

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 79 24 APRIL 2013 PAGES 8375 TO 8465

HELD AT

CIVIC CENTRE, RUSTENBURG, NORTH WEST PROVINCE



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64 10th Avenue, Highlands North, Johannesburg
P O Box 721, Highlands North, 2037
Tel: 011-440-3647 Fax: 011-440-9119 Cell: 083 273-5335
E-mail: realtime@pixie.co.za
Web Address: <http://mysite.mweb.co.za/residents/pak06278>



<p style="text-align: right;">Page 8375</p> <p>1 [PROCEEDINGS ON 24 APRIL 2013] 2 [09:38] CHAIRPERSON: The Commission resumes. 3 Majoor-Generaal, u is nog steeds onder eed. 4 MAJOR-GENERAL ANNANDALE: s.u.o. 5 CHAIRPERSON: Mr Semenya, are you still 6 appearing for your old client or are you appearing for the 7 client whose counsel used to sit where you are now sitting? 8 MR SEMENYA SC: I've upgraded, Chair, I'm 9 Bizos now. 10 CHAIRPERSON: Well, do you think you'll 11 get a front page story in the newspapers tomorrow? Mr 12 Semenya, I think we'd better stop the facetiousness and get 13 on with the Commission. 14 MR SEMENYA SC: Indeed, Chair. 15 EXAMINATION BY MR SEMENYA SC (CONTD.): 16 General, yesterday we stopped at the point that the 17 material on the water cannons, video material was 18 downloaded. 19 GENERAAL-MAJOOR ANNANDALE: Dit is 20 korrek, Voorsitter. 21 MR SEMENYA SC: Did you have an 22 opportunity to view what was captured by those videos? 23 GENERAAL-MAJOOR ANNANDALE: Ek het 'n 24 geleentheid gehad, ja, Voorsitter. 25 MR SEMENYA SC: What was captured?</p>	<p style="text-align: right;">Page 8377</p> <p>1 MR SEMENYA SC: What is this document? 2 GENERAAL-MAJOOR ANNANDALE: Jammer, ek 3 het nie die vraag gehoor nie? 4 MR SEMENYA SC: What is this document? 5 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 6 die dokument is Standing Order (General) 262, it deals with 7 crowd management during gatherings and demonstrations. 8 MR SEMENYA SC: And, in summary, the 9 document deals with the requirements of the Constitution, 10 it deals with the Regulation of Gatherings Act and has 11 specific standing orders. 12 GENERAAL-MAJOOR ANNANDALE: Dit is 13 korrek, Voorsitter. 14 MR SEMENYA SC: Just to talk about two 15 aspects of that document, can I invite you to look at 16 section 7 of, paragraph 7 of that document? 17 GENERAAL-MAJOOR ANNANDALE: Ek het 18 paragraaf 7. 19 MR SEMENYA SC: Paragraph 7.2 reads, "The 20 assessment of the threat level must be based on available 21 tactical information in terms of level of risk, discussions 22 and arrangements with the convenor, history of peaceful or 23 violent protest by the parties involved, past experiences 24 with the party, suitability of vicinity or venue in terms 25 of alleviating or aggravating risk, et cetera."</p>
<p style="text-align: right;">Page 8376</p> <p>1 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 2 daar was by, agter – nou bekend as toneel 1 agter die 3 lemmetjiesdraad gedeelte, was daar opnames gemaak. Daar 4 was egter – die kamera, soos ek verstaan, is gekoppel saam 5 met die spuitstuk van die waterkannon. So, soos wat die 6 spuitstuk sal op- of afgaan of beweeg sal die kamera dan 7 saam met die spuitstuk beweeg en dis nie onafhanklik nie. 8 So daardeur wil ek sê dat jy kan nie die kamera in een 9 rigting terwyl die waterkannon se spuitstuk in 'n ander 10 rigting gaan nie. Dit het veroorsaak dat elke keer as die 11 spuitstuk in 'n opwaartse elevasie was, dat die kamera dan 12 uiteraard ook in die lug afgeneem het. 13 Dan was daar ook waarneming gewees of opname 14 gewees by die toneel nou bekend as toneel 2. Terwyl daar 15 nie veel detail was nie, het dit gewys die waterkannon 16 spuit en hoe dit in 'n beboste gebied inspuit. Dan was die 17 een lens van een van die waterkannon kameras was ook vuil 18 gewees en die beelde was nie baie duidelik nie. Ek kon ook 19 ander polisievoertuie waarneem, hoofsaaklik Nyala 20 pantservoertuie. En dit is wat ek in hooftrekke kan onthou 21 van die opname. 22 MR SEMENYA SC: Now, can I invite you to 23 look at exhibit SS2 which would be the standing order 262? 24 GENERAAL-MAJOOR ANNANDALE: Ek het die 25 dokument, Voorsitter.</p>	<p style="text-align: right;">Page 8378</p> <p>1 GENERAAL-MAJOOR ANNANDALE: Dit is 2 korrek, Voorsitter. 3 MR SEMENYA SC: Were elements of this 4 standing order taken into account in the drawing of the 5 plans? 6 GENERAAL-MAJOOR ANNANDALE: Dit is 7 korrek, Voorsitter. 8 MR SEMENYA SC: Paragraph 7.3 deals with 9 various levels of threat assessment. 10 GENERAAL-MAJOOR ANNANDALE: Dit is 11 inderdaad so, Voorsitter. 12 MR SEMENYA SC: With regard to Marikana, 13 what threat level would that have been according to the 14 assessment in the – 15 GENERAAL-MAJOOR ANNANDALE: Dis 'n vlak 3 16 dreigement. 17 MR SEMENYA SC: Can I take you perhaps 18 back to paragraph 1, which is the definitions section? 19 CHAIRPERSON: Paragraph 2, I think. 20 MR SEMENYA SC: Paragraph 2 indeed, 21 Chair, and particularly paragraph (f) which is a definition 22 of defensive measures. The definition of defensive 23 measures reads, "Refer to proactive tactical measures such 24 as static barriers which are used to protect and safeguard 25 people or property by cordoning off, blocking, isolating,</p>

