

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 84 2 MAY 2013 PAGES 8842 TO 8949

HELD AT

CIVIC CENTRE, RUSTENBURG, NORTH WEST PROVINCE



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1 [PROCEEDINGS ON 2 MAY 2013]
 2 [10:06] CHAIRPERSON: The Commission resumes.
 3 Majoor-Generaal, u is nog steeds onder eed.
 4 GENERAAL-MAJOOR ANNANDALE: Dankie,
 5 Voorsitter.
 6 CHAIRPERSON: Mr Bizos, do you have more
 7 cross-examination?
 8 CROSS-EXAMINATION BY MR BIZOS SC (CONTD.):
 9 Thank you, Mr Chairman. General, you will recall that at
 10 the previous hearing we dealt with your two sentences in
 11 relation to the number of persons you expected to deal
 12 with, 300 or 3 000. You recall that. I don't want to
 13 repeat it.
 14 GENERAAL-MAJOOR ANNANDALE: Ek onthou
 15 dit, Voorsitter.
 16 MR BIZOS SC: The plan drawn by the JRC,
 17 was it premised on an armed group of 300 or 3 000?
 18 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 19 die plan het voorsiening gemaak vir beide groepe inklusief.
 20 MR BIZOS SC: Would you not agree that
 21 clearly a plan to deal with 3 000 belligerent protesters
 22 would have been substantially different from a plan to deal
 23 with 300, or were there two plans?
 24 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 25 daar was een plan. Die plan het voorsiening gemaak om te

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1 handel met die aksies van beide groepe. Die groter groep
 2 was nie die aggressiewe groep nie. Die kleiner groep van
 3 tussen 3 en 400 was die meer militante groep, maar ons het
 4 voorsiening gemaak vir die uiteendryf aksie, sou dit nodig
 5 wees, van selfs die groter groep, alhoewel ons verwag het
 6 dat die groter groep self sou uiteengaan, wat dan ook
 7 gebeur het toe ons die defensiewe maatreël ontplooi het.
 8 MR BIZOS SC: General, you are
 9 contradicting yourself. Let me read to you again the first
 10 sentence that you uttered. "We never thought that we would
 11 have to deal with the bigger 3 000 group because there were
 12 two distinct groups." That is in conflict with what you
 13 have just told us, that you expected to be ready to deal
 14 with the 3 000 group.
 15 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 16 nee. In konteks –
 17 MR BIZOS SC: In context, General –
 18 CHAIRPERSON: He was busy answering the
 19 question when you interrupted him. Carry on with your
 20 reply.
 21 GENERAAL-MAJOOR ANNANDALE: Dankie,
 22 Voorsitter. In konteks het ons nie verwag dat dit enigsins
 23 sou nodig wees om van die groter groep te ontwapen of te
 24 arresteer nie.
 25 MR BIZOS SC: What was the plan in

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1 relation to them now that the majority of the 3 000 were
 2 not armed? Is that what, am I understanding you correctly?
 3 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 4 soos ek reeds getuig het, die meerderheid van die groot
 5 groep was bewapen met meer tradisionele wapens.
 6 MR BIZOS SC: - you not accepting the
 7 statement of your counsel in FFF9, page 14, paragraph 43,
 8 that all 3 000 belligerent protesters had to be dealt with?
 9 Do you say that you don't agree with that statement made by
 10 your counsel in their opening address?
 11 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 12 ek het reeds verduidelik dat die verwysing in die
 13 openingsrede van die, van ons regsplan het verwys na 'n
 14 kollektiewe groep wat ook ingesluit het die kleiner groep.
 15 In die openingsrede is daar ook vermelding gemaak van die
 16 militante groep.
 17 MR BIZOS SC: Your counsel speaks of the
 18 3 000 belligerent protesters, and it's not the only place
 19 where these words appear, but do you agree or disagree with
 20 your counsel?
 21 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 22 in die openingsrede het daar nie verdere onverdelling
 23 plaasgevind nie. Daar was kollektief verwys na die groter
 24 groep. Al 3 000 of 3 000 plus was verseker nie die
 25 aggressiewe individue, of was verseker nie aggressiewe

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1 individue nie.
 2 MR BIZOS SC: Did you expect to deal with
 3 the smaller belligerent group differently from the rest of
 4 the group?
 5 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 6 dit is korrek. Ons het verwag –
 7 MR BIZOS SC: Would you please –
 8 GENERAAL-MAJOOR ANNANDALE: Kan ek net
 9 voortgaan, asseblief, Voorsitter?
 10 MR BIZOS SC: Sorry.
 11 GENERAAL-MAJOOR ANNANDALE: Ons het
 12 verwag, soos ek reeds getuig het, dat die grootste gedeelte
 13 van die groter groep self uiteen sou gaan.
 14 CHAIRPERSON: I don't think he said the
 15 bigger number of the big group; I think he said the bigger
 16 group. I don't think he said the bigger number of the
 17 bigger group; I think he said the whole of the bigger group
 18 he expected would disperse on their own.
 19 GENERAAL-MAJOOR ANNANDALE: Ten minste
 20 die meeste –
 21 CHAIRPERSON: Did I understand you
 22 correctly?
 23 GENERAAL-MAJOOR ANNANDALE: Die meeste
 24 van die groter groep, indien nie die hele groep nie.
 25 CHAIRPERSON: So the interpretation is

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1 right. Most –
 2 GENERAAL-MAJOOR ANNANDALE: Dis reg,
 3 Voorsitter.
 4 CHAIRPERSON: I was wrong.
 5 MR MAHLANGU: Thanks, Sir.
 6 GENERAAL-MAJOOR ANNANDALE: Maar ons het
 7 ook verwag dat potensieel daar selfs van die kleiner meer
 8 militante groep, dat daar van hulle sou self uiteengegaan
 9 het. Voorsitter, tradisioneel het jy slegs 'n klein
 10 groepie Openbare Orde lede nodig om selfs 'n groot groep
 11 mense uiteen te dryf, sou dit nodig wees.
 12 MR BIZOS SC: Could you please –
 13 CHAIRPERSON: That answer hasn't been
 14 interpreted yet.
 15 MR BIZOS SC: Could you please inform the
 16 Commission where in the plan this idea of two separate
 17 groups being treated differently appear?
 18 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 19 die plan wat gedoop is "Operation Platinum" is 'n raamwerk
 20 in terme van polisie optrede. Ek het reeds gemeld dat dit
 21 die operasionalisering is van die "contingency" beplanning
 22 van die 13de.
 23 CHAIRPERSON: Mr Bizos, there is a
 24 reference in the opening speech of two groups – page 10,
 25 para 25, lines 2 and 3, there's reference to "The object of

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1 dispersing and disarming over 3 000 protesters and
 2 removing," to be removing I'd imagine, "and removing the
 3 more militant and obdurate ones by way of arrest." So
 4 there is a distinction between those who were going to be
 5 merely dispersed and disarmed, and those who were going to
 6 be arrested. The arrested ones, or ones to be arrested,
 7 were described as the more militant and obdurate ones. So
 8 there is a distinction already drawn in the opening
 9 statement, to be fair. There may be other questions you
 10 want to ask based on that passage, but I don't think you
 11 can suggest to him that the distinction between two groups
 12 is something that's not in the opening speech.
 13 MR BIZOS SC: I will accept that. Is
 14 there any other place in the plan in which the two groups
 15 were going to be treated different as part of their overall
 16 plan? Is there any other place in the plan which says that
 17 we did not expect – to use your own words – we did not
 18 expect to have to deal with the 3 000 people, and also so
 19 our deployment was in line with smaller groups in terms of
 20 that there was an expectation that there would be the ones
 21 that would not necessarily want to go or disperse over
 22 their own accord. Is there any other place other than what
 23 the Chairman of the Commission has referred us to, any
 24 other place in the plan, any other reference in the plan?
 25 CHAIRPERSON: I'm sorry, Mr Bizos, I

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1 referred you to the opening statement, not the plan. I
 2 didn't make it clear, I'm sorry.
 3 MR BIZOS SC: I'm sorry, I –
 4 CHAIRPERSON: I apologise, but I –
 5 MR BIZOS SC: I'll repeat the question as
 6 to whether there is anything in the plan, is there anything
 7 in the plan?
 8 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 9 die plan maak voorsiening vir aktiwiteite en handelings en
 10 –
 11 MR BIZOS SC: Please refer us to the
 12 passage in the plan. I'm sorry, Mr Interpreter, did I cut
 13 you off?
 14 CHAIRPERSON: You cut the witness off,
 15 which is even more serious, but anyway, please give the
 16 witness a chance to carry on.
 17 MR BIZOS SC: Yes, please continue if you
 18 want to.
 19 GENERAAL-MAJOOR ANNANDALE: Dankie, en
 20 net –
 21 CHAIRPERSON: No, Mr Semenya wants to say
 22 – Mr Semenya?
 23 MR SEMENYA SC: Chair, can Mr Bizos also
 24 have reference to slide 78 of exhibit L?
 25 CHAIRPERSON: Look at the last two lines

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1 of slide 78, Mr Bizos.
 2 MR BIZOS SC: That's not the plan, Mr
 3 Chairman. The plan which they had, the operation plan that
 4 in –
 5 CHAIRPERSON: What is the heading of
 6 slide 78, Mr Bizos?
 7 MR BIZOS SC: I beg your pardon?
 8 CHAIRPERSON: What is the heading of
 9 slide 78?
 10 MR BIZOS SC: Operation – but this is ex
 11 post facto, Mr Chairman. The plan is –
 12 CHAIRPERSON: Well, I'm not sure about
 13 that, but perhaps if it is ex post facto that's something
 14 you must take up with the witness, but the point that Mr
 15 Semenya makes is there is a slide which is headed
 16 "Operational plan." In fact it dates already from the 14th
 17 when the plan was first drawn up, I think, and it refers to
 18 the more militant group being dealt with in a particular
 19 way. So I'm sure he's suggesting that just so that we
 20 could save time, but if it's ex post facto – I'm not sure
 21 it is, but if it is, that's a matter to take up with the
 22 witness, not with me.
 23 MR BIZOS SC: I will persist for an
 24 answer to the question. The plan is a document before the
 25 Commission. Where in that plan is the two groups referred

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1 to?

2 CHAIRPERSON: Remind us, what's the

3 exhibit number of the plan?

4 MR SEMENYA SC: SS3.

5 MR BIZOS SC: SS3.

6 CHAIRPERSON: Thank you, Mr Semenya.

7 GENERAAL-MAJOOR ANNANDALE: Voorsitter,

8 ek was besig om te verduidelik dat daar nie in die plan

9 staan dat ons sodanig sal optree teen die militante groep

10 of sodanig sal optree nie. Die plan maak voorsiening vir

11 die handelinge en aktiwiteite, die gedrag van individue, en

12 daarvolgens is daar gebeurlikhede ingebou in die plan, en

13 daar kan ek u verwys na die vlak 2 ontplooiing en ook

14 pertinent die vlak 3 ontplooiing, wat dan sekere handelinge

15 daarstel deur die polisie om juis sodanige optrede deur ook

16 die militante groep aan te spreek, die sogenaamde

17 offensiewe maatreëls.

18 MR BIZOS SC: You are reluctant, General,

19 to point to any specific wording in the exhibit of the

20 plan, which supports your two sentences that you gave in

21 evidence.

22 [10:26] GENERAAL-MAJOOR ANNANDALE: Voorsitter,

23 daar staan nie in die plan dat dit is hoe ons sal die

24 militante groep hanteer of dit is hoe ons dit sal hanteer

25 nie. Ons, dit dui net handelinge aan, en die handelinge is

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1 as 'n groep nie uiteengaan nie dan sal die volgende

2 handeling plaasvind. So dit is juis wat ons bedoel met 'n

3 operasionalisering van 'n plan. Dis nie 'n omvattende plan

4 wat geskryf word vir 'n beplande [onhoorbaar].

5 MR BIZOS SC: Brigadier Calitz is a

6 senior police officer, as senior as you are. No, I beg

7 your pardon –

8 CHAIRPERSON: He's a brigadier and the

9 witness is a major-general.

10 MR BIZOS SC: Yes. He is a senior police

11 officer.

12 GENERAAL-MAJOOR ANNANDALE: Brigadier

13 Calitz is verseker 'n senior polisie-offisier, dis korrek.

14 MR BIZOS SC: Did he take a part in the

15 adoption of the plan?

16 GENERAAL-MAJOOR ANNANDALE: Dit is

17 korrek, Voorsitter, hy was deel van die JOCOM vergaderings.

18 MR BIZOS SC: And he was also an

19 operational commander?

20 GENERAAL-MAJOOR ANNANDALE: Dit is

21 korrek, hy was die operasionele bevelvoerder.

22 MR BIZOS SC: I want to read to you a

23 portion of his statement, exhibit GGG13, paragraph 7, which

24 says, according to the plan, in paragraph 7, "On the 14th of

25 August there were approximately 4 500 armed men at the

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1 koppie. The group was aggressive and were waving their

2 weapons at us. They were all armed," on the 16th of August,

3 paragraph 19 – have you got it?

4 GENERAAL-MAJOOR ANNANDALE: As u net vir

5 my kan verwys na watter lyn in paragraaf 19, mnr Bizos?

6 CHAIRPERSON: He's reading lines and 1,

7 General.

8 MR BIZOS SC: "The crowd that was

9 assembled at the koppie," have you got that?

10 GENERAAL-MAJOOR ANNANDALE: Ek het dit.

11 MR BIZOS SC: - "was unruly and very

12 aggressive. They were all armed with extremely dangerous

13 homemade and bought weapons which they clearly intended

14 using to injure or kill SAPS members." And mark the

15 following words, "They acted as one group and all of them

16 associated themselves with the action of each other. All

17 of them had the same intention and goal." Do you agree

18 that your evidence is contradictory to that paragraph in

19 Brigadier Calitz's statement?

20 GENERAAL-MAJOOR ANNANDALE: Voorsitter,

21 ek kan slegs getuig oor die feite aan my bekend.

22 CHAIRPERSON: Mr Bizos, to go back to

23 where you were earlier about the plan –

24 MR BIZOS SC: Yes.

25 CHAIRPERSON: There is something in the

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1 plan. I think we should mention it now and get it out of

2 the way so that we don't waste further time on it. If you

3 look at exhibit – it's SS3, if you go down – the pages

4 aren't numbered, but halfway, right near the end of that

5 document, about four or five pages from the end of the

6 document there's a document headed "Operation Platinum,

7 Lonmin Mine Marikana 16 August 2012, stage 3." Have you

8 found that?

9 MR BIZOS SC: I'll have it [inaudible].

10 CHAIRPERSON: It appears to be all, it's

11 a bunch of pages, it's actually four pages all stapled

12 together. It's the last four pages of the exhibit. We may

13 have stapled it together ourselves, so don't rely too much

14 on the staple. I think the second page of those four

15 pages, in other words the third-last page of the exhibit

16 says the following. It's headed "Risk Assessment.

17 Protester group still deemed a threat to police members due

18 to a smaller group who is armed," who are armed, I suppose,

19 "showing a militant attitude." So in the plan itself, the

20 risk assessment of stage 3 there is a reference to a

21 smaller group, armed, showing a militant attitude. I think

22 to be fair, that's the passage that the witness had in mind

23 which he couldn't find at the time. So I don't think we

24 need to spend any more time on that. I don't want to stop

25 you with the next bit you're busy with, but that seems to –

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1 MR BIZOS SC: No, we will argue –

2 CHAIRPERSON: I just want to get that

3 point off the table, because it seems to me that subject to

4 the argument you're going to advance, that there may not be

5 [inaudible], but let's proceed on, with the point you're

6 busy with now.

7 MR BIZOS SC: Yes. You know, General,

8 there is a police culture that people speak of that one

9 policeman doesn't contradict another policeman; they're in

10 this together and will not put blame on anyone who is a

11 fellow policeman. Are you aware of that –

12 CHAIRPERSON: Are you asking the witness

13 whether that's correct?

14 MR BIZOS SC: Yes.

15 CHAIRPERSON: Are you aware of that

16 attitude of essentially geniality?

17 GENERAAL-MAJOOR ANNANDALE: Voorsitter,

18 ek is nie bewus van so 'n kultuur nie, en ek is verseker

19 ook nie as individu deel van enige so 'n kultuur nie.

20 Voorsitter, en dan was ek nog besig om my vorige vraag, die

21 vorige vraag van Adv Bizos te probeer beantwoord, en ek het

22 gemeld ek kan net oor my eie feite getuig; foto's wat ek

23 gesien het wat twee duidelike groeperings aandui; terugvoer

24 wat ons in die JOC gekry het; en die besprekings tydens

25 JOCOM vergaderings.

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1 MR BIZOS SC: Why don't you want to

2 answer a simple question? I will reread the last two

3 lines, "They acted as one group and all of them associated

4 themselves with the actions of each other. All of them had

5 the same intention and goal." Do you agree that that is

6 contrary to your evidence?

7 CHAIRPERSON: Mr Semenya wishes to say

8 something.

9 MR SEMENYA SC: Chair, the fair treatment

10 of Brigadier Calitz's statement would also have paragraph

11 12, amongst many, that is addressing itself to "the group

12 of 3 to 400 men who were very aggressive and waving their

13 weapons at us."

