutes 14568:9 14569:6 14571:5,6,8 14571:10 14572:6,9 14573:8,12,12 14577:23 14578:2 14579:16 14587:16 14589:11 14591:22 14622:7 14641:25 14667:25 14668:18 14668:20 14679:23 14679:25 14690:8,13 14702:5,7 14704:15 14704:19,22 14705:1 14705:3,19,22 14706:7,21 14717:20 14718:6 14719:15 14729:12,14 misplaced 14558:20 missed 14695:8 missing 14628:2 14655:23 mission 14669:1 misunderstood 14545:14 14630:9 14700:8 mode 14633:7 modus 14640:6 moment 14551:10 14591:24 14639:11 14673:23 14683:23 14683:25 14685:5 14687:9 14704:12 14717:3 Monday 14578:22 14580:6 14581:2 14729:5,23 14730:1 monitoring 14607:9 month 14616:7 14649:5 months 14625:25 14626:3 14627:21	mood 14584:1 morning 14548:3,19,20 14549:12 14550:7,11 14559:6,19 14590:10 14593:19 14600:16 14600:19 14613:10 14614:20,22,24 14615:10,10,11 14616:7 14621:1 14625:21 14627:23 14627:23 14630:24 14631:1 14633:22 14634:2 14702:10 14728:25 14729:4,5 14729:18 motivated 14592:19 Motloeny 14684:2,2 mountain 14561:16 14562:19,24 14608:20 mountains 14561:9 mounted 14667:3,9 move 14547:25 14548:3,16,16 14549:22 14550:8 14553:2,8 14555:9 14556:7 14558:16 14562:13 14565:16 14565:23 14576:6 14578:25 14580:19 14581:22,25 14582:6 14582:24,25 14584:16 14587:5,16 14600:8,8 14602:24 14603:1 14607:12 14609:4 14620:6,20 14623:24 14625:17 14631:19 14636:20 14639:10,12,16,17 14641:12 14642:8 14643:20 14650:10 14650:11 14652:22 14654:12 14655:1 14656:16 14657:23 14657:24 14661:16 14664:21 14665:5 14668:23 14673:17 14679:23 14686:10 14701:24 14712:20 14713:17 moved 14550:14 14553:25 14554:3 14559:16 14560:5 14561:24 14565:18 14571:22 14637:11 14638:19,20 14670:18 14704:20 movement 14559:20,23 14559:24 14564:20 14566:2 14610:15 14638:3,5,18 14670:6 14722:20 moves 14711:16 moving 14554:22 14559:10 14560:21 14569:5 14578:19	14580:18 14584:6 14618:16,17 14638:20 14639:14 14639:19 14641:6 14642:9 14658:18 14661:24 14670:4 14704:6 14710:18,24 14711:2 Mpembe 14556:2 14623:7 Mpofu 14543:4,5,8,11 14543:17 14683:22 14683:24 14684:9 14708:3,5,7,10,13 14729:9,10,17,21,25 multiple 14557:16,24 munitions 14674:17 murder 14695:16 muti 14583:12,16,22 14584:4 <hr/> N <hr/> N 14696:22 14697:13 Naidoo 14664:25 14665:1 14667:20 14668:8,11 14671:13 14672:12,13 14673:9 14679:3 14680:12,18 14692:19 Naidoo's 14679:4 14680:22 Naidoo's 14664:22 14665:1,2 14666:19 narrative 14605:15,17 narrow 14707:15 narrowest 14708:11 narrows 14608:22 national 14622:24 14717:16 natural 14607:1 nature 14640:23 14688:10,11,11,12,19 14692:25 near 14554:5 14611:3 14701:18 necessarily 14557:12 14583:6 14635:6 14636:18 14639:17 14640:5 14647:6 14654:24 14657:23 14660:20,24 14663:16 14688:21 14690:25 14694:5,18 14704:3 14716:12 14719:7 14728:19 necessary 14544:5 14565:10 14606:23 14610:9 14616:3 14640:19 14675:16 14676:5 14678:7 14691:1 14720:18 need 14556:25 14557:4 14565:3 14566:24 14570:2 14575:18 14576:19 14584:18 14585:9 14597:15	14598:25 14600:1 14609:25 14625:19 14633:13 14634:10 14652:24 14653:22 14654:1 14658:3,14 14658:16 14666:9 14667:14 14676:11 14682:11,14 14687:12,24 14688:3 14694:3 14695:17,22 14707:5 14709:16 14712:11 needed 14560:20 14563:15 14564:19 14580:20 14597:19 14602:15 14609:8 14617:11 14660:19 14660:22 14685:4 needs 14646:9 14647:5 14675:12 14689:20 14692:13 14694:23 negotiable 14555:18 negotiation 14594:3 14607:9 14608:15 14662:15 negotiations 14553:18 14553:21 negotiator 14597:16 negotiators 14553:24 neither 14671:12 14697:9 Nel 14668:17 neutral 14604:13 14614:23 14663:1 never 14572:14 14579:3,12 14602:23 14612:21 14615:11 14629:15 14649:15 14649:17 14651:9 14682:9 14721:18 14724:23 nevertheless 14699:5 new 14596:24 14609:9 14615:20 14627:16 14630:25 news 14543:24 14626:13,14 14713:2 night 14545:12 14547:6 14550:22 14555:9 14625:22 14628:15 14630:14,20 nine 14628:23 14629:5 14674:18,21 14675:2 NIU 14636:19 14637:11 14651:13 14669:24 14675:21 14676:17 14677:10 14679:8 14693:1 14694:14 NIU's 14655:23 Nkaneng 14560:1,8 14562:4,14 14563:1 14589:24 14607:4 14661:20 nodding 14675:8 14718:8
--	---	---	--	--

<p>Noki 14590:23,25 14591:1 14597:22 14600:20 14605:16 Noki's 14598:5 non-conflict 14606:21 normally 14575:14 14687:20 14725:1 north 14543:14 14650:7 14652:1,18 14652:19,21,22 14653:6,14,17,18 14654:2,4 14668:24 14670:4 14672:25 14673:5 14681:14 14710:24,25 northerly 14668:21 northern 14662:13,15 north-east 14650:7 14652:2 north-easterly 14669:11,12 north-west 14673:13 note 14543:13 14606:15 14633:25 14727:21 notes 14633:3 notice 14604:2 14609:5 14677:2 noticing 14576:6 November 14601:16 number 14552:16 14553:16 14584:15 14585:23 14629:4 14655:2 14680:9 14698:18,19 14699:6 14722:19 14728:4 numbers 14554:15 14678:14,15 numerous 14584:3 14665:6 14667:13 14709:23 Nyala 14559:15,21,23 14559:24 14560:6 14564:15 14565:3 14566:23 14567:7,7 14567:12,12,18,19,21 14571:8,10,21 14572:1 14577:5,12 14577:13,14,15,15,16 14577:19,20 14590:15,16,24 14591:1,2 14594:1,3 14594:7 14602:6,7 14605:16,23 14612:19 14650:14 14650:15,16,17 14702:17,22 14703:6 14704:13,17 14705:16 14706:6 14707:13 14709:15 14711:16,16 14712:15 Nyalas 14564:16 14567:8 14568:16,17 14570:10 14571:13 14604:6 14606:16</p>	<p>14607:21,24 14608:1 14608:19 14609:10 14609:20 14617:11 14617:14 14618:5,17 14618:17 14619:2 14650:2,3,6 14652:1 14709:12,19</p> <hr/> <p style="text-align: center;">O</p> <hr/> <p>oath 14545:6 14620:3 14683:18 OB 14600:17,20 14621:23 object 14626:23 objection 14627:12 14706:19 14708:16 objective 14545:25 14635:22 14636:6 14638:25 objectively 14546:2 14562:22 14635:12 14636:7,8 14640:1,4 OBN 14590:9 observation 14637:19 14637:25 14638:2,6 obvious 14545:18 14546:22 14633:16 14634:12 obviously 14554:4 14555:9 14560:22 14565:9 14570:15 14575:21,23 14578:22 14580:15 14580:24 14582:2,10 14582:15 14595:25 14601:24 14602:4 14607:10 14608:22 14608:23 14615:25 14617:21 14618:5 14621:19 14624:17 14629:9 14635:16 14638:14 14644:23 14652:9 14659:24 14665:17,23 14666:9 14666:21 14667:22 14669:14 14678:23 14682:15 14685:7 14687:10 14688:1,16 14689:14 14692:5,6 14693:5,24 14694:4 14694:23 14709:2 14718:11 14719:18 14726:19 occupants 14693:3 occur 14575:18 14578:17 14580:22 14587:20 14613:14 14618:20 14619:4 14688:23 occurred 14579:3 14615:18 14725:1 occurring 14690:3 occurs 14691:10 October 14543:1 14722:6 14723:22 odd 14602:18 14609:19</p>	<p>14667:25 offensive 14553:2,8 14556:8,13 offer 14581:13 officers 14575:18 14583:20 14628:20 14658:7 14666:8,16 14686:8 14720:24,25 14721:24 offices 14722:23 official 14698:4 officials 14556:22 14673:19 14692:16 oh 14570:18 14605:11 14637:15 14663:20 14684:21 14705:24 okay 14547:16 14549:15 14567:10 14567:17 14576:3,5 14595:15 14633:19 14717:14 14729:25 old 14627:18,22 once 14544:16 14565:1 14579:5 14584:7 14589:7 14590:1 14594:13 14599:13 14609:18 14641:1 14650:10 14704:17 14707:13 ongoing 14557:4 open 14545:16 14576:23 14579:1 14583:1 14622:11 14638:15 14639:13 14639:23 14641:7 14652:20 14657:14 14659:2,8 14660:6 14674:8,9 14692:4,4 14693:2 14695:7 opening 14553:7 opens 14559:25 open-source 14711:8 operandi 14640:6 operating 14658:8 operation 14557:17,20 14558:3 14559:25 14580:11,11,13 14592:17,17 14594:13,15 14597:18 14611:1 14618:25 14626:10 14626:13,15 14627:6 14627:7 14641:4 14645:13 14646:1,5 14646:20,22 14648:11 14666:5 14667:25 14668:2 14670:16 14671:1 14677:18,23 14686:3 14686:22 14687:2 14689:2,13 14692:22 14717:18,20 14718:5 14719:16 14721:3 14728:16 operational 14549:10 14556:20 14557:6,7,8</p>	<p>14557:10 14575:12 14576:1 14598:11,17 14604:12 14643:13 14644:7,16,17,18 14645:15 14646:3,9 14646:24,25 14647:25 14656:4,9 14662:1 14663:1 14667:15 14681:6,13 14681:19 14682:3,9 14682:22 14687:3,23 14690:6,14 14703:8 14718:6 14721:1 14726:24 operationally 14575:22 operations 14557:3,4 14573:2 14584:3 14593:18 14659:24 operator 14592:2,8 opinion 14552:25 14564:1,19 14659:23 14688:23 14689:7 14699:13 14700:12 14700:15 14721:5 14724:19,19 opportune 14665:25 opportunity 14546:11 14546:17,21 14547:6 14552:2,13 