<p style="text-align: right;">Page 8379</p> <p>1 patrolling, escorting and channelling people." Is that in 2 line with what you were testifying about yesterday? 3 GENERAAL-MAJOOR ANNANDALE: Dit is 4 verwysend na my getuienis gister, dit is korrek, ja. 5 MR SEMENYA SC: In particular with 6 reference to the barbed wire. 7 GENERAAL-MAJOOR ANNANDALE: Die statiese 8 versperring soos vermeld in die definisie, dis korrek. 9 MR SEMENYA SC: Paragraph 11 of the 10 standing order then deals with execution. There the 11 standing order reads, "The use of force must be avoided at 12 all costs and members deployed for the operation must 13 display the highest degree of tolerance." It then deals 14 with the requirements of section 9(1) and section 9(2) of 15 the Act, which would be the Regulation of Gatherings Act 16 and says, "During any operation, ongoing negotiations must 17 take place between officers and convenors or other 18 leadership elements." Would these have been the 19 negotiations that were undertaken with the people on the 20 koppie? 21 GENERAAL-MAJOOR ANNANDALE: Die koppie en 22 dan ook ingesluit die ander onderhandelings wat daar was 23 tussen Generaal-Majoor Mpembe en verskeie rolspeleers. 24 MR SEMENYA SC: Paragraph 11.2 then 25 reads, "If negotiations fail and life or property is in</p>	<p style="text-align: right;">Page 8381</p> <p>1 the group of people approached the police line. 2 GENERAAL-MAJOOR ANNANDALE: Dit is 3 korrek, Voorsitter. 4 MR SEMENYA SC: The first step 5 contemplated in terms of the execution of the standing 6 order is to then bring forward the reserve or reaction 7 section or platoon that will be responsible for offensive 8 measures, as a deterrent to further violence should the 9 abovementioned measures not achieve the desired result. 10 GENERAAL-MAJOOR ANNANDALE: Dit is in lyn 11 met die beplanning, Voorsitter. 12 MR SEMENYA SC: But this, as the other 13 witnesses will tell us, did not happen because of various 14 developments which we will handle later, is that right, 15 General? 16 GENERAAL-MAJOOR ANNANDALE: Dit is 17 inderdaad so. 18 MR SEMENYA SC: Paragraph 11.3 of the 19 standing order then deals with circumstances where the use 20 of force is unavoidable. 21 GENERAAL-MAJOOR ANNANDALE: Dit is 22 korrek. 23 MR SEMENYA SC: General, on information 24 given to you, the use of force was explained as what? As 25 avoidable or not?</p>
<p style="text-align: right;">Page 8380</p> <p>1 danger, the following procedures must be followed." It 2 then says, step 1, the action that must be there is to put 3 defensive measures in place as a priority. Would this be 4 in line with the deployment of the barbed wire? 5 GENERAAL-MAJOOR ANNANDALE: Dit is in 6 lyn, Voorsitter. 7 MR SEMENYA SC: It then says as step 2, 8 "The action is then to warn participants, according to the 9 Act, of the action that will be taken against them should 10 defensive measures fail." Is that right? 11 GENERAAL-MAJOOR ANNANDALE: Dit is hoe 12 ons die plan voorsien het, Voorsitter, die waarskuwing sal 13 dan wees sou die defensiewe maatreëls nie slaag nie en 14 voordat daar offensiewe maatreëls geneem word. 15 MR SEMENYA SC: And the evidence is that 16 before this could be implemented, a group of people 17 approached the barbed wire. 18 CHAIRPERSON: More accurately, made for 19 the gap, isn't that so? They didn't just approach the 20 barbed wire. They weren't going to the barbed wire, they 21 were going to the gap, the area which had not been covered 22 yet. Is that right or am I misunderstanding? 23 MR SEMENYA SC: Well, the accurate detail 24 will come from witnesses like Brigadier Calitz but the 25 information was that as the first barbed wire was deployed,</p>	<p style="text-align: right;">Page 8382</p> <p>1 GENERAAL-MAJOOR ANNANDALE: Dit was 2 verduidelik in noodweer en self-verdediging en dat dit nie 3 kon vermy word nie. 4 MR SEMENYA SC: Can I now invite you to 5 look at, firstly, the letter of 20 December 2011, which is 6 exhibit T? 7 GENERAAL-MAJOOR ANNANDALE: Die dokument 8 wat ek voor my het is verwysing 3/1/5/1/1/174 gedateer 20 9 December 2011. 10 VOORSITTER: Noem hom bewysstuk T. 11 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 12 dit wys 'n 5 en u het verwys na – daar was verwys na T, 13 maar myne wys 5. 14 MR SEMENYA SC: Is it a document signed 15 by E Mawela, Lieutenant-General, divisional commissioner, 16 operational response services? 17 GENERAAL-MAJOOR ANNANDALE: Dit is 18 korrek. 19 CHAIRPERSON: I think it's page 399 in 20 the police hard drive, so at the top of the document you 21 should see OOO399. If that's what is at the top of your 22 document, you've got the right document. 23 [09:58] GENERAAL-MAJOOR ANNANDALE: Alhoewel 24 daardie gedeelte nie sigbaar is nie, verneem ek dit is T, 25 dis reg Voorsitter.</p>

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1 MR SEMENYA SC: The first paragraph
 2 records that, "In recent months a great number of crowd
 3 management incidents have occurred, ranging from labour
 4 disputes to service delivery issues, where large numbers of
 5 rubber rounds have been used.
 6 GENERAAL-MAJOOR ANNANDALE: Dit is
 7 korrek, Voorsitter.
 8 MR SEMENYA SC: And in particular
 9 paragraphs 4 and 5 would say that, "As part of the police's
 10 response in situations where the escalation of force may be
 11 necessary, rubber rounds as stipulated in standing order
 12 262 may only be used as a last resort. In spite of this,
 13 and that the charges of some rubber rounds have already
 14 been reduced, serious injuries still result from the use of
 15 rubber rounds." Do you see that?
 16 GENERAAL-MAJOOR ANNANDALE: Ek sien dit,
 17 Voorsitter.
 18 MR SEMENYA SC: And most important, says
 19 the circular, that the use of rubber rounds – under
 20 paragraph 5 – and shotguns must be stopped with immediate
 21 effect. Were you familiar with this instruction?
 22 GENERAAL-MAJOOR ANNANDALE: Ek is
 23 vertrouwd met die instruksie, dis reg, Voorsitter.
 24 MR SEMENYA SC: And might I invite you
 25 then to look at exhibit S, which is a letter dated 20 July