14 MR BIZOS SC: Yes, Mr Chairman, with

15 respect, the mere fact that there may have been another

16 statement somewhere else, my learned friend can –

17 CHAIRPERSON: Mr Bizos, I'm sorry, the

18 complaint really is about the fairness of the question and

19 we don't know whether the Major-General had an opportunity

20 to study Brigadier Calitz's statement. You're putting a

21 passage to him.

22 MR BIZOS SC: Yes.

23 CHAIRPERSON: The basis of the objection

24 with which you must deal is that it's not fair to put the

25 passage you put in isolation, without also drawing the

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1 witness's attention to the passage in paragraph 12 to which

2 Mr Semenya referred. Now what is your answer to that

3 objection?

4 MR BIZOS SC: "The rest of the men

5 remained on the koppie from where they were chanting and

6 waving their weapons at us," –

7 CHAIRPERSON: It's the earlier part.

8 Sorry, the earlier part, Mr Bizos, does refer to a group of

9 men on the mountain, some of them covered with blankets and

10 armed with weapons, were on the ground about 80 metres away

11 from the barbed wire vehicles, [inaudible] and were very

12 aggressive, were waving their weapons at us. They were

13 about 300 to 400 men." So you've read the last sentence,

14 but anyway, the problem with the objection falls away in

15 the light of the fact that the witness's attention is now

16 pertinently drawn to the other passage.

17 MR BIZOS SC: Yes.

18 CHAIRPERSON: So perhaps we can now give

19 him a chance to –

20 MR BIZOS SC: Mr Chairman, with respect,

21 if there is a patent contradiction of two senior officers

22 that there were –

23 CHAIRPERSON: Mr Bizos, Mr Bizos, you put

24 the question. The objection now falls away because the

25 other passage has been referred to.

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1 MR BIZOS SC: Yes.

2 CHAIRPERSON: Let's give the witness a

3 chance to answer the question, unless you wish to

4 reformulate your question before he answers.

5 MR BIZOS SC: Well, even having regard to

6 the slightly different words used by Brigadier Calitz

7 elsewhere, is there anything that is not clear with the two

8 sentences of the passage that I have read out to you, and

9 is it not in contradiction with the whole of your evidence

10 in relation to this point?

11 GENERAAL-MAJOOR ANNANDALE: Brigadier

12 Calitz kan getuig oor sy eie waarnemings, en ek -

13 MR BIZOS SC: Again you're cheeking(?)

14 for touch.

15 CHAIRPERSON: I don't think he's finished

16 his answer, and I'm not – well, I won't say anything about

17 your last comment.

18 MR BIZOS SC: I'm sorry, Mr Chairman –

19 CHAIRPERSON: Let's just give him a

20 chance to finish his answer first.

21 GENERAAL-MAJOOR ANNANDALE: - en ek kan

22 getuig oor my waarnemings, en ek het getuig waarop ek my

23 eie waarneming baseer, en my waarnemings is nie slegs

24 gebaseer op dit wat Brigadier Calitz sê nie. Dis gebaseer

25 op pertinente foto's wat ek self onder oë gehad het en dis

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1 gebaseer op die terugvoer van 'n verskeidenheid van
 2 bevelvoerders, terugvoer wat bespreek was tydens die JOCOM
 3 vergaderings, en ook die nabetragting vergaderings in die
 4 aande waar daar pertinente bespreking was oor die kleiner
 5 militante groep.

6 MR BIZOS SC: You made the –
 7 MR MAHLANGU: If I may just say, Mr
 8 Chair, something was said about “nabetragting.” I can't –
 9 MAJOR-GENERAL ANNANDALE: Feedback.
 10 MR MAHLANGU: Feedback which was –
 11 CHAIRPERSON: Feedback in hindsight,
 12 nabetragting” is in hindsight. There was feedback and then
 13 there was also further discussion by way of hindsight, I
 14 take it, in the evening of what had happened during the
 15 day. I think that was the thrust of what he said. If I've
 16 got it wrong he'll correct me.

17 MR MAHLANGU: This was what was said,
 18 yes. Thank you, Mr Chair.

19 MR BIZOS SC: General, you made a long
 20 speech. Wouldn't it be simpler for you to say that my
 21 senior colleague was wrong in saying that? You're not
 22 prepared to say that. Why not?

23 CHAIRPERSON: Mr Semenya, before the
 24 witness answers, Mr Semenya?
 25 MR SEMENYA SC: Mr Chair, Mr Bizos'

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1 questions are predicated on a contradiction. We tried to
 2 point out that there is no contradiction because Brigadier
 3 Calitz also distinguishes a smaller group from the bigger
 4 group. So they're not at odds with the evidence of the
 5 witness.

6 CHAIRPERSON: Mr Bizos?
 7 MR BIZOS SC: Mr Chairman, the words are
 8 clear, very, very clear, that “They acted as one group and
 9 all of them associated themselves with the actions of the
 10 other. All of them had the same intention and goal.” What
 11 could be clearer, Mr Chairman, than reading those words –
 12 CHAIRPERSON: Just place it to the
 13 witness; let's see what he has to say. I don't remember
 14 you putting to him in terms that what Brigadier Calitz had
 15 said was wrong. You now say he didn't say it was wrong and
 16 therefore you're criticising him. So anyway, let's give
 17 him a chance to answer the questions and then you can carry
 18 on. So have you finished your question, or do you want to
 19 reformulate it?

20 MR BIZOS SC: I've finished the question
 21 whether this is in contradiction, Mr Chairman –
 22 CHAIRPERSON: Well, you put it's a
 23 contradiction. Let's see what the witness has to say,
 24 whether he agrees.
 25 MR BIZOS SC: Yes. We'll have another

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1 long speech, Mr Chairman, with respect.

2 CHAIRPERSON: Mr Bizos, I don't think
 3 that's a comment that's worthy of you. Let the witness
 4 give his answers, long or shot, and we will listen to them
 5 and then we can carry on. Yes, Major-General?

6 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 7 ek is seker as Brigadier Calitz kom getuig sal hy dit
 8 kwalifiseer, en hy sal ook sy terugvoer en sy deelname in
 9 die JOCOM vergaderings sal hy bevestig, dat daar twee
 10 duidelike groeperings was, dat hulle verskillend bewapen
 11 was, dat hulle gedrag anders was, en dat hulle selfs
 12 verskillend aangetrek was.

13 [10:46] CHAIRPERSON: It does seem as if there is
 14 a contradiction of some sort, so let's have a look at that
 15 for a moment. Para 19, “The crowd that assembled on the
 16 koppie was unruly and very aggressive.” That obviously
 17 refers to everybody, I take it. “They were all armed with
 18 extremely dangerous homemade and bought weapons which they
 19 clearly intended using to injure or kill SAPS members.”
 20 Now my understanding of your evidence is that most of the
 21 people in the larger group had traditional weapons, sticks
 22 and that sort of thing. Not to say that some of them
 23 didn't have dangerous weapons, but it's not your evidence,
 24 as I understand it, that they all had dangerous weapons.
 25 Most, if not all, of the smaller group did. So unless some

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1 qualification is introduced by Brigadier Calitz in the
 2 course of his oral evidence, this statement in the second
 3 sentence of para 19 isn't in line with your evidence. So
 4 there is a contradiction to that extent and I think you
 5 agree. So I, and I think Mr Bizos is trying to get you to
 6 deal further with the contradiction, but I must allow him
 7 to repeat his question. But you've now agreed, there is a
 8 contradiction. Mr Bizos can take it further. Mr Semenya?

9 MR SEMENYA SC: Chair, Brigadier Calitz
 10 recording in the statement, addresses from paragraph 12 the
 11 smaller group, and when he's talking about those in the
 12 later paragraph he's still addressing the smaller group of
 13 3 to 400 people.

14 CHAIRPERSON: Mr Semenya, I'm not sure we
 15 know that that's right because the first sentence of 19 –
 16 MR SEMENYA SC: No, from 12, Chair.
 17 CHAIRPERSON: No, no, no, I understand
 18 that. I understand, but we're busy with 19 at the moment.
 19 The first sentence of 19 says the crowd that assembled on
 20 the koppie - that's obviously all of them, I would think,
 21 big and small group – they were all armed. So it does look
 22 as if there is a, on paper at least a contradiction.
 23 Whether, what the value of it is, is a matter that can be
 24 debated later, and the witness in any event presumably
 25 would wish to comment on it. But I don't think I can

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1 disallow the question. Mr Bizos?

2 MR BIZOS SC: Chair, thank you. General,

3 if I understood your answer to the question properly, you

4 said that you are confident that your colleague, Brigadier

5 Calitz, will amend his words. Did I misunderstand you?

6 CHAIRPERSON: I understood him to use the

7 word "qualify" and I'm not sure if a qualification is

8 necessarily an amendment. So if you put it on the basis of

9 qualification -

10 MR BIZOS SC: Yes.

11 CHAIRPERSON: - I'll allow the question.

12 MR BIZOS SC: Yes.

13 CHAIRPERSON: If you put it on the basis

14 of an amendment, I won't.

15 MR BIZOS SC: Let me use the word, the

16 softer word, Mr Chairman. You are confident that your

17 colleague will qualify his statement. Don't you think it a

18 little presumptuous to make that assumption?

19 GENERAAL-MAJOOR ANNANDALE: Voorsitter,

20 nee, want ek lees hierdie paragraaf met verwysing na die

21 "crowd" in die konteks met die terugvoer wat hy aan ons

22 gegee het, beide in terme van radio terugvoer, asook die

23 JOCOM terugvoer. Voorsitter, en as mens dit tegnies lees

24 soos u daar sê, kan ek verstaan want hy maak nie onderskeid

25 nie; hy verwys na die koppie as die groter geheel, maar ek

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1 lees dit in die konteks van die gedurige verwysing na die

2 twee onderskeie groepe.

3 MR BIZOS SC: I'm going to put to you,

4 General, that your evasive answers are -

5 CHAIRPERSON: No, Mr Bizos, you -

6 MR BIZOS SC: That your answer -

7 CHAIRPERSON: No, Mr Bizos, I'm sorry.

8 You can put to him that his answers are evasive and he can

9 comment on that, but you can't assume that they're evasive

10 and then put something to him on the basis of that because

11 he may not agree that his answer is evasive, so I suggest

12 you put the question properly.

13 MR BIZOS SC: Yes. We will submit,

14 General, that you are following the example that I

15 indicated earlier that policemen do not contradict one

16 another; they support one another, never mind what the

17 facts are.

18 GENERAAL-MAJOOR ANNANDALE: Voorsitter,

19 nee, ek teken beswaar aan teenoor die opmerking van Adv

20 Bizos. Mnr Bizos kan nie 'n oordeel oor my integriteit

21 maak gegewe die manier wat ek 'n vraag antwoord nie. Ek

22 sal dit oorlaat aan die Kommissie om dit te doen.

23 CHAIRPERSON: The whole answer wasn't

24 interpreted. He said Mr Bizos can't make a reflection on

25 his integrity based upon an answer he gave. That part

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1 wasn't interpreted.

2 MR MAHLANGU: That's correct, I was

3 unfortunately disturbed by my colleague at the back here.

4 Thank you, Sir.

5 MR BIZOS SC: General, we have searched

6 the documents of - what is his name?

7 CHAIRPERSON: Mr Bizos, you've got two

8 microphones. I don't know which - oh, I see you've only

9 got one now. Okay.

10 MR BIZOS SC: Yes, thank you, Mr

11 Chairman. General Mpembe in exhibit GG12, Major-General

12 Naidoo in exhibit DD, Lieutenant-Colonel Scott in FFF18, Mr

13 Semenya's opening statement, the Provincial Commissioner

14 Mambo's statement, and the evidence -

15 CHAIRPERSON: I think you mean

16 Lieutenant-General Mbombo.

17 MR BIZOS SC: Mbombo, and the evidence of

18 the National Commissioner. Nowhere were we able to find

19 anything like your sentence, "We never thought that we

20 would have to deal with bigger, 3 000 group because there

21 were two distinct groups. So our employment was in line

22 with the smaller group in terms of that there was an

23 expectation that they would be the ones that would not

24 necessarily to go on or disperse out of own accord." What

25 I'm putting to you is that nowhere were we able to find

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1 your words supported by any of these witnesses. What is

2 your commentary? Not in relation to as to whether there

3 were two groups or not, but the words that you have used

4 that you only had to deal with the small group of 3 to 400.

5 What do you say to that?

6 GENERAAL-MAJOOR ANNANDALE: Voorsitter,

7 ek het getuig oor die feite soos wat dit waargeneem was

8 tydens die JOCOM vergaderings, die besprekings wat

9 plaasgevind het, die insette wat gegee was, die verdere

10 besprekings wat plaasgevind het tussen die JOC

11 verteenwoordigers, en die nabetragting vergaderings.

12 Voorsitter, die kleiner groepie was 'n konstante bespreking

13 en van daar die addisionele stappe wat ons ingebring het in

14 terme van die defensiewe maatreël, die gebruik van pantser

15 voertuie vir voorste linie, en die pertinente afstand wat

16 ons gehou het tussen die voorste linie en dan pertinent

17 hierdie militante groep. Die feit dat dit nie iewers

18 pertinent verwoord is soos wat Adv Bizos dit graag sou wou

19 sien nie, beteken nie dat dit nie plaasgevind het nie, en

20 dit het plaasgevind.

21 MR BIZOS SC: I am going to call, to

22 refer you - you don't have to agree to it - to what you

23 have said is the new version of the police about their

24 conduct.

25 CHAIRPERSON: Mr Bizos, in the light of

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1 the passage that I've referred you to in the risk
 2 assessment, I think it's exhibit SS3, where there was
 3 reference to a more militant group, on what basis can you
 4 put to the witness that this is now a new version? I can
 5 understand it's a version that he put a lot of emphasis on
 6 and the others either put no emphasis on or very light
 7 emphasis, so I can understand that, but is it fair to
 8 suggest to him that it's a new version? Because that does
 9 imply something which I'm not sure is necessarily supported
 10 by the facts upon which it's allegedly based.

11 MR BIZOS SC: Yes, let me use his own
 12 words, Mr Chairman, the idea that "We never thought that we
 13 would have to deal with a bigger 3 000 group because there
 14 were two distinct groups." Leave aside the question of
 15 whether there were two distinct groups. "We never thought
 16 that we would have to deal with the bigger 3 000." I will
 17 call that as a new version of the police defence.

18 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 19 dit is verseker nie so nie.

20 MR BIZOS SC: Assume for the purposes of
 21 my questioning that this is what you've said. You can
 22 explain it if you want to many times, but deal –

23 GENERAAL-MAJOOR ANNANDALE: Ek gaan dit
 24 verduidelik, Voorsitter –

25 MR BIZOS SC: - with the meaning of those

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1 words. "We never thought that we would have to deal with
 2 the bigger 3 000." That version, I am going to put to you,
 3 was deliberately adopted as a second defence, or as an
 4 alternative defence in order to meet the statements of the
 5 experts that have been filed, that that plan was – to use a
 6 colloquialism – a crazy plan, and in order to avoid the
 7 judgment of the experts that have been filed, this version
 8 has been brought forward as a new version.

9 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 10 daar is talle getuies wat sal kan getuig tot die effek wat
 11 ek oorgedra het, beide vanuit polisie geleedere en ook van
 12 Lonmin. Daar was 'n mnr Dirk Botes wat deel was van die
 13 JOCOM vergaderings, wie ek seker is sal dit onafhanklik
 14 bevestig. Daar was ook 'n delegasie van Lonmin se senior
 15 bestuur wat op die Donderdag besoek afgelê het by die JOC
 16 en in my interaksie met hulle het ek pertinent verwys na 'n
 17 aparte sogenaamde krygersgroep –

18 CHAIRPERSON: "Krygers" are fighters, I
 19 think, to the fighting group.

20 GENERAAL-MAJOOR ANNANDALE: - wie op en
 21 afbeweeg het op daardie betrokke dag van die een kant na
 22 die ander kant. Voorsitter, nee, ons het nie 'n mal plan
 23 gehad nie. Ons het 'n weldeurdagte plan gehad wat opgestel
 24 was deur 'n span kundiges met jare en jare se ervaring
 25 tussen hulle, gebaseer op 'n geskiedenis van 17 jaar in

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1 hierdie demokrasie, wat ons 151 105 Openbare Orde
 2 protesaksies hanteer het. Voorsitter, en met die voordeel
 3 van nabetragting is dit baie maklik om te kan verwys na
 4 leemtes in 'n plan en ons nie slegs die tragiese uitkoms
 5 dat daar mense gesterf het gebruik as die enigste maatstaf
 6 of so 'n plan geskik was al dan nie.

7 [11:06] MR BIZOS SC: You were a police officer
 8 and what was your rank in –

9 CHAIRPERSON: Are you going on to another
 10 point now, Mr Bizos? Because there's a point I want to put
 11 in relation to the point you've just been putting about the
 12 plan and what it was aimed at.