14574:22 14666:17 14692:11 opposed 14568:23 14660:13 opposite 14546:8,19,20 14619:10 option 14548:20 14549:1 14550:5 14553:2,8 14555:14 14556:8,11,16 14560:22 14576:3 14581:8 14691:17,22 14708:17 14710:18 options 14553:3,5,9 14587:18 14691:17 14691:20 14692:2 orange 14618:5 14650:5 order 14543:24 14556:22 14575:17 14575:18 14576:2,3 14578:16,24 14583:7 14587:16 14624:16 14636:15 14651:7,11 14661:11 14671:1 14686:2,7 14693:20 14711:15 14724:22 14724:25 14725:6 ordered 14624:5 14722:20 ordering 14724:22 orders 14646:12,18,25 14670:5,14 ordinarily 14719:24 organisation 14658:4 14658:17 organised 14554:22 original 14548:4</p>	<p>14559:16 14628:7 14629:14 14721:23 14722:3 14725:9,11 14727:22 originally 14603:14 14654:21 14662:5 outcome 14557:8,14 14584:17 outs 14559:6 outset 14614:18 14662:2 outside 14579:23 14580:4 14670:23 14685:17 14710:2 14726:8 14727:7 overall 14639:2 overcome 14655:20 overnight 14547:2 overridden 14589:8 override 14576:1 o'clock 14719:6,6 14729:6 14730:2 o'clock 14623:18 14633:4</p> <hr/> <p style="text-align: center;">P</p> <hr/> <p>pace 14646:19,20 paced 14708:2,5 paces 14708:5,6,7 page 14552:24 14581:6 14581:7 14596:5,5,24 14653:2,4 14662:17 14685:21,22 14689:1 pages 14552:7,12 panga 14694:2 Papa1 14590:25 paper 14594:9,16 14596:21 Para 14612:3,3 paragraph 14552:14 14556:3 14581:5 14611:1,5 14652:17 14653:2,4 14668:15 14685:22 14687:2 14689:1,5 14722:14 14727:19 paragraphs 14653:9 parameters 14586:13 pardom 14593:21 parked 14704:4 part 14552:20 14554:7 14557:17 14560:18 14564:3 14565:13 14566:10 14569:17 14573:3,4 14575:13 14585:13 14586:19 14586:19,20 14587:21 14601:8 14605:6 14606:20 14616:6 14617:9 14627:8 14632:4 14665:11 14666:22 14666:24,25 14680:17,19 14716:2 14716:15 14720:9 partially 14607:16</p>
--	--	--	--	--

<p>participate 14668:11 14671:14</p> <p>participation 14544:4</p> <p>particular 14574:23 14609:19 14686:16 14686:16,17 14698:22 14700:3,16</p> <p>particularly 14563:24 14582:5 14595:1 14729:11</p> <p>parties 14544:23 14596:20 14720:19</p> <p>parts 14586:21 14652:24 14653:20 14653:21</p> <p>party 14632:16 14684:12</p> <p>pass 14692:16 14707:3</p> <p>passage 14614:4 14685:5,23</p> <p>passages 14551:22 14552:11</p> <p>path 14550:15 14652:25 14653:2,3</p> <p>paths 14652:25</p> <p>peace 14555:7</p> <p>peak 14554:16</p> <p>pedantic 14714:17</p> <p>pedestrian 14711:19 14712:1</p> <p>perceived 14678:16 14710:12</p> <p>percentages 14675:5</p> <p>perception 14601:24 14681:3,4,4 14717:2 14718:11 14726:2</p> <p>perceptions 14716:7</p> <p>perform 14629:9 14666:5 14672:7</p> <p>period 14554:6 14568:19 14571:12 14587:17 14589:10 14590:10 14602:9 14627:25 14628:1 14640:25 14641:25 14642:1 14667:25 14681:1 14687:22 14688:9 14690:8,12 14724:20</p> <p>periodic 14722:17</p> <p>permanent 14543:7,10</p> <p>permission 14544:8</p> <p>permit 14661:23</p> <p>permitted 14661:1</p> <p>perpetrators 14636:21 14658:12</p> <p>persist 14627:11</p> <p>person 14598:4 14618:15 14682:18 14693:15 14695:5 14698:5 14699:11 14713:4 14727:11</p> <p>personally 14720:4</p> <p>personnel 14550:23,23 14665:15,19 14668:9 14676:4</p>	<p>persons 14639:13 14655:14 14695:13 14715:6 14716:19</p> <p>perspective 14562:4,9 14562:9 14589:17 14633:9 14665:22</p> <p>phase 14547:23 14548:1,3,9 14549:23 14550:8 14553:25 14558:16 14560:19 14560:20,22 14563:5 14563:10,13 14600:8 14600:8 14602:24,25 14603:24 14606:15 14606:17 14609:11 14612:23,23,24,24 14613:2,13,19 14614:4,6,8,10,13 14615:8 14616:10,13 14616:14,15,18 14620:21 14623:13 14623:24,25,25 14625:7 14655:17 14662:2,3,16,18 14663:16,19,20 14664:8 14665:3,24</p> <p>phone 14696:18 14718:12,13,17 14726:9</p> <p>phoned 14718:21,24 14719:11 14725:2</p> <p>phones 14543:4 14718:15</p> <p>phoning 14719:2</p> <p>photograph 14685:2 14690:9 14704:2 14706:5</p> <p>photographic 14569:25</p> <p>photographs 14685:4 14685:13</p> <p>photography 14609:8</p> <p>physical 14654:22</p> <p>pick 14606:13 14634:20</p> <p>picked 14546:12 14550:22 14634:18 14638:4 14657:8 14675:1 14682:7 14704:24</p> <p>picture 14567:23 14645:20 14652:2 14703:25 14719:20 14726:4,7</p> <p>piece 14549:4 14574:11 14590:3 14724:10</p> <p>piecemeal 14566:15</p> <p>pieces 14609:17</p> <p>Pitsi 14662:8 14663:3 14710:21</p> <p>Pitsi's 14662:5</p> <p>place 14544:14 14549:7 14556:21 14558:22 14567:1 14572:24,25 14573:8 14578:1,2,9 14584:8 14590:25 14592:18 14594:4,12</p>	<p>14602:13,14 14604:4 14609:19 14610:24 14611:3 14613:10 14616:2,15 14625:15 14625:23 14626:2 14641:2 14650:10 14651:6 14653:9,25 14654:13 14665:16 14666:11 14679:22 14695:10 14696:10 14696:13 14702:15 14702:17,21 14704:15 14709:24 14720:8 14724:16</p> <p>placed 14553:20 14560:6 14569:24 14580:1 14592:21 14615:25 14621:1 14631:22 14697:24</p> <p>placing 14607:5 14632:22</p> <p>planned 14554:22 14580:9 14599:9 14606:15 14619:4,13 14644:21 14648:19 14648:21 14653:19</p> <p>planner 14562:11 14569:12 14587:24 14589:17 14590:2 14626:14 14627:2,2,5 14635:2 14659:23</p> <p>planning 14556:20 14560:18 14580:24 14586:14 14588:7 14606:25 14645:17 14657:11 14658:3,4 14664:19 14665:10 14665:22 14673:20 14677:18 14681:20</p> <p>plans 14559:7 14563:18 14603:21 14620:18 14648:25</p> <p>Platinum 14550:24 14551:3</p> <p>play 14580:1 14633:23</p> <p>played 14607:11</p> <p>please 14543:3 14633:17</p> <p>pleased 14545:5 14684:9</p> <p>plotted 14608:6</p> <p>plotting 14619:12</p> <p>point 14546:7,8 14553:23,24,25 14554:18,19,24 14556:1 14557:18 14561:23 14581:3,18 14585:16 14592:25 14599:24 14600:5 14608:10,21 14612:6 14627:11,12 14630:18 14639:17 14639:18 14642:14 14643:10,12 14648:20 14654:19 14654:19 14655:19</p>	<p>14656:2,3,6 14657:22 14659:21 14665:21 14677:11 14678:20 14678:22 14680:24 14680:25 14682:25 14690:11 14692:6,14 14694:7 14699:21 14700:5,10,22 14705:7 14706:6,17 14707:9 14708:11 14714:24 14715:9</p> <p>pointed 14590:9 14621:23 14675:12</p> <p>points 14565:2,7 14689:2 14701:13</p> <p>poles 14711:23</p> <p>policeman 14698:8 14699:6 14700:17</p> <p>policemen 14636:16 14667:12 14700:15 14701:15,20 14704:7</p> <p>police's 14581:20</p> <p>police's 14562:9 14564:21 14565:6</p> <p>policing 14556:22 14576:2 14578:24 14636:14 14651:7,11 14661:11 14724:22 14725:6</p> <p>pondered 14548:12</p> <p>pondering 14574:13,16 14605:21</p> <p>POP 14604:18 14663:25</p> <p>POPs 14557:1 14558:20 14572:15 14573:11,19 14580:2 14636:17 14657:23 14669:25 14676:2,4 14676:23 14680:12 14680:14,17</p> <p>POP's 14565:9</p> <p>portfolio 14629:2</p> <p>pose 14693:16</p> <p>posed 14710:14</p> <p>poses 14637:8 14693:10</p> <p>posing 14693:15</p> <p>position 14553:17 14559:16 14564:16 14567:22,24 14571:25 14588:19 14606:17 14609:21 14644:13 14649:3 14652:9 14677:10 14681:8,21 14682:10 14682:14,20 14703:14,17 14711:10 14712:16 14715:25</p> <p>positioned 14605:9 14606:22 14677:12 14699:12 14701:10 14704:1,1</p> <p>positioning 14567:14 14609:2,4 14610:13</p>	<p>14612:18,24,24,25 14613:3 14617:9 14639:8 14658:15 14704:9</p> <p>positions 14567:16 14609:9 14677:8 14703:18</p> <p>positive 14555:1</p> <p>possession 14655:15 14667:3</p> <p>possibilities 14584:22 14586:2,2 14628:9</p> <p>possibility 14543:25 14565:4 14585:10 14615:4,14,17 14700:10 14701:13 14701:21 14703:7</p> <p>possible 14548:19 14560:10 14564:20 14579:19 14614:25 14620:18 14626:8 14632:14,25 14633:2 14633:7 14648:18 14657:19 14660:6 14673:13 14686:5,24 14687:6 14695:4 14696:23 14697:4 14698:20,25 14699:4 14700:1,4 14710:5 14729:6</p> <p>possibly 14548:17 14549:16 14550:22 14558:20 14565:8 14569:14 14576:21 14580:5 14582:16 14590:15 14592:24 14598:8 14602:5 14608:9 14610:17,18 14619:9 14621:7 14648:19 14649:16 14659:13 14660:22 14661:19 14663:9 14667:5 14680:15 14690:2 14694:14 14697:13 14709:14 14709:25 14716:2,20 14719:25 14723:22 14726:8 14728:20</p> <p>post 14637:25 14638:2 14638:6,12</p> <p>Potchefstroom 14597:14</p> <p>potentially 14581:13 14674:13,20 14678:8 14680:5,10,20</p> <p>power 14606:24 14607:1,11 14639:12 14646:2 14653:25 14682:10</p> <p>powerful 14646:4</p> <p>practical 14544:6,18 14573:1</p> <p>practicalities 14544:3</p> <p>Practically 14575:15</p> <p>practice 14687:7</p> <p>precisely 14546:19</p>
