

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 142 1 NOVEMBER 2013 PAGES 15436 TO 15573



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1 [PROCEEDINGS ON 1 NOVEMBER 2013]
 2 [09:05] CHAIRPERSON: The Commission resumes.
 3 Colonel, you're still under oath.
 4 DUNCAN GEORGE SCOTT: s.u.o.
 5 CHAIRPERSON: Mr Ntsebeza.
 6 MR NTSEBEZA SC: Thank you, Mr Chairman.
 7 CHAIRPERSON: Have you spent an
 8 industrious evening reading the papers and are you –
 9 MR NTSEBEZA SC: Yes, yes, Chair.
 10 CHAIRPERSON: And have you decided
 11 whether you want to ask anymore questions?
 12 MR NTSEBEZA SC: I wish I could say so,
 13 Mr Chairman, but I think Mr Mpfu was right when he said in
 14 the unlikely event that I would not ask any questions, but
 15 as it turns out I just want to put a couple of questions.
 16 CHAIRPERSON: You have the fullest right
 17 to do so, provided they're covered by your request. Carry
 18 on.
 19 CROSS-EXAMINATION BY MR NTSEBEZA SC (CONTD.):
 20 Yes, thanks, Mr Chairman. Colonel, have you reflected
 21 overnight why you were called by Major-General Annandale to
 22 this meeting in Pretoria?
 23 COLONEL SCOTT: Well, I did go back to
 24 the police office and just asked to see whether there was
 25 any call-up instruction of sorts, so I'm sure that will be

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1 forthcoming to the evidence leaders. But what General
 2 Annandale in specific set out, no.
 3 MR NTSEBEZA SC: So what you are able to
 4 testify about was that he instructed you to come to
 5 Pretoria and that –
 6 CHAIRPERSON: Not Rustenburg? To come to
 7 Rustenburg, surely.
 8 COLONEL SCOTT: To Pretoria, Chairperson.
 9 MR NTSEBEZA SC: To Pretoria, Mr
 10 Chairman.
 11 CHAIRPERSON: Oh, sorry. Sorry, I beg
 12 your pardon. You're talking about the meeting with –
 13 MR NTSEBEZA SC: This meeting.
 14 CHAIRPERSON: - Brigadier Mkhwanazi's
 15 group?
 16 MR NTSEBEZA SC: Yes.
 17 CHAIRPERSON: That, he was not instructed
 18 to come to Pretoria, it's in fact go to Pretoria because
 19 the instruction was given at Marikana.
 20 MR NTSEBEZA SC: Yes, and they indicated
 21 to you that a helicopter had been arranged for you -
 22 COLONEL SCOTT: Yes.
 23 MR NTSEBEZA SC: - to get to Pretoria.
 24 COLONEL SCOTT: If I'm correct, what I do
 25 recall is that the arrangement was made on the day. I had

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1 to depart the next day, and I needed somebody having to
 2 take me to the air wing that morning.
 3 MR NTSEBEZA SC: Yes, and I think twice
 4 yesterday you indicated that he may have been requested to
 5 cause the meeting to be held. Do you recall that?
 6 COLONEL SCOTT: Sorry, I may have been
 7 requested to cause the meeting to be held?
 8 MR NTSEBEZA SC: No, no, no, Major-
 9 General Annandale was probably requested to cause the
 10 meeting to take place.
 11 COLONEL SCOTT: No, I think I testified
 12 that he wouldn't have. He was busy at Roots in
 13 Potchefstroom, that if there was a meeting in Pretoria it
 14 would have been arranged by somebody else who had
 15 instructed him to send me to brief the people that were
 16 involved in that meeting.
 17 MR NTSEBEZA SC: Now who would have
 18 instructed him, in your view? Who did you think would have
 19 instructed him?
 20 COLONEL SCOTT: It would obviously have
 21 been an equivalent rank or higher ranking officer. I don't
 22 know.
 23 MR NTSEBEZA SC: Yes, now Colonel Twala –
 24 is he a colonel?
 25 COLONEL SCOTT: Yes.

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1 MR NTSEBEZA SC: Yes, is he colloquially
 2 his sidekick? Is he somebody who works with Major-General
 3 Annandale?
 4 COLONEL SCOTT: Yes. He's a subordinate
 5 to Major-General Annandale.
 6 MR NTSEBEZA SC: He's a subordinate to
 7 Major-General Annandale. And Colonel Twala is the one, one
 8 of the two who were at this meeting, but also was present
 9 at the meeting where the National Police Commissioner was
 10 being briefed?
 11 COLONEL SCOTT: That's correct. Just out
 12 of deduction, if two of them were at the National
 13 Commissioner's meeting, probably the rest would have been
 14 there too. I just don't recall particularly them standing
 15 up, saying anything, or seeing them. But they probably
 16 were, the whole group was there. I, but I speak again out
 17 of deduction.
 18 MR NTSEBEZA SC: Yes. Now I've been
 19 trying to picture the scenario when you got to this meeting
 20 in Pretoria where you knew you were going to make a
 21 presentation. Now you had your presentation ready when you
 22 got there.
 23 COLONEL SCOTT: Yes.
 24 MR NTSEBEZA SC: So you had prepared it
 25 ahead of time before you came to Pretoria?

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1 COLONEL SCOTT: I'd taken the
2 presentation as it was up to then as we were working on it
3 at Roots. I saved it as HQ, knowing I was going there and
4 that they may possibly want a copy of it.
5 MR NTSEBEZA SC: Yes, and I mean I've
6 looked at the presentation. It seems to be, it was as you
7 say, it seems to have been work-in-progress.
8 COLONEL SCOTT: Yes, it's not the final
9 presentation, or for that matter I think the end product of
10 Roots either.
11 MR NTSEBEZA SC: Yes. It was a
12 presentation from which eventually exhibit –
13 COLONEL SCOTT: L.
14 MR NTSEBEZA SC: - exhibit L emerged.
15 COLONEL SCOTT: That's right.
16 MR NTSEBEZA SC: Yes, now I'm not going
17 to ask you about this partly because I believe Mr
18 Chaskalson asked you extensively on it. I just wanted to
19 be sure that I understood you insofar as how you got to be
20 there. Now do you know who was chairing the meeting?
21 COLONEL SCOTT: No, as I say there was
22 no, it wasn't formal. When I arrived there was just the
23 group of police officers and Mr Ali sitting around the
24 table [inaudible] –
25 MR NTSEBEZA SC: I'm worried about you

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1 saying it was not formal. I mean this is, I take this is
2 police headquarters. These are high-level people. They
3 have taken you away from Roots where you were very key
4 because of your association with the so-called Scott plan.
5 For you to have been just called into a conversation type
6 of meeting is challenging to me. There must have been a
7 beginning, a discussion, and an end, whilst you were there,
8 wasn't there?
9 COLONEL SCOTT: No, as I say I'm quite
10 aware of what a formal meeting is where you have a chairman
11 appointed, you have a minute taker assigned, and so it
12 progresses and you would work through a chair for that
13 matter. This was an informal meeting. It seemed as though
14 this was a briefing to them for whatever assignment they've
15 been given in order to bring them up to speed with what had
16 actually occurred at Marikana as far as the police could
17 recollect at that stage.
18 MR NTSEBEZA SC: But who was in charge –
19 CHAIRPERSON: I'm sorry, may I interrupt
20 and ask a question on this topic? As far as you could see,
21 was there anybody there, or any device there recording what
22 you said?
23 COLONEL SCOTT: No, Chairperson.
24 CHAIRPERSON: Did you leave a copy of the
25 presentation behind?

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1 COLONEL SCOTT: I don't recall if – I
2 think I actually may have printed out copies for them while
3 I was there.
4 MR NTSEBEZA SC: You know, Colonel, as I
5 say, yesterday and even today I'm trying to believe you.
6 Now when you got there –
7 CHAIRPERSON: [Microphone off, inaudible]
8 MR NTSEBEZA SC: Yes, Mr Chairman, thank
9 you very much, but Mr Chairman, can I put the question this
10 way? I find it incredible that you could have gone to that
11 kind of meeting and when you got there, there was this
12 informality that you want the Commission to believe there
13 was, that no-one said look, this is the purpose of our
14 meeting, thank you for coming, this is the purpose of our
15 meeting. Just tell us how did this conversation start?
16 COLONEL SCOTT: Sir, I'm not sure if you
17 would like me to lie under oath to you to put it into the
18 version you want to hear. I'm telling you the truth of
19 what I experienced and that's how it is.
20 MR NTSEBEZA SC: No, Colonel, with great
21 respect, I'm not asking you to give me a version of what I
22 would like to know because I don't. In fact this meeting
23 came for the first time to my attention and I believe to
24 the attention of this Commission only yesterday. All I'm
25 saying to you, give us a basis for understanding what

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1 happened when you get there. We know you got into a
2 helicopter, you got to headquarters, you got to a room with
3 these men. Take us through.
4 COLONEL SCOTT: I'm just – I hear what
5 you're saying and it's not to, but yesterday when I did
6 enquire about the call-up instruction I was informed that
7 this was already sent to SERI last year. It was requested
8 and sent to SERI last year. So to be hearing for it the
9 first time –
10 MR NTSEBEZA SC: I'm saying the
11 Commission –
12 CHAIRPERSON: Sorry, forgive me, Mr
13 Ntsebeza. You're talking about the call-up instruction to
14 go to Pretoria –
15 COLONEL SCOTT: No –
16 CHAIRPERSON: - to appear –
17 COLONEL SCOTT: No, the call-up
18 instruction for the group that was put together.
19 CHAIRPERSON: Oh, I see. I see. Okay.
20 MR NTSEBEZA SC: Yes, Colonel, let's go
21 back. I am requesting you to give the Commission an idea,
22 if you can – and I mean if your mental block is such that
23 you can't recall those details, there's nothing I can do
24 about it; I'll just make submissions in relation thereto.
25 Just take us through the motions, tell us what happened

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1 when you got there.

2 COLONEL SCOTT: As I can say there, I

3 think most of the members were in civvies. I'm not sure if

4 it was the first day that they had arrived, some of them

5 maybe coming from far, having to fly in. It was informal.

6 It was walk in, most of them I know through many years in

7 the police, greeting them, and then knowing that I needed

8 to present the presentation, set it up. I was on a tight

9 deadline. General Annandale wanted me back, I think he'd

10 given me something like three hours or four hours that I

11 needed to be back in Potchefstroom by, and so in setting up

12 the presentation, as I say there was a problem with the

13 sound. I couldn't get sound, so we, I think we spent

14 almost an hour just trying to find speakers in the building

15 that we could attach to my computer. I presented the

16 presentation. I think in that hour, if I recall correctly,

17 I'd asked the secretary of one of the generals to print out

18 copies for the people sitting there, and when I'd finished

19 presenting, that was that and I packed up and left as

20 quickly as I could to get back to the air wing.

21 MR NTSEBEZA SC: Just let's take it step

22 by step. Did Major-General Annandale tell you to come up

23 with a presentation?

24 COLONEL SCOTT: No. He said that I

25 needed to present what I had at that stage already from

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1 Roots.

2 MR NTSEBEZA SC: So can we say, and I

3 know certainly English is not my mother tongue, but can we

4 say that then he was asking you to come up with a

5 presentation when you get to this meeting?

6 COLONEL SCOTT: He'd asked me to present

7 a presentation, not come up with a presentation.

8 CHAIRPERSON: "Come up" is ambiguous, Mr

9 Ntsebeza. I think I know what you mean. What the witness

10 says, he wasn't asked to prepare one specially. He was

11 simply asked to take the presentation he already had on his

12 computer to –

13 MR NTSEBEZA SC: Did he ask you to –

14 thank you, Mr Chairman –

15 CHAIRPERSON: - the version as it was at

16 that stage, to present it. I think that's his evidence.

17 Am I right?

18 COLONEL SCOTT: Yes.

19 MR NTSEBEZA SC: Did he ask you to bring

20 a presentation to Pretoria because there would be people

21 there who would be wanting to hear what you have –

22 COLONEL SCOTT: He asked me to present to

23 a group of people in Pretoria.

24 MR NTSEBEZA SC: Do you think that he

25 requested you to make an oral presentation?

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1 COLONEL SCOTT: Well, like I say, it's –

2 we're going a long time back now, but I'm working from

3 deduction as well. I know that General Annandale was the

4 one who called me, who had arranged the air flights, thus –

5 MR NTSEBEZA SC: That we heard.

6 COLONEL SCOTT: Yes, I know. So the same

7 way obviously he'd asked me to then go and present what we

8 had so far to this group of people in Pretoria.

9 MR NTSEBEZA SC: Now can you answer the

10 question? You still remember the question? Did he ask you

11 to make an oral presentation?

12 COLONEL SCOTT: Well, a presentation is a

13 presentation and you speak orally to it, yes. He didn't

14 ask me to make an oral presentation; he asked me to make a

15 presentation.

16 MR NTSEBEZA SC: And was it your decision

17 over and above what you would do to bring this document?

18 COLONEL SCOTT: No, that was the

19 understanding, was to present the presentation.

20 MR NTSEBEZA SC: So it was your deduction

21 that you need to have this written presentation?

22 COLONEL SCOTT: It – well, like I'm

23 saying, I don't have the exact wording or recall the exact

24 instruction from General Annandale, but it was to give a

25 presentation to those people in Pretoria.

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1 MR NTSEBEZA SC: Yes. And he must have

2 mentioned –

3 CHAIRPERSON: I'm sorry, may I ask a

4 question? Forgive me, but I hope it may help you, Mr

5 Ntsebeza. I notice that the presentation consists very

6 largely of, it looks like photographs or slides,

7 photographic slides. I don't know whether they were video

8 clips and people saw more than what we can see on the

9 printed version, or whether they only saw what is available

10 on the printed version, but there's also some narrative,

11 and the third page of what we've got is headed "Strike

12 history of events" and then there's a narrative "Friday,

13 Saturday, Sunday." Now do you read that out, or did they

14 just read it themselves silently on the screen when you

15 showed it?

16 COLONEL SCOTT: I think in the nature

17 that I would present presentations I would use the words

18 and then elaborate on what I knew according to those words

19 to the best of my ability –

20 CHAIRPERSON: Yes, carry on.

21 COLONEL SCOTT: And then also I think I

22 saw it yesterday, in some of the actual slides you'll

23 notice a little bar. It will probably come forward if it's

24 in black and white. There's a, sort of an oblique, oblong

25 with a, it comes forward as a black bar with a green dot

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1 and I normally insert those as a hyperlink to video
2 footage.

3 CHAIRPERSON: So you've actually now
4 answered Mr Ntsebeza's question that you did give an oral
5 presentation because you read the narrative on the screen
6 and then elaborated on it orally. So that's the answer to
7 that question, and the second point is that not only did
8 they see the images which we see in the printed version,
9 but there were some cases where there was some, the bar for
10 you to click on –

11 COLONEL SCOTT: Yes.

12 CHAIRPERSON: - and they then saw a video
13 clip of some kind.

14 COLONEL SCOTT: Yes. Slide 10 would show
15 one of those bars in the bottom right corner.

16 CHAIRPERSON: Yes, yes. I think that's
17 the information you're looking for, Mr Ntsebeza.

18 MR NTSEBEZA SC: Thank you, Mr Chairman.
19 And I mean in the context of this thing, an informal
20 meeting – so who said anything from these six people about
21 you commencing with this exercise? We know that from
22 General Annandale you were to go to Pretoria and make a
23 presentation, and you have now told us that the
24 presentation was the one we have as an exhibit, that you
25 would speak to it. Now when you get there and you get into

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1 this room, who says what?

2 CHAIRPERSON: Sorry, before you answer
3 the question, did I understand you to say six people? I
4 thought there were four, or did I mishear? How many people
5 were in the group to whom you made this presentation, which
6 we now know to be partly on oral presentation? Were there
7 four or six? How many?

8 COLONEL SCOTT: I recalled four. I've
9 checked yesterday and there are more. So the Advocate may
10 be right that there, I think it is about six.

11 CHAIRPERSON: In this checking that you
12 did, did you find out who the other two were?

13 COLONEL SCOTT: Yes, well I just looked
14 on the call-up. It's Colonel Siva –

15 CHAIRPERSON: How do you spell his name?

16 COLONEL SCOTT: S-I-V-A.

17 CHAIRPERSON: Yes, Siva, yes.

18 COLONEL SCOTT: Then there is a, it's a
19 strange – M-O-K-A-I, something to that effect. I don't
20 think I've got the name totally correct –

21 CHAIRPERSON: The rank?

22 COLONEL SCOTT: But it's also a colonel.

23 CHAIRPERSON: Colonel?

24 COLONEL SCOTT: Yes.

25 MR NTSEBEZA SC: - And all of these were

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1 people who had not been involved in the operation?

2 COLONEL SCOTT: That's correct.

3 CHAIRPERSON: I'm sorry to interrupt you
4 again. Mr Tokota suggest that the last gentleman whose
5 name you got partly may well be Moaki.

6 COLONEL SCOTT: That sounds about right,
7 yes.

8 MR NTSEBEZA SC: Yes, so the six or more
9 people are here in front of you and you must have got the
10 impression that they were waiting for you, they were
11 expecting you to come?

12 COLONEL SCOTT: Well, I knew they were
13 expecting me because the meeting with them had been set up
14 for me to present the presentation to them.

15 MR NTSEBEZA SC: Yes, now somebody must
16 have asked you to, "Well Colonel, you are here, let's see
17 what you have got"?

18 COLONEL SCOTT: Well, it was a given when
19 I walked in that I was going to present the presentation.
20 I don't recall any specific person there being put in
21 charge or saying that they were in charge. That's why I'm
22 saying it was an informal group sitting around the table
23 when I came in.

24 MR NTSEBEZA SC: Yes, but then you come
25 in to this informal group, then what happens?

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1 COLONEL SCOTT: I set up my – well, I
2 greeted them, as I would normally do, set up the computer.
3 I'd been through that, noticed that we didn't have sound.
4 In the time that we were looking for speakers went and
5 printed copies of the actual presentation for them,
6 presented. I think I can recall them inviting me to stay
7 for lunch afterwards, which I declined because there was, I
8 had to get back as quickly as I could.

9 MR NTSEBEZA SC: I want to move away from
10 this, but can I put this question –

11 CHAIRPERSON: Sorry, before you move on
12 to your next point, which I take it is your second and last
13 point for the morning, we've heard from the witness that he
14 understands that the document calling this group together
15 was sent to SERI last year.

16 [09:25] Now it wasn't listed in the list of documents
17 that you were going to use to cross-examine the witness,
18 but if there is such a document extant it may save a lot of
19 time and a lot of unnecessary questioning if we have the
20 document before us. So what is the position in regard to
21 that document? I mean time is precious in this Commission,
22 we can't –

23 MR NTSEBEZA SC: Mr Chairman, can I just
24 interrupt you, with you great respect?

25 CHAIRPERSON: Yes, of course.

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1 MR NTSEBEZA SC: What the witness
 2 believes and what is reality is two totally different
 3 things. I'm instructed that there is no such a document
 4 that was sent to SERI and there never was. In fact
 5 everything that we get independently we take the initiative
 6 to bring to the Commission, all the evidence will testify
 7 to that.
 8 CHAIRPERSON: I understand what you say,
 9 if it is such a document which it was thought was sent to
 10 SERI but was not received by them then presumably the
 11 police can make it available to us. And it will save us
 12 quite a lot of time if we can get the document and then in
 13 fact you will then be able to ask more, if I may so with
 14 equal respect, more focused questions because you won't
 15 have to approach the matter as circumspectly as we've doing
 16 up to now. So can we see the document, is it available,
 17 when can be got to it?
 18 MR SEMENYA SC: Chair, what we've been
 19 able to assess at this point is that there was a call up.
 20 We are unaware of any document or report emanating from
 21 that group.
 22 CHAIRPERSON: Well you obviously got some
 23 information yesterday then that appears to be incorrect,
 24 Colonel, about a call up document.
 25 COLONEL SCOTT: Yes, but I'm sure the

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1 legal as well as myself will just follow that up to look
 2 for the paper trail on that.
 3 CHAIRPERSON: You see the problem is, I
 4 can sympathise with Mr Ntsebeza, he wants information about
 5 this. If there is such a document then he'd be able to
 6 deal with it fairly crisply. The absence of a document
 7 he's got to deal with it in a less crisp fashion than he
 8 would otherwise do. But I'm impatient to get to the meat
 9 of the matter, if you can get it. Anyway you obviously
 10 haven't got it here today, attempts are being made, we
 11 can't speed it up more than that I take it.
 12 COLONEL SCOTT: Chairperson, and it will
 13 be shown in the document, it's actually a call up for a
 14 work session. It doesn't say a panel or a committee of
 15 review or anything to that effect. It says a work session
 16 and I think Brigadier Mkhwanazi may be quite correct in
 17 saying that they called up to independently look at the
 18 presentation and to then give their inputs at the end of
 19 Roots at the same time that the National Commissioner was
 20 hearing the presentation.
 21 CHAIRPERSON: You say it says a call up
 22 for a work session, did you see the document?
 23 COLONEL SCOTT: Yes, I saw it yesterday.
 24 CHAIRPERSON: So you saw it yesterday.
 25 COLONEL SCOTT: Yes.