13 MR BIZOS SC: Well [inaudible] –

14 CHAIRPERSON: I won't do so now. I won't
 15 do so now to interrupt you –

16 MR BIZOS SC: No, no. No.

17 CHAIRPERSON: There's one passage I think
 18 which has to be put to you. It's been referred to already.
 19 In the opening speech, the opening statement rather, which
 20 is exhibit FFF9, on page 10 at the top the, it reads as
 21 follows if one starts at the foot of the previous page,
 22 page 25, "You'll hear in the fluidity of the situation at
 23 Marikana on Thursday, 16 August 2012, the situation got out
 24 of control and tragic unintended consequences resulted,
 25 despite meticulous scenario planning by experienced

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1 generals and other senior officers at the joint operational
 2 centre, the JOC," and these are the words I'd like you to
 3 deal with, "to achieve the object of dispersing and
 4 disarming over 3 000 protesters."

5 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 6 ja, ons het nie verder die verklaring, die openingsrede het
 7 ons nie verder gaan onderverdeel nie, en ons het slegs na
 8 die kollektief verwys, en dieselfde in die, in bewysstuk L.
 9 Op 'n stadium sou ons na 400 "slides" toe gegaan het en ons
 10 het dit probeer beperk en beperk, so ek sien wat u sê; dit
 11 was 'n kollektiewe verwysing sonder 'n verdere
 12 onderverdeling.

13 CHAIRPERSON: Yes, thank you. I must
 14 confess, I thought there might have been something in L
 15 that supported what you said, but that passage seemed to me
 16 to be slightly against it, but I think you've explained,
 17 you've expanded, but there may be something in L as well,
 18 but anyway, if there is I'm sure Mr Semenya will draw it to
 19 our attention at some stage.

20 GENERAAL-MAJOOR ANNANDALE: Daar is
 21 verwysing, dis reg, maar ons het nie in baie detail
 22 ingegaan in terme van die onderskeid nie, Voorsitter.

23 CHAIRPERSON: - being referred to at
 24 slide 78 during the stage 3 of the operation plan, that's
 25 the reference to the more militant group's tight formation

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1 and structuring being dealt with.

2 MR BIZOS SC: You remember – if I may

3 proceed, Mr Chairman. You remember –

4 CHAIRPERSON: Yes, Mr Bizos. I was

5 intervening in your cross-examination. You may carry on

6 now.

7 MR BIZOS SC: Thank you. What was your

8 rank in 1994 when the democratic order came to par?

9 GENERAAL-MAJOOR ANNANDALE: Voorsitter,

10 dit was majoor, sonder die generaal.

11 MR BIZOS SC: Did it come to your notice

12 as an officer that Mr Eddie Hendrickx was employed together

13 with the then new Commissioner Fivaz and Minister Mafomadi

14 to demilitarise the South African Police?

15 GENERAAL-MAJOOR ANNANDALE: Voorsitter,

16 ek het tydens hierdie Kommissie bewus geraak dat mnr

17 Hendrickx betrokke was by die Suid-Afrikaanse Polisiediens

18 jare terug, ek dink so hierso '94 tot '96, daar rond. Ek

19 weet nie wat was al sy pertinente takings waarop sou hy

20 betrokke wees nie, maar ek weet hy was betrokke by Openbare

21 Orde Polisiëring.

22 MR BIZOS SC: After you made your

23 statement, your written statement, did you become aware

24 that in cross-examining certain witnesses we disclosed that

25 Mr Eddie Hendrickx was going to be an expert witness who

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1 was going to say that this plan of dealing with the 3 000

2 protesters as described in the plan – he didn't use the

3 word – was a completely unacceptable position for any

4 police force to adopt?

5 GENERAAL-MAJOOR ANNANDALE: Voorsitter,

6 ek het mnr Hendrickx se verklaring geles.

7 MR BIZOS SC: Did you read, before giving

8 evidence and after you made your statement, Mr Hendrickx's

9 view that what the South African Police did on the 16th was

10 a – to use another word – a faulty exercise?

11 GENERAAL-MAJOOR ANNANDALE: Voorsitter,

12 mnr Hendrickx se verklaring is taamlik omvattend.

13 MR BIZOS SC: Quite what? I'm sorry, I

14 didn't hear.

15 GENERAAL-MAJOOR ANNANDALE: Omvattend.

16 CHAIRPERSON: Comprehensive.

17 MR BIZOS SC: Comprehensive.

18 GENERAAL-MAJOOR ANNANDALE: Omvattend, en

19 hy het na verskeie fasette verwys, so dit sal vir my

20 makliker wees as ek, die pertinente paragraaf aan my

21 voorgehou word.

22 CHAIRPERSON: Mr Bizos, I see it's now

23 quarter past 11. If there are specific passages to which

24 you wish to refer the witness, perhaps you could give it to

25 him shortly after we take the adjournment so he can have a

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1 look at them during the adjournment and so you can then

2 proceed. Have you got specific passages you're going to

3 refer him to?

4 MR BIZOS SC: There are certain passages

5 that we're going to –

6 CHAIRPERSON: Well, you could either

7 mention them now or you can mention it once we adjourn,

8 whichever you prefer.

9 MR BIZOS SC: Well, let's take the

10 adjournment now.

11 CHAIRPERSON: Alright. We'll take the

12 tea adjournment at this stage. We'll try to reassemble, if

13 possible, at half past 11.

14 [COMMISSION ADJOURNS COMMISSION RESUMES]

15 [11:50] CHAIRPERSON: The Commission resumes. As

16 I left the auditorium I told the attorney for the police

17 that if the Major-General required longer time to read the

18 report, the relevant passages, I would be prepared to

19 recommence the sitting later than the time I'd mentioned,

20 and indeed I was then asked to give the General longer

21 time, which I've done, which is why we've come back much

22 later than was promised. Majoor-Generaal, u is nog steeds

23 onder eed.

24 CHARL ANNANDALE: s.o.e.

25 CHAIRPERSON: Mr Bizos, the document

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1 we're looking at is exhibit GGG2. Is that right?

2 MR BIZOS SC: 2, page 16, paragraph 22 –

3 VOORSITTER: Majoor-Generaal, ek dink u

4 wou iets – I think he wants to say something, or did I hear

5 wrongly? No. Is it 22.2, is it Mr Bizos, or would you

6 want to deal with the whole 22?

7 MR BIZOS SC: Well, I would like to read

8 from 22 up to 22.4.

9 CHAIRPERSON: Yes, please go ahead then.

10 CROSS-EXAMINATION BY MR BIZOS SC (CONTD.):

11 Yes, thank you. General, please have a look at exhibit

12 GGG2, that is the statement of Mr Eddie Hendrickx, and it

13 reads, "The objectives of the tactical intervention stage,

14 dispersal, disarmament, and arrest, are problematic."

15 22.1, "I would not try to engage a perceived armed crowd of

16 3 000 protesters with these objectives when there were

17 other options available. The purpose of an operation and

18 the size of a gathering determine the number of police

19 required for a defensive operation. The accepted

20 international ratio is three protesters to every one

21 police; for an offensive, that is arrest operation, one

22 protester to every three police. There were approximately

23 750 police and 3 000 protesters at Marikana on 16th of

24 August 2012, insufficient for an operation of this nature."

25 22.3, "After the incident on Monday the 12th of August 2012,

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1 where members of SAPS and protesters had died, the
 2 probabilities were that the dispersal, disarmament, and
 3 arrest, would not work; and," 22.4, "Even if the protesters
 4 had laid down their arms and surrendered, there were
 5 probably not sufficient personnel and resources in place to
 6 process them." Now this is the view of Mr Hendrickx. Do
 7 you agree or disagree?
 8 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 9 ek stem nie saam met mnr Hendrickx nie.
 10 MR BIZOS SC: Let us see what Mr White
 11 says in WW2, paragraph 4.4.21 on page 32 of his report.
 12 Are you with –
 13 CHAIRPERSON: Sorry, I was looking at
 14 something else, Mr Bizos. Please forgive me. To what are
 15 you now referring?
 16 MR BIZOS SC: WW2 –
 17 CHAIRPERSON: Yes.
 18 MR BIZOS SC: That is Mr White's report.
 19 CHAIRPERSON: Yes, page 32?
 20 MR BIZOS SC: Page 32, paragraph 4.4.21.
 21 CHAIRPERSON: Thank you very much.
 22 MR BIZOS SC: May I read it, Mr Chairman?
 23 CHAIRPERSON: Yes, please do so, Mr
 24 Bizos.
 25 MR BIZOS SC: "Secondly, to the extent

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1 that it was a plan which required the disarmament and
 2 arrest of significant numbers of people, it was inherently
 3 high risk. Engaging a crowd of this size, many of whom
 4 were armed, was always likely to meet with resistance. A
 5 major determining factor of crowd behaviour during public
 6 disorder situations is the actions of the police. Often
 7 the making of arrests can provoke violent responses, which
 8 place both the police and the protesters at higher risk of
 9 injury. Where arrests need to be made it is generally
 10 better to make those arrests after the event, having
 11 received evidence of criminality by video – during the event
 12 itself. That is likely to result in a more proportionate
 13 use of force. That is not to say that arrests should never
 14 be made, but that a plan to make large numbers of arrests
 15 in a crowd numbering in the thousands was inherently risky
 16 and was unlikely to comply with Standing Order 262 –
 17 requirement to avoid the use of force at all costs. It was
 18 an option to consider only after less risky options had
 19 been properly considered and discounted." Do you agree or
 20 disagree with Mr White's opinions?
 21 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 22 mnr White het die opmerking gemaak na aanleiding van 3 000
 23 mense, en dit was nooit die intensie om 3 000 mense te
 24 probeer arresteer nie.
 25 MR BIZOS SC: - anything else that you

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1 want to say that you disagree with, or agree with?
 2 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 3 ek het omvattend na die spesifieke stelling van mnr White
 4 en ook die van mnr Hendrickx verwys tydens my
 5 getuienislewering. Ek kan enige tyd weer daar gaan. Daar
 6 is ongelukkig nie 'n kort antwoord daarvoor nie, so ek sal
 7 moet kommentaar lewer op elke aspek wat hier vermeld is.
 8 MR BIZOS SC: The fundamental question in
 9 both the sections of the opinion says whether or not the
 10 police were right in having a plan to do the dispersal,
 11 disarming, and arrest plan. They say that it appears to
 12 them on the evidence before them that 3 000 people – and
 13 that was what was in the opening address and that is what
 14 was in the evidence and they relied on it. Do you disagree
 15 with everything that they say in criticism of the plan?
 16 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 17 ek sal deur al die aspekte moet werk. Dis die enigste
 18 manier hoe ek dit kan antwoord, want ek kan nie net sê ek
 19 stem saam of ek stem nie saam nie want teoreties en
 20 akademies is daar van die stellings wat waar is, net
 21 [onhoorbaar] vat op die stelling soos gemaak.
 22 MR BIZOS SC: Which are those that you
 23 expect is true?
 24 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 25 soos ek deur dit werk sal dit duidelik word.

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1 MR BIZOS SC: For the sake of
 2 completeness, before you do that, let me also refer to the
 3 statement of Mr De Rover, FFF11, paragraph 62. Let me read
 4 61 first. "One difference I see with the past and with the
 5 benefit of hindsight is that this operation was requiring
 6 more than incidental use of the firearm." 62, "For that
 7 reason alone I place this operation at Marikana at the very
 8 end of the scale of operation such crowd management is
 9 capable of handling. In fact, I strongly believe that as
 10 the events unfolded leading up to scene 1 on the 16th of
 11 August 2012, SAPS were out of their depth and forced to act
 12 beyond current capability levels." Please have regard to
 13 that statement by the expert engaged by the South African
 14 Police. Having regard to the three statements, would you
 15 please tell the Commission which portions of these opinions
 16 do you accept a correct, and which you regard as incorrect?
 17 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 18 ek begin by bewysstuk GGG2, paragraaf 22.1 op bladsy 16,
 19 waar mnr Hendrickx sê dat "I would not try to engage a
 20 perceived armed crowd of 3 000 protesters with these
 21 objectives when there were other options available," dat
 22 dit nie ons intensie was en ons bedoeling was om 3 000
 23 protesteerdere te nader om hulle te ontwapen en/of te
 24 arresteer nie. Dis ook nie vir my duidelik waar mnr
 25 Hendrickx verwys na "There were other options available,"

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1 wat hierdie opsies is waarna hy verwys in die betrokke
 2 paragraaf nie. Dieselfde bewysstuk, dieselfde bladsy,
 3 paragraaf 22.2, waar mnr Hendrickx verwys na die, en ek
 4 haal aan – "Accepted international ratio is three
 5 protesters to every one police," en dit verwysend na 'n
 6 defensiewe aksie. Ek het in my getuienis verwys dat ek
 7 eerstens nie bewus is dat daar 'n internasionale standaard
 8 is nie. Ek het verder verwys dat sou dit die geval wees,
 9 dit sal beteken dat die Suid-Afrikaanse Polisie diens elke
 10 een van hulle Openbare Orde lede landwyd beskikbaar moet
 11 ontplooi as ons 'n skare het van meer as 3 000, pertinent
 12 as ons 9 000 het – net 'n regstelling. Ek het ook verwys
 13 na die, dat ons net oor die 4 000 operasionele Openbare
 14 Orde lede het en ook in 'n informele studie wat ons gedoen
 15 het vroeg in 2012 het ons bevind dat sowat 34% van Openbare
 16 Orde lede op enige gegewe stadium nie beskikbaar is nie,
 17 nie beskikbaar as gevolg van 'n verskeidenheid van redes,
 18 siekverlof, vakansieverlof, bywoning van kursusse, taakspan
 19 ontplooiings, en so meer, en so meer.
 20 [12:10] So dit is nie die ratio wat ons, of die
 21 verhouding wat ons gebruik in terme van ontplooiing nie.
 22 Dan gaan mnr Hendrickx verder en hy verwys na offensiewe
 23 aksies en die verhouding van protesteerders tot
 24 polisiebeamptes en hy gebruik die verhouding as een
 25 protesteerder vir elke drie polisiebeamptes. Weereens is

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1 ek nie bewus dat dit 'n internasionale standaard is nie,
 2 maar hoe dit ook al sy, die totale aantal polisiebeamptes
 3 wat ons ontplooi het op die 16de Augustus 2012 en die
 4 verhouding tussen die polisiegetalle en die tussen 3 en 400
 5 protesteerders waarop ons gefokus het vir 'n potensiele
 6 ontwapening en arrestasie, was in elk geval meer as een
 7 polisiebeampte vir een protesteerder.
 8 As ek dan kan verwys na paragraaf 22.3 op
 9 dieselfde bewysstuk en bladsy, kan ons nie 'n direkte lyn
 10 trek tussen die gebeure – en ek wil net 'n regstelling maak
 11 in sy verklaring, ek is seker hy verwys na die 13de
 12 Augustus en nie die 12de Augustus nie.
 13 CHAIRPERSON: He refers to Monday, which
 14 is the 13th.
 15 GENERAAL-MAJOOR ANNANDALE: En op die
 16 Maandag, soos ek dit verstaan was dit nie die bedoeling van
 17 Generaal Mpembe en sy offisiere om uiteen te dryf, te
 18 ontwapen, en te arresteer nie, anders dan om die groep te
 19 oortuig om vrywilliglik hulle wapens neer te lê. Dit was
 20 'n begeleidingsaksie en tydens hierdie begeleidingsaksie
 21 het daar toe 'n insident gebeur.
 22 MR MAHLANGU: If the Chairperson could
 23 help me with the word "begeleiding?"
 24 MAJOR-GENERAL ANNANDALE: Escorting.
 25 CHAIRPERSON: Escorting, I suppose. It

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1 was an escorting operation.
 2 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 3 dan met u vergunning, paragraaf 22.4 op dieselfde bladsy,
 4 was daar voldoende hulpbronne beskikbaar om te ontplooi om
 5 beide die verwagte aantal arrestasies asook beslagleggings
 6 te verwerk, en daar het ek verwys na die aantal speurders
 7 wat aan diens was op die betrokke dag, ook offisiere
 8 verbonde aan die Plaaslike Kriminele Rekord Sentrum, die
 9 polisieostasies wat, vyf polisieostasies waar daar 170 – kom
 10 ons verwys daarna as beddens – beskikbare kapasiteit was
 11 vir die aanhouding van gearresterdes, en dan ook vyf
 12 trokke, ek dink dit was vyf of potensieel ses trokke vir
 13 die vervoer van sodanige gearresterdes. As ek dan kan
 14 oorgaan na bewysstuk WW2 van mnr Gary White –
 15 MR BIZOS SC: Just before you go there,
 16 may I ask you this question. Your criticisms of Mr
 17 Hendrickx's criticism is the assumption that the plan was
 18 not to deal with 3 000 protesters, as your counsel said in
 19 the opening statement, as the witnesses have stated in
 20 their statements. You base your criticisms on the fact
 21 that the assumption that you were dealing with 3 000
 22 protesters is a wrong assumption. Have I got it right?
 23 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 24 ja, ons het reeds omvattend daarmee gedeel. Ek weet
 25 waarvoor die plan bedoel was, synde dat ek betrokke was met

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1 die opstel.
 2 MR BIZOS SC: The question is that your
 3 criticisms are based that you are right and the evidence
 4 that the plan needed –
 5 CHAIRPERSON: Mr Bizos, sorry to
 6 interrupt, I think he agrees with you. He says his answer
 7 is given on the basis that he says that Mr Hendrickx made
 8 the wrong assumption. He says he doesn't accept that
 9 assumption and therefore he says the criticism falls away.
 10 Obviously the converse question, the one you're now going
 11 to come to, is if you assume for the moment that Mr
 12 Hendrickx's assumption was correct, what do you say about
 13 his criticism. Ja, did you hear that exchange, Major?
 14 GENERAAL-MAJOOR ANNANDALE: Ja, en ek kan
 15 mnr Hendrickx en mnr White nie blameer nie; hulle het hulle
 16 aannames gebaseer op 3 000. Daardeer stem ek nog steeds
 17 nie saam met hulle verhoudings wat hulle na verwys nie want
 18 dit is nie van toepassing op ons nie, paragraaf 22.2.
 19 CHAIRPERSON: If you were going to deal
 20 with 3 000, as they assumed you were going to, do you still
 21 say that the numbers of service members who were on the
 22 scene were sufficient in the circumstances?
 23 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 24 daar was voldoende lede om hulle uiteen te dryf, sonder
 25 twyfel, en selfs al is sy aanname reg, sou ons nie gefokus

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1 het om 3 000 mense te arresteer nie.