--	---	--	--	--

<p>14648:9 14699:22 14706:15 precision 14679:11 14699:5 predict 14588:5 predictable 14644:20 predominantly 14655:1 premise 14673:17 prepare 14628:19 14629:19 prepared 14546:16,20 14581:13 14595:11 14600:10 14628:15 14629:17,22 14630:20 14634:21 14703:13 preparing 14589:12 prepositioning 14604:9 14610:21 14611:23 14613:3 14616:1,23 presence 14553:20 14554:20 14611:20 14622:5 14631:23 present 14548:18 14550:23 14595:16 14597:18 14622:17 14625:12 14632:3 14671:11 14703:3 14705:6 presentation 14577:6 14591:13,19 14594:19,25 14595:22 14600:24 14601:2,7 14602:4,14 14602:18,22 14608:12 14629:7,14 14629:15,22 14630:1 14630:2,12 14639:8 14666:22 14695:21 14697:16 14703:2 14704:12 14713:21 14713:22 14720:13 preservation 14580:25 preserve 14682:11 produced 14543:21 14599:7 14629:1,1,7 14629:11,13,20,25 14630:4 pressure 14590:8 14659:12 14682:16 presumably 14584:20 14585:8 14618:14,14 14716:25 presume 14545:4 14570:12 14692:18 presuming 14713:3 Pretorius 14716:6 pretty 14556:3 14628:25 prevent 14564:20 14589:18 14668:22 prevented 14724:15 previous 14599:6 14643:24</p>	<p>previously 14604:23 pre-positioned 14613:12 prima 14565:12 14695:15 primary 14626:14 14627:2,5 14671:20 14672:7 14692:24 principle 14660:2 printout 14625:22 prior 14602:23 14721:21 private 14677:25 14695:14 privilege 14635:2 privileged 14624:17 proactive 14581:8 14593:18 probability 14581:14 probably 14554:5 14566:3 14570:13 14571:4 14591:5,7 14601:15 14652:13 14660:16 14669:22 14695:9 14701:25 14708:10 14709:16 14716:19 14727:5 problem 14545:19 14546:3,6,13 14565:19 14591:12 14607:13 14646:1 14648:7 14657:17 14669:3 14679:15,16 14681:18,24 14687:19 procedures 14658:8 proceed 14679:21 14709:7 PROCEEDINGS 14543:1 process 14592:23 14593:8 14701:11 14711:3 processes 14624:18 14632:6,19 processing 14611:10 produced 14600:2 14631:3 professional 14699:13 proficient 14657:25 proof 14615:24 properly 14612:16 property 14555:3 proportion 14584:11 proportionality 14694:5 proposal 14549:13 propose 14728:24 proposition 14546:18 14553:7 14580:8 14626:24 14627:1 14660:3 14681:10 14714:25 14719:13 14719:23 propositions 14556:14 14680:3</p>	<p>Protea 14686:11 14688:8 protect 14622:23 14661:23 14666:3 14671:20 protected 14588:22 protecting 14660:18 protection 14579:13,14 14663:7 14671:16 14686:8 14692:21 protesters 14555:1,7 14556:9 14561:20,24 14577:11,11,14 14578:1 14588:18,20 14589:12,18,22 14596:9 14597:24 14599:7 14607:25 14608:15 14611:21 14653:22 14657:13 14657:16 14658:21 14659:2,5 14668:25 14722:19 14723:24 14723:25 14728:5 protestor 14663:8 protestors 14640:9 14642:21 14643:6,20 14668:22 14703:5 provide 14543:21,23 14646:22 14686:8 14693:5 14696:16,22 14697:12 provided 14627:10 14640:16 providing 14722:17,25 provincial 14548:23 14549:25 14620:21 14621:12,20,24 14622:4,9,11,20 14623:8 provision 14579:9 provisional 14648:24 provisions 14647:23 14657:3,9 proviso 14550:10 provocative 14603:22 14604:24 provoke 14607:25 public 14556:22 14575:17,18 14576:2 14576:2 14578:16,24 14636:14,15 14641:3 14651:6,10 14661:10 14669:4 14711:15 14724:22,25 14725:6 publicly 14729:23 purpose 14642:14 14657:13 14658:20 14658:25 14703:8 14723:17 purposes 14613:3 14614:3 14650:23,25 14659:6 14661:19 14671:11 14703:3 14717:8 push 14640:1,11 14652:19 14653:17</p>	<p>14653:18 14676:11 pushing 14557:18 putting 14546:18 14593:22 14601:2 14678:22 14684:3 14705:20 14706:15 14720:15 14725:17 pylons 14607:11,14 pyramid 14676:12,14 14676:23 14677:2 14680:6,8</p> <hr/> <p style="text-align: center;">Q</p> <hr/> <p>quarter 14683:14 14694:2 quarters 14683:11 quest 14544:23 question 14547:24,25 14548:2,9 14549:19 14549:22 14550:6 14551:5,15,19,20 14560:10 14562:16 14564:13,23 14569:11,19 14570:17 14587:14 14590:8 14596:17 14598:7 14603:9,14 14606:14 14607:17 14619:20 14620:13 14621:10,11 14622:14 14623:5 14625:2,18 14627:9 14630:21 14635:17 14635:18,22 14636:2 14636:7,24 14637:14 14638:24 14666:16 14667:16 14677:20 14691:3 14701:3 14706:17,18 14707:6 14721:9 14725:7,14 14726:21 14727:19 14729:18 questioning 14599:25 14640:5 14670:2 questions 14547:3,4,9 14547:11,14,15,22 14575:4 14588:14 14620:10,12 14628:6 14656:17,22 14679:13 14683:1 14686:5,24 14688:6 quibbles 14703:19 quick 14588:16 14658:15 quicker 14571:18 quickly 14561:7 14562:20,24 14564:3 14564:19 14565:15 14566:8,11,17 14573:20 14575:24 14589:18 14600:9 14657:19 14687:21 quite 14547:13 14552:8 14558:17 14564:17 14606:17 14625:18 14628:1 14631:11,12</p>	<p>14632:14,18 14641:9 14646:7 14692:16 14712:3 14715:1 14719:23 14720:25 14728:20 quotation 14597:23 14599:5 quote 14545:17 14553:12 quotes 14554:20</p> <hr/> <p style="text-align: center;">R</p> <hr/> <p>radio 14607:13 14645:21 14646:1,4 14647:5 14648:2,3,4 14648:5,6,10 14667:22 14668:2,4 14685:23 14687:16 14687:23 14688:7 14689:12,19 14690:13,20 14691:1 14714:19 14715:18 14716:9,17 14719:19 14722:14 14725:3 14726:15,18 14727:7 14727:11 radioing 14727:7 radios 14690:21 rails 14558:8,13 14652:12 raise 14570:4 14607:23 14609:18 14613:16 14613:22 14708:16 14712:19 raised 14609:17 14720:23 ran 14669:10 range 14582:25 14601:5 14648:18 14691:17 ranks 14619:7 rapid 14563:6 rapidly 14563:15 14565:23 rate 14638:19 rational 14607:24 ravines 14570:1 razor 14560:4 14563:7 14564:16 14568:16 14568:17,19 14572:19,21 14607:10 14617:17 14710:11 reach 14707:4 reached 14577:16,20 14704:17 14707:13 reaches 14572:3 reacted 14682:18 reaction 14604:16 14665:8 14689:24 read 14552:2,5,14 14598:20 14622:7 14651:22 14696:20 14696:21,23 reading 14590:19 14653:1</p>
--	--	---	---	---

<p>reads 14725:11 ready 14547:8 14594:8 real 14640:11 14648:17 realise 14724:1 realistic 14585:1 reality 14578:21 14580:22 14647:19 really 14561:5 14568:22 14611:5 14679:21 14708:15 14713:14,15,15 14714:1 realm 14586:1 reason 14551:20,21 14564:5 14574:24 14589:22 14603:8 14606:18 14699:25 14720:10 14727:18 14727:23 14729:13 reasonable 14546:11 14546:17 14568:6 14584:21 14585:9 14586:2 14634:19 14657:8 reasonably 14586:1 reasoning 14551:7 14564:18 14569:18 14634:15 14666:10 14693:1 reasons 14544:17 14565:14 14574:20 14575:23,24 14603:20 14613:9 14616:1 14620:25 14621:2,9 14692:19 14709:1 reassess 14642:7 recall 14564:11,17 14566:22,25 14595:18 14613:17 14613:20 14614:9 14622:7,8,20 14623:15,21,23,23 14625:21 14626:6 14627:21 14633:1,6 14669:6 14672:13 14702:3,15 14727:4 14727:17 14728:12 14728:21 recalled 14626:1 receive 14646:9 14726:13,16 14727:3 received 14583:16,16 14595:25 14596:16 14629:5 14637:18 14638:22 14665:21 14716:17 14728:1 recess 14544:15 recited 14633:11 recognise 14595:11 14687:6 recognising 14554:13 recollection 14609:10 14623:17 14665:5 reconciliation 14705:12</p>	<p>reconstruct 14630:14 reconstruction 14628:8 14701:9 reconvene 14702:25 record 14591:1 14614:11 14617:6 14625:5 14630:19 14651:22 14666:11 14684:3,10,24 14690:21 14729:23 recorded 14590:12 14688:8 recounted 14657:2 red 14606:23 14650:4,6 14703:25 14704:21 redoubled 14556:6 refer 14636:3 14717:22 14722:24 reference 14589:9 14590:2 14591:16 14592:9 14686:15,16 references 14614:7 referred 14590:9 14593:23 referring 14552:12 14591:3 14625:1 14686:10 refers 14554:13 14556:3 14713:22 reflect 14546:12,17,22 14628:19 14629:3 14634:22,22 14648:15 14657:8 14682:7 14687:9 reflected 14598:17 14666:25 reflecting 14591:7 14689:12 reflection 14685:3 reform 14654:17 refrain 14599:8 14649:10 refuge 14639:22 regard 14557:19 14605:15 14634:15 14647:13 14682:11 14702:14 regardless 14647:18 regards 14728:6 regroup 14579:1 14583:1 14639:23 14640:12 14642:7 14643:1,7 regrouping 14642:10 14642:21 reiterate 14544:11 rejected 14625:11 relates 14545:24 14552:21 14668:8 14706:17 relating 14626:1 14707:6 relation 14556:15 14601:18,19 14614:23 14639:2,3 14665:3 14691:11</p>	<p>14701:24 