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1 CHAIRPERSON: And where is it, where did
 2 you see it?
 3 COLONEL SCOTT: At the police office.
 4 CHAIRPERSON: Police office where?
 5 COLONEL SCOTT: Here at – local, across
 6 the road where the police have an office.
 7 CHAIRPERSON: So it shouldn't be too
 8 difficult then for the SAPS legal team to get it for us.
 9 COLONEL SCOTT: No.
 10 CHAIRPERSON: No.
 11 COLONEL SCOTT: But I think there's
 12 obviously a further chain that's being asked for from the
 13 evidence leaders, it's not just the one document, I think
 14 there was a couple that they're trying to see if there's
 15 anything in existence.
 16 MR NTSEBEZA SC: You see, Colonel, that
 17 is the problem that I've been trying to get you to
 18 appreciate and it is this. Yesterday questions were put to
 19 you in a fair amount of detail about the people who were
 20 there, how this meeting came about and have you. Now this
 21 morning you say you saw a document from which you are able
 22 to tell the Chairman or the Commission that there were two
 23 more people other than the four that you gave. Now I would
 24 have expected you to come with that document or don't you
 25 think it was important for you to come with the document

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1 and say it is this document that I have now found?
 2 COLONEL SCOTT: I believe it to be part
 3 of a procedure. It's not for me to arrive with evidence
 4 into the Commission, but there's a procedure that's being
 5 followed through the evidence leaders in their requests to
 6 SAPS to do that.
 7 MR NTSEBEZA SC: No, you are answering a
 8 question I'm not putting to you. You are in the witness
 9 box, you are under oath, you have sworn before God to speak
 10 the truth. You told this Commission yesterday that you are
 11 not here to bolster a party's case, you are wanting to put
 12 the Commission in the knowledge of what you know. You are
 13 in the middle of a cross-examination in relation to a
 14 particular meeting about which you make a discovery of a
 15 document relevant to that, why didn't you say Mr
 16 Commissioner, actually I've got a document that reminds me
 17 of this day. And they had – in fact when the question was
 18 raised about there being six you say you would think I was
 19 right when you know that you have a document.
 20 MR SEMENYA SC: Chair, the attack on the
 21 witness is unfair. We have been requested to submit a
 22 whole number of issues by the evidence leaders which
 23 request we are responding to. The attack on the witness is
 24 totally unfair.
 25 CHAIRPERSON: Yes, Mr Ntsebeza do you

<p style="text-align: right;">Page 15456</p> <p>1 wish to defend yourself against what Mr Semenya has said?</p> <p>2 MR NTSEBEZA SC: I don't understand the</p> <p>3 attack, I am simply saying, with respect, Mr Chair, that</p> <p>4 the witness must let the Commission understand whether it</p> <p>5 was not his duty as a witness who has sworn to speak the</p> <p>6 truth, who has discovered overnight a document that is</p> <p>7 relevant and he doesn't say anything about it and it now</p> <p>8 comes that he has a document which –</p> <p>9 CHAIRPERSON: No, no, no, he didn't he</p> <p>10 had the document. He said he saw it at the local police</p> <p>11 headquarters and he said, as I understand him, that he</p> <p>12 understand that the lawyers for the police were dealing</p> <p>13 with the matter. It may well be that you are right, I</p> <p>14 don't say you are, it may well be that you are right, it's</p> <p>15 strictly speaking his duty to present it to us. But if he</p> <p>16 saw his duty differently because he thought the lawyers</p> <p>17 were dealing with it I'm not sure that the substantial</p> <p>18 criticism can be directed against him. But anyway let's</p> <p>19 get his comment on what you've said and then we can carry</p> <p>20 on. Let's get your answer to that and then maybe this</p> <p>21 cross-examination on this topic can stand over till the</p> <p>22 document or the documents come because it seems to me that</p> <p>23 the questions aren't as crisp and focused as they will</p> <p>24 otherwise be. Do you wish to reply to what Mr Ntsebeza's</p> <p>25 put to you in regard to what he says is your duty in</p>	<p style="text-align: right;">Page 15458</p> <p>1 to also maybe just put it on record as well. I'm not</p> <p>2 playing closed cards, the reason that the actual</p> <p>3 presentation which states HQ was made available yesterday</p> <p>4 as well, I didn't bring it up in the Commission, I thought</p> <p>5 that there are channels to be followed and I thus went to</p> <p>6 the evidence leaders with that and had them bring it up in</p> <p>7 the Commission. So I've been under the impression that</p> <p>8 there's a protocol to be observed and that a witness</p> <p>9 doesn't just throw evidence down on the table, it needs to</p> <p>10 move through some or other channel.</p> <p>11 CHAIRPERSON: You've made that clear now</p> <p>12 and Mr Ntsebeza said he will not ask you any more questions</p> <p>13 about this until the documents arrive, document or</p> <p>14 documents arrive. Any more questions at this stage Mr</p> <p>15 Ntsebeza?</p> <p>16 MR NTSEBEZA SC: Yes, Mr Chairman,</p> <p>17 unfortunately.</p> <p>18 CHAIRPERSON: Don't say unfortunately, it</p> <p>19 depends on the nature of the question. We'll decide later</p> <p>20 whether they unfortunate –</p> <p>21 MR NTSEBEZA SC: Colonel, yesterday you</p> <p>22 did mention one of the generals mentioning to you in the</p> <p>23 course of the presentation that this is not a POP</p> <p>24 situation.</p> <p>25 CHAIRPERSON: He didn't say general, he</p>
<p style="text-align: right;">Page 15457</p> <p>1 relation to the document you saw yesterday?</p> <p>2 COLONEL SCOTT: And that's exactly why</p> <p>3 I've mentioned it here and not withheld that information,</p> <p>4 but the actual physical document I personally don't have, I</p> <p>5 saw it on a police computer yesterday when I went back to</p> <p>6 inquire about it. For that very reason, knowing that the</p> <p>7 police wouldn't call people together without some form of a</p> <p>8 call up instruction. But also knowing that that's in the</p> <p>9 procedure of going through the handing of evidence. So I</p> <p>10 left it at that, knowing with the knowledge now what I know</p> <p>11 and then better being able to help the Commission through</p> <p>12 the knowledge that I have.</p> <p>13 COMMISSIONER: Mr Ntsebeza, sorry, is it</p> <p>14 a sensible procedure for us to wait for this document and</p> <p>15 perhaps some allied documents come and you could then ask</p> <p>16 question in a focused, crisp fashion and elicit the</p> <p>17 information that you require? I would examine that that</p> <p>18 cross-examination will take place anyway when the documents</p> <p>19 come, so I don't see any point in your asking preliminary,</p> <p>20 anticipatory questions as it were before the documents</p> <p>21 come. Isn't that a sensible, realistic way of proceeding?</p> <p>22 MR NTSEBEZA SC: I think, Mr Chairman, on</p> <p>23 that basis may I indicate therefore that when the document</p> <p>24 comes we'll reserve our right to revisit the subject.</p> <p>25 COLONEL SCOTT: Chairperson, maybe just</p>	<p style="text-align: right;">Page 15459</p> <p>1 said Brigadier Hunter.</p> <p>2 MR NTSEBEZA SC: Oh brigadier, I'm sorry.</p> <p>3 There wasn't a general there. It was Brigadier Hunter is</p> <p>4 it?</p> <p>5 COLONEL SCOTT: That's correct.</p> <p>6 MR NTSEBEZA SC: Yes. Now I gather from</p> <p>7 that there was an engagement. In other words there would</p> <p>8 have been questions put to you to clarify this, that and</p> <p>9 the next thing.</p> <p>10 COLONEL SCOTT: I just remember it being</p> <p>11 his comment at the end of the presentation.</p> <p>12 MR NTSEBEZA: At the end of the</p> <p>13 presentation. So is the picture this? You get in there,</p> <p>14 nobody seems to be sharing this, these gentlemen apparently</p> <p>15 are waiting for you, you fix up your machine, you just go</p> <p>16 ahead and made this presentation. Nobody asked you any</p> <p>17 questions except there is a comment at the end. Is that</p> <p>18 your evidence?</p> <p>19 COLONEL SCOTT: Well you're asking me</p> <p>20 again for the absolute detail of chit chat that may have</p> <p>21 gone on which I cannot recall, but I know that they would</p> <p>22 have known at that stage what had gone on until I had shown</p> <p>23 them.</p> <p>24 CHAIRPERSON: What Mr Ntsebeza has put to</p> <p>25 you as a summary of your evidence is that what you can</p>

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1 remember.

2 COLONEL SCOTT: That's what I –

3 CHAIRPERSON: Is there anything else that

4 you can remember that would qualify or supplement the

5 summary that he's given?

6 COLONEL SCOTT: I sat last night trying

7 to recall some more and the only other thing that

8 pertinently was – I remember Brigadier Mkhwanazi and

9 Colonel Twala and I think it's because they may have some

10 cultural background to that, they commented on the actual

11 sangoma activities. And when they actually saw the video

12 footage of the person going forward to urinate they

13 commented afterwards that that is a way of showing

14 disrespect towards their opponents. But as I say, that's

15 all I can actually recall.

16 MR NTSEBEZA SC: Now you may – I mean you

17 must have reflected on this on a number of occasions and

18 you know for one thing it was not a debriefing session

19 because none of those people whom you spoke to were

20 involved in the operation or had anything to do with the

21 planning thereof isn't it? It was not a debriefing session

22 what you went to do.

23 COLONEL SCOTT: Obviously it was not,

24 yes.

25 MR NTSEBEZA SC: Now I won't go to the

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1 other thing, we traversed it yesterday. Now on reflection

2 why do you think Major-General Annandale instructed you to

3 go and make this –

4 MR SEMENYA SC: No, Chair, this question

5 was asked three times yesterday.

6 CHAIRPERSON: The question yesterday, I

7 thought I disallowed it yesterday and if I didn't disallow

8 it yesterday I'm disallowing it now. I don't see how this

9 witness can help us with what passed through the mind of

10 General Annandale. If it's a really very important

11 question you can possibly ask for General Annandale to come

12 back or even send a request to him to give you the answer

13 in writing. I'm not sure that I'd necessarily allow that,

14 but it's something possible. But I don't see how the

15 witness can tell us what passed through General Annandale's

16 mind and why he did what he did. But I feel, in any event,

17 the answer's pretty obvious. Colonel Visser and Colonel

18 Scott were busy with the presentation, if they wanted the

19 presentation or what they had of it at that stage shown to

20 this work session then they had to send one or the other of

21 them or possibly both to Pretoria to do it. So it seemed

22 very sensible to pick Colonel Scott and say to him you go

23 and show the presentation as we have it so far and then

24 come back and make sure you're not away for longer than

25 three hours. I mean that's surely the answer, I don't know

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1 if we can take it any further than that surely?

2 MR NTSEBEZA SC: Thank you, Mr Chairman,

3 I accept the ruling. What did you understand your mission,

4 I'm talking now about you, when you reflected on it, what

5 did you understand your mission to have been going there?

6 COLONEL SCOTT: To help those people to

7 understand what had happened at Marikana.

8 MR NTSEBEZA SC: So you understood your

9 mission to have been to help them understand what had

10 happened.

11 COLONEL SCOTT: In the presentation of

12 the – well the presentation that we had at that stage.

13 MR NTSEBEZA SC: And shall I take it

14 therefore that the pictures and the narrative as it stands

15 was what you felt your mission was to communicate to them.

16 In other words all these things that are here were things

17 that you wanted them to understand to be the position, your

18 views on what happened in Marikana.

19 COLONEL SCOTT: The police's views. I

20 was –

21 MR NTSEBEZA SC: The SAPS's views?

22 COLONEL SCOTT: SAPS as I say at stage

23 and prior to that even at Marikana I was given inputs from

24 people and not being on the ground and I was reflecting

25 those in the presentation.

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1 MR NTSEBEZA SC: And if I understood your

2 evidence yesterday you don't know – you are very sure –

3 well let me. As I understood your evidence yesterday you

4 do not know if there were any minutes taken –

5 COLONEL SCOTT: I'm pretty sure there

6 weren't minutes taken.

7 MR NTSEBEZA SC: You're pretty sure.

8 COLONEL SCOTT: Ja.

9 MR NTSEBEZA SC: You also told the

10 Chairman this morning that there was no recorder –

11 COLONEL SCOTT: No.

12 MR NTSEBEZA SC: - of what was going on

13 there.

14 COLONEL SCOTT: No.

15 MR NTSEBEZA SC: Yes. Now let me just

16 move to something else. Mr Chairman, I don't know if the

17 families' opening statement was ever made an exhibit.

18 CHAIRPERSON: I'm pretty certain it was.

19 Ms Pillay will give you the exhibit number if you wish.

20 MR NTSEBEZA SC: Well there was a view

21 that it probably wasn't and I apologise for that. Mr

22 Chairman will recall that yesterday I indicated to the

23 witness that I might put to him what the families think

24 about this tragedy and it will be said –

25 CHAIRPERSON: Is that going to help us?

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1 What the families think of the tragedy is something already
 2 set out in the opening statement. What's the point of
 3 putting it to this witness, what value will we derive from
 4 that exercise?
 5 MR NTSEBEZA SC: Mr Chairman, I am in no
 6 hurry to want to put that. If it is understood that I can
 7 then make submissions. I don't want a situation to arise
 8 later on where I will be told but you never put it to the
 9 person who was there.
 10 CHAIRPERSON: What comment can he make
 11 upon that? It's in your opening statement, you can make
 12 the submission at the end. If there's some value to be
 13 derived from putting it to him again and getting his answer
 14 it would be different.
 15 MR NTSEBEZA SC: As I understand, Mr
 16 Chairman –
 17 CHAIRPERSON: Tell us shortly what the
 18 ambit is or the portion that you want to put to the witness
 19 and then the matter can be considered.
 20 MR NTSEBEZA SC: I didn't understand.
 21 CHAIRPERSON: You're not going to put the
 22 whole opening statement.
 23 MR NTSEBEZA SC: No, they are specific.
 24 CHAIRPERSON: Now tell us shortly what
 25 those points deal with and when I hear what they are I will

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1 then be able to decide whether I will allow you to put it
 2 to the witness.
 3 MR NTSEBEZA SC: For instance in the
 4 statement, I believe that, Chair, the statement has been
 5 given to whoever would let us see - the opening statement.
 6 MS PILLAY: Chair, I should just indicate
 7 that the statement is not an exhibit as yet.
 8 CHAIRPERSON: Let's make an exhibit now
 9 then. Do we keep for convenience to the JJJ series or do
 10 we -
 11 MS PILLAY: We do, Chair, it will be
 12 JJJ201.
 13 CHAIRPERSON: JJJ201 Opening Statement of
 14 Families of Deceased Miners.
 15 MR NTSEBEZA SC: Now Chairman, just about
 16 value.
 17 CHAIRPERSON: I'll know whether there's
 18 value if I know what passages you want to put.
 19 MR NTSEBEZA SC: Yes, yes.
 20 CHAIRPERSON: If it's something in
 21 respect of which his comment will take the matter no
 22 further there'll be no value. If it's in respect of which
 23 he may give a meaningful reply and which you can use in
 24 argument then I'll allow it.
 25 MR NTSEBEZA SC: Yes, Mr Chairman, and

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1 the witness may concede.
 2 CHAIRPERSON: Well you can approach it
 3 optimistically or pessimistically but let's just find out
 4 what it is you want to put to him.
 5 [09:45] MR NTSEBEZA SC: Yes, Mr Chairman.
 6 CHAIRPERSON: Perhaps if you just briefly
 7 tell us what the paragraph is and it's being shown on the
 8 screen, you don't have to read it out, I can quickly read
 9 it silently to myself to see what -
 10 MR NTSEBEZA SC: In paragraph 9.
 11 CHAIRPERSON: Paragraph 9.
 12 MR NTSEBEZA SC: I would like his
 13 comments thereon. I know the chain of his evidence –
 14 CHAIRPERSON: Alright, I'll allow you to
 15 put 9 to the witness.
 16 MR NTSEBEZA SC: Yes. There are a lot
 17 more others.
 18 CHAIRPERSON: I'll read it out for the
 19 benefit of those who're going to read the transcript.
 20 "Whatever the truth of that tragic day, it cannot be that
 21 the SAPS could not have acted differently. It could and
 22 should have brought the day, and indeed the gathering, to
 23 an end peacefully and without loss of life," and then he
 24 goes on perhaps in 10, which I presume he's going to want
 25 to put to you as well, "We will contend that on the

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1 contrary every step taken by the SAPS leading up to and
 2 including 16 August 2012, not only made the workers' deaths
 3 foreseeable, but in the end made those deaths the most
 4 likely result." I take it you wanted to put 10 as well
 5 after you put 9.
 6 MR NTSEBEZA SC: Yes, and then 11 –
 7 CHAIRPERSON: And 11 as well, okay.
 8 MR NTSEBEZA SC: 11 as well.
 9 CHAIRPERSON: 11 is, "We will show that
 10 while disarming and dispersing the miners may not have been
 11 an illegitimate objective, the manner and timing of the
 12 SAPS's attempts to do so inevitably invited death and
 13 injury." Are those the passages?
 14 MR NTSEBEZA SC: Yes, for now, Mr
 15 Chairman.
 16 CHAIRPERSON: Alright, we'll deal with
 17 the others things later possibly.
 18 MR NTSEBEZA SC: Indeed.
 19 CHAIRPERSON: But those are the passages.
 20 Have you comments that you wish to make in respect thereof?
 21 COLONEL SCOTT: I can maybe make brief
 22 comments, Chairperson, but obviously I've got to keep in
 23 mind the interests of the police's opening statement, but –
 24 CHAIRPERSON: No, you don't have to worry
 25 about the police's opening statement; you just give us your