2 CHAIRPERSON: In other words, to be fair

3 to him, if he assumed that the plan was to disperse and

4 arrest 3 000, then you would have had enough people to

5 disperse. I think inherent in what you say is you wouldn't

6 have tried to arrest 3 000. Is that correct? With the

7 forces at your disposal.

8 GENERAAL-MAJOOR ANNANDALE: Absoluut,

9 Voorsitter, ja. Dit was nooit die bedoeling nie.

10 MR BIZOS SC: - three things, disperse,

11 disarm, and arrest.

12 GENERAAL-MAJOOR ANNANDALE: Voorsitter,

13 en daarmee saam die opbreek van groepies in kleiner

14 hanteerbare groepies.

15 MR BIZOS SC: But you agree that your

16 criticism is based upon your assumption that the plan only

17 provided for –

18 CHAIRPERSON: I think he's made that

19 clear, Mr Bizos. So what we haven't dealt with yet is the

20 disarmament. You say even if the assumption had been that

21 you were going to disperse 3 000, you had enough people.

22 If the assumption was you were going to arrest 3 000, you

23 didn't have enough people. But what about the disarmament?

24 If the assumption is you were going to disarm 3 000, do you

25 say you would have had enough people if you proceeded as

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1 you were proposing to do, breaking them up into smaller

2 groups and disarming people who are in smaller groups? Is

3 that what you're saying?

4 GENERAAL-MAJOOR ANNANDALE: Voorsitter,

5 dit is so. Die uiteinde sou nooit 3 000 gearresteerdes

6 gewees het nie.

7 CHAIRPERSON: If the contemplated result

8 had been the disarmament of 3 000, you say because of the

9 method you chose you could have done it with the force,

10 with the members at your disposal? Not arrest, but disarm.

11 GENERAAL-MAJOOR ANNANDALE: In terme van

12 ons hele benadering, selfs al sou daar soveel wapens

13 neergelê het, dan sou dit ons net langer gevat het om dit

14 te prosesseer.

15 MR BIZOS SC: If you give me a moment, I

16 want to refer to the supplementary statement of Mr De Rover

17 –

18 CHAIRPERSON: Sorry, Mr Bizos, I don't

19 mean to interrupt you unduly, but the way you proceeded was

20 you put a passage in Mr Hendrickx's statement to the

21 witness and then as part of the same long question you put

22 a passage in Mr White's statement as well, and De Rover

23 also I think. Now the witness answered on the first one,

24 Hendrickx. You're now moving on to something else, I

25 think. I don't think he's yet had an opportunity to deal

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1 with the White passage you put to him.

2 MR BIZOS SC: I apologise –

3 CHAIRPERSON: So in fairness to him I

4 think we must give him a chance to do that before you

5 proceed with your next point, but you may well want to ask

6 follow-up questions based –

7 MR BIZOS SC: Yes.

8 CHAIRPERSON: We may want to ask follow-

9 up questions based on what he says about why –

10 MR BIZOS SC: Yes.

11 CHAIRPERSON: Well, let's do it in an

12 orderly fashion –

13 MR BIZOS SC: Yes, alright.

14 CHAIRPERSON: It will make it easier for

15 us when we read the record later.

16 MR BIZOS SC: Yes.

17 CHAIRPERSON: Major-General, you were

18 going to say something about the passages from Mr White's

19 report that were put to you, I think.

20 GENERAAL-MAJOOR ANNANDALE: Dankie,

21 Voorsitter. Paragraaf 4.4.21 op bladsy 32, Voorsitter, die

22 eerste gedeelte van sy kritiek is baie in lyn met dit wat

23 mnr Hendrickx gesê het in terme van die gevalle. Dan met

24 verwysing dat ons, dat dit beter is om eerder arrestasies

25 na die gebeurtenis uit te voer, en dat ons eerder sou net

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1 moes opname gemaak het van die kriminaliteit wat

2 plaasgevind het tydens die gebeurtenis –

3 MR MAHLANGU: And to concentrate on the

4 criminality that was conducted during –

5 CHAIRPERSON: No, no, making a record or

6 recording, I think a recording of the criminality that was

7 displayed at the time. That's the second part that Mr

8 White said. He's dealing with that now.

9 GENERAAL-MAJOOR ANNANDALE: - sukkel ek

10 nog steeds met die konsep om dit te verstaan, gegewe die

11 situasie wat hom afgespeel het voor ons, en ek belowe ek

12 gaan nie in soveel detail ingaan soos toe ek getuie is

13 gelewer het nie, Voorsitter, behalwe om 'n praktiese

14 voorbeeld na te verwys wat nou vir my 'n video-opname sal

15 toon na die tyd, waar ek nou sowat 3 000 mense iewers op

16 daardie video kan waarneem, waar ek dan sekere individue

17 moet gaan identifiseer op die video wat dan in besit is van

18 gevaarlike wapens, nou die mense moet gaan opspoor na die

19 gebeurtenis en hulle dan voor die hof te bring deur te

20 verwys na die video wat ek gesien het so 'n persoon sit met

21 'n wapen. Met respek aan mnr White, dit is 'n baie

22 moeilike konsep; dit maak nie vir my sin nie. Voorsitter,

23 dan dink ek is ons by mnr De Rover se verklaring.

24 MR BIZOS SC: De Rover – is that the only

25 criticisms that you have of Mr White's opinions?

<p style="text-align: right;">Page 8886</p> <p>1 GENERAAL-MAJOOR ANNANDALE: Met verwysing 2 na die betrokke paragraaf – 3 CHAIRPERSON: Mr Bizos, I'm sorry to 4 interrupt you, but I think that's his answer to the 5 passages in Mr White's report that you put to him. I'm not 6 sure that, the way you've asked the question it looks as if 7 you're asking for an answer to the complete report of Mr 8 White, because that wasn't on the table – 9 MR BIZOS SC: I didn't intend that, Mr 10 Chairman. 11 CHAIRPERSON: Perhaps you should 12 reformulate the question. 13 MR BIZOS SC: Yes. Is that the only 14 criticism that you have of what Mr White said and recorded 15 in paragraph 4.4.21? 16 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 17 nee. Ek het gedink ek het alreeds daarna verwys in terme 18 van verwydend na mnr Hendrickx en ook in my 19 getuienislewering, maar ek sal dit uitpak. 20 [12:30 21 Verwysend na die arrestasies wat 'n risiko is het 22 ek reeds in my getuienis het ek verwys daarna dat die 23 arrestasie van 'n persoon is inherent riskant, gesê dat die 24 risiko van beserings is nie uitgesluit nie. Dan met 25 verwysing op bladsy 33, die derde sin wat hy sê "But that</p>	<p style="text-align: right;">Page 8888</p> <p>1 MR BIZOS SC: Yes. 2 CHAIRPERSON: It seems to me you're 3 repeating it, but Mr Semenya turned his light on. Mr 4 Semenya? 5 MR SEMENYA SC: Well, Chair, we have 6 dealt with that, as well as the paragraph of the opening 7 statement which focussed arrest on those broken numbers. 8 MR BIZOS SC: If the previous answer in 9 relation to Mr Hendrickx is the same, I will accept that, 10 Mr Chairman. A simple yes would have avoided these – 11 CHAIRPERSON: Yes, I understand you're 12 being fair to the – not trying to be fair to the witness, 13 giving him a chance to deal with the point. 14 MR BIZOS SC: Yes. 15 CHAIRPERSON: My impression was the 16 witness has dealt with the point already and Mr Semenya's 17 impression is the same, but let's just ask the witness. 18 You've heard the debate between Mr Bizos and myself, that I 19 was of the view that you've already dealt with this point, 20 but if there's something extra you want to add in relation 21 to what he's put to you, I won't stop you. 22 GENERAAL-MAJOOR ANNANDALE: Voorsitter, u 23 was baie geduldig met my in my lang antwoorde, so ek sal 24 volstaan met dit wat ek reeds gesê het. 25 MR BIZOS SC: - of Mr De Rover, and I</p>
<p style="text-align: right;">Page 8887</p> <p>1 the plan to make large numbers of arrests in a crowd 2 numbering in the thousands was inherently risky," en daar 3 het ek verwys dat die bedoeling was dat ons sou die groter 4 groepe uiteengedryf het totdat hulle in klein hanteerbare 5 groepies is, en daardeur wat ons dan die risiko's tot 'n 6 groot mate mitigeer. 7 MR BIZOS SC: Your criticisms of Mr 8 White's statements in that regard are also based that he 9 made the wrong assumption in believing that you were 10 dealing with 3 000 protesters? 11 GENERAAL-MAJOOR ANNANDALE: Dit is so. 12 MR BIZOS SC: You see, I must put to you 13 that it was for this, the purposes of offering the defence 14 that you have offered that the amount of 3 000 was reduced 15 to 300, contrary to the evidence in the statements and 16 contrary to the opening address of your own counsel. 17 CHAIRPERSON: Mr Bizos, I thought you had 18 put that point already. 19 MR SEMENYA SC: Yes. 20 CHAIRPERSON: Are you not repeating 21 something that you've asked already? I thought you'd put 22 that point to the witness and he denied it, so – 23 MR BIZOS SC: I did that in relation to – 24 CHAIRPERSON: I understand you're trying 25 to be fair to give him a chance to deal with it.</p>	<p style="text-align: right;">Page 8889</p> <p>1 think in fairness it hasn't been put in as an exhibit, Mr 2 Chairman – 3 CHAIRPERSON: If Ms Pillay will tell me 4 what the next exhibit number is, I shall be happy to 5 receive it as an exhibit. 6 MS PILLAY: Chair, it's GGG15. 7 CHAIRPERSON: Sorry? 8 MS PILLAY: GGG15. 9 CHAIRPERSON: Well, might it not be 10 sensible for us to give it a number which follows directly 11 on his previous statement? How is his previous statement 12 marked? 13 MR BIZOS SC: FFF11 was the previous 14 statement. 15 CHAIRPERSON: So we'll make it exhibit 16 FFF11.1. 17 MR BIZOS SC: 11A, possibly. 18 CHAIRPERSON: Okay, 11A. So then so the 19 two go together, you don't have to search through the 20 alphabet for the second one. So it's exhibit FFF11A. 21 Alright, now let's make sure the Major-General has got a 22 copy of that statement in front of him. Have you, Major- 23 General? You've got exhibits there. I'm not sure what 24 documents - 25 GENERAAL-MAJOOR ANNANDALE: Voorsitter,</p>

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1 ek het 'n dokument wat sê "Supplementary statement of Mr
2 Cees De Rover" –

3 CHAIRPERSON: You have it; that's exhibit
4 FFF11A.

5 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
6 hy is net nie geteken nie, so ek hoop dit is die pertinente
7 weergawe, die ene wat ek het.

8 CHAIRPERSON: My copy isn't signed
9 either. Perhaps when Mr De Rover comes from wherever he is
10 he'll sign it for us before he goes in the box.

11 GENERAAL-MAJOOR ANNANDALE: En myne
12 bestaan uit –

13 CHAIRPERSON: It was distributed to the
14 parties –

15 GENERAAL-MAJOOR ANNANDALE: - 32 bladsye.
16 Ek aanvaar dit is net een en dieselfde.

17 CHAIRPERSON: We've had problems before
18 with documents that weren't signed or properly signed, but
19 we'll assume this time that nothing has gone wrong. Mr
20 Semanya, can we make that assumption?

21 MR SEMENYA SC: We can, Chair.

22 CHAIRPERSON: Good.

23 MR BIZOS SC: Thank you. May I read
24 paragraph –

25 CHAIRPERSON: Major-General, have you had

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1 a chance to read it?

2 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
3 ek het dit gelees, nie met die aandag wat dit sekerlik
4 geverg het nie, maar ek het dit gelees.

5 CHAIRPERSON: Well, let's proceed up
6 until lunchtime with it. If you have a problem, please let
7 me know, because I don't want you to be ambushed by
8 something you haven't studied properly.

9 MR BIZOS SC: It's G, paragraph 22,
10 actions of the protesters and SAPS response, on page 12.
11 "In my first statement at points 62 and 63 I considered
12 events on the 16th of August 2012, presenting them as a
13 situation where police were compelled to make more than
14 incidental use of their firearms. I stated my belief that
15 at this stage SAPS were out of its depth and operating
16 beyond current capability levels in crowd management and
17 maintenance of public order. I stand by that statement.
18 However, I consider an exclusive focus on the actions of
19 SAPS alone at that particular moment in time is not
20 justifiable. Consideration must be given to the actions of
21 the protesters present at Marikana on that day." I thought
22 that in fairness I should refer you to that, but let us
23 take the – you can talk about the qualification at the end
24 in due course, or you can leave it for my learned friend Mr
25 Semanya to ask you questions about it, but Mr De Rover

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1 confirms what he said and says that he stood by it.
2 Leaving aside the qualification for the time being, have
3 you got any criticism of the substantive portion of his
4 statement?

5 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
6 nie noodwendig kritiek nie, maar ek, dis belangrik dat daar
7 net opheldering is in terme van my perspektief. Enkele
8 aspekte – sy paragraaf 61 op bladsy 14 van bewysstuk FFF11
9 is daar net enkele opmerkings. Hy meld spesifiek "One
10 difference I see with the past," en belangrik, "and with
11 the benefit of hindsight," dis net belangrik dat ons
12 hierdie gebeurtenis, die tragiese gebeure op die 16de
13 Augustus wat afgespeel het by Marikana, was uniek en 'n
14 eerste van sy soort. Die polisie het dit benader met hulle
15 historiese ervaring met die hantering van Openbare Orde
16 aangeleenthede. Dit was 'n hibriede situasie en nie een
17 van suiwer skarebestuur nie, en dit was buite die
18 vaardighede en die opleidings en die metodes van Openbare
19 Orde. Ook die metodes, die manier hoe hulle dit hanteer
20 het, dis reg, Voorsitter. Dit is die kommentaar wat ek
21 het.

22 CHAIRPERSON: The passage that was put to
23 you is really an introductory paragraph. The point that Mr
24 De Rover makes is then developed in paragraph 23 through
25 29, the point in 23 is that public order in any country is

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1 not the sole responsibility of the police, and then he goes
2 on to say that the solution, the culmination of these
3 points is the solution to the underlying conflict was not
4 something which the police could provide, and he refers to
5 the necessary involvement of the unions and the employer.
6 In paragraph 27 for example he says about four lines from
7 the foot of that paragraph, "This was the case at Marikana
8 where resolution of the underlying conflict was completely
9 beyond the police influence. As previously said, they
10 didn't hold the key to any possible solution of the
11 conflict." Have you any comments to make about what he
12 says there? They follow on from the passage that Mr Bizos
13 put to you.