14706:15 relative 14555:7 14678:2 relatively 14549:5 14672:8 release 14665:15,25 released 14667:14 relevance 14569:21 14648:4 relevant 14549:10 14602:22 14612:2 14630:20 14688:1 14707:9,9 relied 14622:9 relook 14655:15 rely 14707:23 relying 14632:1 14635:3 remain 14565:11 14584:18 14655:1 remainder 14582:6 14663:4 remained 14555:3 14651:9 14726:25 remaining 14579:6 14707:14 remember 14563:24 14567:21 14612:22 14618:2,3 14629:8 14631:13,21 14662:10 14685:10 14715:4 remnants 14662:4 removal 14590:16 remove 14544:20 14546:22 14578:23 14648:23 14670:16 14678:6 removed 14564:17 14600:21 14615:15 rendezvous 14639:17 rendition 14591:10 14596:4 renditions 14600:23 reorganisation 14642:14 14648:20 14648:21 14654:18 reorganisation's 14641:17 reorganise 14653:8 repeatedly 14708:4 repeaters 14647:14 repetition 14552:8 replaced 14609:10,12 14609:13 14620:15 14620:15 report 14592:10,12 14637:18 14638:17 14638:21 14679:1 14680:13 14686:1,3 14686:20,22 14687:21,24 14723:25 14724:2 14728:21 reported 14550:19 14591:10,13 14598:5</p>	<p>14600:20,22 14621:17 14624:11 14638:9 14722:18 14728:4 reporter 14555:17 reporters 14592:11 reports 14699:16 14722:17,22,25 14723:23 14724:2 14728:10,15 representatives 14593:13 14594:2 represented 14684:4 representing 14545:1 request 14593:13 14604:12 14605:10 requested 14605:10 14671:4 required 14575:14 14581:14 14600:4 14641:20 requirement 14556:12 14665:9 requires 14685:20 reserve 14604:16 14605:1,7 14662:25 resist 14598:24 resistance 14550:15 14581:13 resolution 14555:11 14678:19 resolve 14553:3,9 resolved 14580:17 14621:21 resort 14691:18 14692:7,10 respect 14545:22 14581:17 14613:18 14629:12 14649:19 14662:17 14682:4 14694:8,8 14696:19 14697:14,15 14700:25 14709:4 respects 14614:13 14616:9 14625:12 14652:3 14656:13 respond 14557:2,5 14589:13 14602:25 14631:15,16,17 14633:15 14642:3 14690:25 14691:1 responding 14659:19 response 14549:24 14552:15 14558:18 14561:1 14588:6 14599:12 14600:4 14620:13 14656:10 14667:11 14681:5 14691:2 14692:3 responses 14597:21 14649:9 responsibility 14619:8 14687:3 responsible 14605:17 14643:17 14663:6 14698:21</p>	<p>rest 14592:5 14676:24 14676:25 14712:18 14718:25 restrictions 14647:13 restructuring 14699:10 result 14546:3 14592:3 14619:12 14626:25 14627:8 14673:10 14677:23 14679:5 14696:12 14724:23 14725:5 resulted 14627:2 resulting 14590:16 results 14673:10 14724:24 resumes 14543:2 14620:1,2 14683:16 14683:17 retaliates 14578:20 retreat 14579:9,25 retreated 14655:2 retreating 14579:24 return 14544:20 returned 14721:14 returning 14594:5 14684:22 revised 14547:23 14548:10 revisit 14603:12 re-encircling 14642:11 re-engage 14553:17 re-entrenchment 14648:23 re-gather 14579:1 re-organise 14642:8 re-plan 14642:8 rifle 14673:25 right 14559:16 14564:9 14565:20 14597:3 14599:19,21 14601:15 14603:16 14604:1 14610:8 14612:7 14618:13 14628:7 14629:11,18 14641:21 14653:3,3 14656:22 14671:22 14674:22,23 14675:18 14695:18 14699:11 14704:3 14705:10 14713:18 14722:6 14727:8,10 rightfully 14558:2 14597:13 14617:1 rightly 14641:9 Rights 14703:13 right-hand 14650:14 ring 14673:20 rise 14634:20 risk 14562:13 14578:11 14578:11 14580:12 14588:19 14589:21 14590:3 14624:4 14640:11 14648:17 14693:11,15,16 14710:14 riskier 14589:10</p>
---	--	--	---	--

<p>risks 14581:9,11 risky 14548:5 14550:9 14553:5 14580:11 riverbed 14653:5 rocks 14638:10 14667:5 role 14587:1 14607:11 14633:23 14638:7 14645:11,12 14655:23 14657:22 14667:4 14670:21 14678:10 roles 14667:9 roll 14560:4 14561:25 14563:8,17 14564:19 14568:2,5 14569:10 14569:13 14570:6 14571:10,13 14573:19 14617:19 14617:20,22 rolled 14558:4 14560:12,16 14561:6 14561:9 14562:12,18 14563:25 14564:3,8,8 14565:1,15 14566:7 14573:3 14579:16 14588:2 rolling 14561:7 14562:24 14570:10 14570:19 14571:11 14587:22 14594:14 14602:24 14702:17 rollout 14570:23,25 14571:1,1,15,18 14572:13,24 14573:12,13 14577:22,23 14580:8 14588:16 14589:8 14591:15 14702:1,4,5 14702:6,7,10,14 rolls 14594:15 room 14671:5 Roots 14595:7,14,17,22 14597:20 14602:11 14602:12 14605:24 14626:4,9 14627:21 rough 14567:24 14607:19 roughly 14604:3 14608:16 round 14600:19 14695:8 14704:21 rounds 14692:16 route 14560:7 14660:12 14668:24 14670:3 14673:11,14 14674:9 14696:7 Rowland 14577:19,20 rubber 14587:4 run 14566:14 14646:20 14650:19 14674:8 14683:5 running 14649:25 14650:6,13 14653:5 14654:2,3,4 14661:20 14668:22,25 14669:2</p>	<p>14669:12 runs 14556:1 14643:11 14656:3 Ryland's 14696:18 R12 14555:18 R5 14674:19</p> <hr/> <p style="text-align: center;">S</p> <p>safe 14558:6 14564:21 14588:21 14622:16 14681:8 14687:5 14707:15 safety 14592:12 14665:19 sangomas 14584:4 SAPS 14548:2 14550:7 14551:10,11 14554:25 14558:23 14577:3,4 14578:9,13 14594:7,25 14626:12 14641:20 14642:1,3 14647:21 14649:8 14655:20 14658:23 14659:2 14665:7 14673:11 14674:14 14675:15,17 14676:10 14677:25 14690:10,15 14697:12 14702:16 14702:20 14703:1,4 14703:14,16,17 14712:22 14713:11 14713:20 14714:2,10 14715:10 14717:17 14718:7 14719:13,15 14719:17 sat 14721:2 saved 14595:2,6 14629:13,14 saw 14564:7 14602:19 14618:3 14629:16,16 14666:13 14717:23 saying 14550:2 14551:4 14551:12,14 14553:1 14554:7,20 14556:19 14557:5,22 14562:10 14562:20 14578:15 14581:8 14582:11 14613:8 14617:4 14632:18 14633:23 14635:7 14647:6,17 14647:20 14648:5,6 14651:19 14677:8 14686:1 14688:14 14691:7 14692:10 14704:25,25 14705:21 14719:1,2 14724:19 14728:11 says 14556:3 14610:6 14611:1 14612:13 14668:19 14669:16 14685:25 14695:21 14698:9 14700:17 14708:16 14713:13 14721:25 14727:20 scenario 14557:23</p>	<p>14584:6,21 14585:10 14670:17 scenarios 14588:9 14667:7 scenes 14713:7 scientific 14701:11 scientifically 14707:24 screen 14552:6 scroll 14596:5 searched 14611:7 second 14547:25 14549:19,21 14551:24 14554:18 14574:23 14578:22 14599:24 14610:16 14620:19 14621:11 14663:24 14674:10 14674:12 14680:25 14691:14 14706:16 14727:20 secondary 14643:19 14647:11 secondly 14559:13 14578:25 14604:11 14687:14 seconds 14570:14 14572:6 14577:23 14668:17,18 14705:22 14706:8 14711:5 section 14588:15 14642:21 14686:16 security 14550:23 14583:20 14722:22 seeing 14561:9 14619:16 14645:4 14671:6 14719:1 seek 14554:8 14556:7 seeking 14553:17 seeks 14708:20 seemingly 14554:23 seen 14548:13,14 14561:21,25 14582:3 14591:1 14634:14 14641:4 14668:16 14673:24 14674:3 14718:18 14720:17 sees 14553:16 selective 14550:3 self 14677:25 14678:25 14691:15 14694:11 self-defence 14693:9,20 14694:11 14695:14 Semenya 14551:12 14624:8,21,23 14626:21,22,23 14627:11 14647:15 14648:8 14649:13 14677:20,21 14699:15,19 14700:7 14700:9,24 14705:4 14706:12,19,20 14708:15 14713:12 14714:13,14,16,23 14715:13 semi 14619:12</p>	<p>semi-circle 14619:1 14673:2 14709:19 semi-circles 14618:4 14619:14 semi-permanence 14544:20 Semi-permanently 14543:11 send 14665:20 senior 14551:6,15 14575:18 14628:20 sense 14546:1,1 14560:24 14590:19 14601:6 14606:21 14635:22,23 14703:22,22 14708:24 sent 14629:1 14637:22 sentiments 14555:17 separate 14725:8 separating 14562:5 September 14613:16 14615:12 14722:3,8 14722:12 14723:2,12 14723:22 sequence 14593:12 14627:16 sequential 14569:13 14571:1,18 14702:6 sequentially 14569:10 14570:6,10,18,20 14576:4 Sergeant 14669:5,6 serious 14543:13 seriously 14545:14 14586:4 serves 14696:18 service 14603:15 14678:25 services 14597:19 14665:7 14666:4,4 session 14545:15 set 14566:24 14591:20 14618:5 14639:18 14650:7 14661:22 14662:16,19 14672:8 sets 14672:8 14705:12 setting 14679:19 settlement 14562:6 14607:4 14660:19 14661:17,18,21,24 14663:14,21 14670:19 14671:21 14671:24 14672:9 setup 14575:17 14634:16 14640:6 shake 14572:18 shape 14569:24 share 14628:17,17 sharp 14660:21 14678:20 14692:14 Sharpeville 14626:13 shelter 14586:25 She's 14684:19 shift 14545:19 14546:6 shifted 14546:3</p>	<p>shoot 14675:16 14679:11 14691:7,8 14693:20 shooter 14681:8 14693:21,24 shooters 14694:20 shooting 14674:13 14675:15 14677:16 14680:25 14686:6,25 14687:18 14690:15 14691:15 14693:21 14693:24 14696:10 14696:13 14705:14 14705:19,23 14711:9 14711:14 14713:7 14714:25 14715:14 14715:15 14723:6,7 14723:10,15 14725:4 14726:11 14727:21 14727:24 14728:6 shootings 14578:9 14668:9 14703:15 14704:15 14705:3 14712:23 14717:10 14718:3 short 14610:14 14628:4 14687:22 shorter 14570:15 shortly 14571:25 14691:13 14714:9 shot 14674:3 14677:5 14688:3 14690:10,11 14690:24 14697:23 14698:9,24 14699:7 14700:18,19 14701:14 14705:22 14705:24 14706:1 14713:14,17 14714:4 14714:5,8,11,22,24 14715:7,8,11 14716:19 14722:2 shotist 14700:4 shots 14673:25 14674:18,19,21 14675:3,6 14676:13 14677:1,3,25 14678:8 14678:9,24 14679:3,7 14679:8,9 14680:5,6 14680:9,10,10,20 14698:14,18 14699:3 shouldn't 14674:14 14675:14 14680:23 shout 14688:14 14690:4 shouting 14704:8 14718:23 show 14554:8,10 14572:4 14583:8 14584:12 14605:7 14613:4 14616:17,20 14616:22 14630:6 14639:8 14649:19 14679:11 14724:6,7 showed 14609:9 14630:11 14653:5 showing 14685:5</p>