<p style="text-align: right;">Page 15468</p> <p>1 truthful answer. I'm not suggesting you're doing anything 2 else, but your truthful answer to these three paragraphs. 3 COLONEL SCOTT: Ja, in saying that, I'm 4 just saying that it's based on maybe information or 5 knowledge that was not always available to me and in the 6 sense that when we talk about it could have, that day 7 specifically, obviously I'm not a decision maker 8 necessarily to have made decisions, not saying that I 9 disagree with the decisions, but – so the decision to go 10 ahead that day is maybe one that would be contended, but 11 the fact of the matter is that the police never intended to 12 go out there to harm anybody, and we know that because 13 there is a protocol for a force continuum to be in place. 14 So when the police is instructed to go ahead now and to 15 bring, or to restore law and order, we do that in a way as 16 best as we can with the acceptance that we need to minimise 17 any effect to the loss of life. Now in saying that, there 18 seems to be a perception that the police's action is the 19 cause of the loss of life. The police is reacting to an 20 action posed to them by the strikers, so – and that is 21 something that we were hoping for, was to have it end 22 peacefully. We tried on numerous occasions through 23 dialogue. We even tried on dialogue, in dialogue on the 24 day, and that is reflected in, I think it's Mr Nzuzza's 25 statement where he admits as being one of the party going</p>	<p style="text-align: right;">Page 15470</p> <p>1 not seeing it from the side that the police are 2 experiencing it from, and if we take the whole build-up to 3 where the police were eventually, and the fatal shooting 4 started, there's a history to that from the killings over 5 the weekends, to the killings of the mine security, to the 6 killings of police officials where the police responded 7 also in taking life of strikers at that stage, to the use 8 of muti, the visible use of these things for whatever 9 purposes they may say it was far, etcetera. And then of 10 course the threats which were noted, they were made against 11 the police and I believe that the new video footage which 12 was discovered through, I believe it was Channel 4 in 13 England, or UK, there's – I'm not sure if the whole of it 14 has been shown, but I had the privilege also of seeing that 15 last night, the full version that I'd seen, and it 16 explicitly shows there that the approach on the police line 17 at scene 1 is an organised approach. They take up their 18 positions. They bow down in the fashion that they did on 19 the Monday when they tried to confront that police official 20 who was standing in front of them. That was not an attempt 21 to disperse, and it would be somebody with a very vivid 22 imagination that would tell me that that is an attempt to 23 disperse and to just peacefully try to make their way into 24 Nkaneng. 25 The three statements that I've read that Mr Mpofu</p>
<p style="text-align: right;">Page 15469</p> <p>1 to the police on the 16th, where the police again pleaded 2 with them, please, we want a peaceful end to this. So that 3 was the spirit from where the police was coming all along, 4 but obviously this could not be maintained. 5 Now whether the timings are correct, that is 6 something obviously for debate and outside of my area, or 7 my scope, but we definitely did not want this to go in the 8 direction it did go. But again in saying that, and just to 9 reiterate it again, the police were responding to what they 10 believed was a threat from the strikers. So there was a 11 certain action that was taken and the police was in a 12 responsive, or a reactive place when they were utilising 13 firearms with sharp-point ammunition, not in a proactive 14 pre-planned action against strikers in that way, and if 15 that is maybe answering paragraph 9. 16 Paragraph 10 is being again that every step taken 17 by the SAPS leading up to and including the 16th, surely the 18 SAPS trying to engage in dialogue, General Mpembe going to 19 the unions, for the first time ever getting these two union 20 presidents together to come to a meeting and thereafter 21 going out to address the crowd, trying everything that we 22 could, can surely not be leading up to what is, made those 23 deaths most likely a result. Again, this is on the premise 24 that it's coming from those who were defending obviously 25 the deceased or the families of the deceased, but they're</p>	<p style="text-align: right;">Page 15471</p> <p>1 will put to me shortly, each of those three also admits to 2 the police first using all their less-than-lethal force 3 before they were confronted by the police's line with 4 lethal force. So, and in those admissions, why do you 5 still approach the police line when you're admitting that 6 they are shooting teargas at you, throwing stun grenades at 7 you, firing water cannons at you, and rubber bullets, and 8 yet you still choose to move through that because you want 9 to disperse along the road to Nkaneng? And as I say, 10 that's I don't believe that story to be true. So when we 11 speak to what is being shown on screen, I can understand 12 it's coming from the advocates who are defending the 13 families and that's their job, that's what they need to do, 14 but I don't agree with all that's being said there. If I 15 can maybe end there. 16 MR NTSEBEZA SC: To the extent that you 17 have mentioned the labour dispute, I think you were also 18 covering 12, but it's paragraph 13 that I would like to – 19 CHAIRPERSON: We haven't seen 12 yet on 20 the screen. Perhaps we could see 12 and 13 on the screen. 21 You want to put those too? Let me read it quietly to 22 myself. 23 MR NTSEBEZA SC: 13 is what I would like 24 to put, in the light of all the evidence that the witness 25 has heard and his beliefs.</p>

<p style="text-align: right;">Page 15472</p> <p>1 CHAIRPERSON: Yes. It sounds as if 2 paragraph 12, which he hasn't put to you in any event, is a 3 matter that is not to be put to you. It deals with people 4 who relied exclusively, as put, on NUM or AMCU to negotiate 5 with the miners. 13 reads as follows, "It appears that 6 immediately prior to the killings no direct order to 7 disperse was issued to the striking miners, failing which 8 the police would move in, disarm, and arrest them, nor was 9 there an ultimatum issued requiring the miners to lay down 10 their weapons, nor were the miners given any opportunity to 11 comply with any such order." It seems that 14 is also 12 relevant. "Instead, after what it describes as a 'show of 13 force' which could only have heightened tensions at the 14 scene, the SAPS sought to encircle and entrap the miners. 15 A barbed wire fence was placed around the mountain, 16 blocking the miners' most likely dispersal route to the 17 Nkaneng informal settlement. It was this event, and this 18 event alone, which precipitated the movement of the 19 strikers off the mountain. They had no choice but to move 20 in numbers directly towards the police lines. They were 21 given nowhere else to go. In these circumstances death and 22 injury were depressingly predictable. Less predictable was 23 the fact that many of the miners would be shot in the back 24 and in the back of the head, apparently while trying to 25 escape. The use of automatic weapons was in itself</p>	<p style="text-align: right;">Page 15474</p> <p>1 his thoughts on the points insofar as he's capable of 2 dealing with the points. But perhaps let's get his 3 response insofar as he's prepared to give one. 4 COLONEL SCOTT: Chairperson, as I say, I 5 would have preferred to have had the documents because 6 we're moving through it so quickly, there's bits here and 7 there that I can speak to, but as I say, through my study 8 of what went on, and I am a police official, but I'm bound 9 to adhere to the Constitution and the laws of the country. 10 If the police are wrong, the police are wrong. If the 11 strikers are wrong, the strikers are wrong, and I've 12 maintained since I started with this and with the 13 Commission that what was on the day is what was on the day, 14 and that's why I say if the police were wrong in what they 15 did, then they were, but if the strikers were wrong in what 16 they did, then they were, and there needs to be an 17 admission if the Commission is to truly understand what 18 happened there, because that's the aim of the Commission, 19 is to understand that, and that's why I have testified as I 20 have, as best as I could, to help the Commission to 21 understand what went on. So to have this document, I would 22 also to the best of my opinion comment on what I feel maybe 23 is not accurate, again from the perceptions that I have, 24 having dealt quite extensively with working through to try 25 and get the best result in the police's presentation,</p>
<p style="text-align: right;">Page 15473</p> <p>1 astonishing, especially in the absence of any indication 2 that the miners possessed more than three firearms and in 3 the absence of any suggestion that they had threatened to 4 use them." Those are the passages you want to put, are 5 they, Mr Ntsebeza? 6 MR NTSEBEZA SC: Indeed, Chair. 7 CHAIRPERSON: I have read them out. Do 8 you wish to comment on them? 9 COLONEL SCOTT: Well, Chairperson, again 10 there are many discrepancies in there which I could allude 11 to. You know, if I had the opportunity to simply have the 12 document I would go and highlight them, but again the fact 13 that there was nowhere for the strikers to go because the 14 police were in essence closing themselves off, now when you 15 get to that scene, they could have walked directly north 16 and still got into Nkaneng for that matter. 17 MR SEMENYA SC: Chair, may we make the 18 objection? All of these are conclusions and arguments that 19 are made. We are not given the facts on which these 20 arguments rest, and to call on the witness to be giving his 21 opinion about those conclusions to our respectful 22 submission is objectionable. It's irrelevant. 23 CHAIRPERSON: There is a further problem, 24 and that is that he wasn't given notice of the intention to 25 rely on this, so he wasn't given an opportunity to marshal</p>	<p style="text-align: right;">Page 15475</p> <p>1 exhibit L. Admittedly we didn't have all the footage and 2 the access to experts that maybe CALS had, thus I concede 3 to at least from their point of view from seeing videos and 4 from seeing photo footage, that that would appear to be the 5 case. I think it's still left up to the members on ground 6 as well as the strikers on ground to put their case 7 forward, for that matter to explain their very movements 8 and motives. But again if the Commission feels it would be 9 beneficial for me to do so, I would happily do so, to 10 deliver my opinion. I'm not sure if my legal team would 11 agree though. 12 MR NTSEBEZA SC: Mr Chairman, can I just 13 indicate that I'm told that we had indicated that the 14 opening statement from the families was one of the 15 documents that we would use in cross-examination. In fact, 16 we also – 17 CHAIRPERSON: Hang on. Obviously, isn't 18 the way forward though, he hasn't had an opportunity to 19 study the document. Whether that's anyone's fault is a 20 matter we don't have to worry about. Whether he can give 21 meaningful valuable replies is to some extent, I would have 22 thought, a matter for his counsel to decide. If they wish 23 to traverse these matters in re-examination they'll be able 24 to do so after the witness will have had an opportunity to 25 study the document. Would you like to leave it there at</p>

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1 this stage? Because I take it you don't propose to engage
 2 in a running debate with him in respect of his answers?
 3 MR NTSEBEZA SC: No.
 4 CHAIRPERSON: So perhaps we can leave it
 5 like that, if you – I think that's –
 6 MR NTSEBEZA SC: I'm quite happy to leave
 7 it on that basis.
 8 CHAIRPERSON: - fair and practical. Mr
 9 Semenya can consider his, what he thinks is best for his
 10 case, and then by the time he gets to re-examination the
 11 witness will have had an opportunity to read the document
 12 and study it.
 13 MR NTSEBEZA SC: Now Mr Chairman –
 14 CHAIRPERSON: Yes, Mr Ntsebeza, are there
 15 any other passages in this exhibit that you want to put to
 16 the witness to give him an opportunity to comment on it?
 17 The witness is at a disadvantage because he hasn't had an
 18 opportunity to study the document and marshal his thoughts.
 19 Whether he can make a meaningful contribution is something
 20 I would think is best left to his counsel to decide, but if
 21 you're going to argue at the end that there are these
 22 passages, that they were put and there was no reply, then
 23 obviously the witness must get an opportunity to reply.
 24 But are there other passages in the opening statement that
 25 you wish to rely on in this context?

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1 MR NTSEBEZA SC: I was only going to put,
 2 because of the, I think they are relevant, passages 17, and
 3 I won't put 18 to this witness because he's not an expert
 4 in that area. It would be 17 and 19, and that would be it.
 5 CHAIRPERSON: Right, you've now told us
 6 what they are. Mr Semenya can decide, as the leader of his
 7 team, what, if anything, he's going to do about it in re-
 8 examination.
 9 MR SEMENYA SC: Well, Chair, we can say
 10 they are meaningless. There is no evidence supporting the
 11 conclusions that are contained there. Let us look at 19
 12 for instance.
 13 CHAIRPERSON: Yes, no, I understand that
 14 [microphone off, inaudible] That's a matter that can be
 15 traversed in argument later. There were, in some of the
 16 earlier passages there were statements of, assertions of
 17 facts which the witness said he didn't agree with, but
 18 anyway, that's a matter for –
 19 MR SEMENYA SC: Chair, with respect –
 20 CHAIRPERSON: But that's a matter for you
 21 to decide as to what, if anything, you're going to do,
 22 whether you're going to content yourself with arguing at
 23 the end that there's no factual basis put up for them, but
 24 I can't tell you how to run your case. I've just got to
 25 ensure that procedure is fair both to Mr Ntsebeza's side

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1 and your side, and also I've got to be fair to the witness,
 2 of course.
 3 MR SEMENYA SC: Chair, I'm making the
 4 objection, Chair –
 5 MR NTSEBEZA SC: Can I respond to the
 6 objection, Mr Chairman?
 7 MR SEMENYA SC: Well, only after I've
 8 made the objection, Chair.
 9 MR NTSEBEZA SC: You have made one
 10 already.
 11 CHAIRPERSON: No, Mr Ntsebeza, behave
 12 yourself. Let's hear Mr Semenya's objection and then you
 13 can deal with it fully, otherwise you're going to speak
 14 now, and then he's going to speak again and the situation
 15 is going to get out of hand, and that's something that I
 16 don't want to allow. Carry on, Mr Semenya.
 17 MR SEMENYA SC: Chair, whether or not the
 18 police's response was disproportionate, it's a question
 19 squarely to be determined by the Commission itself. So the
 20 opinion of this witness is totally irrelevant and therefore
 21 the question is objectionable.
 22 MR NTSEBEZA SC: Mr Chairman, now that I
 23 hear, I've heard the objection, can I just say this; this
 24 is a witness whose opinions I'm not seeking. I'm not just
 25 seeking an opinion from a lay witness. This is a witness

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1 who in his own admission in his 148 paragraphed, or 38
 2 pages of affidavit, says he was not just the conceiver of
 3 the plan, he was central in the execution of a plan which
 4 it is at some stages indicated as having been a plan that
 5 went just horribly wrong. So the facts are not something
 6 that we are conjecturing about. This witness has been on
 7 the stand since September, from what I gather, and these
 8 facts were canvassed with him by the evidence leader. So
 9 it's not just something out of the air.
 10 What is remarkable, though, is the fact that
 11 right at the beginning, without us hearing any evidence, we
 12 had made these observations and all I'm putting to him now
 13 is to say we are all the more the reason going to be
 14 arguing what we'll be arguing, because we've stated it in
 15 our opening statement. In fact, can you give us a
 16 reflection of your own views now that you have testified
 17 and now that you know what we were saying. So it's not as
 18 though there are no facts. He has seen the videos. He's
 19 read other people's statements. He has testified to his
 20 own statement. Questions have been put to him about what
 21 other witnesses have been saying from the SAPS. He has got
 22 all the facts in it.
 23 [10:04] CHAIRPERSON: You make him sound like a
 24 Commissioner, he's got all the facts before him, seen all
 25 the videos, must give his opinion. There is an area which

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1 is reserved for our decision. The witnesses obviously have
 2 to give us facts, which are relevant. Insofar as they are
 3 experts, they are entitled to give us their expert
 4 opinions, but at the end of the day as President Truman
 5 said, the buck stops here on this table with us.
 6 MR NTSEBEZA SC: Of course it does.
 7 CHAIRPERSON: I don't think it's
 8 appropriate for us to delegate to this witness the duty to
 9 do part of our work for us, so I think I agree with Mr
 10 Semenya, I disallow this line of questioning. Obviously,
 11 you are free to argue these points at the end, I am not
 12 stopping that, but I am just trying to save something of
 13 that precious commodity, it's important for us, and it's
 14 time. Would you like to proceed to your next point
 15 MR NTSEBEZA SC: Mr Chairman, can I just
 16 say I am happy to leave it where it is, but I was not happy
 17 to leave it at this stage where there was an objection to
 18 which I wouldn't be given a response, just for the record.
 19 CHAIRPERSON: On that happy note, you
 20 will proceed.
 21 MR NTSEBEZA SC: Thank you, Mr Chairman.
 22 COLONEL SCOTT: Chairperson, if I may
 23 just also on my behalf, I don't have the list that was sent
 24 through from Seri as far as the exhibits I needed to see,
 25 and it may well be in that, but I had the – what they were

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1 going to possibly question about, and nowhere in there does
 2 it make reference to their opening statement, thus it was
 3 not provided to me for that matter. It only had to do with
 4 evidence on the 14th of October, that the SAPS established
 5 the panel of officers and then Monique Marks, but there's
 6 comment on something to do with 99, since 2003 only one
 7 person was killed in the crowd. I don't want to go
 8 through, but there's nothing there relating to an opening
 9 statement.
 10 CHAIRPERSON: Thank you for mentioning
 11 that. Right, Mr Ntsebeza, have you got any more questions
 12 to ask?
 13 MR NTSEBEZA SC: Just one question.
 14 CHAIRPERSON: The longest two questions
 15 I've ever seen in my life.
 16 MR NTSEBEZA SC: That's what worries Mr
 17 Semenya sometimes when he says, it's just going to be a few
 18 minutes. If he said, it's going to be an hour, I could
 19 contend with that, but when he says just a few minutes, we
 20 don't know how the minutes will end. Now Mr Chairman, I
 21 just wanted to ask, since I represent the families, just to
 22 put a general question to the Colonel, Colonel have you
 23 ever, it's been a year now, it's been more than a year,
 24 have you reflected in your own time about the tragedy,
 25 insofar as at least it affects my, the families I

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1 represent?
 2 COLONEL SCOTT: I have briefly, and –
 3 MR NTSEBEZA SC: You said you have
 4 briefly?
 5 COLONEL SCOTT: Yes, I have and I, in
 6 some ways I've got to find the right word, I have sympathy
 7 with them and again, the perpetrators of what caused this
 8 needs to be determined, so I don't place blame at this
 9 stage anywhere but I do feel sorry, seeing the families as
 10 actually being the victims of whatever the causes were from
 11 socio-economic right through to the end product of a
 12 violent encounter with strikers with police, because in my
 13 reflection I've actually gone back to the place, just as
 14 much as the police didn't want to be there that day, I am
 15 sure that the strikers didn't want to be there that day
 16 either in the same situation. But whatever forced their
 17 hands to get people to this place where eventually the
 18 Commission has to have focused on what actually happened in
 19 people being killed, is definitely not necessarily the
 20 result of what the families have had to endure and because
 21 of that, obviously, I've reflected on that, and had the
 22 greatest of sympathy for them, understanding that they're
 23 actually the true victims of losing breadwinners, husbands,
 24 brothers, and I don't say this in any way without
 25 recognising the same again for the very policemen that

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1 died, and for the very mine security that died, because we
 2 may look at this as a number, and we could say that there
 3 were 44 people in all that died, but in essence every
 4 family lost one person and whether that be a family of a
 5 striker or the family of a policeman or family of a mine
 6 security, that's one person to that family, and in essence,
 7 that's where it comes down to. So I do, I have the deepest
 8 of sympathy for the families that lost people that day, and
 9 –
 10 MR NTSEBEZA SC: Have you established or
 11 have you sought in your reflection, just want to establish
 12 where they come from, whether they have extended families
 13 and all of that.
 14 COLONEL SCOTT: I haven't obviously had
 15 the ability to go into that depth, and understanding that I
 16 am part of the police's team giving evidence and so on,
 17 I've also made no attempt to obviously connect with the
 18 families because of the Commission and what's going on, and
 19 I am not sure I will have that opportunity in the future,
 20 or even know where to start to do that, but I would think
 21 when this all finishes, that there would be some form of a
 22 reconciliation process, I would hope that would allow for
 23 the actual meeting of people, because in all essence we are
 24 all human beings, we are all from one country and nobody,
 25 at least myself, I can speak for, had any ill intent in

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1 what we were trying to do there, and that is something that
 2 I would in essence not try to convey to the families, but
 3 at least try to have them understand, maybe through the
 4 Commission, that the way the police has been made out in
 5 this is not actually in my opinion, the full truth of who
 6 the police are. We are not a monster which I think maybe
 7 sometimes we are portrayed to be, that we just went out
 8 there to be a killing machine. Quite the contrary, we
 9 tried to go out there to restore order through the most
 10 peaceful ways that we could.

11 MR NTSEBEZA SC: Yes, I am sure the
 12 Commission will be put in a position to determine what the
 13 actual truth is relevant thereto. Mr Chairman, I have no
 14 further questions.

15 CHAIRPERSON: Thank you, Mr Ntsebeza. Mr
 16 Mpfu?

17 CROSS-EXAMINATION BY MR MPOFU: Thank
 18 you, Chairperson. Colonel, if I may just, before going to
 19 my questions, just –

20 CHAIRPERSON: I record that you had a
 21 discussion with, in chambers with us, Mr Tokota and myself,
 22 in the presence of Mr Chaskalson, and we agreed that you
 23 could cover certain topics in your cross-examination, and
 24 the documents relating thereto, have I believe been made
 25 available to the witness. That is correct.

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1 MR MPOFU: Thank you, Chairperson –

2 CHAIRPERSON: Is it correct? I don't
 3 want the trouble that we had previously. Mr Mpfu
 4 indicated he wanted to cover certain topics, I allowed some
 5 and disallowed others, and in respect to those that were,
 6 he is allowed to cover under the rules that we've made,
 7 there are documents which he wishes to refer, you've been
 8 told of those, have you?

9 COLONEL SCOTT: I have, I was given them
 10 last night.

11 CHAIRPERSON: So you are ready?

12 COLONEL SCOTT: Thank you.

13 MR SEMENYA SC: Chair, we haven't been
 14 made privy to the rulings you made, Chair. I don't know
 15 which topics have been allowed and which not.

16 CHAIRPERSON: Yes, well, perhaps at tea
 17 time, Mr Chaskalson can show you. Sorry, Mr Chaskalson,
 18 what is the position to, do the SAPS not know what the
 19 topics are?

20 MR CHASKALSON: It's my oversight,
 21 Chairperson, I didn't revert to the SAPS after our meeting
 22 last night. SAPS have the original set of topics but not
 23 the –

24 CHAIRPERSON: That which have been
 25 deleted.

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1 MR CHASKALSON: Indeed. I am going to
 2 give a copy of that reduced set of topics to the SAPS now.

3 CHAIRPERSON: Yes. So if you know the
 4 full list, then you know everything, in fact you know more
 5 than you need to know because about half of them are cut
 6 out. So would you like to carry on, Mr Mpfu?

7 MR MPOFU: Thank you, Chairperson. Good
 8 morning, Colonel.

9 COLONEL SCOTT: Good day.

10 MR MPOFU: You will appreciate that the
 11 people that I represent are equally affected or maybe less
 12 so, but also affected by your last remark about the
 13 possibility of reconciliation.