14 COMMISSIONER HEMRAJ: Chair, can I just
15 add that paragraph 22 can't be read in isolation. It
16 should be read together with paragraphs 64 and 65 as well
17 which –

18 CHAIRPERSON: Of the original –

19 COMMISSIONER HEMRAJ: Yes, of the
20 supplementary, yes.

21 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
22 ek het dit net gelees in konteks met hierdie paragraaf 22
23 op die aanvullende verklaring en 61 en 62 van sy
24 oorspronklike verklaring. Ek het nie wyer as dit gelees
25 nie. Met -

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1 CHAIRPERSON: The point he makes in 64 is
 2 that you couldn't just use known POP tactics, they would be
 3 futile because – the point he makes in 65 is POP vehicles
 4 would [inaudible] on the ground, says POP personnel and
 5 vehicle formation couldn't be employed for the same
 6 reasons. Of course the other point that could be made, I
 7 take it, that he doesn't make directly, is the POP people
 8 were generally speaking armed with less than lethal force.
 9 I think some of them had firearms, but basically they were
 10 there to use less than lethal force and the situation was
 11 one where less than lethal force wasn't the answer. I know
 12 that's a leading question to which Mr Bizos would object if
 13 I were counsel, but do you agree with him?
 14 MR BIZOS SC: - to the Judge's question.
 15 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 16 in al die insidente wat, of in – ja, by verre sekerlik die
 17 meeste insidente wat Openbare Orde in die afgelope 17 jaar
 18 mee gedeel het, en in gevalle wat hulle moes optree buite
 19 die sogenaamde kontinuum van geweld soos verwys daarna in
 20 'n Openbare Orde Polisiëring konteks, was sodanige gevalle
 21 was dit beperk tot die toevallige gebruik van 'n vuurwapen,
 22 en met vuurwapen verwys ek nou nie die gebruik van 'n
 23 haelgeweer met rubber nie, ek praat van skerp-punt
 24 ammunisie. So die tradisionele toerusting van Openbare
 25 Orde en ook hulle opleiding is om te deel met gevalle wat

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1 daar minder dwang moet gebruik word. Hierdie situasie was
 2 heeltemal anders, so dit het buite hulle vaardigheidsveld
 3 gegaan, en ook hoe hulle toegerus is.
 4 MR BIZOS SC: General, I would like to
 5 draw your attention to what you were asked and what you
 6 replied on day 77 of these proceedings on the 22nd of April
 7 at page 8198. The question by the Chairperson was, "I
 8 think really the point that Mr Semenya is making, if I may
 9 sort of take it over for a moment, was how many operations
 10 of this magnitude involving protesters or strikers or
 11 participants who were armed as these people were armed,
 12 have you been involved in, in the past?"
 13 [12:51] "Generaal-Majoor Annandale – Voorsitter, ekself
 14 was by geen sodanige operasie betrokke wat soveel mense so
 15 bewapen was nie en ek is nie bewus van pertinente," daar is
 16 'n vraagteken, "pertinente situasie in my loopbaan waar
 17 daar sodanige dreigement was en soveel mense so gewapen
 18 was, maar die ontplooiing en," vraagteken, "skarebestuur
 19 situasie was hierdie by verre die grootste een wat ek nog
 20 waargeneem het." Forgive me for my hesitant reading of
 21 Afrikaans, but did you say that?
 22 CHAIRPERSON: You don't expect him to
 23 deny that. It's in the transcript. I say, you don't
 24 expect him to deny it; it's in the transcript. I think the
 25 two question marks indicate the indefinite article in each

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1 case. Perhaps he can tell us whether he agrees with that.
 2 You don't deny you said that?
 3 GENERAAL-MAJOOR ANNANDALE: Geensins nie,
 4 Voorsitter, nee, behalwe die vraagteken gee ek –
 5 CHAIRPERSON: No, they look like
 6 indefinite articles to me. I think "n." Is that right?
 7 GENERAAL-MAJOOR ANNANDALE: Dit is gewis
 8 so, ja.
 9 MR BIZOS SC: - were you're referring to
 10 when you gave that evidence?
 11 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 12 ek het daarna verwys dat so 'n groep, nou met die betrokke
 13 getalle, wat sodanig gewapen is, met pertinente verwysing
 14 na die 400 groepie, maar sonder om die groter groep totaal
 15 uit te sluit want hulle het ook wapens in hulle besit
 16 gehad.
 17 MR BIZOS SC: Are you asking the
 18 Commission to ignore the evidence of all those that said
 19 that there were 3 000 of – to use the evidence –
 20 belligerent protesters, to use the words that your counsel
 21 used?
 22 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 23 nee, ek vra nie dat die Kommissie dit moet ignoreer nie.
 24 Ek het regtig al na die beste van my vermoë probeer
 25 verduidelik na die kollektiewe verwysing na die groter

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1 groep en die kleiner groep, en dat 'n gedeelte van die
 2 kollektief die militant was.
 3 MR BIZOS SC: I'm going on to a new
 4 point. I can start and use the five minutes, if need be.
 5 CHAIRPERSON: If you can use the five
 6 minutes to finish the point then we won't adjourn yet, but
 7 if you'll still be busy with the point when we adjourn, we
 8 may as well take the adjournment now.
 9 MR BIZOS SC: I will be busy with that.
 10 CHAIRPERSON: We will adjourn until half
 11 past 1 or as soon thereafter as we can all get back here.
 12 MR BIZOS SC: Thank you.
 13 [COMMISSION ADJOURNS COMMISSION RESUMES]
 14 [13:43] CHAIRPERSON: The Commission resumes.
 15 Majoor-Generaal, u is nog steeds onder eed.
 16 CHARL ANNANDALE: s.o.e.
 17 CHAIRPERSON: Mr Bizos, you're still
 18 cross-examining.
 19 CROSS-EXAMINATION BY MR BIZOS SC (CONTD.):
 20 Thank you, Mr Chairman. I'm going to read you a passage
 21 from the opening address of Mr Semenya, your counsel.
 22 CHAIRPERSON: It's actually an opening
 23 statement, I think.
 24 MR BIZOS SC: Statement –
 25 CHAIRPERSON: It's headed "Opening

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1 Statement."

2 MR BIZOS SC: Opening statement. Now

3 paragraph 43 to which we referred to before, but I want to

4 read it again because I have a number –

5 CHAIRPERSON: This is exhibit FFF9.

6 MR BIZOS SC: Yes.

7 CHAIRPERSON: What paragraph are you

8 reading?

9 MR BIZOS SC: 42.

10 CHAIRPERSON: 42.

11 MR BIZOS SC: 43, I beg your pardon.

12 CHAIRPERSON: 43, that's page 14, is it?

13 MR BIZOS SC: Yes, Mr Chair. "We propose

14 to give a presentation regarding the training of the

15 various units of the police service, the policy

16 considerations which apply in crowd control and management,

17 the constitutional mandate of the police service, and the

18 provisions of the various statutes dealing with police

19 conduct. The evidence, however, will be that some –

20 CHAIRPERSON: Mr Bizos, I'm sorry to

21 interrupt you. The impression I get is there's static on

22 the equipment –

23 MR MAHLANGU: I have a problem with this

24 machine.

25 CHAIRPERSON: Now I mentioned it to the

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1 operators to see whether they can – we had it once before

2 and they did something and it was sorted out. Now I fear

3 the quality of the recording of today's proceedings,

4 alternatively this afternoon's proceedings, may be

5 affected.

6 MR MAHLANGU: - only give this problem if

7 Mr Bizos opens that machine. If he could possibly try the

8 one on the other side.

9 MR BIZOS SC: Is that better? Is that

10 better?

11 MR MAHLANGU: It still has the same

12 problem.

13 CHAIRPERSON: It sounds as if we have the

14 same problem. It's a kind of echo as well. I mean if we

15 still have an audible record it will be alright, but I'm

16 afraid it may not be so – I mean an audible record and it

17 can then be clearly and accurately transcribed. If it

18 can't be then obviously – can we go on despite the static?

19 Do you find it distracting, Mr Interpreter?

20 MR MAHLANGU: We fortunately have –

21 CHAIRPERSON: Or does the Major-General

22 find it distracting?

23 MR MAHLANGU: I'll try to listen as

24 carefully as I can, but –

25 CHAIRPERSON: If we adjourn for a short

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1 while will that enable you to address the problem?

2 MR HANABE: According to the gentleman

3 here there was a problem that side. He says he fixed it;

4 now it's fine, we can continue.

5 CHAIRPERSON: Alright. Alright, let's

6 proceed for the moment then.

7 MR BIZOS SC: Do I have to start again

8 with paragraph 43 –

9 CHAIRPERSON: I think it may be sensible

10 to start again reading from the beginning of para 43.

11 MR BIZOS SC: Yes, thank you. "We

12 propose to give a presentation regarding the training of

13 the various units of the police service, the policy

14 considerations which apply in crowd control and management,

15 the constitutional mandate of the police service, and the

16 provisions of the various statutes dealing with police

17 conduct. The evidence, however, will be that some of the

18 instruments will not adequately deal with a treacherous

19 situation of more than 3 000 belligerent protesters who

20 were armed and resisting any effort to disarm them."

21 You've heard what your counsel said.

22 GENERAAL-MAJOOR ANNANDALE: Ek het dit so

23 gelees, Voorsitter.

24 MR BIZOS SC: Are you here to give

25 evidence to this effect?

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1 GENERAAL-MAJOOR ANNANDALE: Voorsitter,

2 ek is hier om –

3 MR SEMENYA SC: Chair –

4 CHAIRPERSON: Major-General, your counsel

5 has indicated he wishes to say something.

6 MR SEMENYA SC: Chair, in fairness, the

7 opening statement also deals at paragraph 25, page 9, with

8 the group that was to be arrested, would have been the more

9 militant and obdurate ones of the 3 000 –

10 CHAIRPERSON: We've had that passage

11 before. It also talks about dispersing and disarming over

12 3 000 protesters. That passage has also been put, but

13 anyway, once again you've read that passage. Perhaps you

14 should read the whole passage so that the criticism can't

15 be raised that the witness was being ambushed by a

16 selective quotation. 25 you've read already. "You will

17 hear the fluidity of the situation at Marikana on Thursday,

18 16 August 2012, the situation had got out of control and

19 tragic unintended consequences resulted, despite meticulous

20 scenario planning by experienced generals and other senior

21 officers of the joint operational centre, the JOC, to

22 achieve the object of dispersing and disarming over 3 000

23 protesters and remove the more militant and obdurate ones

24 by way of arrest." So that's that passage, and then

25 there's the passage which Mr Bizos has already read,

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1 particularly the reference to more than 3 000 belligerent
2 protesters, and it's that passage that he wants the witness
3 to comment on. Is that right, Mr Bizos?

4 MR BIZOS SC: Yes, may I say for my
5 learned friend's reassurance that the issue that I want to
6 deal is no longer the issue of numbers, but the other
7 content of the passage.

8 CHAIRPERSON: I think it's at best to the
9 question that you've already put –

10 MR BIZOS SC: Yes.

11 CHAIRPERSON: - to make that point clear,
12 so the witness can then answer you comprehensively, as it
13 were.

14 MR BIZOS SC: Yes, thank you, Mr
15 Chairman. General, the question was are you here to give
16 evidence on the matters that your counsel promised the
17 evidence on?

18 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
19 ek kan net getuienis lewer oor die feite aan my bekend. Ek
20 weet nie of ek oor elke liewe aspek wat vermeld is in daai
21 openingsverklaring kan getuienis lewer nie. Ek is seker
22 dat –

23 MR BIZOS SC: Let me start with the
24 first. What training was inadequate?

25 CHAIRPERSON: I'm sorry, Mr Bizos, what

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1 was described as inadequate was, quote, "some of these
2 instruments," and I'm not sure that training is an
3 instrument. Is that right?

4 MR BIZOS SC: Well, it may well be. The
5 witness, I can't cross-examine my learned friend on what he
6 meant. I want to ask the witness what he understood –

7 CHAIRPERSON: Alright, okay, no ask the
8 question. My only fear was that you were suggesting that
9 he'd said that the training was inadequate. It may well be
10 that that was meant, but that's not the wording used. But
11 anyway, the point has been put on the table, so you can now
12 deal with it without the witness being at a disadvantage, I
13 think.

14 MR BIZOS SC: Let's start off with the
15 question, do you agree with what your counsel said in
16 paragraph 43?

17 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
18 ek het reeds verduidelik in terme van die 3 000 persone en
19 dat dit 'n kollektiewe verwysing is. Ek het ook verwys die
20 onderskeid wat gemaak was in die vele besprekings tydens
21 die JOCOM vergaderings en nabetrugting vergaderings.
22 Voorsitter, en ek het vroeër getuig, ek het verwys ek kon
23 iets onthou van 'n voorlegging wat ek gemaak het aan 'n
24 groep van Lonmin bestuur en ek het nou tydens die breek het
25 ek gaan kyk in die verklarings wat beskikbaar gestel is

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1 deur Lonmin, en ek merk op in 'n verklaring van 'n mnr
2 Mohamed Ismail Seedat op bladsy 5, en pertinent die einde
3 van paragraaf 5.2, in die laaste paragraaf, en ek haal aan,
4 "General Annandale had also informed us that there were two
5 groups at the koppie and that there appeared to be a large
6 group of 'impi' moving backwards and forwards at the base
7 of the hill." Ek het ook 'n foto gekry wat ingehandig is,
8 ek sien as bewysstuk EEE10.1 en 10.3 –

9 CHAIRPERSON: It's EEE10.1 and 10.3.

10 MR MAHLANGU: EEE, yes, and in the other
11 document, if I may say, Mr Chairperson, there was the use
12 of the word "impi." I don't know if that is understood.
13 It's a Zulu word, also Xhosa word, meaning a war, or
14 warriors.

15 GENERAAL-MAJOOR ANNANDALE: Die foto is,
16 die bewysstuk wat ek na verwys het is 'n foto deur
17 Luitenant-Kolonel Mere, foto 3448 en 3449, geneem op die
18 15de Augustus 2012, en dit wys duidelik die verskil in die
19 twee groepe wat dan telkens die bespreking was tydens
20 hierdie vergaderings wat ek na verwys het. So om terug te
21 kom na Adv Bizos se vraag, die laaste gedeelte van die
22 openingsverklaring soos vermeld in paragraaf 43 gee nie 'n
23 verdere onderverdeling nie, van die groepe nie.

24 MR BIZOS SC: Are you finished?

25 GENERAAL-MAJOOR ANNANDALE: Ek is klaar,

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1 dankie Voorsitter.

2 MR BIZOS SC: "The evidence, however,
3 will be that some of these instruments were not adequate to
4 deal with a treacherous situation." Leave aside the
5 numbers; we don't want to have. I want to know from you
6 which instruments were not adequate.

7 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
8 ek kan pertinent verwys na Staande Orde 262, 'n staande
9 orde wat opgestel is om uiting te gee aan die Wet op
10 Openbare Byeenkomste. Voorsitter, en dan die opleiding –

11 MR BIZOS SC: Excuse me for interrupting
12 you. Are you suggesting that that Standing Order is an
13 instrument which is not adequate? Is that what you are
14 saying? If not, what are you saying?

15 GENERAAL-MAJOOR ANNANDALE: Staande Orde
16 262 deel uitsluitlik met die hantering van openbare
17 protesaksies.

18 MR BIZOS SC: How was that an instrument
19 which was not adequate in the Marikana situation?

20 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
21 ek het verduidelik dat hierdie 'n hibriede situasie was en
22 dat dit baie wyer gestrek het as suiwer skarebeheer, en in
23 die –

24 MR BIZOS SC: Are you blaming the order
25 for any –

<p style="text-align: right;">Page 8906</p> <p>1 CHAIRPERSON: The witness is still busy 2 with his answer, Mr Bizos. 3 MR BIZOS SC: Sorry. 4 CHAIRPERSON: Am I right, Major-General? 5 GENERAAL-MAJOOR ANNANDALE: Dis reg, 6 dankie Voorsitter. En dat die situasie wat hom in Marikana 7 afgespeel het, gegewe dat dit sodanig uniek was, en dat dit 8 vereis het dat verskeie ander eenhede 'n pertinente rol het 9 om te speel, en dat daar nie 'n staande orde is wat 10 pertinent na dit verwys nie. 11 MR BIZOS SC: What portions of this 12 situation do the Standing Orders not cover? 13 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 14 alles vandat die aanval op die polisielyn plaasgevind het, 15 want offensiewe aksies het toe oorgegaan in defensiewe 16 aksies om steeds dit te gebruik om binne die perk te bly 17 van die gebruik van geweld in kontinuum. 18 MR MAHLANGU: I would need some 19 assistance, Chairperson. 20 MAJOR-GENERAL ANNANDALE: Still stay in 21 line – 22 CHAIRPERSON: Are you still busy with 23 your answer? 24 MAJOR-GENERAL ANNANDALE: To still stay 25 in line with the use of force as we understand it in the</p>	<p style="text-align: right;">Page 8908</p> <p>1 think perhaps that's relevant at this stage. I hope Mr 2 Bizos will forgive me if I intervene. I've been worried 3 for some time about this use of protesters all the time. 4 The strikers were not really protesters. This isn't a 5 protest action pure and simple; this is a different kind of 6 situation actually, and the word "protest" of course is I 7 think a word used in the act and the Standing Order is 8 really designed at dealing with public protests, to some 9 extent at least, and this isn't really a protest action, as 10 I understand it. It certainly wasn't from about the 13th 11 onwards, but I take it you'll agree with that view of the 12 matter. 13 [14:03] GENERAAL-MAJOOR ANNANDALE: Ek stem saam 14 met u samevatting, dis reg, Voorsitter. 15 MR BIZOS SC: Do you know the Standing 16 Orders in relation to protests is not the only 17 constitutional or legal instrument; the question of 18 training, part of the constitutional mandate, part of even 19 personal self-defence has got to be proportional. There 20 has to be command and control. There has to be other ways 21 than killing people in order to obviate an attack against 22 the police. Do you say all those things do not apply in 23 the situation that we had to deal with in Marikana? 24 Proportionality doesn't matter. Shooting at the legs 25 doesn't matter. Warning doesn't matter. We shoot to kill</p>
<p style="text-align: right;">Page 8907</p> <p>1 force of continuum. 2 CHAIRPERSON: You're talking about the 3 continuum of force. 4 MAJOR-GENERAL ANNANDALE: Continuum of 5 force. 6 CHAIRPERSON: As it's understood in the 7 Standing Order. 8 MAJOR-GENERAL ANNANDALE: That's correct, 9 Chairperson. 10 CHAIRPERSON: Because the Standing Order 11 was also amplified firstly by exhibit T, which was later 12 withdrawn and replaced by exhibit S, the letter of July 13 2012. That's correct, isn't it? 14 MAJOR-GENERAL ANNANDALE: Yes. 15 CHAIRPERSON: I take it that's also, 16 that's part of the, effectively - 17 GENERAAL-MAJOOR ANNANDALE: Dis van die 18 gebruik van geweld – 19 CHAIRPERSON: - effectively part of 20 Standing Order 262, or an amplification, qualification of 21 it, in the POP context, the Public Order Policing context. 22 Is that right? 23 GENERAAL-MAJOOR ANNANDALE: Dit is 'n 24 korrekte samevatting. 25 CHAIRPERSON: There's another point I</p>	<p style="text-align: right;">Page 8909</p> <p>1 and there's nothing that the law can do about that. 2 CHAIRPERSON: That's a whole batch of 3 questions all rolled up into one, I think, but perhaps 4 you'd like to pick them off one by one, Major-General. 5 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 6 ek moet sê vir die eerste keer is ek sprakeloos. Ek, 7 daar's 'n klomp goed ingegooi, maar Voorsitter, ek was 8 besig op die vraag van die advokaat in terme van pertinente 9 voorbeelde en ek het die eerste voorbeeld gebruik as 10 Staande Orde 262, en ek sal graag wil voortgaan in terme 11 van nog 'n voorbeeld in terme van opleiding. Voorsitter, 12 ons weet nou baie aspekte in nabetraging en ons weet nou 13 dat ons sal 'n groter klem moet lê in terme van praktiese 14 simulasies tydens die opleiding van Openbare Orde 15 Polisiëringselede. Ons weet dat ons sal moet kyk na 16 gevallestudies en uiteraard sal Marikana 'n pertinente 17 gevallestudie wees. 18 CHAIRPERSON: He said we'll have to look 19 at case studies, and par excellence I think he said 20 Marikana will be one of those, will have to be one of those 21 case studies. 22 GENERAAL-MAJOOR ANNANDALE: Ons moet kyk 23 na ons opleidingsgeriewe om sodanige praktiese simulasies 24 en opleiding te kan akkommodeer, en ons sal ook moet kyk 25 dat ons Openbare Orde lede 'n hoër vlak van opleiding het</p>