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1 2012. Do you have that document?
 2 GENERAAL-MAJOOR ANNANDALE: Ek het die
 3 dokument, dis reg, Voorsitter.
 4 MR SEMENYA SC: It is one signed by the
 5 National Commissioner General Phiyega, is that right?
 6 GENERAAL-MAJOOR ANNANDALE: Dit is
 7 korrek, Voorsitter.
 8 MR SEMENYA SC: In essence, the document
 9 is an instruction reintroducing the use of rubber rounds
 10 this time, am I correct?
 11 GENERAAL-MAJOOR ANNANDALE: Dit is
 12 korrek, Voorsitter.
 13 MR SEMENYA SC: Are you familiar with the
 14 document or were you familiar with the document when it was
 15 issued?
 16 GENERAAL-MAJOOR ANNANDALE: Ek is bewus
 17 van die dokument.
 18 MR SEMENYA SC: Do you know the
 19 circumstances leading up to the reintroduction of the use
 20 of rubber?
 21 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 22 soos ek dit het, was op daardie stadium die Waarnemende
 23 Nasionale Kommissaris, was daar 'n gesprek tussen homself
 24 en Generaal Mawela, wie die afdelingskommissaris vir
 25 operasionele reaksiedienste is en daar was vermeld dat daar

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1 verskeie negatiewe publisiteit is as gevolg van beserings
 2 wat opgedoen is en dat die beserings as gevolg van die
 3 beweerde gebruik van die rubber was deur lede van openbare
 4 orde polisiëring. Ek het dit verstaan dat dit 'n
 5 onttrekking was, 'n tydelike onttrekking van die gebruik
 6 van rubber aangesien dit geblyk het dat die lede van
 7 openbare orde in dié gevalle te vinnig oorgegaan het na die
 8 gebruik van rubber en dit nie gebruik het as 'n laaste
 9 uitweg nie, maar ook dat tydens die gebruik, dat dit nie
 10 noodwendig korrek aangewend word soos wat die lede opgelei
 11 is nie.
 12 Daar is in daardie tydperk, moes daar gekyk word
 13 sodat daar kan 'n opdrag uitgaan om die mense weer te
 14 herinner aan die korrekte gebruik van rubber en die
 15 omstandighede waaronder dit gebruik kan word. Wat ek
 16 verder verneem het, is dat daar raadpleging as in terme van
 17 ballistiese kundiges om te kyk wat die effek van rubber is
 18 in terme van die gebruik daarvan en die waarskynlikheid van
 19 ernstige beserings tydens die gebruik daarvan. Daar was
 20 ook verwag van die openbare orde eenhede om weer die
 21 beginsels van die gebruik van rubber onder hulle lede se
 22 aandag te bring.
 23 Soos ek verneem, die bevinding was dat as die
 24 rubber reg gebruik word deurdat 'n mens dit vuur, 'n
 25 afstand voor – so dit rig 'n afstand voor die skare sodat

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1 dit dan kan basies hop, met 'n "skip fire", we refer to it
 2 as skip fire – voordat hy die persoon, so nie direk gevuur
 3 word nie. En dat dit dan gerig sou wees op die laer
 4 gedeelte van die liggaam en dat daar 'n sekere afstand, ek
 5 dink die afstand van 20 meter moet min of meer gehou word
 6 tussen die - ek dink dit is vermeld in die dokument, dit is
 7 of 20 of 25 meter.
 8 MAJOR-GENERAL ANNANDALE: 20.
 9 CHAIRPERSON: I think in paragraph 3 at
 10 the top of the last page it talks about 20 metres.
 11 GENERAAL-MAJOOR ANNANDALE: Dan is die
 12 waarskynlikheid van ernstige beserings baie minder. En dan
 13 was daar verder verwys dat die stappe van geweld, en dan
 14 was dit weer goedgekeur dat die rubber weer gebruik kan
 15 word.
 16 MR SEMENYA SC: Alright, can we now go
 17 back at least to Potchefstroom just to talk about what
 18 happened there, culminating in exhibit L?
 19 GENERAAL-MAJOOR ANNANDALE: Ek aanvaar ek
 20 moet voortgaan waar ek gister geëindig het.
 21 MR SEMENYA SC: Yes, General.
 22 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 23 ek het gister verduidelik hoekom die waterkannon
 24 videomateriaal nie beskikbaar was nie, asook die van
 25 Luitenant-kolonel Botha, dan was die videomateriaal wat

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1 getoon was wat uit 'n Protea Coin helikopter geneem was,
 2 dit was nie getoon nie aangesien ons nie bewus was van die
 3 video-opname nie. Ek het eers bewus geword dat daar so 'n
 4 opname was, ek dink so min of meer die tweede week van
 5 September van 2012, nadat 'n mnr De Waal my geskakel het
 6 van Protea Coin en hy vir my gesê het dat daar so 'n opname
 7 beskikbaar is en die video-opname is toe beskikbaar gestel
 8 aan ons regsspan en ek verneem dit is ook 'n bewysstuk tot
 9 hierdie prosedure.

10 Dan was daar ook 'n video van 'n kaptein Ryland
 11 wat ek verneem wat getoon was en wat 'n bewysstuk is tot
 12 hierdie prosedures. Dit was ook nie getoon of beskikbaar
 13 tydens – ons was ook nie bewus daarvan tydens die
 14 Potchefstroom vergadering nie.