14 COLONEL SCOTT: Yes.

15 MR MPOFU: And you will appreciate that
 16 no such reconciliation can eventuate if you don't know the
 17 truth.

18 COLONEL SCOTT: I agree with that.

19 MR MPOFU: And do I understand the
 20 remarks you made earlier to Mr Ntsebeza about some
 21 paragraph or another, to be that your standpoint is that
 22 what resulted on that day which is the death of 34 people
 23 and injury of between 80 and 100 was all the fault of the
 24 protesters? There is no fault to be apportioned to the
 25 police?

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1 COLONEL SCOTT: No, I think what you are
 2 saying, I am speaking specifically of scene 1, that what's
 3 been portrayed there from what I see from other parties, of
 4 the protesters simply wanting to move into the Nkaneng
 5 settlement and it's my opinion, and it will obviously be
 6 left to the Commissioners to make the judgment, but as
 7 shown in, as specifically in the most recent video footage
 8 to come to light, that doesn't seem to be the case to me.
 9 If I weigh that up, according to how people would normally
 10 just walk away and disperse and for that matter.

11 MR MPOFU: Yes, so you do accept –

12 CHAIRPERSON: Sorry, I am not sure you
 13 finished the answer.

14 MR MPOFU: - Chairperson.

15 CHAIRPERSON: He says you put a summary
 16 of what you understood him to be saying to him, I am not
 17 sure that that summary was entirely correct but I was
 18 waiting for him to reply to it. He then replied by dealing
 19 with scene 1, I think he's made it clear already that as
 20 far as scene 2 is concerned, he's got no personal knowledge
 21 of that. He can't really comment. Is that the correct
 22 position?

23 COLONEL SCOTT: That is in case, I have
 24 no objective video footage or evidence of scene 2 to make
 25 an objective call from, on opinion, from objective footage.

<p style="text-align: right;">Page 15488</p> <p>1 CHAIRPERSON: You seem to be saying that 2 if the strikers who advanced towards the police at scene 1, 3 hadn't done so, then what happened, wouldn't have happened. 4 COLONEL SCOTT: That is the case. 5 CHAIRPERSON: And you believe that they 6 were charging or attacking the police. 7 COLONEL SCOTT: That's what I – 8 CHAIRPERSON: And you personally don't 9 believe that they were just trying to get to Nkaneng, and 10 that's – but you say that's for us to decide. 11 COLONEL SCOTT: That is so, Chairperson. 12 CHAIRPERSON: Ja, okay. 13 CHAIRPERSON: But again, I also say that 14 my belief is open for persuasion otherwise, you know, if 15 it's shown to be otherwise, and it is proven to be that 16 way, I obviously can't show or be inside the minds of the 17 strikers, to show their exact intent. I can only look at 18 body actions and – 19 CHAIRPERSON: Because there's a further 20 point that we don't have to debate with you, but let's 21 mention it while it's in the topics before us, another 22 possibility is the police thought that they were being 23 attacked, whereas in fact the strikers weren't intending to 24 attack them. 25 COLONEL SCOTT: Yes.</p>	<p style="text-align: right;">Page 15490</p> <p>1 version, it can't be described as objective evidence like a 2 footprint or a cartridge case, or something of that kind, 3 but it may well be correct. It's something we will have to 4 decide about at the end, but it's not accurate to describe 5 it as objective evidence. What you can say, is it is 6 evidence which is not directly disputed at this point. 7 Whether it's capable of being directly disputed, of course 8 is another matter also, but you can't put it higher than 9 that, but if you put it that way, then obviously you will 10 be putting it correct. 11 MR MPOFU: Thank you, no, Chairperson, I 12 am happy with it not being directly defeated. Do you 13 accept that there's objective evidence of that group of 14 people actually walking? 15 COLONEL SCOTT: Well, I see the video 16 footage, I see it at a late stage where they're actually 17 almost stationary and walking, but in just saying what the 18 Chairperson is saying, because the three statements that I 19 was provided, Mr, I don't know, you know, to pronounce the 20 name properly. Phatsha. Ja, he actually mentioned in 21 paragraph 10, "together with many other workers we ran 22 towards the path next to the kraal with the intention of 23 escaping to Nkaneng." In each of those statements I 24 highlighted that this morning that each of them are 25 mentioning rapid movements and not – Mr Nzuzza mentions,</p>
<p style="text-align: right;">Page 15489</p> <p>1 CHAIRPERSON: But that's another matter 2 that you can't deal with either, we'd have to deal with at 3 some stage if the point is pertinently argued before us, 4 but again, you don't have to worry about that. 5 COLONEL SCOTT: Okay. 6 MR MPOFU: Are you – okay, you said that 7 if it is shown otherwise, but also I accept that, I put it 8 to you, yes, I am talking about scene 1, so we are on the 9 same wave length. Are you aware that there is evidence 10 placed in front of this Commission that shortly before they 11 left the place that they were congregated, what is 12 otherwise known as the Noki group were informed by Mr Noki 13 that they should walk instead of running to Nkaneng because 14 they had done nothing wrong. 15 COLONEL SCOTT: I have read that 16 somewhere. I believe that's testimony, I don't know about 17 objective evidence but in testimony that probably would 18 have been brought through somewhere, yes. 19 MR MPOFU: Well, objective evidence in 20 the sense that nobody says Mr Noki didn't say that to the – 21 CHAIRPERSON: Come, Mr Mpofo, it's not a 22 simple as that. The evidence of Mr Magidiwana, there was 23 no, there's no witness who has given evidence to the effect 24 that that's not correct but it's something we will have to 25 decide at the end whether it's correct. It's not – it's a</p>	<p style="text-align: right;">Page 15491</p> <p>1 "people started to run in different directions. Those who 2 were in front moved towards the informal settlement and we 3 wanted to take advantage of the gap which was still open 4 leading to the, one of the" - 5 CHAIRPERSON: Forgive me for 6 interrupting, what are you reading from? 7 COLONEL SCOTT: Oh, sorry, Chairperson, 8 it's Mr Nzuzza's statement. 9 CHAIRPERSON: Paragraph? 10 COLONEL SCOTT: Paragraph 26. 11 CHAIRPERSON: Thank you. 12 COLONEL SCOTT: And 27 continues, and 13 then of course there's the same statement of Mr Magidiwana 14 in paragraph 12, "Since I was in front, I joined the first 15 group that dashed in the direction of Nkaneng." 16 MR MPOFU: Mr – Colonel Scott, it will 17 assist both of us if you listen to the question. To make 18 it easy for you, it's common cause, well at least, I accept 19 or the people I represent accept that some of the people 20 ran and actually some of them were lucky in that they ran 21 before the barbed wire could entrap them. 22 COLONEL SCOTT: But were these three not 23 part of the actual - 24 MR MPOFU: No, answer the question – 25 COLONEL SCOTT: Sorry.</p>

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1 MR MPOFU: The, so on that we are ad
 2 idem, but the question I was asking you, you know, when I
 3 say the Noki group, you know what I am talking about.
 4 COLONEL SCOTT: The militant group.
 5 MR MPOFU: Well –
 6 COLONEL SCOTT: Or the police's version
 7 of the militant group.
 8 MR MPOFU: What you call militant, the
 9 militant group and all sorts of horrible things, ja, okay.
 10 But that group, do you accept that the only objective
 11 evidence before this Commission is of that group walking.
 12 MR SEMENYA SC: No, Chair, objection.
 13 That's not objective at all.
 14 MR MPOFU: Okay. I'll play the video.
 15 Then we'll play the video.
 16 CHAIRPERSON: Do you say something
 17 different? Oh.
 18 MR MPOFU: If you, anyone has seen them
 19 running, well, they must show us, I am saying the only
 20 objective - and I will play the video –
 21 CHAIRPERSON: By objective evidence you
 22 mean –
 23 MR MPOFU: I mean what we saw on the
 24 screen.
 25 CHAIRPERSON: If you'd said, if you'd

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1 phrased your question this way, "do you accept that the
 2 only evidence we have of video clips of the scene, shows
 3 people walking, and not running," then if that's correct,
 4 then the witness will respond, he can say, yes, it is so,
 5 or he'll say no, it isn't so, I have seen videos that show
 6 something else. The question phrased like that is okay,
 7 but the way you put it earlier I don't allow, but anyway,
 8 I've rephrased it for you, so if you are prepared to accept
 9 my rephrasing, we can carry on.
 10 MR MPOFU: Ja, can you answer the
 11 Chairperson's question?
 12 COLONEL SCOTT: I agree, I am trying to
 13 think that possibly only after public order policing means
 14 are deployed and so on that there was a more quickened
 15 response from the strikers, but there's also something
 16 different to walking. Walking as we know it is not what I
 17 see in the crouching down and coming forward as – that
 18 can't be considered as walking either. So I can agree that
 19 possibly at some stage it's difficult to see any running,
 20 it's possible that they did walk, to a certain point but
 21 when they got to a certain point there's a definitive
 22 change in body language which is definitely not described
 23 as walking further.
 24 MR MPOFU: Alright, I'll again – I don't
 25 want to – I won't argue with you on that, I'll even grant

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1 to you, let's call it crouch walking, so – but do you agree
 2 that all the evidence on the videos will either show them
 3 walking or crouch walking, but not running, the Noki group?
 4 [10:24] COLONEL SCOTT: Well, I would probably
 5 need to review them again, but I, in principle at this
 6 stage I would agree with you.
 7 MR MPOFU: Okay, now so we have
 8 undisputed evidence that Mr Noki instructed them, or told
 9 them, or whatever –
 10 CHAIRPERSON: Not directly disputed.
 11 MR MPOFU: Yes, we have not directly
 12 disputed evidence that Mr Noki informed them to walk and
 13 not to run, and we have evidence, until you find something
 14 else over the weekend, of the videos only showing them
 15 either walking or crouch-walking, correct?
 16 COLONEL SCOTT: Correct.
 17 MR MPOFU: Now we also, you've seen the
 18 evidence and I'm trying to save time by not playing the
 19 videos, but of course if some of the videos that have been
 20 played to you, if you don't remember then we'll have to do
 21 that. Have you also seen the videos, or rather the direct
 22 evidence of the TRT group with semi-automatic rifles,
 23 running towards the gap?
 24 COLONEL SCOTT: I have seen that, yes.
 25 MR MPOFU: Yes, and you've seen from the

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1 Al Jazeera footage them running to that place and cocking
 2 their guns, correct?
 3 COLONEL SCOTT: Yes, I think it's the
 4 latest footage that was covered from –
 5 MR MPOFU: Yes, from Al Jazeera.
 6 COLONEL SCOTT: - Channel 4 or something.
 7 MR MPOFU: Yes.
 8 MR CHASKALSON SC: Sorry to intervene at
 9 this point, Chairperson, but there is now apparently some
 10 controversy over whether this footage emanated from Al
 11 Jazeera. I wonder if we can just refer to these clips as
 12 video clips of the 16th of August that were produced in
 13 October 2013 –
 14 CHAIRPERSON: Well, can't we call them
 15 last week's video clips? If we call them that then we'll
 16 know –
 17 MR MPOFU: We can call them most recent.
 18 CHAIRPERSON: You see, I understand the
 19 source of the clips may well be important and we'll be
 20 taking up the question of why the undertaking the media
 21 houses gave us to give us all their footage was not
 22 complied with, so there may be more footage that's still in
 23 the cupboard somewhere, but for the moment has this footage
 24 or some of it been given an exhibit number?
 25 MR MPOFU: Yes, it's 194 –

<p style="text-align: right;">Page 15496</p> <p>1 CHAIRPERSON: I don't think we've seen 2 all of it. We've only seen parts of it, I believe. 3 MR MPOFU: Yes, the parts we've seen are 4 JJJ194, I understand point 5 to 15. 5 CHAIRPERSON: Right, let's call it 194 6 and then at some stage perhaps we will see the rest of it, 7 if it's relevant. 8 MR MPOFU: Yes. 9 CHAIRPERSON: But we'll keep that number 10 194. 11 MR MPOFU: Yes. Okay, can I – 12 CHAIRPERSON: Sorry, Adv Hemraj raises 13 the question which I must confess I also worried about, and 14 that is we've obviously got to see all that footage at some 15 stage and so that we don't see bits out of context and so 16 forth. The question that we'd have to consider is at what 17 stage we should see it all, and if the witness a few 18 minutes ago was referring to parts of it we haven't seen 19 yet, then it may be advisable for us to see it sooner 20 rather than later. But I'm going to take the tea 21 adjournment now and perhaps you and your colleagues and the 22 evidence leaders and others can consider the matter, 23 because if it's to be sooner rather than later, then let it 24 be sooner rather than later. And there's also the Channel 25 4 video as well. Of course if our discussions with the</p>	<p style="text-align: right;">Page 15498</p> <p>1 perhaps Mr Mpofo would like to speak also, but I'll give Mr 2 Chaskalson a chance first. 3 MR MPOFU: Yes. 4 MR CHASKALSON SC: Chairperson, we don't 5 think it would be helpful to play all 71 clips of the newly 6 discovered videos now, partly because some of them are 7 unlikely ever to be relevant and – 8 CHAIRPERSON: Newly discovered, you mean 9 previously not disclosed. 10 MR CHASKALSON SC: Indeed, Chairperson. 11 But we think the relevance of those clips will be enhanced 12 if we can obtain the timestamps for the videos, for each 13 clip, and we're working on that at the moment, so certainly 14 until we've exhausted our efforts in that regard there 15 would be little utility in playing them in Commission. In 16 relation to the way forward, I understand that Mr Mpofo and 17 Colonel Scott have identified the video to which Colonel 18 Scott referred earlier, and I'm subject to correction that 19 it would be convenient to play that video in Commission so 20 that the footage to which the Colonel was referring is 21 clear to all of us. 22 CHAIRPERSON: Thank you. Mr Mpofo, is 23 there anything you wish to add? 24 MR MPOFU: No, that's correct, Chair. 25 CHAIRPERSON: Are you in a position to</p>
<p style="text-align: right;">Page 15497</p> <p>1 media houses produce more material that they promised to 2 give us and didn't, then we presumably have to look at that 3 as well, although again some of it may just be some stuff 4 that's been seen already from different angles and so on, 5 but I remember saying to the media houses who were 6 represented at the meeting we had that the eye of history 7 is on this Commission and it will be a terrible thing if we 8 in our report exonerate people who are shown by video 9 material that was not made available to us should not have 10 been exonerated, or if we make findings of culpability 11 against people who are shown to be exonerated by video 12 material that's been withheld from us, and it was after I'd 13 said that to the media houses and after they'd had a 14 discussion with the, amongst others the then editor of the 15 Sunday Times, that they gave us the undertaking they did, 16 and it's a matter of considerable regret and concern that 17 that undertaking has not been complied with. We'll take 18 tea. 19 [COMMISSION ADJOURNS COMMISSION RESUMES] 20 [11:04] CHAIRPERSON: The Commission resumes. In 21 order to set an example to everybody, I've turned my cell 22 phone off. I expect others will follow that example. We 23 waited before coming back to be informed as to what 24 happened in relation to the discussion about the video. Mr 25 Chaskalson, is there anything you wish to report, or</p>	<p style="text-align: right;">Page 15499</p> <p>1 show the video now, or at what stage do you want to show 2 it? You're the master of your cross-examination, subject 3 to control by me. 4 MR MPOFU: Well, I thought it was always 5 subject to that control, Chair, but yes, no what we omitted 6 to do was to prime the technology people for that. 7 CHAIRPERSON: Would you like me to take a 8 short adjournment so you can do that quickly? 9 MR MPOFU: No, Chairperson, I'm not going 10 to – I'll get one of my attorneys to arrange it with them. 11 I'm not going to directly, I have to – 12 CHAIRPERSON: Can it be done while we 13 proceed with the evidence? 14 MR MPOFU: That's correct, Chairperson. 15 CHAIRPERSON: Alright. Colonel, you're 16 still under oath then. 17 DUNCAN GEORGE SCOTT: s.u.o. 18 CHAIRPERSON: Mr Mpofo. 19 CROSS-EXAMINATION BY MR MPOFU (CONTD.): 20 Thank you, Chairperson. Yes, and Chairperson, I'll go 21 along with it, I think that should be the description of 22 the video, the previously undisclosed videos. 23 CHAIRPERSON: They will be exhibits – 24 we've already got that, we've already got them, haven't we? 25 MR CHASKALSON SC: It's JJJ194,</p>

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1 Chairperson.

2 CHAIRPERSON: Yes, thank you.

3 MR CHASKALSON SC: And they run from 1 to

4 71.

5 CHAIRPERSON: Of course it may not be

6 necessary for us to see all 71 clips. There may be clips

7 which all the parties agree take the matter no further and

8 we don't have to spend time on, but that's something that I

9 take it the parties will apply their minds to.

10 MR MPOFU: Yes.

11 MR CHASKALSON SC: Yes, Chairperson, but

12 they should still keep those numbers because that's how

13 they are numbered on –

14 CHAIRPERSON: No, no, no, I understand

15 that. The only question is whether we have to see them.

16 The whole video clip will presumably, or video clips, or

17 the whole set will be put in as an exhibit and those in the

18 future who follow our steps and try to evaluate our work

19 will have an opportunity to examine them, but we don't

20 necessarily have to look at them all ourselves in

21 Commission spending time on that.

22 MR MPOFU: Thank you very much,

23 Chairperson. Colonel, before we proceed, I just want to

24 round off one little aspect of what we discussed before

25 tea. Would you accept that the not directly disputed

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1 version that the strikers were intending to walk towards

2 Nkaneng is further corroborated by a SAPS witness known as

3 Mr X?

4 CHAIRPERSON: Have you studied, or been

5 given the opportunity to study the statement which has been

6 produced and is already an exhibit, of a witness to be

7 called by SAPS, who is up to this point simply known as Mr

8 X?

9 COLONEL SCOTT: I recall hearing of him.

10 I don't recall studying a statement from him, no.

11 CHAIRPERSON: It sounds as if you can't

12 answer the question that you've been asked –

13 COLONEL SCOTT: No.

14 CHAIRPERSON: But again it will be

15 question, I mean we don't need your confirmation or

16 otherwise that what Mr X says confirms what Mr Magidiwana

17 said on the point, because we have Mr X's statement in

18 exhibit form and his going to come and give evidence, I

19 assume, in due course. So we don't need your confirmation,

20 valuable or not as it may be, that that statement says

21 that.

22 MR MPOFU: Yes. No, fair enough,

23 Chairperson. I'm really addressing that question on the

24 basis that you said both to me and Mr Ntsebeza that you,

25 Colonel Scott, don't believe this version that these people

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1 were walking to Nkaneng. You understand that?

2 COLONEL SCOTT: I don't believe that

3 their intention was –

4 MR MPOFU: Yes, that's correct, ja.

5 COLONEL SCOTT: Yes.

6 MR MPOFU: I'm only asking from that

7 point of view, yes. Now you also accept that, to use a

8 colloquial phrase, at the end of the day, or when all is

9 said and done, in relation to scene 1 the question that we

10 are dealing with now is basically the central question, in

11 other words as to whether the police shot and killed the

12 people for no apparent reason, or they shot and killed them

13 when they were being attacked by them.

14 CHAIRPERSON: There's another

15 probability, though [microphone off, inaudible]

16 MR MPOFU: Yes, of course.

17 CHAIRPERSON: They shot them [microphone

18 off, inaudible]

19 MR MPOFU: Believing, yes.

20 CHAIRPERSON: [Microphone off, inaudible]

21 MR MPOFU: I accept that, Chairperson.

22 CHAIRPERSON: Yes, there's a third

23 possibility and that is that the police fired because they

24 thought they were being attacked, based upon threats and

25 things of that kind that had gone before, but anyway, I

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1 take it that's not –

2 MR MPOFU: It's not SAPS's case.

3 [Inaudible] self-defence is what it's called, but that's

4 not SAPS's case.

5 CHAIRPERSON: Well, SAPS's case is they

6 acted in self-defence.

7 MR MPOFU: Yes.

8 CHAIRPERSON: But if it were to be found,

9 and I'm not saying it will be, but if it were to be found

10 that they weren't being attacked, but that they thought

11 they were and that's why they acted as they did, that would

12 have to be our finding. But I know that's not going to be

13 their main argument, but it may just be that Mr Semanya may

14 argue in the alternative, but we will see in due course

15 when we have the advantage of hearing his submissions, but

16 that's an issue that we can't exclude completely.

17 MR MPOFU: No, fair enough. Fair enough,

18 Chairperson. And you and I would accept by now that we see

19 the so-called Noki group either walking or crouch-walking

20 on the videos that you have been shown.