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1 om pertinent te deel met sodanige dreigemente, en daardeur
 2 moet ons ook gaan kyk na metodes en middele; ons sal moet
 3 gaan kyk na byvoorbeeld wat is beskikbaar in die mark in
 4 terme van optiese, akoestiese, kinetiese of chemiese
 5 middele wat beskikbaar is, om vir ons verdere opsies te gee
 6 om aan te wend as ons gekonfronteer word met so 'n skare.
 7 Voorsitter, en daardeur gooi ons niks weg in terme van wat
 8 in wetgewing bestaan, pertinent verwysend na noodweer en
 9 selfverdediging.

10 CHAIRPERSON: "Noodweer" is self-defence,
 11 I think –

12 MAJOR-GENERAL ANNANDALE: No, it's
 13 private defence.

14 CHAIRPERSON: And the other one is
 15 private defence. In other words, self-defence is if you
 16 defend yourself; private defence you defend your, someone
 17 else. "Noodweer" also actually covers necessity, so it's
 18 necessity, I think you said or meant, to translate that in
 19 English, necessity and private defence, where private
 20 defence would include self-defence and defending other
 21 people, but necessity is the other legal concept as applied
 22 here. Neither of them is governed by legislation; there
 23 are a few common law rules that apply.

24 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 25 ek gaan nie eers kommentaar daarop lewer nie. Ek aanvaar

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1 dit net honderd persent so.

2 MR BIZOS SC: General, what
 3 constitutional and statutory provisions proved to be
 4 inadequate according to your counsel?

5 CHAIRPERSON: No, I'm sorry, Mr Bizos,
 6 I'm not sure that one can say that what Mr Semenya said
 7 there was necessarily referring to the Constitution or
 8 statutes. He just used the expression "some of these
 9 instruments," and the witness has referred to those aspects
 10 that he regarded as inadequate, so I don't know if the
 11 question as framed is correctly put, but I think I
 12 understand where you're going. So if you'd like to
 13 reformulate the question then you can carry on.

14 MR BIZOS SC: Well, I'm following my
 15 learned friend's words. "The constitutional mandate of the
 16 police service and the provisions of the various statutes
 17 dealing with police conduct. The evidence, however, will
 18 be that some of these instruments were not adequate to deal
 19 with a treacherous situation of more than 3 000" –

20 CHAIRPERSON: It doesn't necessarily then
 21 refer to –

22 MR BIZOS SC: - "who were armed and
 23 resisting any effort" –

24 CHAIRPERSON: I'm sorry, Mr Bizos. The
 25 expression "some of these instruments" doesn't necessarily

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1 refer to the constitutional mandate of the public service,
 2 and it looks from what the witness says that he understands
 3 instruments to include things like training manuals and so
 4 forth, but anyway, I don't want to stop you. You can carry
 5 on, but all I'm saying to you is I'm not sure that one can
 6 say that Mr Semenya suggested or intended to suggest that
 7 the Constitution is somehow defective in this regard.

8 MR BIZOS SC: Why did he use the words
 9 "the constitutional mandate of the police" –

10 CHAIRPERSON: He used the word "some," so
 11 he didn't say all these things are inadequate, each one of
 12 them; he said "some." So –

13 MR BIZOS SC: Which -

14 CHAIRPERSON: Well, that's a matter for
 15 you to ask the witness –

16 MR BIZOS SC: If it's some, which were
 17 the constitutional or legislative "leemtes," to use the
 18 word for the benefit of the witness, that were responsible
 19 for Marikana?

20 CHAIRPERSON: What the witness has said
 21 so far, as I understand him, is he's referred to gaps, if
 22 one can use that word, deficiencies in the Standing Order
 23 because it didn't deal with the hybrid situation. He's
 24 also spoken about the training, which is not strictly
 25 speaking an instrument, but he may have meant things like

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1 training manuals and that sort of thing, and he also
 2 referred to the equipment they had, because he said they
 3 need other equipment. I'm not quite sure what the kinetic
 4 equipment means, but we'll ask him that in a moment, but he
 5 did refer to other things, which I did understand. But as
 6 I say, I don't want to stop you, but I think you must ask
 7 the question in a way which is a fair reflection of what Mr
 8 Semenya said.

9 MR BIZOS SC: I think I must put it to
 10 the witness bluntly, Mr Chairman. What your counsel said
 11 is to some extent supported by the National Commissioner
 12 who thought that parts of the Constitution and legislation
 13 and Standing Orders –

14 MR SEMENYA SC: Objection –

15 MR BIZOS SC: - were responsible –

16 MR SEMENYA SC: Objection, Chair. At no
 17 stage did I suggest that the –

18 CHAIRPERSON: Let's hear your objection.
 19 I don't remember her saying anything about the Constitution
 20 being defective or deficient. If you can perhaps refer us
 21 to the transcript where that is said then we can deal with
 22 it, but I must confess, I don't remember that, but I may
 23 have missed it, but if you can give us the precise
 24 reference –

25 MR BIZOS SC: - on it, Mr Chairman,

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1 because she said when I asked why were the police so –
 2 CHAIRPERSON: Give us the reference to
 3 the transcript and then I can deal with Mr Semenya's
 4 objection. Mr Semenya says she didn't say that. You say
 5 she did. Well, one of you is right and the other is wrong,
 6 but if you can give me the reference in the record I will
 7 then see which of you is correct and either uphold the
 8 objection or dismiss it.
 9 MR BIZOS SC: The portion that I don't
 10 think any of us can forget that she said it, it was the
 11 beautiful Constitution that led the protesters to have an
 12 adverse attitude to the police, Mr Chairman.
 13 MR SEMENYA SC: No, that's not –
 14 CHAIRPERSON: I thought that was put to
 15 her and she denied saying it, as far as I can recall, but
 16 again if you can give me the reference I can deal with it
 17 in a satisfactory fashion to all concerned, I hope.
 18 MR BIZOS SC: - we do not have to accept
 19 the National Commissioner's interpretation of the words
 20 that she used, Mr Chairman.
 21 CHAIRPERSON: Mr Bizos, the fact of the
 22 matter is that you put that she said something. Mr Semenya
 23 says she didn't say that. If she said it, it will be in
 24 the record.
 25 MR BIZOS SC: Yes.

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1 CHAIRPERSON: You can give us the
 2 reference and then I'll allow you to proceed and I'll
 3 overrule Mr Semenya's objection. If on the other hand she
 4 didn't say it, then I fear your question will be disallowed
 5 and Mr Semenya's objection will be upheld. That must be
 6 the way one must proceed, isn't it?
 7 MR BIZOS SC: For the sake of saving time
 8 I'll withdraw the question of the parallel and come back to
 9 the question that I originally asked. Are there any
 10 constitutional provisions which are inadequate in the
 11 opinion of the police to control the conduct of protesters?
 12 Are there any constitutional provisions which prevent the
 13 police from adequately controlling protesters?
 14 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 15 ek is nie die gesag om namens die polisie te praat rondom
 16 so 'n pertinente stelling nie. As 'n individu is ek nie
 17 bewus van enige sodanige leemtes in die Grondwet nie.
 18 MR BIZOS SC: And in your personal
 19 capacity you would not suggest that there is anything in
 20 the Constitution or in the legislation which would have
 21 enabled the police to act differently at Marikana,
 22 different from what they actually did?
 23 CHAIRPERSON: Mr Bizos, I've got an idea
 24 that a negative felt out of that question somewhere. I
 25 don't think you meant it the way you put it. Perhaps you

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1 could repeat the question. I may have misheard you, but it
 2 sounded to me as if there was a "not" missing from the
 3 question, but anyway, ask the question again. Perhaps I
 4 was wrong in understanding it the way I understood it.
 5 Just put the question again.
 6 MR BIZOS SC: As a senior policeman, do
 7 you personally believe that there is anything in the
 8 Constitution, in the legislation, or in the Standing
 9 Orders, which prevented the police from dealing with the
 10 situation in Marikana without killing 34 people and
 11 seriously wounding 84 of them?
 12 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 13 ek het reeds na die Konstitusie verwys en dit geantwoord.
 14 In terme van wetgewing kan ek nie pertinent my vinger lê op
 15 'n spesifieke aspek wat ek nou hier kan verwys na, en ons
 16 kan nie na Staande Ordes net uitsluitlik in die eksklusie
 17 na verwys nie want Staande Ordes gaan aan die hand van
 18 beleid, beleid soos opgestel op, by die Ministerie, en dan
 19 nasionale instruksies, direkteiewe, standaard operasionele
 20 prosedures, en gebeurlikheidsplanne wat ons opstel op
 21 polisievlak –
 22 MR MAHLANGU: Occurrence, what do they
 23 call it?
 24 CHAIRPERSON: Contingency plans that we
 25 compile or draw up at the police level. I think that's

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1 what he said.
 2 GENERAAL-MAJOOR ANNANDALE: Dis korrek.
 3 Standing operating procedures, contingency planning,
 4 national instructions and directives, en Voorsitter, ek het
 5 verwys daarna dat daar is 'n leemte in terme van pertinente
 6 sodanige instruksies waarna ek nou verwys het om opgestel
 7 te word –
 8 MR MAHLANGU: There are gaps in what I
 9 have mentioned now that this has got to be –
 10 CHAIRPERSON: Compiled or drawn up, I
 11 think is what he was saying.
 12 MR MAHLANGU: To be drawn up, yes.
 13 CHAIRPERSON: Ja, he's made the point, as
 14 I understand it, that the Standing Order and the other
 15 documents that he's said flow from it don't deal with this
 16 hybrid situation that he talked about, and that's something
 17 that's not addressed in the Standing Orders, and the
 18 Standing Orders should be compiled or drawn up to deal with
 19 the situation, and I think that's what I understand him to
 20 be saying. If I'm wrong, he'll correct me.
 21 GENERAAL-MAJOOR ANNANDALE: En dis dan
 22 die leemtes pertinente soos u dit nou stel, die leemtes wat
 23 ons het en wat ons na moet gaan kyk.
 24 MR SEMENYA SC: Chair, just for the
 25 record, I know Mr Bizos withdrew the question, but there is

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1 nowhere in the opening statement where I make the assertion
2 that the Constitution is inadequate.

3 CHAIRPERSON: I thought I'd said that on
4 your behalf already, but I'm glad you agree with me.
5 You're quite right, you didn't say it anywhere in the
6 opening statement, and to be fair, I think Mr Bizos very
7 wisely didn't persist in that point, but anyway, Mr Bizos,
8 there are a lot of other points you're going to persist in,
9 I take it.

10 [14:23] MR BIZOS SC: - clear with a last
11 question on this issue to the witness. What I am going to
12 put to you, leaving aside the Constitution – listen
13 carefully, please. What I want to put to you and your
14 colleagues in the police force, that there was nothing
15 wrong with the legal instruments that led to the tragedy of
16 Marikana. It was the police strategy and plan that was
17 defective, not the laws. Can you give an answer with a yes
18 or no to this question?

19 CHAIRPERSON: I don't know if I was in
20 the witness box, or the witness seat, I'd like to answer
21 that question either as yes or no. I think I must allow
22 the witness to answer it as he wishes, but if he wishes to
23 say more than just yes or no, I will allow him to do so.

24 GENERAAL-MAJOOR ANNANDALE: Met u
25 vergunning sal ek asseblief wil meer sê as net ja of nee.

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1 Voorsitter, die polisie strategie en plan was nie
2 ontoereikend nie. Die polisie kon nie eers behoorlik
3 uitkom ten uitvoer van hulle plan voordat hulle onder
4 aanval gekom het nie, en die sterftes was nie as gevolg van
5 uiteendryf aksies deur die polisie nie, maar was as gevolg
6 van individuele handelinge deur polisie-offisiere – lede en
7 offisiere –

8 CHAIRPERSON: Police members and
9 officers, is that right?

10 MAJOR-GENERAL ANNANDALE: Officers, in
11 lyn met gemeenregtelike beginsels van selfverdediging en
12 noodweer.

13 MR BIZOS SC: - counsel's suggestion that
14 the constitutional mandate of the police service and the
15 provisions of the various statutes dealing with police
16 conduct may have been responsible, you don't associate
17 yourself with that?

18 CHAIRPERSON: No, no, no, no, no, Mr
19 Bizos. I don't know that one can say that Mr Semanya
20 suggested that the constitutional mandate of the police
21 service in any way contributed to what happened, and I
22 don't think that's a fair interpretation of what he said.
23 But unless he, you know, if he says that the way you put it
24 is correct, I won't say anymore, but that's not the way I
25 understood that paragraph of his statement.

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1 MR SEMENYA SC: I even attempted to put
2 on record that which the Chair said you had done it for my
3 behalf, on my behalf. I still reiterate there is nowhere
4 in the opening statement where we ascribed unfortunate
5 deaths to be a consequence of inadequacies in the
6 Constitution, nowhere.

7 MR BIZOS SC: I will welcome my learned
8 friend's statement that he never intended such a meeting.
9 I know him too well –

10 MR SEMENYA SC: Chair, I haven't said –
11 MR BIZOS SC: Sorry, the purpose of the
12 cross –

13 CHAIRPERSON: Mr Semanya, Mr Bizos is
14 saying something very constructive –

15 MR BIZOS SC: The purpose of the cross-
16 examination –

17 CHAIRPERSON: - which I think I must
18 allow him to say.

19 MR BIZOS SC: The purpose of the cross-
20 examination is not to show up Mr Semanya and what he said,
21 and I will accept his assurance. Our function here is to
22 put on record that the misconception that it is the law
23 that is responsible for police violence is not his
24 position. The witness has said as much and I'm glad to
25 accept it. If Mr Semanya says that this is not what I

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1 intend, what appears to be to us at least an ambiguous
2 situation, we will accept it, Mr Chairman, and we will
3 proceed.

4 MR SEMENYA SC: Not only did I not intend
5 it, I have not said it, Chair.

6 CHAIRPERSON: Mr Bizos says he thinks
7 what you said was ambiguous, but he's happy to accept your
8 assurance that's not what you intended, and I think we can
9 leave the matter there, that you're totally unaffected. Mr
10 Bizos –

11 MR BIZOS SC: Thank you, I'll go into a –
12 don't worry about it. We'll go on to a new topic, Mr
13 Chairman. According to your statement, General, on Sunday
14 the 12th of August you responded to a request from the North
15 West province to deploy members of the National
16 Intervention Unit (NIU) and that you deployed members of
17 the NIU Pretoria. Was this request made by Deputy
18 Provincial Commissioner, Operations North West Province,
19 Major-General Naidoo?

20 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
21 dit is korrek, ja. Hy het tweeledig gevra vir NIU, maar
22 ook vir Openbare Orde. Die NIU het ek goedgekeur, synde
23 dat dit in nasionale kapasiteit is. Die Openbare Orde was
24 gehanteer deur 'n versoek aan die Nasionale Gesamentlike
25 Operasionele Komitee, of die NATJOC.