--	---	--	--	---

<p>14717:11 shown 14629:17 14630:12 14724:6 shows 14554:14 14567:6 14606:14 14649:22 14667:1 shrink 14582:11,11,12 shutting 14646:23 SH2 14663:25 side 14562:25 14565:6 14567:23 14569:19 14570:3 14580:24 14596:20,20 14613:23 14618:8 14619:7,10 14637:10 14641:21 14642:18 14650:14 14652:2 14653:6 14660:18 14662:15 14672:22 14673:4 14674:23 14697:7 14701:15,17 14701:18 14708:18 sides 14619:9 sight 14603:16 sign 14594:9,16 14596:21 14686:6,25 signature 14722:10,12 signed 14722:7,9 14723:22 significant 14553:20,23 14554:2 14574:17 14596:18 14697:1 14723:3,15 significantly 14559:14 14559:25 14581:11 signs 14686:4,23 silence 14687:16 similar 14601:24 14636:17 14637:9,23 14643:3 similarly 14657:24 simple 14623:4 14727:23 simply 14580:20 14581:20 14582:14 14640:10 14658:15 14659:21 14673:19 14678:17 14679:5 14692:15 14710:9 14719:18 14724:24 14728:4 simultaneous 14572:12 14573:23,25 14589:8 14617:20,23 simultaneously 14560:13,16,24 14561:6 14566:20 14568:5,18 14569:11 14570:6,20 14572:8 14575:10 14702:5 single 14626:12 14685:5 sit 14587:3 14658:14 14671:7 14729:1,2,6 sitting 14543:17 14544:1 14576:18</p>	<p>14670:17 14681:14 14728:25 situation 14546:9 14551:3 14553:3,9 14558:23,24 14559:8 14559:10 14562:20 14562:23 14569:13 14579:13 14588:2 14621:21 14640:2 14642:4 14643:7 14644:19,21 14645:17 14646:7 14650:12 14660:5,7 14678:5,12 14681:13 14681:20 14682:2 14687:21,24 14689:25 14690:24 14693:9,10,14,17,18 14698:8 14722:17 14723:23 14724:2 14726:19 14728:10 situational 14722:25 six 14570:10 14571:12 14650:6 14652:1 sixes 14658:10 size 14582:7,10,12 sketch 14709:18 sky 14648:1 slide 14566:24 14567:12,19,20,23 14572:1 14577:9 14591:18,20,25 14592:1,5,8,14 14593:11,11 14596:22 14600:6 14604:2,5,12 14606:14 14608:12 14608:14 14613:7 14617:9 14619:12 14629:22 14639:7 14641:15,16 14649:21,22 14650:11 14653:12 14662:1,16,19 14663:23 14666:20 14674:16,17,24 14696:21,21,23,24 14697:1,1,3,4,5 14704:12,13,14 14713:21 slides 14549:3 14571:20 14572:5 14649:19 14653:16 14662:1 14695:24 14696:15 14697:10 14720:14 slightly 14574:20 14622:15 14643:25 14659:14 14713:20 14725:8 14726:10 slow 14689:20 14704:23 slowly 14562:12,18 14563:18,22 14564:8 14601:14 small 14570:2 14607:4</p>	<p>14611:3 14638:10 14650:17 14651:3 14658:22 14661:18 14661:21 14666:22 smaller 14618:21,23 14639:22 14642:10 14642:12 14645:8 14654:25 snapshot 14711:1,2 solidarity 14545:3 somebody 14582:8 14585:5 14597:15,22 14598:8 14668:3 14688:14 14689:19 14694:2 14716:5 14721:7 14725:2 14726:10,25 14727:5 somewhat 14675:5 sorry 14551:4 14568:10 14593:15 14593:16 14609:20 14624:21 14651:20 14653:1 14654:4 14666:18 14675:13 14684:11,21 14686:9 14688:25 14696:23 14707:5 sort 14562:23 14586:25 14661:15 14676:2,12 14679:15,18 14687:11,16 14690:4 14712:9 sorts 14600:19 14659:24 sound 14728:7 sounded 14668:3 sounds 14704:23 south 14544:2 14607:1 14637:10 14640:3 14652:19,22 14653:6 14653:17,18,24 14673:3,4 14703:13 14705:16,17 southern 14637:10 south-east 14672:15 south-west 14661:17 14661:21 14672:18 south-western 14707:13 space 14612:6 14709:7 speak 14556:22 14562:8,9,21,22 14582:4 14601:25 14602:1,7,7 14614:12 14617:6 14620:25 14622:11 14623:17 14637:24 14639:10 14640:24 14643:21 14645:9 14658:6 14659:24 14667:21 14668:5 14694:8 14699:11 14703:15 14709:22 14711:12 14718:11 14719:11 speaking 14563:10 14566:6 14570:3</p>	<p>14574:11 14581:19 14615:10 14621:20 14634:2 14645:12 14727:14 14728:12 14728:17,19 speaks 14611:4 14628:15 14681:18 spear 14694:2 Special 14637:11 specific 14631:17,22 14641:8 14657:3 14658:12 14665:16 14665:21 14667:7 14669:23 14670:8,9 14670:22 14677:24 14694:19 14695:4 specifically 14557:19 14614:3 14622:8 14632:22 14637:11 14641:6 14658:11 14663:21 14667:2 14669:24 14688:18 14689:15 14697:23 14698:5 14721:16 14726:1 14728:22 spectators 14582:14 speculate 14611:19 14621:3 14623:1 speculating 14605:25 14610:19 14611:19 speculation 14612:12 speech 14719:19 speed 14544:3,17 14560:17 spent 14616:6 14631:4 spill 14662:17 splashing 14654:10 split 14652:24 14653:18,20,24,25 14654:2,2 14674:18 14674:21 splits 14653:21 14654:5 14654:8 spoke 14549:5 14669:22 14726:9 14728:19 spoken 14617:23 14697:25 spot 14698:22 14699:7 spread 14654:25 spreading 14713:2 spreadsheet 14680:13 squarely 14695:10 SS3 14614:9,10 stage 14553:6,17 14554:7,8 14558:14 14559:9,9,10 14560:19 14565:5 14601:9 14602:23 14609:11 14613:16 14614:10 14615:24 14616:1,2,4 14619:19 14619:25 14641:8,12 14649:6 14651:17 14652:23 14654:23 14663:23 14664:8</p>	<p>14665:24 14670:1 14683:4 14690:18 14691:12 14692:5 14694:8 14715:3 14716:8 14718:22 14727:16 14729:20 stand 14555:4 14576:5 14580:7 14597:7 14701:9 standard 14658:8 14687:15 standing 14607:8,13 14673:19 14726:6 start 14547:4 14548:8 14551:18 14553:7 14558:19 14563:18 14568:17,24 14569:5 14571:25 14572:11 14581:5 14588:19 14593:25 14608:5 14625:24 14634:23 14641:11 14679:25 14721:8 started 14544:16 14566:14 14567:7,7 14572:6 14577:5,13 14577:15,23,24 14579:24 14591:15 14591:22 14592:14 14594:1 14595:21 14599:25 14606:2 14627:16 14630:13 14630:24 14682:5 14702:7,17 14713:2 starting 14545:10 14563:17 14567:16 14571:24 14577:5 14644:20 starts 14552:25 14572:3 14577:12 14581:8 14670:12 14689:12 14705:7 state 14555:8 14588:5 14601:14 14611:6 14667:23 14690:20 14725:18 stated 14543:24 14545:17,18,18 14577:10 14594:3 14641:10 14688:22 statement 14551:23,24 14551:24 14552:3,8 14552:16,18 14553:13 14581:4 14590:19 14591:11 14596:19 14599:17 14600:5 14610:2,6,16 14610:23 14611:23 14614:4,5 14616:16 14616:22 14632:8 14633:8 14638:9 14652:16 14667:2 14668:14 14685:11 14685:21 14691:15 14708:17 14718:2 14722:2,3,24</p>
--	--	---	--	--

<p>14723:18,21 14724:6 14725:9,11,17 14727:20 statements 14556:1 14591:5 14598:5 14614:1 14697:22 14721:23,25 states 14555:17 static 14711:4 stating 14697:23 14712:4 station 14606:25 14607:1 14639:12 14653:25 14657:1 stationed 14727:24 stationery 14711:4 stay 14579:23 14585:17 14586:4,15,15,16 stayed 14587:8 stays 14593:2 step 14635:11,12 14658:20 steps 14648:18 14687:4 STF 14636:19 14637:19 14651:13 14651:14 14655:23 14669:24 14675:18 14676:14 14677:3,9 14677:13,13,14 14678:9,14 14679:8 14685:6 14693:1,2 14703:24 stimulated 14632:6 stood 14587:12 14588:25 stop 14551:2 14553:23 14641:20 14642:21 14653:7 14655:12 14703:8 14711:19 14712:1,10 straddled 14673:2 straight 14561:19 14562:2,3,5 14610:14 14661:1 strange 14575:17 strategic 14557:7 strategies 14550:25 14556:21 strategise 14575:21 strategising 14613:24 strategy 14548:17 14549:12,13 14557:8 14575:19 14606:21 14613:24 14615:20 14617:18 14655:25 14709:22 14710:22 14711:12 streak 14654:9 stretch 14567:3 14612:19 14651:2 strides 14708:10 strike 14582:15,16 14609:19 strikers 14545:21 14550:14,25 14555:12,17 14558:5</p>	<p>14563:16 14565:16 14565:17,23 14566:3 14573:7 14578:11,13 14578:17 14579:6 14584:1 14588:6 14596:21,25 14606:22 14610:15 14638:19,19 14640:17 14641:5,9 14642:7 14644:24 14648:23 14652:8 14654:15,24 