21 COLONEL SCOTT: That's correct.

22 MR MPOFU: Yes, we don't see anywhere the

23 so-called attack, or advance, or whatever.

24 COLONEL SCOTT: Well, the crouch-walking

25 to me is an advance. It's moved now from simply walking to

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1 a specific staging position possibly and has now, and
 2 that's what I was alluding to in the video. I know they go
 3 from 1 to 71 odd. I think I've only got the one which is
 4 eight minutes long, put together by Channel 4, but clearly
 5 in that you can see the crouch-walk towards the police.
 6 MR MPOFU: Thank you.
 7 CHAIRPERSON: In fact, Mr Mpofo, there's
 8 another point of course that I'm not sure the witness could
 9 deal with, but you'll remember there was evidence that a
 10 pistol was fired by one of the strikers and it's a
 11 suggestion, I take it, it again will be the subject of
 12 argument at the end of the day as to whether, at what stage
 13 the pistol was fired, before or after the beginning of the
 14 volley and so on. So I don't know whether this witness can
 15 deal with it, but –
 16 MR MPOFU: No –
 17 CHAIRPERSON: It's part of the SAPS case,
 18 and it's something that we mustn't ignore, not necessarily
 19 with this witness because if he can't deal with it, he
 20 can't, but it's on the picture which is part of the people
 21 who are – there must be a better word than "crouch-
 22 walking" –
 23 MR MPOFU: Well –
 24 CHAIRPERSON: When these people are
 25 moving forward, let's not use the word "advance" because

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1 you don't seem to like it. When the people are moving
 2 forward in this crouched position, as far as I can recall
 3 there is the sound of a pistol shot and the suggest of the
 4 SAPS is that that was fired by one of the strikers. But
 5 anyway, so let's not confine the debate too unduly because
 6 we may not get satisfactory results if we do that.
 7 MR MPOFU: Yes. No, Chairperson, I'm
 8 fully aware of that, and I'll deal with it with other
 9 witnesses. In fact in EEE16 which we've brought to the
 10 Commission, that person is shown, so I'm mindful of that.
 11 But SAPS's case is what the Colonel is saying, namely that
 12 the strikers were advancing towards them aggressively and
 13 what he has now confirmed that what is contained in that
 14 understanding is what we call crouch-walking, for the lack
 15 of a better word. Am I correct, Colonel?
 16 COLONEL SCOTT: It starts as crouch-
 17 walking obviously, but the Chairperson is quite right in
 18 saying that – and that same video actually shows that
 19 person within the crowd either wearing white with the
 20 brown, or brown with white, actually firing two shots at
 21 the Public Order Police members, who were firing rubber
 22 rounds, and you can see that from the recoil of their
 23 shotguns that they're firing rubber rounds, it's not
 24 pellets. So, but just in stating that, it starts off as a
 25 crouch-walk.

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1 MR MPOFU: Okay, let me put it directly.
 2 Would you be able to dispute - the evidence that's going to
 3 be brought is that what you and I call crouch-walking is
 4 not as you suggest a sign of aggression, but a sign of
 5 respect and actually submissiveness, and you remember –
 6 well, firstly, you understand that?
 7 COLONEL SCOTT: Well, it's not for my
 8 interpretation because obviously I'm, I can't speak to the
 9 reasons of why they did that.
 10 MR MPOFU: No, Sir. No, Sir, it is for
 11 your interpretation. You said one of the reasons was
 12 because they were crouch-walking, just as they did on the
 13 13th –
 14 COLONEL SCOTT: No, I'm just saying –
 15 MR MPOFU: You remember that?
 16 COLONEL SCOTT: What you're saying is
 17 that it's going to be shown to be a sign of respect and so
 18 on. I can't speak to that.
 19 MR MPOFU: Yes, okay, fair enough. But
 20 you accept that your incorporating the crouch-walking as
 21 part of the aggressive behaviour was among other things on
 22 your evidence before tea based on the fact that the crouch-
 23 walking was also seen on the 13th, correct?
 24 COLONEL SCOTT: That's correct. And as I
 25 say, I'm speaking from my opinion.

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1 MR MPOFU: Ja.
 2 COLONEL SCOTT: I'm not speaking for
 3 those who were on the ground that day.
 4 MR MPOFU: Fair enough. Now on top of
 5 the evidence that will be led which shows that the – well,
 6 let me start by this. You know that when General Mpenbe
 7 approached the people on the 13th, they sat down?
 8 COLONEL SCOTT: I'm aware of that.
 9 MR MPOFU: Right, and then they spoke to
 10 him very respectfully, saying we're not fighting with the
 11 police, and so on, please allow us to go to the mountain,
 12 correct?
 13 COLONEL SCOTT: Yes.
 14 MR MPOFU: And then when they left that
 15 place, which is what you are referring to, they moved in a
 16 crouch-walking fashion, correct?
 17 COLONEL SCOTT: They moved standing up
 18 first until they were confronted by a police official
 19 standing with a shotgun, a Public Order Policing member,
 20 and then they went down into the crouch position in front
 21 of him, forcing him to move.
 22 MR MPOFU: Correct. Exactly. So when
 23 they saw the armed policeman, then they started crouch-
 24 walking, correct?
 25 COLONEL SCOTT: That's correct.

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1 MR MPOFU: And as they were crouch-

2 walking, they passed those POP members. In fact there was

3 one with a blue thing, they passed them with their guns in

4 that position, correct?

5 COLONEL SCOTT: I recall seeing the POPs

6 member standing in front of them and having to back away

7 because they continued and advanced towards him, so, and I

8 mean that can be shown, and one can speculate now as to

9 what would have occurred had he not moved away.

10 MR MPOFU: Ja. But nevertheless, for now

11 I'll show you the video. You accept that the crouch-

12 walking happened at that stage near the road before there

13 was any trouble near the squatter camp?

14 COLONEL SCOTT: Yes.

15 MR MPOFU: Alright, okay, then –

16 CHAIRPERSON: Is this a video that we

17 haven't seen before?

18 MR MPOFU: It is one you have seen

19 before, Chairperson. It is based on L –

20 CHAIRPERSON: Alright, okay, you'll give

21 the – I don't have to record it as an exhibit. You'll give

22 us the exhibit number and the reference to it so that those

23 who follow this Commission later either before the argument

24 is prepared or even in years to come will be able to

25 identify it, if necessary.

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1 MR MPOFU: Can you play, I think it's Z1.

2 I'm told it's L50 from Mr Chaskalson, but I suspect that

3 that might not be the exhibit. Yes, it's L50 and I've

4 discussed it with the witness during the break. He's happy

5 if I play it, Chairperson.

6 CHAIRPERSON: L50, in other words it's a

7 video clip that's part of exhibit L, the police

8 presentation.

9 MR MPOFU: Yes. Yes, and there's no

10 warning for this one, Chairperson.

11 CHAIRPERSON: Thank you.

12 MR MPOFU: Z1. L50 or Z1, Charles.

13 Chairperson, maybe I can move to something else just so

14 that we don't waste time. Oh, there you are.

15 CHAIRPERSON: It seems as if you don't

16 have to. What you want is now visible.

17 [VIDEO SHOWN]

18 MR MPOFU: Sorry, can you just – we don't

19 want to hear all the speeches and the pleas for weapons.

20 If you can go towards the end of this episode, because –

21 CHAIRPERSON: Can you give the reading

22 perhaps to assist those who are showing it to us, what we

23 have to refer to –

24 MR MPOFU: 3:25, thank you. Colonel, can

25 you see that there's a member of POP other than the one

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1 that we are talking about, wearing, or rather where the

2 crowd is passing that member of POP while crouch-walking,

3 correct?

4 COLONEL SCOTT: I can see that.

5 MR MPOFU: Okay, play on. Thank you. So

6 you would accept that in this episode on the 13th the

7 crouch-walking was not a sign of aggression, that they

8 actually passed the police members, correct?

9 COLONEL SCOTT: I interpret it as a sign

10 of warning in order, we are going where we want to go,

11 we're not going to give out our weapons, like they

12 obviously didn't adhere to General Mpmembe's request, and

13 don't stand in the way.

14 MR MPOFU: Ja, let's assume it's a sign

15 of saying that, which I don't accept, but you accept that

16 that is not a threat to violence if they say we are going

17 where we are going?

18 [11:23] CHAIRPERSON: Wouldn't it be an implied,

19 if the witness's interpretation is correct it would be an

20 implied threat wouldn't it of violence?

21 MR MPOFU: How is that – I'm sorry, Mr

22 Chairperson, I'm cross-examining the Chair.

23 COLONEL SCOTT: But if I can respond or

24 maybe continue with my rationale because moments later or

25 minutes later we see the police well tried to divert. And

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1 in that diversion there's no lethal force in any way used

2 upon them. There's only teargas and stun grenade and then

3 we actually see the response of that group of strikers to

4 the police after an attempted police tactical option to

5 divert them which would possibly have been caused there

6 already had the police attempted to stop them from

7 proceeding to the koppie.

8 MR MPOFU: No, Colonel, please this is a

9 very important aspect we're talking about. The only thing

10 I'm saying to you is that the strikers while crouch walking

11 went past armed policemen without harming them. Is that

12 correct?

13 COLONEL SCOTT: That is correct.

14 MR MPOFU: Thank you, thank you very

15 much. Anyway we'll argue the –

16 CHAIRPERSON: The witness wants to add

17 something.

18 MR MPOFU: Yes, of course sorry.

19 COLONEL SCOTT: But as I'm saying,

20 they're doing that because they've got their way. The

21 police are trying to simply adhere to the laws of the

22 country which they are blatantly disrespecting and

23 disrespecting the authority of the country. But as long as

24 they've got their way they don't see the police as a threat

25 and that was what was occurring on the 13th. They managed

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1 to go in the direction they wanted to with their weapons
 2 still in hand until such time, as I say, moments later the
 3 police tried to stop that or to divert it away from a
 4 township and then there's conflict.
 5 MR MPOFU: Ja, I'm even prepared to
 6 accept that for the purposes of this question, as long as
 7 they get their way and so on they will, while crouch
 8 walking walk past armed policemen without killing them.
 9 That's at least from what I call the first episode. I know
 10 what happened later, but I'm not talking about that. At
 11 that point they were crouch walking past armed policemen,
 12 correct?
 13 COLONEL SCOTT: Yes.
 14 MR MPOFU: Thank you. And you, yourself
 15 don't know anything to suggest that on the 16th while they
 16 were crouch walking next to that kraal they would not
 17 crouch walk past the armed TRT people in the same way?
 18 COLONEL SCOTT: Well that's something
 19 that as I said before, I can't speculate what was in the
 20 minds of the strikers and I can't again stand to say what
 21 was in the minds of the police officials at that time. But
 22 I can only imagine what they must have been thinking. And
 23 I know we're basing what you're arguing now on the opinions
 24 that I've expressed. But again my opinions are also based
 25 on that reason that if you can see the police are setting

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1 up for a tactical option why would you confront them to
 2 where you know that they are congregated and not just move
 3 simply in a different direction.? If you did want to move
 4 off without confrontation why specifically move to where
 5 they were? Why not move directly north or move towards the
 6 west or towards the north-west? Why move specifically to
 7 the point where the police are congregating?
 8 MR MPOFU: Because that was the only
 9 place and the most obvious place to go to, would you agree
 10 with that?
 11 COLONEL SCOTT: No.
 12 MR MPOFU: Okay, if that was not the
 13 place where the strikers were logically expected to go to
 14 why did the TRT line go and line up there in basic line and
 15 cocking their guns?
 16 COLONEL SCOTT: The TRT and obviously I
 17 wasn't there to make that command, I presume that their
 18 commanders would have done something, but responded only
 19 after the public order policing people were already moving
 20 their vehicles into position. They saw the movements of
 21 what they considered to be the militant group and in doing
 22 that they rushed forward to take up what they presumed to
 23 be a role to help defend the police's safe environment or
 24 neutral area.
 25 MR MPOFU: And if I can show you, which I

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1 will maybe on Monday, that –
 2 CHAIRPERSON: I don't what you're going
 3 to be doing on Monday because it's the first Monday of the
 4 month.
 5 MR MPOFU: Oh, on Tuesday.
 6 CHAIRPERSON: You can come here on Monday
 7 if you like, but –
 8 MR MPOFU: You won't be here,
 9 Chairperson.
 10 CHAIRPERSON: I won't be here.
 11 MR MPOFU: Thank you.
 12 CHAIRPERSON: I can't stop you from
 13 coming but you'll find this chamber being used for
 14 municipal purposes.
 15 MR MPOFU: Thank you, Chairperson. I'll
 16 just cross-examine whoever is sitting there.
 17 MR CHASKALSON SC: Maybe we can come to
 18 an agreement, Chairperson, we'll let you know on Tuesday.
 19 MR MPOFU: If I can show you, Colonel,
 20 that by the time the basic line was formed and the cocking
 21 of guns, you know what I'm talking about -
 22 COLONEL SCOTT: Yes, I do.
 23 MR MPOFU: - ja, but by the time that
 24 happened the strikers had not even emerged from around the
 25 kraal, what would you say?

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1 COLONEL SCOTT: Well like I say, I wasn't
 2 on ground, but it makes sense. Obviously that TRT line
 3 could see Nyala 4 moving with this razor wire and that
 4 that's forming a barrier and they can see – and in the
 5 video I've been alluding to which I think shows it pretty
 6 clearly, you actually see the Nyalas, the armoured vehicles
 7 of the police, rushing forward around the right-hand side
 8 of the kraal. And that's where you see the TRT line moving
 9 in with some of the Nyalas coming past them.
 10 MR MPOFU: Yes, that's correct, but why
 11 if it was not the only logical place where the strikers
 12 were going to emerge, why did they go and get ready at the
 13 gap?
 14 COLONEL SCOTT: Well by the time TRT's
 15 moving forward, as I say, the razor wire from Nyala 4 is
 16 probably already in position.
 17 MR MPOFU: No, Sir, that's not what I'm
 18 talking about. I accept what you're saying, Nyala 4 has
 19 already closed them off to pass let's say the entrance of
 20 the kraal, correct?
 21 COLONEL SCOTT: Yes.
 22 MR MPOFU: According to the evidence of
 23 the police they then dispersed in that big orange line for
 24 a period of about 90 seconds.
 25 COLONEL SCOTT: Well we've actually shown

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1 that through CALS to be a different interpretation which I
 2 agree with, with the CALS.
 3 MR MPOFU: Ja, it's about two minutes.
 4 COLONEL SCOTT: I have a very good
 5 reasoning for why I think there's an incident 2 and
 6 incident 3 and –
 7 MR MPOFU: Yes, no, no, fair enough,
 8 we're not –
 9 COLONEL SCOTT: And maybe just for your
 10 very three statements that you've given me, your own
 11 members also speak to that, speak to walking next to Nyala
 12 that was cutting them off, speak to having to go around the
 13 kraal because they had public order dispersion tactics on
 14 them, what we considered to be position 2.
 15 MR MPOFU: Ja, that's very interesting.
 16 COLONEL SCOTT: Or incident 2.
 17 MR MPOFU: I'm asking you a simple
 18 question, Sir.
 19 COLONEL SCOTT: Okay.
 20 MR MPOFU: Do you accept that on the
 21 version of SAPS, firstly I'm going to put it to you that
 22 the evidence of Mr Magidiwana is that when Nyala 4 closed
 23 off the road, so to speak, the road Nkaneng there was no
 24 TRT line at that stage which we've also seen in the videos.
 25 After that then they run towards the line, correct?

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1 COLONEL SCOTT: Yes.
 2 MR MPOFU: Ja. Now from that point you
 3 would accept that the strikers then go around the kraal
 4 whether in the police arrow or in another form, but they go
 5 around the kraal.
 6 COLONEL SCOTT: Are we talking after the
 7 line is formed?
 8 MR MPOFU: Yes, after Nyala 4 has closed
 9 and after the line is formed.
 10 COLONEL SCOTT: I think the line is
 11 forming more or less when – because the video footage I've
 12 seen again, the front group of the strikers lines up
 13 possibly about 30 metres to the rear, maybe 40 metres away
 14 from that line. The Nyalas are passing at that stage and
 15 taking up positions and then you see them going into the
 16 crouch walk and they start crouching forward and moving
 17 towards the police line.
 18 MR MPOFU: Go to slide 205. L205, sorry.
 19 Are you there?
 20 COLONEL SCOTT: Yes.
 21 MR MPOFU: Can you see that, although the
 22 photo cuts it you can already see the TRT line, a portion
 23 of it.
 24 COLONEL SCOTT: Yes.
 25 MR MPOFU: At the top of the picture.

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1 COLONEL SCOTT: Yes.
 2 MR MPOFU: And at that stage the strikers
 3 have not come around the corner of the kraal, correct?
 4 COLONEL SCOTT: They haven't come around
 5 the corner?
 6 MR MPOFU: Yes.
 7 COLONEL SCOTT: Yes.
 8 MR MPOFU: Ja, thank you. In other words
 9 the TRT line went and formed there, cocked their guns
 10 towards the gap before the strikers even emerged from the
 11 corner of the kraal.
 12 COLONEL SCOTT: Well in the same
 13 photograph you're speaking of you can see the dotted yellow
 14 line which shows Nyala 4 in position. So I'm quite sure
 15 the TRT is not expecting anybody to climb through the razor
 16 wire. But is witnessing what has been happening with the
 17 approach of the militant group as seeing that is probably
 18 the only area open and has gone to form up there -
 19 MR MPOFU: Thank you.
 20 COLONEL SCOTT: - in order to protect the
 21 area, the police safe area.
 22 MR MPOFU: That's exactly the point, ja.
 23 It's the only logical place where there could be
 24 anticipated, thank you. Now let's go to – you are quite an
 25 important witness in the sense that you are the chief

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1 architect of the plan. Correct?
 2 COLONEL SCOTT: Of the strategy, yes.
 3 MR MPOFU: And the strategy, yes and you
 4 also are the person who was the so-called nodal point for
 5 information at various stages, correct?
 6 COLONEL SCOTT: Nodal point mostly for
 7 the videos and photographs that were brought to me other
 8 than for the first two weeks, it was a week after Marikana
 9 and at Roots, yes.
 10 MR MPOFU: Yes and you're also one of the
 11 architects, if I can use that word of exhibit L which is
 12 central to the Commission.
 13 COLONEL SCOTT: Yes.
 14 MR MPOFU: And you also participated in
 15 the construction to stress the matter of the opening
 16 statement of SAPS.
 17 COLONEL SCOTT: No.
 18 MR MPOFU: You participated in the
 19 compilation of the briefing documents for the National
 20 Commissioner and no less than the President of the country.
 21 COLONEL SCOTT: We gave a briefing to the
 22 President, we didn't draft his briefing documents and the
 23 National Commissioner I didn't brief her or compile her
 24 briefing documents. I compiled the presentation to which I
 25 spoke at the briefing that she hosted.

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1 MR MPOFU: Yes, but you participated
 2 rather in the putting together of the information which was
 3 used for the briefing of the National Commissioner at
 4 least.
 5 COLONEL SCOTT: Yes.
 6 MR MPOFU: Thanks. Now would it be fair,
 7 I know that the plan has been called a Scott's plan and
 8 you've raised your view about that because sometimes it
 9 might not be fair. And maybe to show that it's not
 10 completely fair the first plan or what you've called in
 11 your evidence, I think under cross-examination by Mr
 12 Chaskalson, the original plan was really a product of you
 13 and Mr Sinclair, correct?
 14 COLONEL SCOTT: No, Mr Sinclair – are we
 15 talking about the initial plan for the Tuesday morning?
 16 MR MPOFU: Yes, no, no, or maybe let me
 17 ask it differently. You remember you left Pretoria I think
 18 and you were going to chase people in the Magaliesburg.
 19 COLONEL SCOTT: Yes.
 20 MR MPOFU: Ja, once you realised that
 21 that was not the case and started what one might call the
 22 foundations of the plan, on that information Mr Sinclair
 23 had great input. You arrived at night, you had never been
 24 there, you didn't know where you are, I think –
 25 COLONEL SCOTT: Yes, but I think we must

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1 just clarify there's a difference between providing
 2 information and actually deriving a concept. Mr Sinclair
 3 had no part of deriving a concept.
 4 MR MPOFU: No, fair enough. Okay let me
 5 put it differently. Without Mr Sinclair's input you
 6 wouldn't have started that work.
 7 COLONEL SCOTT: With the intelligence he
 8 gave that's correct. We needed the intelligence or that
 9 information.
 10 MR MPOFU: Yes, that's all I meant, yes.
 11 And Mr Sinclair even went, after giving you all this
 12 information because I mean you were quite literally in the
 13 dark, having arrived in the dark and not knowing the place.
 14 COLONEL SCOTT: Yes.
 15 MR MPOFU: He also then took you in the –
 16 to further the orientation is I think, what you've called
 17 it, he took you in the Lonmin chopper, otherwise known as
 18 the Protea Coin chopper.
 19 COLONEL SCOTT: No, at no time was I in
 20 that chopper. We drove in his bakkie.
 21 MR MPOFU: Ja, ja, in any event let's
 22 forget the mode of transport. He took you to the terrain,
 23 I think that's what it's called, correct?
 24 COLONEL SCOTT: Yes, to what we know as
 25 forward holding area 1.