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1 MR BIZOS SC: According to your paragraph
 2 3, on Monday the 13th of August Major-General Naidoo called
 3 you and gave you a report of the day's events and said
 4 additional personnel were needed. You then departed to
 5 Marikana shortly after 15:00.
 6 CHAIRPERSON: Say 3PM, then we'll
 7 understand you.
 8 MR BIZOS SC: 15PM.
 9 CHAIRPERSON: 3PM.
 10 MR BIZOS SC: Oh, 3PM.
 11 CHAIRPERSON: Police speak 15:00,
 12 ordinary speak 3PM.
 13 MR BIZOS SC: I'm usually accustomed to
 14 12, to 15:00. Is that correct?
 15 GENERAAL-MAJOOR ANNANDALE: Dit is
 16 korrek, Voorsitter.
 17 MR BIZOS SC: By whom were you requested
 18 to go to Marikana, if there was a request?
 19 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 20 ek het myself besluit in my kapasiteit as die
 21 Komponentshoof, Gespesialiseerde Operasies, dat ek deurgaans
 22 soontoe.
 23 MR BIZOS SC: Does a person in your
 24 position, General, normally –
 25 CHAIRPERSON: Mr Bizos, the interpreter

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1 hasn't finished interpreting what the Major-General said,
 2 and the Xhosa interpreter hasn't interpreted at all into
 3 Xhosa, so we must give them both a chance.
 4 MR BIZOS SC: Do you yourself normally
 5 attend directly to matters at a local level?
 6 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 7 dis 'n besluit wat ek self neem en ek het al telkens
 8 gereageer waar van my eenhede ontplooi word op 'n
 9 provinsiale vlak.
 10 MR BIZOS SC: You didn't decide by – or
 11 did you decide for yourself to go and involve yourself in
 12 order to fix it up in Marikana, or were you asked by anyone
 13 to do it?
 14 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 15 ek het besluit om te gaan sodat ek myself kan gaan vergewis
 16 van die omstandighede want ek het reeds lede van die
 17 Nasionale Intervensie Eenheid het ek reeds ontplooi gehad
 18 daar, en dat verdere ontplooiing van sodanige eenheid kan
 19 dalk behels dat ek sou moet lede vanaf die, hetsy die
 20 Durban of die Umtata eenheid ook ontplooi, synde dat daar
 21 beperkte kapasiteit by die Pretoria eenheid is.
 22 MR BIZOS SC: As the head of a tactical
 23 unit at a national level, once you had chosen to insert
 24 yourself into the local chain of command, the prospects of
 25 tactical approach being deployed at Marikana became

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1 substantially higher.
 2 GENERAAL-MAJOOR ANNANDALE: Ek verstaan
 3 nie, is dit 'n stelling wat gemaak word –
 4 CHAIRPERSON: Do you understand the
 5 question? You look as if you don't. Perhaps you could
 6 repeat it again, Mr Bizos.
 7 MR BIZOS SC: Yes. If a person in your
 8 position and in your capacity decided to go to Marikana,
 9 the local chain of command probably would infer that the
 10 tactical approach in Marikana became considerably higher.
 11 We have a top general here, head of a unit; things are
 12 getting serious.
 13 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 14 nee, ek sien nie die verbintenis dat dit nou meer ernstig
 15 is net uit –
 16 MR BIZOS SC: There is nothing in your
 17 statement that you were requested by anyone to do that,
 18 particularly for the deployment of the STF.
 19 CHAIRPERSON: Sorry, Mr Bizos, here you
 20 have a major-general who is the Component Head of
 21 Specialised Operations. He receives a phone call from the
 22 Deputy Provincial Commissioner Operations Officer, North
 23 West Province –
 24 MR BIZOS SC: Yes.
 25 CHAIRPERSON: - Major-General Naidoo, who

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1 asks that, or indicates that additional personnel be
 2 deployed. In the circumstances it seems obvious that
 3 Major-General Naidoo would have telephoned Major-General
 4 Annandale, asked for the deployment of members of the
 5 service who belong to one or other of the units over which
 6 he was the component head. Isn't that so?
 7 MR BIZOS SC: There was no specific
 8 request for STF, for an STF unit.
 9 CHAIRPERSON: Well, it was a request
 10 presumably for one or other or both, or all of the units
 11 over which he was the component head.
 12 MR BIZOS SC: Yes.
 13 CHAIRPERSON: You know, so what I'm
 14 suggesting to you –
 15 MR BIZOS SC: The STF is a very
 16 specialised unit, and what I want to know is that there was
 17 no request for it.
 18 CHAIRPERSON: So what you are saying is
 19 there was no specific request for the STF?
 20 MR BIZOS SC: Yes.
 21 CHAIRPERSON: Alright, okay. No, that's
 22 alright.
 23 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 24 toe Generaal Naidoo my geskakel het was dit kort nadat die
 25 vyf persone gesterf het op die Maandag. Hy het nie vir my

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1 gesê stuur 10 of 20 NIU lede nie. Hy het vir my gesê dat
 2 hulle addisionele ontplooiing nodig het. Hy het vir my
 3 gesê dat hy oppad is terug na Marikana toe, en weens die
 4 redes wat ek vroeër gegee het in terme van die ontplooiing
 5 van NIU, het ek toe deurgegaan om myself te gaan vergewis
 6 en ek het ook die seksiehoof van Nasionale Intervensie
 7 Eenheid, Brigadier Tsiloane saamgevat weens sy direkte
 8 verantwoordelikheid vir die eenheid. Die kwessie van die
 9 ontplooiing van Spesiale Taakmag lede is eers
 10 geïdentifiseer later die Maandagaand nadat ons pertinent
 11 vergader het en ons soveel klem gelê het in terme van die
 12 versameling van intelligensie en identifikasie van
 13 potensiële verdagtes, dat daar toe besluit is om 'n groepie
 14 Spesiale Taakmag lede te mobiliseer sodat hulle op bystand
 15 kan wees om te reageer na aanleiding van sodanige
 16 potensiële optredes.

17 MR BIZOS SC: On Sunday the 12th of
 18 August, Mr Zokwana, president of NUM, telephoned the
 19 Minister of Police and had a discussion. In this
 20 discussion Mr Zokwana calls on the Minister to intervene in
 21 Marikana. Do you know about that?

22 [14:43] GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 23 ek dink met een van die openingsverklarings deur een van
 24 die partye was daar na verwys dat daar sodanige oproep
 25 plaasgevind het, en dit is omtrent die somtotaal van wat ek

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1 weet van sodanige beweerde oproep.

2 MR BIZOS SC: In any event, on Monday the
 3 13th of August NUM released a public statement, which is
 4 exhibit BBB7, calling for the following, "The deployment of
 5 Special Task Force or the SANDF to deal decisively with the
 6 criminal elements in Rustenburg and surrounding mines. We
 7 appeal for the deployment of the Special Task Force as a
 8 matter of urgency before the things run out of hand." Did
 9 you know about that public statement?

10 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 11 nee, ek is nie bewus daarvan nie. Die bewysstuk is egter
 12 nou vir my gegee.

13 MR BIZOS SC: In paragraph 4 of your
 14 statement you stated, on Monday evening, the 13th of August,
 15 at the JOC meeting you, to use your own words, "mobilised
 16 additional NIU and Special Task Force members."

17 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 18 ek probeer net verband kry tussen Spesiale Taakmag as 'n
 19 eenheid in die polisie, en dan wat hierso staan in die
 20 opskrif van bewysstuk BBB7. Voorsitter, hierso staan, en
 21 ek haal aan, "NUM calls for a special task force in the
 22 mines." So ek weet nie of dit verwysend is na die eenheid,
 23 een van my eenhede, Spesiale Taakmag, nie.

24 MR BIZOS SC: In the copy of BBB7, the
 25 fourth-last paragraph, "We appeal for the deployment of the

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1 Special Task Force." Have you got that as well?

2 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 3 ek sien dit, en ek sien ook in die tweede paragraaf, "We
 4 call for the deployment of a special task force," so
 5 miskien sal NUM kan sê of hulle verwys het na die eenheid
 6 bekend in die polisie as Spesiale Taakmag, en of hulle
 7 verwys het na 'n taakgroep. Ek weet werklik nie.

8 MR BIZOS SC: Well, General -

9 CHAIRPERSON: Mr Bizos, sorry, can I
 10 interrupt you? The heading is "NUM calls for a special
 11 task force in the mines," and then in the second paragraph
 12 Mr Baleni, the general secretary is quoted as having
 13 saying, "We call for the deployment of a special task
 14 force," all small letters, "or the SANDF to deal decisively
 15 with the criminal element in Rustenburg and surrounding
 16 mines," and then further down, a couple of paragraphs later
 17 on, "We appeal for the deployment of the Special Task
 18 Force," now capital letters, but it's certain is ambiguous.
 19 It's consistent with, I mean depending which one you read.
 20 They are either referring to a special task force, small
 21 letters, or they're referring to the Special Task Force,
 22 capital letters, which is part of the police service. I'm
 23 not sure in view of the contradictions, particularly in the
 24 light of the heading, one can say that NUM definitely
 25 called for the Special Task Force which forms part of the

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1 police service. I don't know whether there's any point in
 2 exploring the point further.

3 MR BIZOS SC: The person that appears to
 4 have put the exhibit together seems to be particularly
 5 literate, and I think that saying the Special Task Force in
 6 capitals distinguishes it from the general possible
 7 interpretation of a special task force as it is in the
 8 heading or in the second paragraph. I would submit, with
 9 respect, that the Special Task Force -

10 CHAIRPERSON: It's a bit ambiguous, isn't
 11 it? Anyway, you put the point.

12 MR BIZOS SC: Yes.

13 CHAIRPERSON: The witness is as puzzled
 14 as I am about it; he doesn't know which one it is.

15 MR BIZOS SC: The purpose for -

16 CHAIRPERSON: Sorry, can I interrupt and
 17 ask a question which goes back to something you dealt with
 18 a few minutes ago? What time on the Monday - well, let me
 19 not ask you a question which is designed to trap you. Let
 20 me just put it to you. According to exhibit FFF18
 21 Lieutenant-Colonel Scott says - he is of course a member of
 22 the Special Task Force - he says that at about 18:00, 6PM,
 23 he was telephoned by Brigadier Fritz, the Section Head of
 24 the Special Task Force, and instructed to report to Lonmin.
 25 So it would seem if that's correct, that the decision to

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1 call in at least one member of the Special Task Force was
 2 taken before 6PM on the Monday. I think you said the
 3 evening, but I think your memory may have been slightly
 4 inaccurate on the point, alternatively of course what
 5 Lieutenant-Colonel Scott says may be wrong also, but there
 6 is that apparent conflict. So perhaps we should clear it
 7 up now.

8 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 9 ja, wat Kolonel Scott betref, dit is waar, hy's 'n lid van
 10 die Spesiale Taakmag. Hy's nie deel van die een, drie, een
 11 van die drie operasionele eenhede van Spesiale Taakmag nie.
 12 Hy is betrokke by die opleiding van Spesiale Taakmag lede,
 13 onder andere; daar is ook ander aspekte wat hy
 14 verantwoordelik is voor in sy posisie. So ek het vir
 15 Brigadier Fritz geskakel en vir hom gesê hy moet vir my
 16 Kolonel Scott stuur om te kom vir my die beplanning
 17 konsolideer. Voorsitter, en as ek reg kan onthou het hy
 18 waarskynlik na 7 die aand, 7 uur, half 8 het hy gearriveer
 19 daar. Die ander lede van Spesiale Taakmag is eers later
 20 die aand, het ek gesê ons moet addisionele lede mobiliseer
 21 vir 'n pertinente ander rede, soos ek vermeld het, die
 22 intelligensie-gedrewe optredes.

23 MR BIZOS SC: Were you either asked or
 24 instructed by the Minister or anyone else to deploy the STF
 25 members to Marikana?

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1 GENERAAL-MAJOOR ANNANDALE: Geensins nie,
 2 Voorsitter.

3 MR BIZOS SC: Do you take personal
 4 responsibility for the decision to call them to be present
 5 at Marikana?

6 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 7 ek het die voorstel gemaak die aand toe ons vergader het
 8 dat hulle 'n pertinente rol kan speel. Ek het verwys na
 9 die pertinente tegnologie wat hulle het in terme van die
 10 opstel van 'n observasiepos en dan die verkykers wat hulle
 11 het, hulle vaardighede om dan 'n persoon of persone te
 12 arresteer wie potensieel gewapen kan wees, die waarde wat
 13 hulle kan toevoeg met hulle teenskerpskutter vaardighede
 14 wat hulle het, maar ook hulle vermoë om te ontplooi uit 'n
 15 helikopter wat gebruik word as 'n platform. Daar was toe
 16 ooreengekom dat hulle waarde kan toevoeg en ek persoonlik
 17 het gesê daar moet addisionele lede gemobiliseer word.

18 MR BIZOS SC: General, do you remember
 19 what the question –

20 CHAIRPERSON: Mr Bizos, what he said
 21 needs to be interpreted.

22 MR BIZOS SC: General, do you remember
 23 what the question was?

24 GENERAAL-MAJOOR ANNANDALE: Of ek
 25 persoonlik verantwoordelikheid vat vir hulle ontplooiing.

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1 MR BIZOS SC: Did you say yes or no? Why
 2 are you afraid of the word "responsibility?"

3 CHAIRPERSON: Mr Bizos, the answer he
 4 gave amounted to an admission that he was responsible, as I
 5 understood the answer. So I don't think it's fair to say
 6 he's afraid of the word "responsible." He gave the
 7 background, but he didn't in any way, as far as I could
 8 see, duck or dodge or evade the suggestion that he was
 9 responsible. He took it firmly on the chin as far as I
 10 understood, but anyway, perhaps we could –

11 MR BIZOS SC: I have my own purposes for
 12 using the avoidance of the word "responsibility."

13 CHAIRPERSON: Alright, but please
 14 proceed, Mr Bizos –

15 MR BIZOS SC: Why are you afraid to
 16 merely say yes or no in relation to the word
 17 "responsibility?" It was a simple question.

18 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 19 ek het die agtergrond geskep wat my genoep het om tot so 'n
 20 besluit oor te gaan, en ek het ook gemeld dat ek aanvaar
 21 persoonlik verantwoordelikheid want ek het hulle
 22 gemobiliseer.

23 MR BIZOS SC: This may be a convenient
 24 stage.

25 CHAIRPERSON: We'll take the tea

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1 adjournment at this stage.

2 [COMMISSION ADJOURNS COMMISSION RESUMES]

3 [15:20] CHAIRPERSON: The Commission resumes.
 4 Majoor-Generaal, u is nog steeds onder eed.

5 CHARL ANNANDALE: s.o.e.

6 CHAIRPERSON: Mr Bizos.

7 CROSS-EXAMINATION BY MR BIZOS SC (CONTD.):
 8 General, the function of the STF unit, in addition to those
 9 that you have mentioned, according to our information that
 10 speciality is to be assigned tasks where there are
 11 seizures, where people are seized and held and a good
 12 example is the siege of Volkskas Bank in Silverton; it
 13 appears to be an old established unit for specialised
 14 purposes.

15 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 16 dit is een van hulle funksies.

17 MR BIZOS SC: Another is kidnapping and
 18 hostage situations.

19 GENERAAL-MAJOOR ANNANDALE: Dit is ook
 20 deel van hulle funksies, dis korrek.

21 MR BIZOS SC: Hijacking of buses or other
 22 means of transport.

23 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 24 soos ek verduidelik het, hetsy dit op land, op see of in
 25 die lug plaasvind, ja, so dit kan 'n bus ook insluit.

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1 MR BIZOS SC: Hijacking of a plane of
2 Swazi Airlines with passengers.
3 GENERAAL-MAJOOR ANNANDALE: Dit is
4 korrek.
5 MR BIZOS SC: And arrests of gangs that
6 smuggle weapons into the country; cash-in-transit heists;
7 confronting heavily armed robbers.
8 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
9 hulle sal daarmee ook deel, nie eksklusief nie, maar ook.
10 MR BIZOS SC: They may even help people
11 who attempt to commit suicide, and they can climb high
12 buildings and save people.
13 GENERAAL-MAJOOR ANNANDALE: Ja, die, dit
14 sal meer die rol wees van die gyselaaronderhandeling en
15 selfmoord voorkomingspan, maar wat u noem is potensieel ook
16 moontlik.
17 MR BIZOS SC: We have not been able to
18 find a single example where they were used at or in
19 connection with crowd management.
20 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
21 ons het hulle nie ontplooi om met skarebestuur te deel nie.
22 MR BIZOS SC: I want to show you a
23 colour, I suppose diagram, put together by Lieutenant-
24 Colonel Scott in relation to the STF. This is it; I'm
25 informed that you have a copy, Mr Chairman. It's on slide

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1 5 of exhibit Q.
2 CHAIRPERSON: Yes.
3 MR BIZOS SC: Is it going to be shown, or
4 is it being –
5 CHAIRPERSON: It's being retrieved from a
6 box over there in the corner.
7 MR BIZOS SC: We can hand out copies if
8 needed, Mr Chairman.
9 CHAIRPERSON: It might be helpful while
10 the copies are being found in the boxes if you've got them
11 "byderhand" as it were, you can hand them out and save us
12 time.
13 MR BIZOS SC: Yes.
14 CHAIRPERSON: Time is a precious
15 commodity of this Commission, as I don't have to remind
16 people.
17 MR BIZOS SC: Exhibit Q.
18 CHAIRPERSON: Slide 5, exhibit Q. Thank
19 you very much. Unfortunately the green block in the STF
20 column obscures some of the writing, but -
21 MR BIZOS SC: Yes, we have what it is.
22 It's "counter terrorism" that has got to be filled in. If
23 everybody has a copy, may I proceed, Mr Chairman?
24 CHAIRPERSON: Yes, you may.
25 MR BIZOS SC: In the last column in green

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1 with STF, specialised operations, international and
2 national interest hostage release, and counter terrorism.
3 The colour red indicates the function of high-risk
4 operations, NIU, and STF may participate in operations of
5 NIU, but according to this diagram drawn by Lieutenant-
6 Colonel Scott, STF should not operate with TRT and POP –
7 no, sorry, yes well there is a very small margin of NIU,
8 but certainly it cannot operate with POP. Why was Marikana
9 an exception in relation to the presence of STF?
10 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
11 hierdie is nie 'n operasionele mandaat omvattende dokument
12 nie. Dit verwys na die tipiese oorvleueling van sekere
13 pertinente aktiwiteite waarvoor die eenhede verantwoordelik
14 is. As ons gaan kyk na die mandate van die eenhede sal u
15 sien daar is baie meer besonderhede wat vermeld word in
16 terme van hulle verantwoordelikhede. Ek sal pertinent meld
17 dat byvoorbeeld seek-en-reddingsoperasies is nie vermeld
18 onder die mandaat van Taakmag nie. Hoë profiel BBP
19 beskerming is nie ingesluit in die betrokke groen blok nie.
20 MR MAHLANGU: The abbreviation H?
21 CHAIRPERSON: High profile, VIP
22 protection.
23 GENERAAL-MAJOOR ANNANDALE: Dan hoë
24 risiko situasies wat spesiale toerusting en/of vaardighede
25 vereis.