15 Die proses wat tydens daardie aantal dae, ek dink
 16 dit was sewe of nege dae - ek het aangedui dit was vanaf
 17 die 27ste tot die 6de September, maar nie die 1ste en die 2de
 18 September nie – was dat brigadier Van Graan sou dit
 19 fasiliteer. Lede sou dan hulle weergawes, sou hulle – of
 20 nie lede, dit was nie, dit was meestal die bevelvoerders
 21 sou dan hulle weergawes sou hulle dan gegee het vanuit
 22 hulle perspektief en dit sou dan beliggaam word in die
 23 narratiewe deur kolonel Visser. Terselfdertyd sou
 24 luitenant-kolonel Scott, sou hy die foto's, sou hy dit in
 25 PowerPoint-formaat sou hy dit geplaas het. Dit behels dat

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1 daar deur elke foto gegaan was wat beskikbaar was. Daar
 2 was gekyk na die datum en tyd van die foto en daar was dan
 3 foto's gekies wat die beste kon illustreer in terme van wat
 4 op sekere fases gebeur het. Voorsitter, dit was 'n
 5 ongelooflike tydrawende proses want dit het baie lank
 6 gevat.

7 MR MAHLANGU: It was quite a crucial time
 8 and a lot was happening, Mr Chairperson.

9 CHAIRPERSON: Time-consuming. He said it
 10 was a long, time-consuming process.

11 GENERAAL-MAJOOR ANNANDALE: Daar was dan
 12 ook wegbreekgroepe wat uit die groter – so almal het eers
 13 in 'n groter saal gesit en dan was die voorlegging, was dit
 14 elektronies vertoon. Dit het basies begin met die aanloop,
 15 nog voor die 10de Augustus. Die speurders sou byvoorbeeld
 16 gee, dit is al die sake wat hulle het wat gereflekteer is
 17 wat verwysend is na die Marikana omgewing, hulle sou
 18 daardie saaknommers gee, die detail gee. So die tipiese
 19 wegbreekgroepe sou byvoorbeeld gewees het 'n groep wat op
 20 die 13de, bevelvoerders wat betrokke was –

21 CHAIRPERSON: He said a typical breakaway
 22 group was – he added, a typical breakaway group was that
 23 which dealt with what happened on the 13th.

24 MR MAHLANGU: That's correct,
 25 Chairperson.

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1 GENERAAL-MAJOOR ANNANDALE: En so ook sou
 2 daar byvoorbeeld 'n groep gewees het, die groep van kolonel
 3 Makhubela wat die versperrings uitgesit het. Dan uit
 4 hierdie wegbreekgroepe sou hulle dan teruggekom het na die
 5 groter groep toe, dan sou hulle terugvoer gegee het. Ek
 6 myself was, baie van die tyd was ek nie fisies teenwoordig
 7 in die groter saal nie en so ook nie Generaal Mpembe of
 8 Generaal Naidoo nie en Generaal Mbombo was nie elke dag
 9 daar nie, sy was – ek het in die tydperk wat ek in 'n
 10 aparte vertrek gesit het, het ek begin werk aan my
 11 konsepverklaring en ons het, pertinent wou ons as generale,
 12 wou ons nie noodwendig die heeltyd betrokke wees nie, want
 13 ons het gevoel dat ons teenwoordigheid potensieel die mense
 14 kan inhibeer.

15 [10:18] MR MAHLANGU: Ek is jammer?

16 GENERAAL-MAJOOR ANNANDALE: Ons het
 17 gevoel dat ons teenwoordigheid die mense kan inhibeer.

18 CHAIRPERSON: He felt that their presence
 19 might inhibit those, the others present, the others there.

20 GENERAAL-MAJOOR ANNANDALE: Ons het die
 21 klimaat geskep vir die lede om te voorskyn te kom in belang
 22 van elke ding wat hulle tot hul beskikking het, dat hulle
 23 dit kan voorlê. En dan het ons van tyd tot tyd ingesit
 24 deur die dag sodat ons kan sien hoe daar vordering gemaak
 25 is in terme van die voorlegging asook die narratiewe. En

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1 die proses was gevolg totdat ons 'n produk gehad het en dis
 2 die produk wat u sien.

3 MR SEMENYA SC: Who was making the inputs
 4 that explained the narrative we find in exhibit L?

5 GENERAAL-MAJOOR ANNANDALE: Die
 6 bevelvoerders soos betrokke, soos wat hulle dit verneem het
 7 van hulle onderskeie lede.

8 MR SEMENYA SC: So where slide 283 of
 9 exhibit L, where the second bullet reads, "When stage 3 of
 10 the operational plan was implemented, the use of life
 11 ammunition was never an option and the use of minimum
 12 force, if negotiation was not successful, was the next
 13 alternative, where encirclement and dispersion would be
 14 executed by using, if necessary, water cannons, stun
 15 grenades, tear grenades and rubber bullets. The
 16 unfortunate reality was that the aggression of the crowd
 17 left the SAPS with no other choice than to act in private
 18 defence, defending their own lives and the lives of
 19 others." That would have been as a result of information
 20 given by the commanders.

21 GENERAAL-MAJOOR ANNANDALE: Die
 22 informasie is so gereflekteer soos dit oorgedra was deur
 23 die onderskeie bevelvoerders, dis korrek.

24 COMMISSIONER HEMRAJ: Do you know
 25 specifically who would have been the author of that

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1 statement?

2 GENERAAL-MAJOOR ANNANDALE: Kommissaris,

3 dit is 'n samevatting van verskeie insette wat gelewer is

4 en so verwoord, ek aanvaar, deur kolonel Visser wie die

5 narratiewe saamgestel het.

6 MR SEMENYA SC: General, may we now tap

7 on your police experience? There are various criticisms

8 levelled at how the South African Police executed the

9 operation in Marikana. I want us to go through those,

10 starting with exhibit WW2, which would be the statement of

11 Mr White.

12 MR MSIMANG: Chairperson, before Mr

13 Semenya –

14 CHAIRPERSON: Sorry, yes Mr Msimang, I

15 see you've turned your machine on. What do you want to

16 tell us?