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1 MR MPOFU: So once again apart from his
 2 verbal input without which you wouldn't have been able to
 3 construct the beginnings of the plan, that tour of the
 4 terrain with Mr Sinclair also assisted, correct?
 5 COLONEL SCOTT: Yes, it did. I must say
 6 very limited, what we could see at 2 o'clock odd in the
 7 morning was obviously very limited. I could just see the
 8 vague koppie in the distance with where the Nkaneng
 9 township was and he pointed to where the hostels were –
 10 MR MPOFU: No, that's correct. In
 11 fairness you do say that at a later stage when the people
 12 went in the light they told you that the terrain was much
 13 more complicated. Correct?
 14 COLONEL SCOTT: Yes.
 15 MR MPOFU: So to that extent what I call
 16 the foundations of the plan can be called a joint effort by
 17 you and Mr Sinclair.
 18 COLONEL SCOTT: No.
 19 MR MPOFU: Well okay let's just leave it
 20 at – without Mr Sinclair's input it would not have
 21 happened.
 22 COLONEL SCOTT: For that matter if we're
 23 going include in any plan, not just speaking Marikana
 24 everybody that gives input - I would build plans at times
 25 that comes open source media. I can't include ETV, SABC as

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1 co-scribes of the plan. They're matters of input that you
 2 would receive –
 3 MR MPOFU: No, no, let's forget SABC and
 4 ETV. I'm saying foundations of the plan or the original
 5 which you and I have agreed would not have eventuated
 6 without the input of Mr Sinclair. Is that the same plan
 7 that was then endorsed in the morning?
 8 COLONEL SCOTT: It's a lengthy process
 9 which we've been through in testimony –
 10 MR MPOFU: But eventually.
 11 COLONEL SCOTT: But it became a stage 3,
 12 or a phase 3 which initially got changed later, but as I
 13 say again, Mr Sinclair had absolutely no input into the
 14 police tactics, how we would go, what we would do. He
 15 simply told us what he knew and we continued from there.
 16 MR MPOFU: Ja, Colonel, I don't want us
 17 to waste time on this, do you accept that you can't do a
 18 plan without information?
 19 COLONEL SCOTT: Yes, that's so.
 20 MR MPOFU: Ja, the basic information is
 21 part of the plan, is the bricks of the plan, correct?
 22 COLONEL SCOTT: Yes.
 23 MR MPOFU: Thanks.
 24 COLONEL SCOTT: But in saying that again
 25 I can't agree with you that Mr Sinclair has a part in the

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1 plan as far as – because a plan initially will go not so
 2 much about the information received, it goes about dealing
 3 with a problem, coming up with a solution.
 4 MR MPOFU: Ja.
 5 COLONEL SCOTT: He was not part of a
 6 solution that was conceptualised.
 7 MR MPOFU: Ja, no, that I accept, that I
 8 accept, Colonel. I'm just happy with him having provided –
 9 if we use the building metaphor, having provided you with
 10 the building blocks for you to do that foundational plan.
 11 CHAIRPERSON: On that basis the brick
 12 manufacturer provides the bricks but the brick manufacturer
 13 isn't one of the builders. And that's the point he's
 14 trying to make isn't it? But I think the point's been made
 15 –
 16 MR MPOFU: Ja, it's the same point I'm
 17 trying to make as well, Chairperson. That's why I said I
 18 agree with him, I started with that, ja. Can you answer
 19 the question?
 20 COLONEL SCOTT: If we're going to take it
 21 in that light we have to consider the inputs from the
 22 officers that were there on the 13th that I listened to, we
 23 would listen to with the meeting with the National
 24 Commissioner, all information that was given all need to be
 25 in the same position as Mr Sinclair.

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1 MR MPOFU: Ja, but some of them might
 2 have given information which is not a sine quo non, which
 3 is not as you've put with Mr Sinclair's contribution,
 4 information without which you would not have – rather
 5 finalised the plan.
 6 COLONEL SCOTT: Ja, I'm not disputing Mr
 7 Sinclair's inputs were important for us to know –
 8 MR MPOFU: Thank you.
 9 COLONEL SCOTT: But it was a matter of
 10 knowing what we needed to know.
 11 [11:43] MR MPOFU: That's enough. And in any
 12 event let's now – you see the difficulty, where I
 13 sympathise with you is that sometimes I'll be asking you
 14 things to a particular stage and now you know everything
 15 because you've been a nodal point and all sorts of things.
 16 So I'll try and separate out what you know at a particular
 17 point to what you know now, because you've been told, in
 18 fairness to you. While you were there from the 13th, let's
 19 say up to the 16th, would it be fair that the impression
 20 that a neutral observer would have gained is that this was
 21 a joint operation between SAPS and Lonmin –
 22 MR SHOZI: No, Chair, there's no basis
 23 for that question.
 24 MR MPOFU: Okay. Apart from Mr
 25 Sinclair's essential contribution to the foundations of the

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1 plan, is it also correct that Mr Botes was effectively a
 2 permanent feature in the JOC?
 3 COLONEL SCOTT: He was a representative
 4 in the JOC.
 5 MR MPOFU: Yes.
 6 COLONEL SCOTT: And from my knowledge he
 7 was requested to be there by SAPS and requested to bring
 8 assets which SAPS didn't have, like the CCTV.
 9 MR MPOFU: Yes, and he also –
 10 CHAIRPERSON: The question you asked is
 11 was he permanently in the JOC.
 12 COLONEL SCOTT: Well, permanent is 24/7,
 13 Chairperson, but he was their representative there in the
 14 hours mostly that I was there. I couldn't think he would
 15 stay there the full –
 16 CHAIRPERSON: Yes, I see.
 17 COLONEL SCOTT: - period.
 18 COMMISSIONER HEMRAJ: Some of the
 19 statements do say that he was asked to leave at certain
 20 stages –
 21 COLONEL SCOTT: Yes, yes.
 22 COMMISSIONER HEMRAJ: - when there were
 23 JOC meetings, isn't that so?
 24 COLONEL SCOTT: Yes.
 25 MR MPOFU: You know what I mean. When I

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1 say "permanently," I mean of course he must have slept at
 2 some stage. All I'm saying is to you, would it be fair to
 3 say that Mr Botes was usually to be found in the JOC?
 4 COLONEL SCOTT: Yes.
 5 MR MPOFU: Thank you, and is it correct
 6 that Mr Botes also attended JOCCOM meetings?
 7 COLONEL SCOTT: He could have been there
 8 in the morning ones. I'm not too sure if he was, but he, I
 9 know that he wasn't at the 13:30 meeting. He was requested
 10 to leave I think with the two video operators as well.
 11 MR MPOFU: Colonel, have you ever seen Mr
 12 Botes in a JOCCOM meeting? I'm not talking about 13:30.
 13 COLONEL SCOTT: I've never pertinently
 14 noted him being there because he never had an input. So as
 15 I say, whether he would be sitting at the video monitors or
 16 somewhere else, he wasn't around the immediate circle of
 17 chairs around the table that the senior officers were at.
 18 As I say, if he was there, he was there, but again I think
 19 we must also –
 20 MR MPOFU: Well, he was there, I'm
 21 putting it to you –
 22 COLONEL SCOTT: We must look at it in
 23 perspective.
 24 MR MPOFU: Well, do you accept for
 25 example that the document that Mr Ntsebeza showed you

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1 yesterday where there was a list of people in the JOC with
 2 their cell numbers, that Dirk Botes's name was there?
 3 COLONEL SCOTT: It probably was there.
 4 MR MPOFU: Ja.
 5 COLONEL SCOTT: I don't dispute that.
 6 MR MPOFU: Were you at the 6:30 meeting
 7 on the 16th?
 8 COLONEL SCOTT: 6:30? 6 o'clock meeting?
 9 MR MPOFU: Ja, the earlier meeting –
 10 CHAIRPERSON: You mean 6AM?
 11 MR MPOFU: 6AM, sorry. Yes, 6AM meeting.
 12 COLONEL SCOTT: On the 16th, yes.
 13 MR MPOFU: And Dirk Botes was there,
 14 correct?
 15 COLONEL SCOTT: Like I say, I can't
 16 recall. What I'm just trying to say is that sort of 10 by
 17 8 metre room at the JOCCOMS was so full that people were
 18 standing not just in one row, but two to three behind each
 19 other. So it was extremely full. There must have been 40,
 20 50, even up to 60 people in there at those JOCCOMS.
 21 MR MPOFU: But, Colonel Scott –
 22 COLONEL SCOTT: But to recall
 23 specifically Mr Botes being there, and not knowing that he
 24 had a specific input, I don't recall. As I say, I'm not
 25 disputing he was there. I'm just saying you're asking me

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1 now and I'm just saying that I don't have a specific
 2 recollection of him.
 3 MR MPOFU: Well, I put it to you that you
 4 must have a specific recollection because you said, when I
 5 first asked you the question, he must have been there in
 6 the morning meetings. Why would you make that distinction
 7 if you've never seen him there?
 8 COLONEL SCOTT: That I said he must have
 9 been there in the morning meetings?
 10 MR MPOFU: Ja, as opposed to afternoon
 11 meetings. So it means you must have seen him there.
 12 COLONEL SCOTT: I've read in, and I think
 13 it may be his statement because it was given to me by
 14 yourself, that he says in his own statement he was asked to
 15 leave the 13:30 special JOCCOM. But he doesn't, I don't
 16 know if he says in there that he was part of the JOCCOM
 17 meetings in the morning either. All I'm telling you is
 18 that I don't have a recollection specifically of him being
 19 there or had any input in that, those morning meetings.
 20 CHAIRPERSON: Mr Mpofu, I take it Mr
 21 Botes is going to be called by Lonmin, so if he is you can
 22 then ask him about it yourself.
 23 MR MPOFU: Ja, well if the only issue I
 24 was canvassing was his presence, ja. I'm asking a
 25 different question, which is the role played by Lonmin in

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1 those meetings. I can't ask Mr Botes about that; I must
 2 ask this witness. But anyway, can you –
 3 COMMISSIONER HEMRAJ: Doesn't Mr Botes in
 4 his statement in paragraph 44 set out some of his movements
 5 between the two JOCS, the Lonmin JOC and the SAPS JOC?
 6 MR MPOFU: I'm sorry, Commissioner, I
 7 didn't get that.
 8 COMMISSIONER HEMRAJ: Mr Botes in his
 9 statement in paragraph 44, I think, sets out his movements
 10 between the Lonmin and the SAPS JOC.
 11 CHAIRPERSON: In fact, Mr Mpofu, the
 12 answer to what you are looking for is contained in
 13 paragraphs 44 and 46 of Mr Botes's statement, which is
 14 exhibit GGG19, where he talks about paying visits
 15 occasionally, that's in paragraph 44, to the JOC, and then
 16 in 46 he says, "Once I had moved into the SAPS JOC
 17 permanently on 14 August 2012, there was always a
 18 representative from management on a rotating basis with me.
 19 The two of us together would confer on making decisions
 20 regarding whether any area of any business unit would have
 21 to be evacuated at any particular time for security
 22 reasons. We were not at any stage required to issue any
 23 such evacuation order." So –
 24 MR MPOFU: Thank you. Thank you,
 25 Chairperson, yes. I used the words – yes, thank you very

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1 much, Chairperson. I used the words "permanent feature"
 2 without even having read paragraph 46.
 3 CHAIRPERSON: But he says he was there on
 4 a rotating basis with some other Lonmin personnel, but as
 5 far as you –
 6 MR MPOFU: Yes, he also says he was there
 7 permanently.
 8 CHAIRPERSON: As far as you want to
 9 establish the permanent –
 10 MR MPOFU: Yes.
 11 CHAIRPERSON: - Lonmin presence, it's
 12 there in the statement, if you're not going to get it from
 13 this witness, that's what I'm saying.
 14 MR MPOFU: That's correct, ja. So at
 15 least on the version of Mr Botes there was a permanent
 16 Lonmin presence either by him or his alternate at the JOC,
 17 correct?
 18 COLONEL SCOTT: On his evidence, yes.
 19 MR MPOFU: Thank you.
 20 CHAIRPERSON: The question is that did
 21 that coincide with your recollection, or are you in a
 22 position to contradict it?
 23 COLONEL SCOTT: No, I'm not in a position
 24 to contradict it, but, and as I say, I can remember their
 25 screens and that they had people there the majority of the

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1 time. I just don't know if there was a ruling that they
2 couldn't come to any JOCCOM, or if it was only the special
3 JOCCOM.
4 MR SEMENYA SC: Chair, maybe to the
5 extent that may help us, we have to distinguish between the
6 JOC and the JOCCOM.
7 MR MPOFU: Yes. So did I, but for the
8 sake of clarity, when I was talking to you about Mr Botes's
9 attendance of JOCCOM meetings, I was not talking about this
10 permanent presence, and that's why you said morning and
11 afternoon meetings. So you and I understand that that's a
12 different thing, correct?
13 COLONEL SCOTT: Yes.
14 MR MPOFU: Ja, thanks. Okay, so we have
15 Sinclair's input. We have the permanent presence. Mr
16 Shoji said I must lay a basis for the question, so that's
17 what I'm busy doing. Could you go to JJJ192, please?
18 You've read JJJ192 in general, haven't you?
19 COLONEL SCOTT: In general, yes.
20 MR MPOFU: Yes, would you agree that one
21 of the purposes of that meeting was to synchronise or align
22 the plan of SAPS and Lonmin?
23 COLONEL SCOTT: I don't know if I can
24 answer specifically what the meeting was about. I know
25 there's discussions in there from the Provincial

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1 Commissioner. I recall parts where she says that our
2 members will be coming back out of the field now to be
3 briefed, which is why I could sort of put a time zone to
4 it, etcetera, but it's a long document and to have me sum
5 it up in it's a coordinating meeting between the Provincial
6 Commissioner and the mine, I don't think I would feel
7 comfortable saying that it's a –
8 MR MPOFU: It's a what? A coordinating
9 meeting?
10 COLONEL SCOTT: Ja.
11 MR MPOFU: Coordinating what and what?
12 COLONEL SCOTT: No, I'm saying I wouldn't
13 be comfortable in saying that.
14 MR MPOFU: Oh, I see.
15 CHAIRPERSON: May I interpose? Were you
16 at that meeting?
17 COLONEL SCOTT: No, Chairperson.
18 CHAIRPERSON: So you are in effect in the
19 same position we're in -
20 COLONEL SCOTT: Yes.
21 CHAIRPERSON: - in interpreting what we
22 see in the transcript.
23 COLONEL SCOTT: Yes.
24 CHAIRPERSON: Is this transcript subject
25 to debate still?

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1 MR SEMENYA SC: Yes, Chair.
2 CHAIRPERSON: Mr Mpofo, I don't see the
3 point of asking this witness detailed questions about what
4 was said by the Provincial Commissioner at this meeting
5 with Lonmin because he wasn't there. You've got the
6 transcript. When we reach a stage where the transcript is
7 agreed, you will then obviously be able to argue based upon
8 it and you'll also be able to ask questions of the Lonmin
9 witnesses who were there and also of course the Provincial
10 Commissioner.
11 MR MPOFU: Yes, I intend to do that,
12 Chairperson. I'm asking this for a limited purpose –
13 CHAIRPERSON: I don't want much time
14 spent with this witness on a topic of which he can have no
15 first-hand knowledge at all.
16 COMMISSIONER HEMRAJ: Mr Chaskalson, this
17 transcript does not read intelligibly at all. It's very
18 difficult to follow. Has any effort been made, because
19 reference was made to it yesterday and again today and it's
20 very difficult to follow what the conversation is about.
21 MR CHASKALSON SC: As we speak we're
22 going to give it to our own transcriber to try to patch up.
23 I've listened to the tape along with the transcript and had
24 made some handwritten corrections myself, but I think let's
25 get some professionals to do it again and then circulate a

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1 draft to the parties with suggested changes from this
2 document, and get agreement on it.
3 COMMISSIONER HEMRAJ: Is that happening
4 as we speak?
5 MR CHASKALSON SC: Well, what's happening
6 as we speak is we're copying the audio tape so that another
7 attempt at the transcription can take place.
8 COMMISSIONER HEMRAJ: Thank you.
9 MR MPOFU: Chairperson, I appreciate very
10 much what you have said. I'm not going to canvass this
11 document with the witness. I'm doing it for the limited
12 purpose of responding to the invitation to lay a basis for
13 my suggestion that there was a joint effort. I've already
14 done it in respect of Sinclair, Botes's presence, and so
15 on. I'm now giving a further, only for that purpose –
16 CHAIRPERSON: I understand that, but
17 you're putting it to the witness, who will not be able to
18 confirm, apart from material that's before us in any event,
19 from his own knowledge won't be able to give any
20 independent confirmation of what you're putting. So isn't
21 this something in respect of which if you keep your powder
22 dry and fired off the ammunition at the – that's possibly a
23 singularly inappropriate metaphor to use in this
24 Commission, but to deploy - to use a fashionable
25 [inaudible] word – your arguments at a more appropriate

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1 time?

2 MR MPOFU: Thank you, Chairperson. No, I

3 just happen – I do have some powder to spare on this

4 particular exhibit. But all I want – okay, let me put it

5 like this. Colonel, despite the fact that this exhibit was

6 undisclosed, it was known to you, correct?

7 COLONEL SCOTT: No.

8 MR MPOFU: It was part of the information

9 that passed through your hands, to put it mildly, correct?

10 COLONEL SCOTT: It was part of the

11 subpoena 205 from which the police obtained from Lonmin.

12 On the police's hard drive I think there's about 500

13 gigabytes of information and it happened to be in a folder

14 as one of the files of many folders that I'd downloaded,

15 but I've never perused all the folders, or for that matter

16 all the files in the folders. I'd kept them as something

17 that I may need to prepare for, for the Commission, but

18 never went through this, and I wasn't even aware that this

19 existed until it was handed in as evidence.

20 MR MPOFU: Okay, let me put it like this.

21 If when the gunpowder that the Chairperson was referring to

22 is deployed, it is accepted that one of the purposes of the

23 meeting was, in the words of Mr Mokwena, so that the two

24 plans can go together, would you agree that that is a sign

25 of –

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1 MR SHOZI: Chair –

2 CHAIRPERSON: [Microphone off, inaudible]

3 for him to express an opinion on that? You know I made the

4 point to you already. You can obviously argue it. You can

5 ask the witnesses who were involved in the discussion all

6 about it, but you are asking him a question which really is

7 a question that we'll be asked at the end of the day to

8 decide about. He hasn't got any special qualifications, as

9 I understand it, to add value to the debate –

10 MR MPOFU: Okay.

11 CHAIRPERSON: So I don't think I should

12 allow the question.

13 MR MPOFU: That's fine, Chairperson.

14 CHAIRPERSON: It doesn't mean that you're

15 not, will be stopped from making the point. You can deal

16 with it at the appropriate time.

17 MR MPOFU: No, that's fine. That's fine.

18 Were you aware of meetings at a high level between Lonmin

19 and the police in the course of that week?

20 MR SHOZI: No, Chair, that's a huge and

21 vague question. Meetings when and between who from Lonmin

22 and the police?

23 MR MPOFU: Well, for example between –

24 CHAIRPERSON: I think the question is

25 sufficiently clear to be answered.

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1 MR MPOFU: It's very clear, Chairperson.

2 CHAIRPERSON: Mr Mpofu, you don't have to

3 concur with my rulings, and you don't have to dissent to

4 them either. Let's carry on. Were you aware of any high-

5 level meetings between representatives of Lonmin and the

6 SAPS at Marikana during the time from when you arrived

7 there on the evening of the 13th up to the 15th?