14656:10 14657:21 14660:4,11,12 14661:20 14673:12 14678:15 14702:8 14704:5 14707:2,3,14 14711:17 strikes 14548:4 14550:9 14719:23 striking 14635:14 14636:10 14639:3 14720:7 strong 14618:14 14634:20 struck 14685:3 structure 14638:25 structured 14643:18 stuck 14569:16 14572:16 14580:3 14725:21 stuff 14716:9 stun 14587:4 stutteringly 14562:18 subject 14550:10 14597:7 14627:3 14703:15 subjective 14546:1 14636:4,6 14637:13 14637:15,16 14638:24 subjectively 14562:21 14635:20 14637:17 14639:11 14640:25 submission 14649:14 14682:4 submissions 14633:14 submit 14649:19 14682:6 substantial 14584:11 14585:23 14608:13 14631:12,12 subtotal 14675:3 sub-commanders 14576:20 succeeding 14589:1 successful 14639:2 sufficient 14638:1 14693:6 sufficiently 14580:25 suggest 14602:22 14621:3 14635:20 14689:19 14718:2 suggested 14575:14 14708:4 14710:5 14714:21</p>	<p>suggesting 14634:16,17 14636:24 14657:7 14687:1 14688:12,12 suggestion 14593:4 14649:13 14697:2 suggests 14554:15 summary 14621:5 supplementary 14727:23 support 14650:8 14662:10 14666:4 14672:14 14710:7 supported 14544:10,23 supporting 14670:20 suppose 14576:9 14584:11 14698:14 14698:21 supposed 14558:4 14563:6 14604:25 14610:3 14638:6 14639:10 14651:10 supposition 14598:11 sure 14547:5,13 14549:5 14551:9 14552:5 14555:20 14569:22 14570:2 14571:16 14574:11 14591:6 14597:19 14600:17 14606:23 14612:15 14620:14 14624:10 14628:1,16 14641:5 14659:18 14668:1 14687:10 14688:18 14694:18 14697:21 14699:13 14707:22 14711:10 14716:16 14719:5 14720:16,21 14721:10 surely 14600:6 14601:5 14611:24 14721:7 surprise 14568:22 14711:15 surround 14611:2 14612:2 surrounded 14673:11 14674:6 surrounding 14660:13 14673:18 14681:15 suspect 14676:3 suspects 14636:21 14658:11 14681:5 sweep 14636:21 swell 14582:10 switch 14543:3 synopsis 14615:14 14696:16 system 14645:22 14646:4 14688:7 s.u.o 14545:7 14683:19</p>	<p>14548:1,3,9,20,25 14549:22 14550:5,8 14553:2,8,25 14556:8 14556:13 14558:16 14560:22 14580:20 14581:8,24 14587:18 14589:12 14602:24 14602:25 14615:21 14620:20 14623:13 14623:25 14624:5 14625:7 14640:16,18 14644:8 14648:25 14649:2,3 14657:24 14658:2,7 14662:25 14676:9 14681:7 tactics 14658:12 14678:18 take 14549:15 14552:15,25 14556:12,14 14558:18 14569:24 14570:11,13 14571:19 14572:8,25 14573:12 14585:25 14586:4,25 14598:23 14604:13 14610:19 14619:19,24 14620:12 14623:1 14625:24 14627:10 14631:16,17 14635:11 14639:21 14642:25 14649:10 14649:18 14652:24 14653:25 14655:16 14661:2 14666:18 14668:11,13 14669:12 14671:10 14674:11 14677:4 14679:24 14681:19 14683:3 14686:4,23 14687:4 14688:2,4,4 14689:20 14691:2 14692:11 14694:7 14700:20 14713:6 14717:6 14729:18 taken 14550:4 14551:7 14558:17 14560:23 14569:7 14570:5 14578:1 14580:20 14583:12,14 14584:7 14590:2,11 14592:18 14615:16 14621:16 14622:1,5,17,18 14623:5,6,8,24 14625:15 14629:4 14641:1 14648:18 14649:1 14655:23 14665:21 14681:9 14691:24 14692:6,13 14702:5,17 14704:14 14706:13 14711:8 14721:8 14724:14 takes 14557:24 14571:10 14650:10 14678:3 14702:2 talk 14610:11 14612:3</p>	<p>14614:4,6 14644:17 14688:20 14717:8 14729:15 talked 14592:23 14680:6 talking 14569:4 14570:23,24,25 14571:7,8 14612:23 14614:3,8 14615:9 14636:5 14643:15 14655:4 14661:4 14662:21 14671:5 14675:6 14677:18 14685:16,16 14688:16 14693:23 14694:1,25 14699:2 14710:1,9,9 14726:5 14727:15 14728:14 talks 14591:19,21 14592:2 14610:25 target 14554:22 targets 14663:7,9 task 14544:11 14611:2 14629:9 14637:11 14664:16 tasked 14628:22,23 14661:16,22 14664:18 tasking 14662:15,18 14663:21 14664:22 14665:2,3 14669:23 14670:8,10,13,14 taskings 14628:23,25 14629:5 14633:23 14671:12 14692:24 taught 14636:18,19 14658:10 tea 14619:24 team 14637:19 14660:23,24 14661:4 teams 14573:4 14587:1 14635:4 14641:3 14657:24 14658:2 14661:3 14663:25 teargas 14582:2 14587:4 techniques 14636:17 television 14719:14 tell 14556:22 14557:13 14558:21 14568:16 14688:2 14714:7 14728:24 telling 14574:3 14596:9 tells 14708:9 temporary 14543:7,9 tend 14572:19 14575:20 terminology 14610:17 terms 14568:22 14585:11 14587:6 14598:5 14600:22 14602:20 14607:23 14638:13 14660:3 14661:8,8 14665:13 14670:25 14671:11 14674:14 14675:14</p>
T				
<p>t 14582:13 table 14544:2 14620:19 14628:9 tactical 14547:22</p>	<p>takes 14557:24 14571:10 14650:10 14678:3 14702:2 talk 14610:11 14612:3</p>	<p>talking 14569:4 14570:23,24,25 14571:7,8 14612:23 14614:3,8 14615:9 14636:5 14643:15 14655:4 14661:4 14662:21 14671:5 14675:6 14677:18 14685:16,16 14688:16 14693:23 14694:1,25 14699:2 14710:1,9,9 14726:5 14727:15 14728:14 talks 14591:19,21 14592:2 14610:25 target 14554:22 targets 14663:7,9 task 14544:11 14611:2 14629:9 14637:11 14664:16 tasked 14628:22,23 14661:16,22 14664:18 tasking 14662:15,18 14663:21 14664:22 14665:2,3 14669:23 14670:8,10,13,14 taskings 14628:23,25 14629:5 14633:23 14671:12 14692:24 taught 14636:18,19 14658:10 tea 14619:24 team 14637:19 14660:23,24 14661:4 teams 14573:4 14587:1 14635:4 14641:3 14657:24 14658:2 14661:3 14663:25 teargas 14582:2 14587:4 techniques 14636:17 television 14719:14 tell 14556:22 14557:13 14558:21 14568:16 14688:2 14714:7 14728:24 telling 14574:3 14596:9 tells 14708:9 temporary 14543:7,9 tend 14572:19 14575:20 terminology 14610:17 terms 14568:22 14585:11 14587:6 14598:5 14600:22 14602:20 14607:23 14638:13 14660:3 14661:8,8 14665:13 14670:25 14671:11 14674:14 14675:14</p>		

<p>14680:22 14707:1 terrain 14545:20 14569:18,21,21 14635:12,14 14636:9 14636:25 14637:1,17 14637:19 14638:13 14643:8 14644:9 14652:25 tested 14705:10 testified 14623:7 testifying 14705:5 testimony 14576:10 14625:6,20,25 14626:19 text 14633:11 thank 14543:5,6 14544:8,24,25 14545:10 14576:8 14595:9 14605:13 14606:11 14618:1 14620:4 14630:15 14664:9 14683:15 14684:6,23 14729:10 14729:25 thanks 14544:9 theoretically 14589:5 theory 14647:18 thereof 14549:1 14560:17 14563:11 14573:23 14606:25 14615:22 14642:22 there'd 14600:9 there's 14552:7 14585:9 14593:4 14596:4,18 14599:16 14603:8 14633:12,15 14653:22 14654:1 14656:3 14674:22 14684:8 14689:7 14693:8 14713:20 14715:21 14716:20 14721:22 14726:11 they'd 14575:21 14652:12 14715:8 they'll 14596:21 they're 14576:3,18 14597:1,2 14621:9 14640:1,2 14655:20 14655:24,25 they've 14602:2 14643:23 14651:16 14716:2 they'd 14611:3 14674:2 thing 14547:6 14633:20 14652:5 14677:2 14679:20 14716:25 things 14543:18 14557:24 14575:21 14578:18 14582:21 14583:5 14586:3 14607:4 14629:7 14635:25 14659:14 14683:5 14689:20 14705:9 thinking 14627:16 14630:25 14631:5</p>	<p>14632:6 14633:7 14634:5 14666:19 14688:20 14711:13 third 14548:2 14549:19 14550:6 14600:5 14620:24 14621:10 14648:25 14653:23 14666:20 thought 14563:2 14564:7 14565:14 14568:6 14569:7 14571:18 14572:7 14573:8 14577:3 14585:19,22 14603:21 14610:3,25 14617:2 14630:6 14635:20 14639:21 14645:10 14669:3 thoughts 14724:23 thousand 14586:15,16 14587:2 threat 14555:2 14560:20 14563:9 14564:15 14590:12 14590:13,15 14591:10,13,19,24,25 14592:9,18 14593:11 14593:17,22,23 14594:11,15 14596:4 14597:8 14598:12,13 14600:1,3,19 14602:20,20,21,23 14603:5 14621:4,9 14637:8 14648:23 14663:16,17 14694:6 14694:6 14710:12 threats 14550:16,18 14556:4 14563:11,14 14590:8 14591:4 14597:18 14600:6,14 14601:6 14602:5,13 three 14547:3,4,8,11,22 14549:16 14578:18 14582:21 14583:5 14588:14 14610:2 14620:10,12 14651:25 14652:24 14652:24 14653:20 14679:23,25 14683:11 14699:7 14700:15 14715:20 three-wire 14711:21 three-wired 14712:2 threw 14558:7 14675:4 throw 14558:13 thrown 14576:22 Thursday 14548:1,19 14549:12,23 14550:5 14555:10,13,24 14593:19,20 14614:20,22,24 14615:1,8 14621:4 14625:21,24 14626:3 14627:23 14630:14 14630:24,25 14632:3 14632:20,25 14633:4</p>	<p>14633:22 14634:2 14703:1 14728:2 14729:2,6 thwarted 14702:22 tight 14587:3 tightly 14583:3 timed 14593:2 timeframe 14590:16 14710:1 timeframes 14718:10 times 14572:5 14576:19 14582:8 14646:2 14647:6 14667:14 timetable 14705:18,23 14706:15 today 14545:12 14594:4,10,13,17 14596:22 14598:16 