17 MR MSIMANG: Chairperson, before Mr

18 Semenya goes on I want to make an enquiry about what is the

19 probative value of the evidence that is being led by the

20 witness because he is being taken through exhibit L and at

21 some instances he comments as an expert, because we all

22 know that he was not there. So you know as –

23 CHAIRPERSON: - JOC.

24 MR MSIMANG: Exactly, as it happened with

25 Mkhwanazi, the Brigadier, Major Mkhwanazi. What happened

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1 is that during the course of his examination there was a

2 question whether he is an expert, he's being called by the

3 SAPS as an expert or not. So I mean the current witness

4 has been taken through certain things to say going through

5 this line, is it proper or what. What – is he here as an

6 expert, particularly when he talks on things that he was

7 not present when they happened?

8 CHAIRPERSON: Let's ask Mr Semenya. Mr

9 Semenya, am I correct in thinking that you now propose to

10 lead what would amount to expert evidence from this

11 witness?

12 MR SEMENYA SC: No, I'm just trying to

13 get –

14 CHAIRPERSON: Because if he's going to

15 comment on criticisms and he's commenting on the criticisms

16 made about things that happened when he wasn't there, then

17 he would presumably – I'm not suggesting he can't do it but

18 he would be doing it wearing an expert hat rather than

19 giving direct evidence based on his own knowledge. Isn't

20 that right?

21 MR SEMENYA SC: The opinion expressed by

22 the witness, given his 30 years' experience as a police

23 officer.

24 CHAIRPERSON: That would make him an

25 expert. He'd be entitled to express opinions based on his

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1 experience but he'd be doing so as an expert witness. Now

2 that's the only point that's raised and I think you have to

3 concede that he's giving evidence from what – he's going to

4 give evidence on what follows as an expert.

5 MR SEMENYA SC: Indeed, Chair.

6 CHAIRPERSON: Yes, alright.

7 MR SEMENYA SC: Given his 30 years'

8 experience –

9 CHAIRPERSON: Yes, of course, no – on

10 that, yes Mr – sorry, let's finish Mr Msimang first. Mr

11 Msimang, are you finished?

12 MR MSIMANG: If he's called as an expert

13 then my learned friend must please not at some stage then

14 say he was not an expert because –

15 CHAIRPERSON: Well, he's stopped now

16 because we've debated it with him –

17 MR MSIMANG: Okay.

18 CHAIRPERSON: He won't be able to raise

19 that point anymore. Yes, Mr Burger?

20 MR BURGER SC: Chair, I want to raise

21 another point and I'll raise it in due course more

22 thoroughly. If the witness is going to give expert

23 evidence, I would've expected that we should have a summary

24 of that expert evidence in order to be able to prepare

25 cross-examination on it. We won't have that benefit.

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1 We'll have to cross-examine cold on expert evidence which

2 must have been available to the SAPS for a long period of

3 time, certainly they've read Mr White's evidence. I also

4 listened to the evidence on Potchefstroom. It's the first

5 time that I heard what happened at Potchefstroom. We've

6 had 20 witnesses' statements by the police. We have, for

7 the first time today, heard what happened at Potchefstroom,

8 but the rather haphazard version of Colonel Botha earlier.

9 So all I'm saying is that the ideal for going forward is

10 for witnesses to give us fuller statements so that we can

11 hopefully cut down on the length of the evidence-in-chief

12 and, secondly, prepare those people who have to ask

13 questions to ask more pertinently and shorter in their

14 cross-examination.

15 CHAIRPERSON: Thank you, Mr Burger. What

16 do you say about this, Mr Semenya? I understood the idea

17 was that the evidence-in-chief would be covered by

18 statements, affidavits in fact, which would be exchanged

19 between the parties beforehand in order to try to cut down

20 the length of what is becoming an inordinately long

21 Commission. There are a number of aspects which, I

22 presume, are going to be touched on later but certainly

23 this isn't an ideal way of proceeding, is it? You've had

24 Mr White's statements in your possession for a long time.

25 I must confess I assumed that Mr De Rover was going to be

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1 the person who was going to answer it. I didn't realise
 2 until late yesterday afternoon that you propose leading
 3 this witness on aspects not covered in the statement that
 4 was given but which deal with what Mr White says. Now is
 5 that a fair way of proceeding which helps us to get to
 6 grips with the issues crisply in a focused way?
 7 MR SEMENYA SC: Chair, the concern
 8 expressed by my learned colleague Burger is correct but the
 9 circumstances explaining it are also there. When we
 10 commenced with the Commission immediately after the events
 11 happened, we were enjoined by the evidence leaders to make
 12 statements available as and when we can and we did, with
 13 the time lines. Beyond that point there are a whole host
 14 of things that have happened, including the production of
 15 documents such as that of Mr White, which necessitate us to
 16 respond to the issues that were raised in cross-
 17 examination. Otherwise we'd have to do supplementary
 18 statements after each and every witness has been examined.
 19 I regret the inconvenience this has occasioned but in some
 20 instances it was simply inescapable and to that which we
 21 take blame, we take blame. Chair -
 22 CHAIRPERSON: Sorry, do you want to say
 23 something further before I call on the evidence leaders?
 24 MR SEMENYA SC: I was going to say
 25 perhaps to accommodate Mr Msimang, may he just wait for the

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1 questions that are put to see whether the witness would be
 2 competent to answer to those questions?
 3 CHAIRPERSON: I don't think that there's
 4 - I mustn't anticipate anything but I don't think it can be
 5 argued that this witness, regard being had to his
 6 experience, which should perhaps have been set out in a CV
 7 and handed in and just confirmed rather than dealt with at
 8 length, but in view of what we know about his CV, I would
 9 be very surprised if it could be argued that he's not an
 10 expert in, as defined in the cases that deal with experts.
 11 Mr Burger's point is a point of more substance. I'd like
 12 to find out what the evidence leaders say about that before
 13 we carry on further. Mr Madlanga or Mr Budlender, which of
 14 you wishes to address the point?
 15 MR MADLANGA SC: Mr Chairman,
 16 Commissioners, much as one appreciates what my learned
 17 colleague Mr Burger says, one also understands the
 18 practical difficulties that Mr Semanya is referring to. As
 19 he says, indeed as we go along and issues get raised it
 20 might necessitate the filing, the perpetual filing of
 21 supplementary statements or affidavits, not only by SAPS
 22 but indeed even by any other witness who might be similarly
 23 affected as SAPS is. So perhaps it's a balancing exercise
 24 and maybe we, as evidence leaders and the parties, may have
 25 to discuss the matter and see whether we are able to reach