8 COLONEL SCOTT: Chairperson, only the

9 one, and that was the National Commissioner on the Monday

10 night. I was aware that General Mpembe had met with the

11 unions. After the fact, I don't know if the, Lonmin was

12 part of that or not, but I think I've learned after the

13 fact they may have been but I wasn't aware of that at the

14 time, no. I still don't know if that's a confirmed fact

15 though.

16 MR MPOFU: And were you aware that SAPS

17 saw it fit to get the input of Lonmin on a permanent basis

18 for that operation?

19 COLONEL SCOTT: No.

20 MR MPOFU: Now given these indications

21 that I've given you, would you now agree that from a

22 neutral observer's point of view –

23 CHAIRPERSON: No, I think neutral

24 observers, we're neutral observers; we'll make the comments

25 of the neutral observers in due course. We don't need the

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1 benefit of Colonel Scott's views on what a neutral observer

2 would say. So I'm not going to allow that question.

3 MR MPOFU: Well, I thought – anyway,

4 fine. I thought all the questions we were asking were

5 meant to influence those neutral observers, but be that as

6 it may. There's one thing that I want you to assist us

7 with –

8 CHAIRPERSON: Are you moving on to

9 another topic?

10 MR MPOFU: Chairperson, yes, if I may.

11 It's not a long one.

12 CHAIRPERSON: No, no, no, I was proposing

13 to take a comfort break at noon for five minutes. If it

14 would be convenient for it to be taken now I'll be –

15 MR MPOFU: It can be taken now.

16 CHAIRPERSON: If you prefer me to wait

17 until you've made a suitable point –

18 MR MPOFU: No, no.

19 CHAIRPERSON: I'm in your hands.

20 MR MPOFU: No, I thought you were talking

21 about the big adjournment. If it's a comfort break,

22 thanks, Chairperson.

23 CHAIRPERSON: Comfort break will be taken

24 for the next five minutes.

25 [COMMISSION ADJOURNS COMMISSION RESUMES]

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1 [12:19] CHAIRPERSON: The Commission resumes.
 2 You are still under oath Colonel. Mr Mpfu?
 3 MR MPOFU: Thank you, Chairperson. Can
 4 I, sorry, I know I said I am moving to something else, but
 5 let me round off the point, the previous point. You are
 6 aware that in the JOC that discussions of what was being
 7 planned were held at the very least within earshot of the
 8 Lonmin personnel. In other words, they were aware of what
 9 the police were planning.
 10 COLONEL SCOTT: I would think they were
 11 aware, yes. I am also aware Mr Botes mentioned in his
 12 statement he overheard myself and General Annandale
 13 discussing options on how to try to disarm the strikers,
 14 yes.
 15 MR MPOFU: Yes, correct. He specifically
 16 mentioned you and General Annandale –
 17 COLONEL SCOTT: Yes.
 18 MR MPOFU: - discussing in his presence.
 19 Okay. And you are also aware that the – Mr Sinclair and Ms
 20 Amanda van der Merwe were given access to police radios
 21 during that period.
 22 COLONEL SCOTT: No, I wasn't aware of
 23 that.
 24 MR MPOFU: You are not aware of that?
 25 Are you also aware that – well, this one you definitely are

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1 aware of, that the presentation to the National
 2 Commissioner, the President and the media, for the 17th, was
 3 prepared largely with the assistance of an IT specialist
 4 from Lonmin.
 5 COLONEL SCOTT: I wouldn't say "largely,"
 6 just the video, the cutting and editing of the video of
 7 General Mpembe was deemed to be too long, they needed to
 8 shorten it, and then I think add on something that just
 9 filled the picture because the police video photographer
 10 didn't get to film the remainder, and we didn't have the
 11 expertise so –
 12 MR MPOFU: Yes.
 13 COLONEL SCOTT: - yes, so Lonmin IT
 14 specialists assisted with just cutting and putting that
 15 video together.
 16 MR MPOFU: Ja, so once again, since you
 17 didn't have the expertise, without the input of the Lonmin
 18 specialist that exercise would not have occurred. Well, if
 19 you didn't have the expertise how else were you going to do
 20 the shortening exercise without the assistance of the
 21 Lonmin -
 22 COLONEL SCOTT: Ja, we could have
 23 probably still shown the video, and then shown all the
 24 different clips, if we didn't have that capability. But
 25 that was just assisting to make it more presentable to the

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1 media at that time.
 2 MR MPOFU: Ja, but that's the point that
 3 I am making, I am not saying you would have not shown
 4 anything, I am saying you wouldn't have shown the shortened
 5 versions which you wished to show without the assistance of
 6 the Lonmin person, correct?
 7 COLONEL SCOTT: Yes.
 8 MR MPOFU: Thank you.
 9 COMMISSIONER HEMRAJ: Mr Mpfu, the
 10 access of Ms Van der Merwe to the police radios, just for
 11 the record, is restricted to the Lonmin JOC, right?
 12 MR MPOFU: Whatever, Chairperson. As
 13 long as they have access, I don't mind where it was, the
 14 mere fact that they had access to police radios, the
 15 location is not important.
 16 COMMISSIONER HEMRAJ: Well let not the
 17 wrong facts be placed on record, that's what she says in
 18 her statement because I am sure you will argue something as
 19 a result of that at a later stage.
 20 MR MPOFU: Yes, no, fair enough.
 21 COMMISSIONER HEMRAJ: Yes.
 22 MR MPOFU: Thank you. Yes, do you
 23 understand the point? Irrespective of the place, were you
 24 aware that the Lonmin personnel were given access to police
 25 radios? The fact that they had access to what was going

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1 on.
 2 COLONEL SCOTT: If access means being
 3 able to hear, I would agree because even those sitting
 4 inside the police JOC would have been able to hear police
 5 radios inside the police JOC which was the lapa building,
 6 but the physical giving of radios to Lonmin personnel, I
 7 doubt very much that that would have happened.
 8 MR MPOFU: Access, were you or were you
 9 not aware?
 10 COLONEL SCOTT: Obviously I was aware,
 11 they were sitting in the JOC where the radios were audible.
 12 MR MPOFU: And were you aware that Ms Van
 13 der Merwe was keeping a log sheet based on the information
 14 coming out of the radios?
 15 COLONEL SCOTT: No.
 16 MR MPOFU: You are aware, I am sure that
 17 my clients, the people that I represent, after they were
 18 arrested, they were taken to Lonmin premises to be
 19 processed.
 20 COLONEL SCOTT: Yes, I am aware of that.
 21 MR MPOFU: Okay, now we can move to the
 22 other issues.
 23 CHAIRPERSON: While you are busy with
 24 that, if you want to put on record aspects of co-operation,
 25 whether they are significant or not was another matter, but

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1 we do know that Lonmin video cameras were used by police
2 and in fact as a result of that we've got access to certain
3 videos we mightn't otherwise have had, I think the evidence
4 indicates. But that also was a – is a form of co-operation
5 presumably.
6 MR MPOFU: Yes, Chairperson, yes.
7 CHAIRPERSON: It may or may not have
8 significance.
9 MR MPOFU: Yes, thank you very much,
10 Chairperson, no I am consciously not putting other forms of
11 co-operation that I've put to other witnesses, like the
12 CCTV and all that. I was putting what I will consider to
13 be mainly new stuff. I know the radios have been mentioned
14 before, but thanks, Chairperson. Could you kindly go to
15 L191, Colonel.
16 CHAIRPERSON: Slide 191?
17 MR MPOFU: L191, yes, Chairperson.
18 CHAIRPERSON: From exhibit L.
19 MR MPOFU: Are we there? Now I want you
20 to please listen to me carefully, I've canvassed this
21 before with General Annandale, and we agreed that what one
22 might call the horseshoe arrangement of Nyalas, do you see
23 that?
24 COLONEL SCOTT: I don't think that's a
25 fair description, it's a straight line with the last Nyala

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1 specifically turned in towards the Wonderkop Hostel side,
2 which is the east.
3 MR MPOFU: No, okay, I am talking in the
4 side –
5 COLONEL SCOTT: Are you talking about the
6 razor wire?
7 MR MPOFU: Yes.
8 COLONEL SCOTT: The razor wire or the
9 Nyalas –
10 MR MPOFU: No, no, no, ignore the razor
11 wire, Nyalas.
12 CHAIRPERSON: Referring to the Nyalas,
13 which are in a sort of horse shoe arrangement with a line
14 with an arrow headed at each end.
15 MR MPOFU: Yes.
16 CHAIRPERSON: And the figure 100 metres.
17 He is referring to those Nyalas. Am I right, Mr MpoFU?
18 MR MPOFU: That's correct, that you very
19 much, Chairperson. I concur with the –
20 COLONEL SCOTT: Maybe just for the
21 accuracy, there is a front line which we know is the
22 monitoring and negotiation line, which you see where the
23 yellow and black arrow points almost come together.
24 MR MPOFU: Yes.
25 COLONEL SCOTT: There's 1, 2, 3, 4, 5

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1 Nyalas there, then there's a northern flank, what we call
2 the northern flank, which was called in I think at about
3 11, between 11 and 12 o'clock by Brigadier Calitz, which
4 consists of 1, 2, 3, 4 Nyalas and a Casspir which is behind
5 110 metre, the pictures, but the request of the vehicles
6 are not to do with the public order policing, those are, I
7 think a mixture of TRT vehicles and I see some larger
8 vehicles there, they may be Canters and the like.
9 MR MPOFU: Okay, all I really want from
10 you is, assume for the purposes of this question that the
11 razor wire had not yet been rolled out, I am saying that
12 the horseshoe arrangement there, that the Chairperson
13 indicated, can you see it?
14 COLONEL SCOTT: Yes.
15 MR MPOFU: Ja, now that horseshoe
16 arrangement is defined by the yellow line, correct? In
17 other words, it is that horseshoe arrangement – let me put
18 it like that, that is what was called the neutral area or
19 the police enclosure, correct?
20 COLONEL SCOTT: Everything from the razor
21 wire towards the east considered the neutral area, yes.
22 MR MPOFU: No, Sir, I am talking about
23 before the razor wire –
24 COLONEL SCOTT: No, I mean from the razor
25 wire Nyalas, as you see them standing there, is where the

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1 police line officially is. So everything from the razor
2 wire Nyalas moving towards the east, is then, is not
3 deployed, I agree with you, but from where they are located
4 is considered is considered then a neutral area - standing.
5 MR MPOFU: Okay, but you agree that
6 before, please bear with me, I know the picture has got
7 those Nyalas.
8 COLONEL SCOTT: Ja.
9 MR MPOFU: Before the Nyalas were
10 deployed, the razor wide was deployed, that the neutral
11 area was defined by the horseshoe.
12 COLONEL SCOTT: No.
13 MR MPOFU: Okay, the 80 metres –
14 COLONEL SCOTT: It would have been,
15 sorry, just to maybe assist, on the Wednesday before the
16 razor wire, Nyalas were placed, then the front line then of
17 the police would have been monitoring negotiation in the
18 phase 1. Then that would be an agreeable assumption.
19 MR MPOFU: Okay, fine, so by Wednesday
20 you are saying the neutral area was defined by the
21 horseshoe.
22 COLONEL SCOTT: Yes.
23 MR MPOFU: Let's say, ja.
24 COLONEL SCOTT: Yes.
25 MR MPOFU: And by Thursday –

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1 COLONEL SCOTT: Sorry, it's –
 2 CHAIRPERSON: Well -
 3 MR MPOFU: I am sorry, Chairperson.
 4 Sorry.
 5 COLONEL SCOTT: You don't demarcate it
 6 specifically, as in with boundary tape or specific vehicles
 7 for that matter. The neutral area simply depicted as an
 8 area of ground between what would one consider to be key
 9 points of strategic, that need protecting, and protesters,
 10 gatherers, or strikers in this matter, on the opposite
 11 side, so the police would need to position between what
 12 they thought would be possible targets, which makes it a
 13 neutral area because you have key points to the one side
 14 and you have – so to define it specifically by vehicles
 15 becomes a little inaccurate in essence.
 16 MR MPOFU: Thank you, it's not me who
 17 defines it by vehicles, it's the, whoever drew this map.
 18 The yellow lines are meant to show something, do you accept
 19 that?
 20 COLONEL SCOTT: Yes.
 21 MR MPOFU: The yellow lines are meant to
 22 show the distance between the 80 metres in my estimation,
 23 correct me if I am wrong, shows the distance between the
 24 strikers and the neutral area or the – let's say the
 25 strikers and the horseshoe.

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1 COLONEL SCOTT: It was to – I actually
 2 put those in, it was to show the distance between the
 3 strikers and the –
 4 MR MPOFU: Horseshoe.
 5 COLONEL SCOTT: - monitoring and
 6 negotiation line –
 7 MR MPOFU: Yes, which is based on the
 8 horseshoe.
 9 COLONEL SCOTT: I can't agree with you
 10 necessarily that's a horseshoe because if we are going to
 11 include all the vehicles what about the vehicles behind the
 12 left, as we see it.
 13 MR MPOFU: Alright.
 14 CHAIRPERSON: Mr Mpofu, something has
 15 been happening lately which isn't desirable and I know you
 16 are no doing it on purpose, but sometimes, when the witness
 17 is speaking you speak over, and then the transcription is
 18 going to be difficult, and we'll have lots of these
 19 "inaudibles" like we have on the Lonmin transcripts which
 20 is undesirable. Please keep an eye on that.
 21 MR MPOFU: Yes, thank you, Chairperson, I
 22 misreading the pauses as having finished, I am sorry about
 23 that. Sorry, Colonel. And when you did the other yellow
 24 line, the 50 metres between the kraal and those Nyalas,
 25 what were you trying to communicate to the Commission?

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1 COLONEL SCOTT: Both of them are showing
 2 the lines to the, where the public order policing members
 3 are lined. So the northern flank, it shows from the kraal
 4 to where the northern flank of public order policing
 5 vehicles, how far they were away from the kraal positions
 6 and as again, I say the monitoring and negotiation group,
 7 how far they were positioned from the strikers.
 8 CHAIRPERSON: That's the 80 metres, is
 9 it?
 10 COLONEL SCOTT: Yes.
 11 CHAIRPERSON: The 50 metres is the public
 12 order policing vehicles, the distance between them and the
 13 kraal.
 14 COLONEL SCOTT: Yes.
 15 CHAIRPERSON: And 80 metres is the front
 16 row as it were of the strikers, to the monitoring group.
 17 That's the 80 metres, is that right?
 18 COLONEL SCOTT: Yes.
 19 MR MPOFU: Fine.
 20 CHAIRPERSON: And what's the significance
 21 of the 100 metre distance you've indicated with the black
 22 line with arrow heads at each end?
 23 COLONEL SCOTT: That was to show the,
 24 where the TRT positioning was, again in relation to the
 25 kraal, understanding this is built building up to scene 1,

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1 to actually show the movement of how far they had to move,
 2 the armoured vehicles moving towards scene 1, being the 50
 3 and approximately the 110, where we –
 4 CHAIRPERSON: Sorry, I am now doing what
 5 I told Mr Mpofu not to do. You now talk about the 110
 6 metres, I actually asked you about the 100 metres but I was
 7 going to ask you next about the 110, the 110 metres is the
 8 distance between the kraal and the TRT people, is that
 9 right?
 10 COLONEL SCOTT: Yes.
 11 CHAIRPERSON: And the distance between
 12 the 100 – the vehicles at either end of the 100 metre line?
 13 COLONEL SCOTT: That was the line of the
 14 TRT vehicles, initially that were placed out as the rear
 15 guard if one would, to the monitoring and negotiation on,
 16 the distance gap that was envisioned to be kept.
 17 MR MPOFU: Okay, let's talk about the 50
 18 metres, so firstly it would be fair to say that the TRT
 19 line was meant to be at a place double that distance from
 20 the kraal to the, those Nyalas. 100 metres, correct?
 21 COLONEL SCOTT: Well, they are in a line,
 22 they were it be parallel to the monitoring and negotiation
 23 line formed up behind them and at this time, I didn't know
 24 who the people in blue were that you can see, well, they
 25 look more black now, the little people that you see lined

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1 up there, whether that was in fact TRT or, I don't know if
2 NIU has arrived yet in this photograph. They probably have
3 because I think Nyala 1 has started moving which I didn't
4 really recognise till Adv Chaskalson showed it, but so it
5 was more or less trying to sort of get a central point of
6 where the TRT was at that time, and how they would have had
7 to have moved, because obviously when they would have
8 briefed, they would have come together for a briefing at a
9 central point.

10 MR MPOFU: Ja, all I want to establish at
11 this stage is that if we, let's look at it from the point
12 of view of the kraal, if the POP people were at the kraal,
13 the TRT people were meant to be at a size twice that
14 between the kraal and those Nyalas which is 50 metres times
15 2, which is 100, correct?

16 COLONEL SCOTT: No, because that was
17 envisioned as I say in a phase 1, and in the phase 2 as you
18 see it depicted now, and when they'd gone out to form up
19 they would have formed up in my, I'd actually worked it
20 out, is they would have started pretty much close together,
21 POPs would have pulled away and started with the dispersion
22 action from a higher level moving forward. The rest would
23 have initially remained static, and allowed the dispersion
24 to start its process and then they would have started
25 walking with a gap behind them to start going to their

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1 with any arrests of people that have been subdued by public
2 order policing possibly or that had, they would need to see
3 people that have run to the koppies for instance but still
4 keeping the gap as I mentioned, I think it was yesterday
5 that they had an opportunity to make decisions consciously
6 on how to respond should the protesters try to attack POPs,
7 climb into their Nyalas and then move past the Nyalas maybe
8 to the next police line, which would have been the TRT
9 members.

10 MR MPOFU: Colonel, once again I say, you
11 can – I also don't understand what you are saying, but
12 maybe let me try and break it down. I always got the
13 impression and if I am wrong, you'll correct me, that the
14 plan was that the TRT line should at all material times be
15 100 metres behind the POP line.

16 COLONEL SCOTT: Once the –
17 MR MPOFU: If I am wrong, you will
18 correct me.

19 COLONEL SCOTT: Once the action is under
20 way.

21 MR MPOFU: Yes, but is there a stage
22 where they were supposed to be left 100 metres from POP.

23 COLONEL SCOTT: Well, approximately, I
24 mean if we saying, you need to estimate that anyway so
25 let's say approximate of 100, but the idea, the rationale

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1 different areas of responsibility, being koppie 2 and then
2 koppie 1 for the NIU, STF.

3 MR MPOFU: Yes, well correct me if I am
4 wrong, the impression I've always got is that –

5 COMMISSIONER HEMRAJ: Mr Mpofu, I am
6 sorry to interrupt you, can you just repeat that? I didn't
7 quite follow that.

8 COLONEL SCOTT: Ma'am, if it had gone
9 according to plan, the way I had envisioned is, you would
10 have had the razor wire set out, the forces would have come
11 out, they would have, as we know, towards the north set up.
12 There would have been the three consecutive lines, where
13 you have the public order in front. There would have been,
14 however, the operational commander chose for spacing but
15 initially in the morning when you can see the razor wire
16 would have been coming around, so initially the gapping
17 would have been a bit small but you allow the dispersion
18 action to go and we are talking now possibly 100 metres or
19 more from the actual protesters and then the dispersion
20 would start with the members outside, walking on foot with
21 the water cannon being the first to initiate when they got
22 to possibly about, or within range, which I think is about
23 80-90 metres but the rest would remain static and allow the
24 dispersion action to continue, not all the way through.
25 They would start walking slowly behind in order to start

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1 behind it is that sufficient space which I had thought was
2 100 metres as we can see depicted there, that they would
3 need to remain back, because – and I take that into
4 consideration considering our members' ability to shoot,
5 that we do shooting tests at that very distance, for
6 accuracy, etcetera, so if they were at that distance, and
7 they really did need to use a firearm at that distance to
8 protect a POP member forward, they should have the
9 capability to carry out that –

10 MR MPOFU: Ja.

11 COLONEL SCOTT: - in essence, whether
12 they were 20 metres closer, at 80 metres or so, I don't
13 know, but –

14 [12:39] MR MPOFU: Ja. Look, I am sure nobody
15 was walking around there with a tape measure, so I accept
16 that - approximation. All I am saying to you is that, and
17 you've given part of the answer, given the range of the
18 guns or rifles that they were having, you were satisfied
19 that if they were at least approximately 100 metres behind
20 POP, that was okay?

21 COLONEL SCOTT: I was, yes I was
22 satisfied with that.

23 MR MPOFU: Thank you. And it was never
24 envisaged that they could break through the barbed wire.
25 They didn't have that kind of intelligence?