14633:5 14670:17 14682:5 14684:4,13 14684:19 14729:1 today's 14636:17 told 14574:19 14575:22 14597:22 14599:3,4 14599:11 14664:3 14668:20 14683:21 14697:25 14701:9 14715:2 14728:7 tomorrow 14706:9,10 14729:2,2 tool 14678:18 top 14578:23 14608:22 14618:6,11 14676:14 14703:25 topic 14566:15 14603:3 14603:10 14616:6 14619:22 14620:7 14680:2 14685:20 14701:24 14712:20 torched 14722:23 total 14608:14 14631:8 14675:5 14680:9 totally 14582:12 14668:2 touch 14617:24 town 14683:9 trace 14600:3,9 track 14558:9 14654:20 14655:21 traffic 14711:19 14712:2,10,11 tragic 14626:17 trailer 14565:2 14650:15,16 trailers 14600:21 14604:6 trained 14636:13,15,17 14675:17 14677:4,24 14681:7,9 training 14636:20 14640:19 14675:15 14676:4 14678:2 transcript 14689:9,10 translating 14612:15 transmit 14607:15</p>	<p>travel 14566:23 14567:22,22,25 traverse 14621:10 traversed 14556:4 14603:7 14620:11 trees 14637:9 14638:10 tricky 14676:2 tried 14558:8 14567:1 14607:20 14630:13 14685:9 14718:21 tries 14690:18,19 troops 14670:6,6,9 14687:4 trouble 14667:12 TRT 14565:10 14578:10 14580:1 14604:17 14636:19 14650:8 14651:12 14655:22 14661:15 14663:25 14669:24 14675:24 14676:20 14680:18,19 14685:6 14689:16 14693:1 true 14659:4 truly 14721:6 try 14561:10 14562:25 14563:19 14565:6 14582:24 14588:7,7 14639:23 14649:24 14659:7,8 14660:7 14670:2 14681:6 14683:6 14710:2 14723:18 trying 14549:3 14564:10 14584:9 14598:20 14622:22 14624:25 14628:19 14630:10 14631:13 14639:16,17 14647:7 14652:11 14655:25 14659:20 14679:6 14687:8 14688:21 14695:7 14710:11 14712:3 14715:25 14719:20 14720:1,2 14723:20 14726:4,6 Tsibangu 14680:16 Tuesday 14554:4 14555:10 14582:4 14613:19,25 14614:6 14614:14 14616:11 14616:13,16,17,18 14617:3,4 14637:20 14637:22 14727:25 turn 14695:22 turned 14562:1 14677:20 turning 14596:11 14597:3 14598:1,16 14599:16 14652:19 14653:2 turns 14561:22 TV 14717:22 14718:19 14719:1,6 Twala 14554:4 two 14561:5 14568:9</p>	<p>14568:19 14569:6 14571:8,10 14572:8 14573:8 14579:16 14591:18 14596:20 14597:21 14607:22 14612:2 14613:3 14617:22 14618:4,24 14619:6,14 14623:20 14628:8 14631:6 14644:1 14651:25 14653:8,21 14654:2,5 14654:7,13 14661:3 14673:9 14680:3 14683:23 14688:5 14693:2 14703:20,21 14703:23 14704:7 14710:21 14711:5 14715:20 14716:21 14726:3 twofold 14706:14 twos 14658:9 type 14607:4 14628:16 14661:22 14665:24 14693:4 14710:8 typed 14606:8 14722:11 types 14695:1 typically 14687:17</p> <hr/> <p style="text-align: center;">U</p> <hr/> <p>ultimately 14548:5 14550:10 14569:11 14570:7 14587:4 14613:17 14618:20 14626:16 14627:17 14671:17 14689:12 14692:10 unable 14699:16 14728:5 unarmed 14660:21 unaware 14668:6 14690:13 uncoiled 14563:22 14565:17,22,24,25 14566:11 underneath 14565:8 14607:14 understand 14551:10 14552:22 14554:5,12 14555:14 14556:20 14560:2,3,11 14566:9 14577:7 14584:5 14590:14 14593:9 14597:4 14601:17 14603:14 14605:8 14607:7 14610:5 14611:24 14614:16 14616:13 14618:18 14618:22 14619:11 14619:14 14621:19 14629:25 14630:16 14632:17 14642:13 14661:4 14662:3 14671:19 14677:7 14691:10 14692:12 14698:8,11 14703:16</p>
---	---	--	---	---

<p>14705:6,15 14710:17 14712:22 14716:20 14716:23 14719:4 14720:16 14723:21 14727:7 understanding 14549:7 14563:15 14567:2 14572:17 14585:2 14590:24 14612:15 14612:17 14622:21 14628:20 14699:15 14699:23 14712:25 14713:10 14715:23 14716:1 14727:3 understands 14552:9 14717:7 understood 14564:2 14582:3 14652:12 14691:4 14699:1,22 14714:4 14729:8 undertaken 14648:12 unfair 14647:9 14671:8 unfolded 14721:3 14722:15,18,25 14723:3,16,23 unfolding 14653:14 unfortunate 14626:17 14673:9 unfortunately 14634:9 unhooking 14568:8,11 14571:11 unit 14557:25 14573:4 14636:19 14644:3,3 14663:25 14667:3 14680:11 units 14636:13,15 14661:15 14665:6,7 14667:9 14677:8 unnecessary 14608:1 unprecedented 14558:24 unpredictable 14642:6 upward 14618:16,16 urgent 14556:12 use 14545:24,25 14550:25 14606:25 14611:6 14673:18 14676:5 14693:7 14706:22 useful 14552:13 utilise 14678:14,18 14692:7 utilised 14661:12 14667:8 14682:22 utilising 14667:5 14678:19</p> <hr/> <p style="text-align: center;">V</p> <p>valiant 14673:13 various 14603:15 vehicle 14596:9 14598:8 14606:24 14612:18 14617:24 14646:5 14651:8 14654:9 14690:23 14692:15,15</p>	<p>14703:24 14704:4,7 14711:9,11 14712:10 14712:11 14722:20 vehicles 14565:8 14568:1 14579:10,18 14579:21 14580:4 14588:18 14604:16 14604:19 14607:5,7 14608:6 14609:3 14610:13 14611:23 14613:11 14615:25 14639:9 14651:9,10 14651:17 14652:7 14661:11 14662:10 14662:13,14 14685:7 14692:17,17,21 14693:2,5 14703:14 14703:17,18,20 14704:6 14710:10,14 14710:17,23 14711:3 14712:10,11 14722:23 vehicle-wise 14655:24 veldt 14674:8 Venter 14669:5,7 verbal 14590:21 14635:3 verbatim 14601:22 verified 14622:10 14716:4 verify 14602:2 14690:5 Vermaak 14645:9,11 14690:3 14715:18 14722:16,24 14724:2 14726:3 14727:15 14728:3,19 versa 14628:8 version 14599:20,21 14605:25 14606:5 14613:20 14614:5,6 14614:14 14616:10 14696:22 14703:4 14712:22,25 14713:20 14714:10 14717:17,25 14718:7 14720:15 versions 14698:2 versus 14678:15 vice 14628:8 vicinity 14695:9 14728:17 victim 14690:11,12 14691:11,13 14696:20,22 victims 14545:5 14649:7 14695:21 14696:25 14697:18 video 14555:16 14592:2,7 14668:18 14685:24 14686:10 14686:12,17,19 14688:8 14689:5 14691:7 14696:17 14711:8 videography 14592:5 videos 14621:20</p>	<p>14668:16 14669:6 view 14554:25 14555:4 14558:23 14565:13 14591:8 14657:22 14659:21 14670:23 14677:11 14689:17 14711:16 viewed 14563:4 viewership 14718:4 views 14547:1 14576:23 village 14611:4 violence 14550:21 14551:2 14553:23 14554:2,21 violent 14554:10 14580:12 14581:13 14582:22 14661:20 14661:23 14669:4 virtue 14546:15 visible 14567:20 14568:23 14603:22 14685:24 Visser 14606:2,7 visual 14645:20 visuals 14717:11 voice 14687:11 14727:16 volatile 14605:11 volume 14674:5 voluntarily 14639:14 vulnerable 14605:11 14663:7</p> <hr/> <p style="text-align: center;">W</p> <p>wait 14548:2 14550:7 14562:15 14644:24 14655:12 waiting 14620:25 14634:4 14711:11 walk 14661:1 walking 14711:16 want 14547:17 14549:8 14551:20 14554:14 14557:14 14560:15 14563:16 14564:12 14564:22 14565:16 14565:23 14567:6 14569:15 14572:22 14573:12 14578:7 14582:2 14586:13 14588:14 14602:25 14603:9 14607:23 14609:18 14611:18 14614:22 14616:6,24 14620:6 14621:10 14626:7 14628:21 14630:21 14631:15 14631:16 14633:13 14634:15 14638:2 14640:5 14642:15 14649:10,18 14656:11,16,25 14657:4 14661:19,20 14666:7,10 14673:8 14674:11 14676:13</p>	<p>14678:9 14679:20 14680:2,24,25 14681:1 14682:4,14 14682:19 14683:10 14685:16 14688:22 14694:4 14701:23 14702:13 14703:4 14704:16 14712:20 14714:16 14729:22 wanted 14555:18,19 14556:10 14564:18 14565:14,22 14589:17 14600:20 14607:9 14668:23 14729:17 wanting 14545:25 14657:5,6 14660:11 14670:4 14673:19 14720:20 wants 14646:22 14687:18 14714:15 war 14594:8 warning 14580:21 14581:21,23 14587:12,19 14639:15 14674:18 warnings 14579:6 14587:15,22 wasn't 14573:17 14583:8,22 14589:4 14589:21 14609:3,4 14621:1,16 14622:16 14622:18 14623:5 14624:16 14631:7 14638:1 14641:11 14643:21 14647:24 14648:16 14649:5 14687:10 14709:1 14718:21 14719:11 14726:15 wasn't 14562:20 14619:3 14664:16 14666:1,12 14673:12 wasting 14685:9 watch 14659:11 watching 14671:6 14719:6,14 water 14565:10 14579:2 14582:23 14583:2,3 14587:3,19 14651:25 14654:9,10 14673:13 14690:10 waving 14669:7 way 14551:2 14555:22 14560:4 14571:19 14576:20,24 14584:15 14587:5 14588:13 14589:1 14603:22 14611:24 14613:11 14622:22 14632:18 14634:6 14645:4 14650:16 14652:8 14656:24 14672:25 14673:4 14682:19 14687:15 14692:25 14698:4</p>	<p>14699:22 14701:20 14708:22 14714:6 ways 14557:17,24 weak 14565:2,7 weakness 14645:24 14646:7 14647:17 14648:3 weaknesses 14632:9,16 14645:22 weapon 14695:4 weaponry 14674:22 14693:25 weapons 14550:14 14611:8,16 14660:22 14667:6 14668:25 14695:1 Wednesday 14548:14 14548:15 14549:7 14593:17,18,20 14613:25 14620:17 14624:13 14627:23 14632:5,19 14633:1 14634:4 week 14544:19 14595:21 14601:16 14628:24,24 welcome 14684:7,8 went 14558:9 14579:5 14592:4 14607:6 14626:4 14634:5 14647:12 14666:8 14669:16 14698:10 14721:10 weren't 14573:11 14586:22 14598:14 14621:2 14642:2 14674:15 14713:24 14720:1 14725:10 west 14611:21 14639:4 14639:24 14640:1 14641:7,22 14652:20 14657:14 14660:24 14663:7,12 14704:13 westerly 14654:16 western 14637:10 14650:16 14653:6 14672:22 14673:4 14701:17,18 14704:18 14705:16 14705:17 we'll 14544:20 14570:4 14575:5 14608:12 14627:13 14645:14 14649:17 14679:24 14683:3,13 14710:3 14729:24 we're 14545:5 14570:12,24,25 14571:7,8 14574:10 14574:20 14581:19 14588:13 14599:14 14599:15 14602:11 14636:5 14638:24 14643:14 14652:22 14675:6 14676:1 14678:11 14684:9</p>