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1 some acceptable position amongst ourselves.
 2 CHAIRPERSON: Of course it's not
 3 necessarily as stark as that. I wouldn't imagine you need
 4 to have a running commentary of expert statements or extra
 5 statements - never mind expert statements, extra statements
 6 - after every witness has testified but I would have
 7 thought at least before the moment arrives for a particular
 8 witness to testify, that we in the Commission should be in
 9 possession of a document setting out a summary of what the
 10 witness is going to say in chief so that - and that could
 11 have been done in this case, as far as I can see. I can't
 12 think of any excuse why it wasn't done and certainly for
 13 the future I would expect it to be done but that doesn't
 14 help us in relation to the existing situation in relation
 15 to this witness. Have you any suggestions as to what can
 16 be done about that from a practical point of view? One
 17 doesn't want to lose time but I'd be grateful if you can
 18 give us the benefit of your input on this aspect.
 19 MR MADLANGA SC: Yes, the problem is on
 20 the expert issues because some of the issues, as Mr Semanya
 21 says, may arise as we go along and only at a stage when a
 22 witness is being cross-examined and it's not the sort of
 23 thing that one would have anticipated long, long
 24 beforehand. So rather than perhaps, rather than -
 25 CHAIRPERSON: Sorry -

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1 MR MADLANGA SC: May I continue, Mr -
 2 CHAIRPERSON: I want to raise a question
 3 about what you've just said before you continue. I'm not
 4 sure that I understand you. Obviously you can't deal with
 5 something that's going to be done in cross - or that's
 6 going to be said by a witness in cross-examination when
 7 you're leading his evidence-in-chief.
 8 MR MADLANGA SC: No, I'm talking about
 9 witnesses that are still to come, Mr Chairman.
 10 CHAIRPERSON: Yes, I see -
 11 MR MADLANGA SC: I'm talking here -
 12 CHAIRPERSON: I see.
 13 MR MADLANGA SC: I certainly can't, I'm
 14 not talking about anticipating before the witness is
 15 already being cross-examined. I'm saying you may want to
 16 deal with that when you are calling subsequent witnesses,
 17 so it's there that I say it may then necessitate
 18 supplementary documents. And all I'm saying now is that
 19 rather than off the top of my head to try and come up with
 20 solutions, perhaps it's best for us as evidence leaders and
 21 the parties to discuss the issues and see how best to take
 22 the matter forward.
 23 CHAIRPERSON: It's now going on for 20 to
 24 11. I think, if I may say so, there's merit in what Mr
 25 Madlanga has said. I haven't given Mr Burger a chance to

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1 reply but he may not wish to reply at this stage in the
 2 light of what I'm going to say. I suggest we stand the
 3 matter down until – we take the tea adjournment now and
 4 perhaps, it's quarter past 11, give the parties'
 5 representatives and the evidence leaders an opportunity to
 6 discuss the matter as to how we should proceed. There are
 7 various possibilities that occur to me. The one is for the
 8 evidence to be led, it will of course be transcribed and by
 9 the time Mr Burger is called to cross-examine, if the
 10 evidence leaders have cross-examined already, he would have
 11 had the time to consider his cross-examination. That's one
 12 way of doing it.

13 The other way to do it is to request that a
 14 summary be, as it were, prepared of what the witness is
 15 going to say before this evidence is led. There may be
 16 other ways of dealing with it as well but isn't that a
 17 matter which can sensibly be discussed outside the
 18 auditorium by the parties' representatives and the evidence
 19 leaders?

20 [10:38] MR BURGER SC: Chair, before we stand
 21 down, the last thing I want to do is to waste time and my
 22 learned friend Mr Madlanga is very kind to my learned
 23 friend Mr Semenya, but it's quite incorrect to suggest that
 24 this comes as a surprise. There is a very serious
 25 comprehensive expert debate in this case between a Mr White

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1 and a Mr De Rover. Mr De Rover speaks for SAPS and Mr
 2 White speaks for the rest of us. That debate has been out
 3 in the open, it's been defined in witness statements and
 4 I'm looking forward to that debate. We have this morning,
 5 not surprisingly for me, been given a supplementary 29 page
 6 statement by Mr De Rover. He's going to amplify his
 7 statement, he's going to deal with that expert debate.
 8 What I would like to have guidance on, in anticipation of
 9 that debate are we going to now hear general upon general
 10 to run ahead of that debate and give us their views on the
 11 expert date, which we don't know what they are. And I'm
 12 very sorry to raise it now because, speaking purely for
 13 myself, I've really enjoyed listening to the evidence of
 14 this general. It's a delight to listen to a real policeman
 15 giving evidence but are we going to now have police
 16 generals commenting without script on an expert debate
 17 which is going to take its own time? I would have thought
 18 not and that's really the guidance –

19 CHAIRPERSON: I wouldn't be prepared to
 20 allow undue repetition on that. If a criticism is put up
 21 and answered, the answer is – the criticism is either good
 22 or bad, the answer is either good or bad. It's not made
 23 better or worse by being repeated ad infinitum and almost
 24 ad nauseam by a whole series of witnesses. So I don't
 25 propose to allow that but obviously I have to allow a