<p style="text-align: right;">Page 15556</p> <p>1 COLONEL SCOTT: I did, I had envisioned 2 the barbed wire being, or the razor wire being deployed as 3 it should have been. I did reason that there were weak 4 points in the barbed wire, in the razor wire, and two of 5 them specifically, and that I'd actually requested that 6 some of the TRT members needed to remain behind, as well as 7 the extra water cannon which had arrived, just as a 8 protection of what was still going to remain in the 9 police's safe area, changing from neutral area to safe area 10 once the wire was deployed.</p> <p>11 MR MPOFU: No, my question is this; in 12 keeping this 100-metre distance, what was certainly not 13 envisaged is that the POP line is going to break through 14 the barbed wire. In other words the POP line could only 15 come towards - I think is it the north? - could gain 16 access to the larger ground from going through the north, 17 because the other place was closed with barbed wire. I 18 understand.</p> <p>19 COLONEL SCOTT: If you're asking what the 20 rationale was for the police assets to come out, they were 21 going to drive out in the vicinity of the kraal and come 22 and form up, yes.</p> <p>23 MR MPOFU: Yes, and at all those times 24 keeping the approximately 100 metre distance?</p> <p>25 COLONEL SCOTT: No, they would - as I</p>	<p style="text-align: right;">Page 15558</p> <p>1 operation starts, the 100-metre distance must be kept, 2 approximately, correct?</p> <p>3 COLONEL SCOTT: But I don't know if 4 you're understanding me. The TRT/NIU/STF 100-metre 5 distance is applicable in stage 2 because of the threat 6 that could come through at that time. Once razor wire is 7 in place, that needs to be formed up on the outside. How 8 the members move to the outside, they don't need to still 9 move with a hundred-metre gap to move to the outside.</p> <p>10 MR MPOFU: No -</p> <p>11 CHAIRPERSON: You say the outside; the 12 outside is an ambiguous expression. What do you mean by 13 the outside?</p> <p>14 COLONEL SCOTT: The outside is into the 15 staging area before the dispersion action where the 16 dispersion would be set up, the dispersion line would be 17 set up, which we know to be to the north of koppie 2.</p> <p>18 CHAIRPERSON: Yes, looking at this slide, 19 I take it if one looks at the Nyalas with the barbed wire 20 trailers behind, it looks very much as if that white line 21 that you've drawn diagonally across is running from north 22 to south. Is that correct? If one goes by the indication 23 of north in the top right-hand corner.</p> <p>24 COLONEL SCOTT: Ja, a little bit more 25 towards the east.</p>
<p style="text-align: right;">Page 15557</p> <p>1 say, we're talking now according to the plan and not 2 according to what happened.</p> <p>3 MR MPOFU: No, I'm not talking about what 4 happened. I'm talking about the plan.</p> <p>5 COLONEL SCOTT: Ja, according to the 6 plan.</p> <p>7 MR MPOFU: Ja.</p> <p>8 COLONEL SCOTT: Once the razor wire is 9 out, if the Public Order vehicles start moving out you 10 don't set up the formation inside the police's safe area 11 already and everybody walks like that. You'll come to the 12 staging point on the outside where the armoured vehicles 13 will be stopped and pulled into a line and from there the 14 water cannon in the middle and you make sure that your TRT 15 forces are lined behind you and the STF/NIU force behind 16 them, and those lines could be 20 or 30 metres apart at 17 that stage because now the verbal warning will be given and 18 POPs would after the time start moving forward. So the gap 19 essentially starts being created, the required gap, when 20 Public Order Policing starts approaching, but I think the 21 part that might make a bit unclear is the approach doesn't 22 start 50 metres from the strikers; the approach starts a 23 fair distance away.</p> <p>24 MR MPOFU: Yes. Colonel, I think let's 25 not complicate this. Your earlier answer was that once the</p>	<p style="text-align: right;">Page 15559</p> <p>1 CHAIRPERSON: I mean more or less.</p> <p>2 COLONEL SCOTT: Yes, but if we can -</p> <p>3 CHAIRPERSON: Okay, and it was going to 4 end in the bottom left-hand corner of the slide virtually. 5 Is that right?</p> <p>6 COLONEL SCOTT: Bottom left-hand corner?</p> <p>7 CHAIRPERSON: Not quite the bottom left- 8 hand corner, but more or less where - where exactly was it 9 going to end?</p> <p>10 COLONEL SCOTT: What was going to end, 11 Chairperson?</p> <p>12 CHAIRPERSON: The barbed wire -</p> <p>13 COLONEL SCOTT: The razor wire?</p> <p>14 CHAIRPERSON: - barrier, ja.</p> <p>15 COLONEL SCOTT: Well, no, it would have 16 probably gone where we can see Nyala 6, Nyala 6 would have 17 pulled its wire out, but that would, those, these are 18 operational decisions for Brigadier Calitz, but I would 19 envision that he would have pulled it out, leaving the gap 20 at the kraal. In other words he would have probably moved 21 it past the kraal, but leaving a gap for the vehicles to 22 drive out of.</p> <p>23 CHAIRPERSON: Yes, I see, so that then if 24 one can talk about the area on the strikers' side of the 25 barbed wire, perhaps one can call that the western side</p>

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1 because if that indication of north is correct –

2 COLONEL SCOTT: The western side, yes.

3 CHAIRPERSON: The western side of the

4 barbed wire is the strikers' side of the barbed wire. You

5 used the expression "outside." You see, I wasn't quite

6 sure what you meant.

7 COLONEL SCOTT: Yes.

8 CHAIRPERSON: Now if you meant the

9 strikers' side of the barbed wire, then obviously the

10 members of the SAPS had to get there.

11 COLONEL SCOTT: Yes.

12 CHAIRPERSON: And you envisaged them

13 getting there more or less to the western side of the

14 kraal –

15 COLONEL SCOTT: Yes, eastern side of the

16 kraal.

17 CHAIRPERSON: No, no – oh, eastern side

18 of the kraal?

19 COLONEL SCOTT: Yes.

20 CHAIRPERSON: Eastern side of the kraal.

21 COLONEL SCOTT: Actually coming out,

22 Chairperson, where scene 1 happened.

23 CHAIRPERSON: Sorry, repeat that again.

24 COLONEL SCOTT: Coming out of the

25 police's safe area where scene 1 happened, in that gap.

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1 CHAIRPERSON: They were going to go

2 through that gap?

3 COLONEL SCOTT: Yes.

4 CHAIRPERSON: The gap that was

5 effectively taken with fatal consequences by the strikers

6 was the gap that was going to be used by the members of the

7 police service to get into the strikers' side of the barbed

8 wire. Is that correct?

9 COLONEL SCOTT: Yes.

10 CHAIRPERSON: Thank you, now I

11 understand.

12 MR MPOFU: And one of the reasons for the

13 100-metre gap was to give the TRT people a safe distance,

14 if I can call it that, and reaction time, correct?

15 COLONEL SCOTT: Yes.

16 MR MPOFU: Now actually it is the key

17 reason for the 100-metre gap, is to give them a safe

18 distance and reaction time. Correct?

19 COLONEL SCOTT: Decision making time,

20 yes.

21 MR MPOFU: Yes, decision making time.

22 MR MPOFU: And obviously for, to allow

23 the approaching strikers also to see that these members are

24 warning, going beyond warnings to their stun grenades,

25 etcetera, to dissuade any further approach towards them.

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1 MR MPOFU: Yes, that's very correct. In

2 other words the 100-metres distance is meant to create time

3 within which to discourage the strikers, talk to them or

4 whatever, before they get to the danger zone, as it were,

5 before there can be a physical threat to the TRT, correct?

6 COLONEL SCOTT: Yes.

7 MR MPOFU: Ja.

8 CHAIRPERSON: The TRT or the POP?

9 MR MPOFU: TRT. To the TRT. So if that

10 distance which is meant, the distance is meant for that

11 noble cause, which would in, since these people are armed

12 with dangerous weapons, that distance could save lives,

13 correct?

14 COLONEL SCOTT: That's, as I say, that's

15 what it was envisioned to do, is not to –

16 MR MPOFU: Yes.

17 COLONEL SCOTT: Yes.

18 MR MPOFU: Thank you. And if that

19 distance for some reason gets shortened to about a tenth of

20 its intended magnitude, then logically the lifesaving

21 capacity of the distance is reduced by about a tenth,

22 correct? You understand what I'm saying? I can break it

23 down –

24 CHAIRPERSON: Do you mean reduced by a

25 tenth, or reduced to a tenth?

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1 MR MPOFU: To a tenth.

2 CHAIRPERSON: If it's reduced to a tenth,

3 then the lifesaving capacity is reduced to a tenth.

4 MR MPOFU: That's correct. That's

5 correct. Thank you. I'm sorry. You understand? I'm

6 sorry, I used the wrong proposition.

7 COLONEL SCOTT: Ja, but I think we also

8 just need to look at it in context though, because if the

9 TRT is in a position and the approach is made to them,

10 that's also closing the distance and not necessarily the

11 TRT closing the distance unnecessarily on whatever the

12 perceived threat was.

13 MR MPOFU: Ja, but we know in this

14 instance that the TRT ran towards that position.

15 COLONEL SCOTT: Yes, and I've explained

16 if they had stayed a hundred metres back from where kraal,

17 the kraal was, in effect the Public Order Policing members

18 would have got back into their Nyalas, hopefully all of

19 them, but you would have now had people inside the police's

20 safe area, exactly as the strikers claimed that they were

21 now cordoned in or boxed in, because where would they have

22 gone? Because they are now essentially inside the police's

23 very own protective wire, and if action is taken, even if

24 public order further action is taken with the vehicles

25 doubling back and coming back forward again, they've got

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1 exactly nowhere to go to disperse because the razor wire is
 2 a barrier to them. So in essence what's happening is that
 3 the TRT is going forward to protect whoever is in the safe
 4 area and to prevent entry into that safe area –
 5 MR MPOFU: Yes.
 6 COLONEL SCOTT: - not in essence with the
 7 plan, as you're saying, that this is the case.
 8 MR MPOFU: Ja, okay. For the purposes of
 9 – I don't agree at all with what you're saying, but for the
 10 purposes of this let's assume you're correct. For whatever
 11 reason that the TRT was putting itself in that position,
 12 according to your plan they could achieve that purpose
 13 because of the range of their guns a hundred metres away,
 14 correct?
 15 COLONEL SCOTT: I hear what you're
 16 saying, but the commander on ground there I feel made the
 17 correct call in taking his members closer because this was
 18 an unforeseen approach and possible attack awaiting the
 19 policemen on the area of kraal, of the kraal.
 20 MR MPOFU: Ah, so it was a possible
 21 attack. Aha. Now we get to the possible attack, the
 22 simple point I'm making to you now is that – and I accept,
 23 Colonel, that you were not there, there might have been
 24 decisions taken to adjust the plan and so on and so on, but
 25 I'm saying according to your plan that a distance of a

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1 hundred metres from whatever trouble the POP members might
 2 have been in, would have been sufficient to protect them,
 3 given the range of the guns, correct?
 4 COLONEL SCOTT: Envisioned on the
 5 outside?
 6 MR MPOFU: Ja, wherever.
 7 COLONEL SCOTT: On the outside for the
 8 dispersion, yes.
 9 MR MPOFU: Yes, thank you.
 10 COLONEL SCOTT: But not considering what
 11 had to be protected inside the police's safe area, people
 12 like the media, like softer assets that may have been
 13 positioned there as well. So in other words you're
 14 expecting the TRT line to literally stand with the media in
 15 this instance and make their defence from there.
 16 MR MPOFU: No, you see, Colonel, the
 17 problem is you are busy with justifying what happened and
 18 so on. We're not there yet. I'm simply saying according
 19 to your plan, let's say on the 15th, the 15th has not
 20 happened yet, according to your plan –
 21 CHAIRPERSON: You're assuming that was
 22 the plan on the 15th.
 23 MR MPOFU: Well, that's another story,
 24 but yes. According to your plan – I'll take out the date,
 25 ja, because we'll get to a confusing area, but according to

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1 your plan the TRT armed with sharp ammunition would have
 2 been able to protect POP from any danger from a hundred
 3 metres away. Yes?
 4 COLONEL SCOTT: At a very, in the
 5 planning level, yes.
 6 MR MPOFU: Yes, thank you.
 7 COLONEL SCOTT: Now you have to consider
 8 that around armoured vehicles as well, if there were POPs
 9 members outside of armoured vehicles obviously you can't
 10 say that from a line a hundred metres back you can see past
 11 the armoured vehicles on an attack that's happening. So
 12 I'm just stating, these are the realities of being on the
 13 ground and not just looking at this academically or
 14 theoretically, and in the essence that you're trying not to
 15 put it in context, you're going to put it in context in a
 16 moment, and to bring it back to scene 1 and that's why I'm
 17 showing the actions of the members at scene 1 because with
 18 you having me admit now to the plan outside as it was
 19 supposed to be carried out, it's not going to be the same
 20 as being put in context at scene 1 where the police in
 21 essence had a different mission. It was no longer a
 22 dispersal mission and a protection simply of the POPs
 23 members there; this was a defensive action that was
 24 happening, not an offensive action by the police.
 25 MR MPOFU: Okay, I give up now. But at

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1 least before I give up, let's accept the following; that
 2 the hundred-metre distance for you is sufficient for the
 3 range of the guns to give protection, correct?
 4 COLONEL SCOTT: Yes.
 5 MR MPOFU: That another reason for the
 6 hundred-metre distance is that it might save lives in the
 7 sense that people coming to you for a hundred metres will
 8 take longer time than if they come to you –
 9 COLONEL SCOTT: Yes.
 10 MR MPOFU: - 20 metres. That's just
 11 logical.
 12 COLONEL SCOTT: Yes.
 13 MR MPOFU: Correct, okay. And the third
 14 thing, which is really the proposition I wanted to put to
 15 you, is that assuming for a minute that the strikers were
 16 intending to attack the TRT line, had that TRT line been
 17 where it should be, which is a hundred metres away, the
 18 point at which they would think well, these people are now
 19 attacking us, would have been elsewhere, maybe 80 metres
 20 from where it was?
 21 COLONEL SCOTT: It would probably have
 22 been around the area of koppie 2.
 23 MR MPOFU: Ja.
 24 COLONEL SCOTT: That's where the, I would
 25 suspect that the Public Order Policing line would have been

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1 by the time that the, if there was going to be trouble –
 2 MR MPOFU: Correct.
 3 COLONEL SCOTT: - as I had envisioned it.
 4 MR MPOFU: Ja.
 5 COLONEL SCOTT: And just to clarify
 6 something that I'd mentioned earlier just for the
 7 Commission, and that's also why, if you consider the
 8 placement of TRT to protect the gaps between the Nyalas and
 9 so on, if there's a line behind, and as I was saying that
 10 you've got people on the ground in front being attacked
 11 which the TRT can't get to see, although they're spread
 12 out, there are TRT members and there are people, task force
 13 sharpshooters on to of Nyalas, to identify that type of
 14 incident. That's how it was planned for the outside.
 15 MR MPOFU: Yes, and if they had kept
 16 their distance that they're supposed to keep, this
 17 Commission would not be sitting here, or all of us, forever
 18 wondering –
 19 CHAIRPERSON: No, I hope that "forever"
 20 is a metaphor and not intended to be a literal statement,
 21 because if it is –
 22 MR MPOFU: Well, it is. It is intended,
 23 but I'll be happy if it doesn't turn out that way, but in
 24 other words, okay let's assume the Commission one day will
 25 determine whether upon arrival on the road those strikers

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1 would have turned left to go to Nkaneng, or would have
 2 crossed the road and attacked the TRT line, you understand
 3 that that's the central question?
 4 COLONEL SCOTT: Well, a moment ago we
 5 were not in the context of scene 1, and now we're in the
 6 context of scene 1.
 7 MR MPOFU: Ja, we are.
 8 COLONEL SCOTT: So you're referring to
 9 the hundred metres now at scene 1 again –
 10 MR MPOFU: No.
 11 COLONEL SCOTT: - and I've given my –
 12 isn't that what you just said, that if the strikers had
 13 approached and the TRT was a hundred metres back, we would
 14 – you're in context of scene 1, which is not where the
 15 hundred-metre gap was envisioned to be, number 1, and I
 16 just need to maybe rectify something that you pointed out
 17 earlier. Probable attack – the police were attacked.
 18 There is objective evidence of one of the strikers shooting
 19 two rounds with a pistol at the police members who were
 20 shooting rubber at him. So maybe I was wrong in saying
 21 "probable" and maybe I should say the police were attacked.
 22 MR MPOFU: No, you were right in saying
 23 "probably attacked," because by the time – and I'll show
 24 you the video on Tuesday - by the time even that so-called
 25 shooting incident happened, the TRT line had already been

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1 formed, the basic line had already formed. So you were
 2 right in saying it was a probable attack.
 3 MR SEMENYA SC: Chair –
 4 CHAIRPERSON: I'm not sure I understand
 5 that. If the TRT line was formed in order to act if
 6 required, and before they took any action, apart from being
 7 in position to be able to act, two shots were fired by a
 8 striker in the direction of the police, then there was, I
 9 would have though in anyone's language, an attack, not just
 10 a probable attack.
 11 MR MPOFU: No –
 12 CHAIRPERSON: So I don't accept that that
 13 distinction accurately reflects what was happening.
 14 MR MPOFU: Okay, I'll break it down so
 15 that we can all understand then.
 16 MR SEMENYA SC: Chair –
 17 MR MPOFU: All I'm saying is this -
 18 CHAIRPERSON: Sorry, Mr Mpofu, before you
 19 do that, Mr Semenya has turned on his light and so we must
 20 give him the opportunity to say what he wants to say.
 21 MR SEMENYA SC: Chair, the visuals are
 22 what they are. We can see them. This witness is not on
 23 the ground, he's in the JOC when these events happen. Of
 24 what value is all this questioning?
 25 MR MPOFU: Well, Chairperson, with the

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1 greatest –
 2 CHAIRPERSON: [Microphone off, inaudible]
 3 MR MPOFU: Yes.
 4 CHAIRPERSON: I understood he was probing
 5 the plan every now and then because we still don't know
 6 what actually happened at scene 1, but I understood the
 7 thrust of this cross-examination was to illustrate, if it
 8 could be done, inadequacies in the plan. If I'm
 9 misunderstanding then I would hope I'll be corrected. So
 10 on that basis, as this witness is the planner, he's the
 11 appropriate person to ask those questions.
 12 MR MPOFU: Thank you, Chairperson.
 13 CHAIRPERSON: But Mr Semenya was dealing
 14 with another matter. He said if you are away from the
 15 plan, dealing with what actually happened by way of a
 16 deviation from the plan, then his objection gains
 17 considerable weight, I would have thought. But anyway, the
 18 point has been made. Carry on. You've got – well, I'm
 19 going to take the adjournment as soon after 1 o'clock as
 20 you come to the end of the point you're busy with, but I'm
 21 in your hands until then.
 22 [12:59] MR MPOFU: Yes. Ja, I've even forgotten
 23 the question. What I'm saying to you, Colonel, is a simple
 24 point. The fact that the strikers were killed and shot at
 25 before they could cross the road, or turn left, is what

1 makes us not – or I understand the Commission one day will
2 answer that question, but it's what makes us at this stage
3 not know whether they would have turned left or crossed the
4 road. Do you accept that?

5 COLONEL SCOTT: If we're going to go back
6 to context, I –

7 MR SEMENYA SC: I don't understand,
8 Chair –

9 MR MPOFU: Okay, let –

10 MR SEMENYA SC: When they're dead they
11 can't be crossing anything.

12 MR MPOFU: Well, Chairperson –

13 CHAIRPERSON: Mr Mpofo, I think this
14 point is going to take a little bit of time to develop.

15 MR MPOFU: Ja.

16 CHAIRPERSON: If it's a point that can be
17 developed with this witness, but may I suggest that we
18 resume that part of the case at 9 o'clock on Tuesday
19 morning?

20 MR MPOFU: Yes, we may get –

21 CHAIRPERSON: It's going to take a bit of
22 time to make the point clear and there may be further
23 objections and so forth, and the distinction between the
24 planning situation the witness can deal with, and what
25 actually happened on the ground, which is a matter that may

1 be different –

2 MR MPOFU: Ja.

3 CHAIRPERSON: All these matters can in
4 the fullness of time after careful consideration over the
5 weekend and Monday be dealt with in a more focussed and
6 helpful way than they can be now. So we'll now adjourn
7 until Tuesday morning at 9 o'clock.

8 [COMMISSION ADJOURNED]

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