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1 CHAIRPERSON: It's high-risk operations
2 which require specialised skills and equipment. I think
3 that's what the witness said. If I misheard, he'll correct
4 me.
5 MR MAHLANGU: That is so, Mr Chairperson.
6 GENERAAL-MAJOOR ANNANDALE: So sal u sien
7 by NIU byvoorbeeld word daar nie vermelding gemaak hulle
8 direkte betrokkeheid by bendegeweld byvoorbeeld, of taxi,
9 huurmotorgeweld, en byvoorbeeld plaasaanvalle. Net soos by
10 TRT is daar baie beperk vermeld in terme van dit waarvoor
11 hulle verantwoordelik is op 'n daaglikse basis. Spesiale
12 Taakmag was dan wel in die kategorie hoë risiko met
13 spesiale toerusting en vaardighede, en daarvolgens hulle
14 betrokkeheid by Marikana.
15 MR BIZOS SC: Are you aware of any
16 situation that the operations, of any incident or place or
17 event where POP and STF were deployed together?
18 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
19 ja. Die Wêreldberaad op Volhoubare Ontwikkelinge – World
20 Summit on Sustainable Development –
21 CHAIRPERSON: Sustainability Summit, I
22 think is – the World Sustainability Summit.
23 GENERAAL-MAJOOR ANNANDALE: Sokker
24 Wêreldbeker 2010, COP17, ANC Centenary Celebrations, en dan
25 verskeie ander groot gebeurtenisse.

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1 MR BIZOS SC: Is this high-profile
2 functions where preventative measures are taken with
3 personages of high rank and international visitors? We are
4 talking about the violent crime incidents such as Marikana
5 may have been categorised by you and the police.
6 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
7 verskoon tog, ek is nie doodseker van die vraag nie.
8 MR BIZOS SC: The events that you
9 mentioned were very important events where there were great
10 masses of people with high profile visitors from throughout
11 the world, and it may be that snipers may have been
12 necessary. Have you any example of inviting STF in order
13 to stabilise violent crime incidents such as you say were
14 present in Marikana? Were STF invited to that sort of
15 similar situation and not the high profile examples that
16 you have given us?
17 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
18 Marikana is uniek in ons geskiedenis.
19 MR BIZOS SC: Is that because the police
20 killed 34 people and wounded 84 people? You didn't know
21 that when you decided to deploy STF, or did you?
22 CHAIRPERSON: It's more appropriate to
23 ask the witness why he says it was unique. What Mr Bizos
24 is suggesting is you describe it as unique because of the
25 consequences. Is that why you say it was unique?

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1 GENERAAL-MAJOOR ANNANDALE: Nee,
2 Voorsitter. Dit was uniek in terme van dat daar nie 'n
3 geval is wat ek van histories bewus is waar daar so 'n
4 groot groep en so gewapen as 'n pertinente dreigement in 'n
5 gemeenskap voorgekom het nie.
6 MR BIZOS SC: You are aware of exhibit Q
7 which describes – it's on slide 24, which describes
8 mandated functions, administrative policy, division Visible
9 Policing, the functioning of Public Order Police (POP) and
10 the fourth bullet is stabilising of serious and violent
11 crime incidents. It's a function of POPs.
12 [15:40] GENERAAL-MAJOOR ANNANDALE: Voorsitter,
13 "restoring serious public violence" en ook stabilisering
14 daarvan is nie net eksklusief die verantwoordelikheid van
15 Openbare Orde nie.
16 MR BIZOS SC: Although you're much
17 younger than I am, you couldn't fail to remember that there
18 was nothing unique about what happened in Marikana. What
19 happened in KwaZulu Natal in the late 80s and early 90s?
20 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
21 ek is nie bewus van 'n geval waar daar soveel as 400 mense
22 so gewapen was met kapmesse, wat in een groep sodanig
23 funksioneer soos wat hierdie groep gefunksioneer het nie.
24 MR BIZOS SC: History is not on your
25 side, General, but don't let's debate that. The question

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1 is the sending of STF there was in preparation of showing
2 force and showing the people that went on an unprotected
3 strike, to be shown at the request of their employers, that
4 the police were the "baas" in order to bring an end to the
5 strike. That's why the STF were there –
6 CHAIRPERSON: Mr Bizos, I'm sorry, that's
7 a very wide statement you're making which should really I
8 think more appropriately be broken down into a number of
9 separate questions because you say for example that this
10 was an unprotected strike, which of course it was, but it
11 was also according to some of the evidence we've heard an
12 unprotected strike accompanied by violence, intimidation,
13 murder and malicious injury to property.
14 MR BIZOS SC: Yes.
15 CHAIRPERSON: So putting the question as
16 you do, without breaking it down into the different
17 components, maybe well cause difficulties. So the first
18 question I suggest you ask is, is it correct that it can
19 simply be described as an unprotected strike, and then you
20 can move on to your next question.
21 MR BIZOS SC: Yes.
22 CHAIRPERSON: But the way you do it I'm
23 afraid is a treble or quadruple question, which I don't
24 think is appropriate.
25 MR BIZOS SC: Yes, well do we agree that

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1 it was an unprotected strike?
2 GENERAAL-MAJOOR ANNANDALE: In terme van
3 die Arbeidswet, dit is korrek.
4 MR BIZOS SC: And the people were
5 gathering in order to show strength, if you like, that they
6 were not going to work until their demands were met.
7 GENERAAL-MAJOOR ANNANDALE: Die samekoms
8 van die groeperings was onwettig in terme van die Wet op
9 Openbare Byeenkomste. Dit was nie vreedsaam nie. Mense
10 was nie ongewapen nie. Daar was 'n geskiedenis van
11 intimidasie, geweld, aanrandings en moorde wat verbind is
12 aan –
13 MR BIZOS SC: Were the 3 000 people that
14 had gathered to be deemed responsible for those crimes that
15 were committed?
16 GENERAAL-MAJOOR ANNANDALE: Nie die 3 000
17 nie, nee Voorsitter.
18 MR BIZOS SC: Or even the 400 or 300,
19 were they responsible for all those crimes that you say
20 were committed? And I may say that we accept that there
21 were crimes committed which should be condemned, and we
22 condemn them, but that is no excuse for killing 34 people
23 and wounding the 84 others.
24 MR SEMENYA SC: Chair, there was never an
25 excuse to kill 34 people.

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1 MR BIZOS SC: I didn't hear my learned
2 friend –

3 CHAIRPERSON: The objection is that it
4 was never used as an excuse for killing 34 people. That's
5 the objection; that your question suggested that it was.
6 What is your answer to the objection?

7 MR BIZOS SC: Well, I submit that I am
8 entitled to put to the witness the lack of proportionality
9 of wrong done by the people on the scene, irrespective of
10 what may have happened on the 9th, 10th, 11th, 12th, 13th, on
11 the contrary to what may be suggested –

12 CHAIRPERSON: You might be entitled to
13 put it, but I'm not sure you're entitled to put it in the
14 form of the question that you asked, which suggested that
15 the killing of these people was a "excuse" – that's the
16 word you used – for killing 34 people, but maybe you can
17 reformulate the question in a way which makes the point you
18 want to make, but doesn't –

19 MR BIZOS SC: Yes.

20 CHAIRPERSON: - doesn't elicit that kind
21 of objection.

22 MR BIZOS SC: You mentioned the crimes
23 that were committed. Are you saying that the commission of
24 those crimes was a license to the police to have a plan
25 which led to the death of 34 people and 84 seriously

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1 wounded?

2 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
3 lisensie tot wat? Lisensie om mense dood te maak en te
4 beseer?

5 MR BIZOS SC: To shoot people dead; to
6 shoot people and seriously wound them.

7 CHAIRPERSON: What Mr Bizos is
8 suggesting, as I understand the question, is he's asking
9 you do you say that all these crimes that he condemns, the
10 antecedent murders and assaults and malicious injuries to
11 property and so on, do you say that those crimes constitute
12 a basis – is that what you're saying? - or a license to
13 shoot the 34 people on the 16th. What he wants to know, is
14 that what you say?

15 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
16 verseker nie.

17 MR BIZOS SC: In paragraph 75 in Mr De
18 Rover's affidavit, exhibit FFF11, the expert witness, he
19 says, "TRT, NIU and STF have no responsibility or equipment
20 for frontline handling of crowd management situations,
21 neither is that their task. They are there to support POP
22 personnel institutions" – in situations, I'm sorry, "in
23 situations where there is confrontation with high-risk" –

24 CHAIRPERSON: High-risk confrontation –
25 MR BIZOS SC: - "with individual crowd

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1 members occurs. Their typical task is of isolation,
2 containment, and arrest of such individuals in assistance
3 to POP personnel." Would you agree with your expert's
4 statement?

5 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
6 korrek, en dis dan juis hoekom ons hulle nie gebruik het in
7 die voorste linie of om skarebestuur toe te pas nie.

8 MR BIZOS SC: General, that's not in
9 accordance with the facts that appear on exhibit L.
10 According to exhibit L, on the morning of the 16th of August
11 –

12 CHAIRPERSON: I'm sorry, Mr Bizos, where
13 are you reading from in exhibit L?

14 MR BIZOS SC: From my notes, Mr Chairman
15 -

16 CHAIRPERSON: Oh, I thought you were
17 reading from exhibit L. Sorry.

18 MR BIZOS SC: - to which I'm indebted to
19 the people sitting behind me and to my left and my right.
20 The documentation in this case is too much for a person of
21 my age. According to exhibit L, on the morning of the 16th
22 of August the deployment show of force consisted of 176 POP
23 unit members, compared to 337 specialised unit members.
24 These numbers were calculated by adding up the personnel
25 figures reflected on slides 136 to 147 of exhibit L. In

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1 other words, the specialised or tactical unit members
2 outnumbered the POP members by nearly two to one. This was
3 a POP operation, or should have been. Why did the
4 specialised units constitute a two to one majority against
5 POP?

6 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
7 in Openbare Orde sal u ook opmerk in dieselfde bewysstuk
8 dat hulle die voorste linie was, dat hulle sou direk agter
9 die linie in die middel sou hulle waterkanonne gehad het,
10 dat hulle verantwoordelik sou wees vir die uiteendryf
11 aksie, en dan ook die opbreek van groter groepe in kleiner
12 hanteerbare groepe. Die ander eenhede waar daar na verwys
13 word, pertinent TRT, NIU en Spesiale Taakmag, sou
14 pertinente vee-aksies gedoen het en ook om bogrond te vee
15 en skoon te maak. Dan sal u ook merk in Staande Orde 262
16 dat mens jou reserwe groepe vorentoe bring as 'n
17 magsvertoon om dan aksies pertinent van die protesteerders
18 of die groep te ontmoedig, aksies teenoor die polisie, en
19 sodanige magsvertoon het nog vir ons altyd baie, baie goed
20 gewerk om sodanige groep uiteen te laat gaan, sonder om
21 enige offensiewe aksies daar te stel.

22 MR BIZOS SC: Finished? Do you disagree
23 with the opinion of the three experts that the specialised
24 units haven't got the training or the ability to crowd
25 control? We read out their views to you earlier. Do you

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1 disagree with their views, and how can your answer be what
 2 it is when POPs were in the minority in Marikana on the
 3 morning of the 16th?
 4 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 5 ek gaan dit weer meld, dat die ontplooiing en die
 6 aanwending van TRT, NIU, en STF, was nie bedoel om as
 7 skarebestuur te gebruik word, en daar was voldoende
 8 Openbare Orde Polisiëringslede om skarebestuur aspekte te
 9 deel.
 10 MR BIZOS SC: I am going to put to you,
 11 General, that the inevitable inference to be drawn from
 12 those figures and your conduct on the morning of the 16th
 13 was not to manage the crowd, but to show force and that
 14 would lead to confrontation and not a solution to the
 15 problem.
 16 [16:00] CHAIRPERSON: Mr Bizos, I have a problem
 17 with that question. You referred simply to his conduct or
 18 behaviour on the morning of the 16th. I'm not quite sure
 19 what you were referring to and I don't know whether he does
 20 either. So again I would suggest you break up the
 21 question, or explain what you mean by conduct, because the
 22 question as it is, is too vague in my opinion.
 23 MR BIZOS SC: By showing force, by
 24 spreading the razor wire, by using gas –
 25 CHAIRPERSON: I'm sorry, Mr Bizos, you

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1 said the morning. The razor wire was only –
 2 MR BIZOS SC: The day, I mean –
 3 CHAIRPERSON: - was only deployed –
 4 MR BIZOS SC: I mean –
 5 CHAIRPERSON: You mean during the day?
 6 MR BIZOS SC: During the day. That your
 7 actions of the 16th, the day of the 16th, the show of force,
 8 the presence of unqualified units with heavy guns, the
 9 failure to warn –
 10 CHAIRPERSON: When you've finished your
 11 question, Mr Semenya has something he wants to say, but I
 12 think we should let you finish the question first so that
 13 Mr Semenya can then address me.
 14 MR BIZOS SC: Yes, was not any attempt to
 15 deal with crowd control, but to use the words of the local
 16 commissioner and the public relations officer, that this
 17 was D-day and that an end to the situation would come about
 18 as a result of the police action.
 19 MR SEMENYA SC: Chair, there is no
 20 evidence of unqualified units that were deployed in
 21 Marikana.
 22 MR BIZOS SC: They have been described by
 23 their own expert as not being fit to deal with crowd
 24 control, Mr Chairman.
 25 MR SEMENYA SC: Chair, that's not

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1 unqualified.
 2 CHAIRPERSON: Perhaps you can rephrase
 3 the question –
 4 MR BIZOS SC: I apologise in advance –
 5 CHAIRPERSON: I understand the point
 6 you're making, but I think if I may say so, it can be more
 7 happily phrased so it won't elicit these objections. So
 8 take a step back, rephrase the question in a way which gets
 9 around Mr Semenya's objection and then we can get the
 10 answer.
 11 MR BIZOS SC: Yes. What I'm going to put
 12 to you is what the police were intending to do and in fact
 13 did on the 16th, was to show that force that they were
 14 intent on surrounding the people there with razor wire –
 15 CHAIRPERSON: Mr Bizos, that's not going
 16 to solve your problem because we had that yesterday.
 17 MR BIZOS SC: Yes.
 18 CHAIRPERSON: Not yesterday, the day
 19 before, about the encirclement argument, and the point was
 20 dealt with in some detail that there was no intention to
 21 surround the people, that that would have required far more
 22 wire than they had, so that question raises all those
 23 issues –
 24 MR BIZOS SC: Let me use as a general –
 25 CHAIRPERSON: So I would suggest you

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1 avoid that.
 2 MR BIZOS SC: And leave the rest. You
 3 were there to confront them and not to find a solution.
 4 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 5 dit is nie waar nie.
 6 MR BIZOS SC: It may be –
 7 CHAIRPERSON: Mr Bizos, have you reached
 8 a logical point in your cross-examination –
 9 MR BIZOS SC: Yes, I'm going on to the
 10 slide –
 11 CHAIRPERSON: So can we resume tomorrow
 12 morning?
 13 MR BIZOS SC: Are we adjourning early?
 14 CHAIRPERSON: It's 5 past 4.
 15 MR BIZOS SC: Oh, I'm sorry. I was
 16 looking at my watch.
 17 CHAIRPERSON: Yes, some people say it's
 18 wonderful how time flies –
 19 MR BIZOS SC: No, that –
 20 CHAIRPERSON: Some people say it's
 21 wonderful how quickly time flies when we're having fun. We
 22 will adjourn till half past 9 tomorrow morning.
 23 [COMMISSION ADJOURNED]
 24 .
 25 .

A				
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