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1 certain measure of liberty, as it were, to the parties to
 2 present their contentions. I still think, subject to what
 3 you say, Mr Madlanga's right that this is a matter which
 4 should be discussed among the parties between now and
 5 quarter past 11 and maybe we can work out a sensible way
 6 forward, but certainly it would not be desirable to have
 7 every general coming and saying, I've heard the criticisms,
 8 I don't agree with them for the following reasons and then
 9 he trots out the reasons that have been given by his
 10 predecessors. And of course it would not be sensible to
 11 trot out, to trot out conflicting reasons because that
 12 would just lead to chaos on their side as well but anyway,
 13 we won't get there now. We'll now adjourn until quarter
 14 past 11. Sorry, sorry, I've been discourteous. Mr Bizos –

15 MR BIZOS SC: It's unfortunate that this
 16 has happened but the quickest way forward, with respect, is
 17 to allow Mr Semenya to ask the questions. There are
 18 experts, there's Mr Hendrickx, there's Mr White and there
 19 is the last affidavit. The expert opinions of a person who
 20 was part of, if I may use the word, problems that we are
 21 facing, is not very likely to outweigh the opinions of
 22 independent experts. The easiest way forward is, let him
 23 express his opinion and it will be a matter for argument
 24 whether they will be taken seriously or not when we have
 25 the independent experts giving evidence so that we can get

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1 on without adjournments and supplementary affidavits and –
 2 it's not the end of the world if he expresses an opinion.

3 CHAIRPERSON: Mr Madlanga, do you wish to
 4 comment on that?

5 MR MADLANGA SC: Let's rather go by what
 6 you said earlier, Mr Chairman, that is the adjournment and
 7 maybe have a brief, brief discussion amongst ourselves.

8 CHAIRPERSON: Alright. It's now nearly
 9 quarter to 11. I'll make up for it at lunch time. We'll
 10 adjourn now till quarter past 11.

11 [COMMISSION ADJOURNS COMMISSION RESUMES]

12 [11:16] CHAIRPERSON: The Commission resumes. Mr
 13 Semenya, I understand that you've had discussions with your
 14 learned friends and you're able to tell us something about
 15 the way forward, is that correct – sitting in Mr Bizos's
 16 seat.

17 MR SEMENYA SC: Indeed, Chair. The
 18 agreement, if I state it as, one, is that I will put such
 19 questions as I deem relevant and if they trigger an
 20 objection, I'll handle the objections but –

21 CHAIRPERSON: I'll then rule on the
 22 objections if there are any.

23 MR SEMENYA SC: Indeed, Chair.

24 CHAIRPERSON: Alright, okay. Thank you.
 25 I take it the silence means no-one disagrees with your

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1 statement of what happened. I understand Ms Hardy from
 2 Kells who is appearing for, or representing and appearing
 3 for the Human Rights Commission, is that correct, wishes to
 4 make – to say something, is that correct?
 5 MS HARDY: That's correct, thank you,
 6 Chair. We would just like to state although Gary, Gary's
 7 statement may speak for a lot of parties –
 8 CHAIRPERSON: Sorry, you're on first name
 9 terms with the gentleman but this is Mr White MBE, is that
 10 correct?
 11 MS HARDY: Mr White, yes. Although his
 12 statement may speak for a lot of parties here, he is our
 13 witness which means anything that is said, whether it's a
 14 factual commentary or anything else on Gary's statement, we
 15 would need to take back to him. I understand that we could
 16 take a transcript to him, the difficulty being is that he's
 17 not always available overnight to be able to comment on
 18 that so then preparation for our cross-examination becomes
 19 quite difficult. So we would actually like to put on
 20 record, firstly, we would like that summaries are made
 21 where commentary will be made by a witness on Gary's – on
 22 Gary's statement. It's only fair and reasonable, number 1,
 23 and number 2, in this instance in particular if we're going
 24 to proceed on the basis that we are, then we would request
 25 that or place on record that we may reserve our right to

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1 recall this witness at a later stage if we cannot speak
 2 with Gary in the meantime.
 3 CHAIRPERSON: Let's deal with the two
 4 points, you're really dealing with two issues. You're
 5 dealing with the broad point, principle, and you're dealing
 6 with this particular witness. This particular witness, as
 7 I understand it, is going to give evidence now. What he
 8 says is going to be transcribed and you will be able to
 9 send that to Mr White and I imagine that depending on the
 10 order, but if I call on you, your side to cross-examine him
 11 last, you would have had ample opportunity I would think -
 12 I hope not too ample, but reasonable opportunity to prepare
 13 to cross-examine him. So I would think that deals with
 14 that problem.
 15 As far as the other aspects you refer to, I did
 16 say before we adjourned that I thought that the ruling
 17 initially was that evidence-in-chief would be covered by
 18 the statements that would be given beforehand. Mr Madlanga
 19 pointed out that from a practical point of view one doesn't
 20 have to apply that too strictly but certainly if the
 21 substantive topic is going to be dealt with in chief by a
 22 witness which is not covered by his or her previous
 23 statement, then I think in terms of the original ruling,
 24 that substantial topic should be covered in a supplementary
 25 statement, as in fact it has been done very properly by the

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1 SAPS in relation to the supplementary statement we received
 2 today from Mr De Rover. So I think that, if I may say so,
 3 would also deal with the other problem that you've raised.
 4 So if we can now proceed. U is nog steeds onder
 5 eed, Majoor-Generaal. Mr Semenya, you're now going to
 6 carry on with your examination-in-chief.
 7 GENERAAL-MAJOOR ANNANDALE: s.o.e.
 8 EXAMINATION BY MR SEMENYA SC (CONTD.):
 9 Thank you, Chair. General, we were to talk about exhibit
 10 WW2, which is the statement of Mr White and I wanted us to
 11 start on page 25 of that document.
 12 CHAIRPERSON: I'm sorry, we've got two
 13 sets of numbers on our copies. Is it page 25 which
 14 contains paragraph 4.4.3 and following, dealing with
 15 inadequate intelligence?
 16 MR SEMENYA SC: That is indeed –
 17 CHAIRPERSON: Yes, thank you.
 18 MR SEMENYA SC: That is indeed the
 19 paragraph, Chair. Mr White will say, General, in paragraph
 20 4.4.4 that the intelligence he has seen provided in the
 21 evidence admitted by the SAPS, is brief, general and often
 22 outdated and to that he adds, if you go to the second
 23 sentence – sorry, then he says, "I would have expected to
 24 see considerably more information/intelligence on which to
 25 help those planning for the operation to construct their