---	---	---	--	---

14688:6 14689:6 14690:13 14693:23 14694:1 14715:24 14725:20 14728:14 we've 14571:20 14574:18 14590:25 14592:24 14594:18 14599:14 14607:20 14608:6 14620:9 14621:8 14652:21 14653:13 14657:2 14679:22 14684:23 14701:11 14708:1 14718:18 we'll 14617:5 14619:24 we're 14558:1 14563:10,13 14566:13 14569:4 14609:16 14612:23 14614:2 14619:16 14668:6,9,12 14671:4 we've 14558:22 14559:3 14567:19,24 14609:18 14614:17 14668:16 whatever's 14630:20 what's 14587:8 14645:4 14650:24 14688:21 14696:25 14715:24 14719:2 14720:8 14726:7 what-ifs 14588:8 whilst 14579:24 white 14551:23,25 14552:2,19,24 14556:1 14558:15 14581:4,18 14685:21 14685:23 14686:19 14687:1 14688:11 14690:9 14704:4 14707:17 White's 14552:16,25 14689:6 14691:15 who'd 14654:11 who's 14576:2 14687:18 14715:6 wide 14620:9 14707:19 widely 14654:25 wider 14611:22 14639:13 wild 14689:19 willing 14596:11 14597:2,25 14598:15 14598:21,21 14599:15 window 14594:3 wired 14564:16 wires 14572:19 wish 14619:20 14624:22 withdraw 14681:8 withdrawing 14691:21 withhold 14659:20 withstand 14582:24 14583:2 14587:3,9 witness 14549:19	14552:1 14593:19 14624:23 14627:1,5 14656:21 14680:4 14705:5 14706:18,25 14707:1 14709:2,5,9 14727:24 witnesses 14705:10 wonder 14608:8 wondering 14605:22 Wonderkop 14563:1 14589:23 14611:3 won't 14575:9 14597:1 14603:10 14706:10 14729:18 wooden 14711:23 word 14545:24 14608:9 14612:2 14618:14 14635:21 wording 14622:20 words 14612:2,9 14643:12 14670:22 14679:7 14715:21 work 14544:2 14574:14 14575:22 14592:5 14633:20 14658:9 14687:15 14719:7,11 worked 14549:8 14551:2 14584:2 14601:23,24 14628:3 14649:14 workers 14678:5,6,7 14704:18 working 14554:21 14568:18 14595:22 14601:10 14615:17 14658:9 workings 14556:20 world 14594:9,17 14681:11 worst 14557:23 14584:17,21 14585:10,16,17 worthy 14699:14 wouldn't 14578:3,5,8 14580:9 14588:1 14589:2,11 14606:1 14622:3 14641:5 14649:23 14692:20 14700:14 14702:13 14710:5,14 14716:11 wouldn't 14556:23 14563:7 14565:18 would've 14622:2 wounded 14696:6 14716:9,19 written 14559:4 14601:9 wrong 14593:22 14599:20 14628:8 14631:13 14633:13 14633:15 14699:22 14708:18 14713:11 14724:6	year 14550:24 14551:4 14598:7 yellow 14641:20 14654:18 yesterday 14543:14 14545:17,18 14547:2 14547:21 14548:7 14551:12 14555:16 14590:8 14609:17 14621:23 14633:12 14635:21 yesterday's 14545:15 you'd 14546:12 14570:13 14583:16 14583:18 14637:18 14676:16,19,23 14679:10 14691:18 14695:17 14709:16 14716:17 14723:14 you'll 14625:21 14656:18 14702:3 you're 14545:6 14551:13,14,14 14570:10,19,20 14576:21 14587:11 14591:3,18 14598:6 14598:20 14599:12 14601:10,21 14603:9 14620:3 14631:13 14640:8 14643:7 14644:6 14647:4 14656:21 14660:17 14675:7 14677:17 14678:4,22 14683:18 14688:3,19,20,20 14692:4,4,10,14 14694:25 14704:25 14705:20 14707:9 14710:9,9 14712:1,5 14718:8 14719:5 14720:21 14721:10 14722:12 14723:18 14726:6 14727:2 you've 14546:24 14547:1 14569:23 14570:5 14574:19 14576:17 14580:16 14580:23 14584:16 14584:16 14588:7 14592:23 14597:13 14623:2 14633:11 14634:14 14638:16 14644:2,21 14657:6 14658:8 14674:17 14679:12,14 14683:7 14692:11 14693:14 14698:6 14699:22 14707:22 14715:9 14728:7	14585:17 14587:3 09:07 14543:2 09:27 14555:6 09:47 14569:14 <hr/> 1 <hr/> 1:30 14590:10 14591:12 14592:14 14622:1,7 14623:9,12 14625:8 14631:2,5 14634:7 10 14553:18,18 14571:4 14571:6 14573:12 14589:10 14591:22 14668:17,20 14690:8 14690:12 10:06 14583:8 10:15 14593:12 10:26 14596:7 10:46 14609:15 100 14567:2 100% 14655:24 11 14600:3 14601:4 14695:23 14696:16 14696:17,19 11:20 14554:16 14689:5 11:27 14620:2 11:30 14590:13 14593:12 14600:19 14603:5 14604:3 11:47 14634:14 112 14680:20 118 14593:11,11 119 14685:22 14689:1 12 14571:5,6 14572:6 14573:12 12:06 14648:13 12:26 14660:14 12:46 14674:6 120 14567:3 123 14675:6 14680:11 14680:12,20 127 14552:7 13 14699:6 13.11 14653:2 13.12 14653:4 13:30 14549:2 14563:11 14591:22 13:40 14591:21 14594:6,11,16 13:48 14683:17 14 14553:18,19 14696:4 14696:5,5 14697:14 14698:2 14699:2,3 14721:2 14727:25 14th 14554:23 14:08 14696:1 14:28 14706:24 14:45 14685:25 14686:15,19 14:48 14721:15 144 14662:2 149 14606:14 14613:7 14617:9 14619:12,14 15 14543:1 14570:13	14587:16 14592:24 14711:5 15:35 14592:13 14593:2 14599:6 15:37 14596:7 14599:6 15:40 14591:19 14594:11 15:45 14722:14 15:50:21 14577:21 15:51:47 14704:14,15 15:53:50 14704:16 15:55 14722:18 152 14619:12 159 14604:2,5,12,12 16 14553:22 14673:24 14715:20 14728:2 16th 14554:17 14556:17 14590:10 14628:18 14717:23 16:06:09 14717:11 16:06:46 14717:13,17 16:07 14718:4 14719:8 14719:10 16:12:50 14577:21 17 14691:12,13 17:26 14691:6 170 14592:2,6 18 14691:12,13 14695:24 14696:9 14697:11 14698:2 14721:3 14723:22 18th 14722:6,8 18:30 14722:22 180 14610:15 181 14608:12 14639:7 14649:22 182 14663:22,23 184 14666:20 189 14591:25 14592:9 14592:14 19th 14631:3 191 14566:24 14567:5,6 14567:12,23 14571:20 14608:14 192 14591:18 14593:22 14596:22 194 14572:1 14704:12 195 14577:9,10 <hr/> 2 <hr/> 2's 14670:8 20 14570:13 14587:16 14708:6,7 14714:9 14717:20 14718:5 14719:15 20-odd 14715:20 20:20 14635:25 2012 14595:3,5 14723:2 14727:25 14728:2 2013 14543:1 21 14604:17 223 14650:11,12 14653:13 225 14653:16,16,16 226 14654:7 227 14654:12
--	--	--	---	---

<p>228 14654:14 229 14641:16,16 14653:16 14654:14 14654:14 23 14680:12 14708:12 14708:12 14709:10 14709:11,12 231 14695:24 14696:15 14696:21 14697:5 232 14696:23,24 233 14696:16 236 14696:21 24 14631:7 241 14696:24 14697:1,3 14697:9 243 14697:6,9 247 14695:24 257 14674:16 27 14595:2,4,5,13 14597:7 27th 14600:2 14601:14 14602:19</p>	<p>52 14675:4 53 14700:25 58 14706:8</p> <hr/> <p style="text-align: center;">6</p> <hr/> <p>6 14559:15 14564:15 14567:12,18,20,21 14590:15,16 14591:1 14591:2 14602:6,7 14609:20 14611:5 14612:3,19 14620:15 14623:18 14633:4 14668:15,18 14696:23 14697:4 6am 14620:19 6.5.10 14581:5 6.5.11 14552:14 14581:5 6.5.4 14552:14,25 6.5.5 14554:19 6.5.6 14556:3 600 14554:17</p>			
<hr/> <p style="text-align: center;">3</p> <hr/> <p>3:30 14591:14 3:35 14591:14 30 14650:20 14651:3 300 14582:12 14586:16 31 14596:5,5,24 33 14722:14 330 14567:7,8 34 14626:10 38 14668:18</p>	<hr/> <p style="text-align: center;">7</p> <hr/> <p>7 14577:23 14702:7 72 14680:11 74 14552:12,24 78 14581:6,7 79 14552:13 14581:5</p>			
<hr/> <p style="text-align: center;">4</p> <hr/> <p>4 14567:8 14572:1 14577:5,12,13,14,15 14577:16,20 14609:20,20 14650:17 14665:24 14665:25 14696:6 14702:17 14703:6 14704:13,17 14705:16 14706:6 14707:13 14712:24 14714:9 14719:6 14722:8 14723:12,21 4th 14722:3,12 14723:2 4:20 14713:8 14714:5 4:25 14713:16 14714:1 4:29 14713:23 4:30 14713:6,14,16 14714:1 40 14608:9,13 14648:5 41 14604:18 450 14570:9,20 14571:3 46 14577:23 49 14675:3</p>	<hr/> <p style="text-align: center;">8</p> <hr/> <p>80 14567:9,13 14608:16 800 14554:16 84 14652:17 14653:2 85 14653:4,4</p> <hr/> <p style="text-align: center;">9</p> <hr/> <p>9 14572:5 14729:6 14730:1 90 14568:2</p>			
<hr/> <p style="text-align: center;">5</p> <hr/> <p>5 14567:7,12 14609:20 14727:19 5.6 14674:21 50 14568:1 14581:9 14608:9,19 500 14555:18 14720:14</p>	<hr/> <p style="text-align: center;">9</p> <hr/> <p>9 14572:5 14729:6 14730:1 90 14568:2</p>			