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1 plans." Then he says, "And this might have included
 2 information in relation to the intentions of the
 3 protesters, i.e. how long they intended to maintain their
 4 protest, details on individual key members of the groups,
 5 where the majority of the people who left the koppie each
 6 evening went, how many remaining on the koppie overnight
 7 and who they were, the likely number of firearms, et
 8 cetera." What's your comment there?
 9 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 10 van die perspektief van die bevelstruktuur sou ons ook wou
 11 baie, baie meer intelligensie en informasie gehad het as
 12 wat ons tot ons beskikking gehad het. Ek het gister
 13 verduidelik hoe dit aan my oorgedra is, hoe moeilik, hoe
 14 ontsettend moeilik dit was om informasie te kry. Die
 15 informante het net eenvoudig nie te voorskyn gekom nie.
 16 Die informante was nie bereid om infiltrasies te doen nie,
 17 weens die risiko. Die groepskohesie het dit uiters moeilik
 18 gemaak. Ons moet verstaan dat die mense bly saam in
 19 hostelle en in informele nedersettings. Hulle is verwyder,
 20 'n klomp van hulle is verwyder van hulle eie families.
 21 CHAIRPERSON: He also added the hostels,
 22 he said the people stay together in the hostels and in the
 23 informal settlements - then there's the rest of the passage
 24 that you, the rest of the evidence which you interpreted.
 25 MR MAHLANGU: Thank you, Chairperson.

<p style="text-align: right;">Page 8407</p> <p>1 GENERAAL-MAJOOR ANNANDALE: So dit was 2 beperk. Daar's geen twyfel nie, dit is beperk maar ons het 3 intensies, ons het geskiedenis gehad in terme van wat 4 gebeur het. Ons het gesien wat gebeur het van die tydperk 5 veral vanaf die 10de. 6 MR SEMENYA SC: Was the intelligence 7 available, but ignored? 8 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 9 nee. Elke brokkie intelligensie wat ons gehad het, het ons 10 oorweeg. Ons het dit bespreek. 11 CHAIRPERSON: On an earlier point, 12 obviously this may be controversial but it appears from the 13 statement that Mr X made that Mr Twala who was killed on 14 the 14th may well have been some kind of informer and who 15 was caught or overheard making a mobile telephone report to 16 somebody, which presumably is what led to his death. 17 MR SEMENYA SC: No, Chair – 18 CHAIRPERSON: I'm told that he also had a 19 lot of money, that that was – 20 MR SEMENYA SC: Air time – 21 CHAIRPERSON: Sorry, a lot of air time, 22 let me get it right, a lot of air time on his cell phone. 23 Now if that's true, it's a matter that will obviously be 24 the subject of evidence, I take it, later but if there's 25 any truth or substance in those allegations, that would've</p>	<p style="text-align: right;">Page 8409</p> <p>1 your comment in relation to that criticism? 2 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 3 dit was inderdaad die fase 5 van ons beplanning maar toe 4 het ons ook deurlopend, het ons 'n span taktiese persone 5 beskikbaar gehad, veral in die nagte, pertinent vanaf 6 Maandag die 13de se nag sodat ons kon reageer sou daar enige 7 informasie deurkom van, hetsy dit die speurders of 8 intelligensie is. Fase 5 is pertinent geplaas na die fase 9 3 wat ons dan verwag het om arrestasies te maak. En dit 10 was vir ons kardinaal want uit hierdie arrestasies uit 11 tydens die ondervraging kon ons sekerlik informasie gekry 12 het en gebaseer op hierdie informasie, en dit is die 13 intelligensie-gedrewe operasies waarna ons verwys, wat dan 14 die spanne gereageer het om sodanige arrestasies uit te 15 voer. 16 MR SEMENYA SC: If we go to page 27, the 17 opinion deals with the operational plans of 10th to the 13th 18 August 2012, you will see it against paragraph 4.4.6 there. 19 Mr White will say that the strategic aim on those plans 20 provided little useful direction to the police involved in 21 the operation. What's your comment? 22 GENERAAL-MAJOOR ANNANDALE: Voorsitter, u 23 sal deurlopend merk in die betrokke beplanning dat dit baie 24 vaag was omdat daar nie 'n pertinente gebeurtenis was wat 25 daar voor beplan was nie. Dit was nie asof dit 'n beplande</p>
<p style="text-align: right;">Page 8408</p> <p>1 caused a dramatic limitation on the flow of information 2 after Twala's death. Is that – am I understanding things 3 correctly or is that something that's not relevant on this 4 point? 5 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 6 sou dit die geval wees en ek het nie die feite nie, dan sou 7 dit uiteraard baie beperkend gewees het in terme van 'n 8 verdere informasie-vloei. Voorsitter, ek wil net verder 9 meld dat dit was nie 'n kwessie van dat ons nie hulpbronne 10 in die veld in gestoot het om vir ons informasie te gee 11 nie. Ons het 'n kombinasie van intelligensie versamelaars 12 en analiseerders gehad. Ek weet daar was, op 'n stadium 13 was daar iets soos 12 misdaadintelligensielede en dan nog 14 addisionele ses van die Gauteng operasionele 15 koördineringsentrum. En dan het ons ook die aantal 16 speurders gehad en dan ook informasie, informasie en 17 terugvoer soos dit beskikbaar was deur die verteenwoordiger 18 van Lonmin myn. 19 MR SEMENYA SC: If you go to page 26 20 against paragraph 4.4.5, there Mr White will say in 21 relation to stage 5, that "Intelligence led follow-up 22 operations to arrest at places of residence." He will say 23 it is not apparent that any such intelligence was gathered 24 to support this part of the plan. Do you remember that is 25 the plan in relation to stage 5 of the operation? What is</p>	<p style="text-align: right;">Page 8410</p> <p>1 byeenkoms is wat op 'n sekere tyd gaan plaasvind met sekere 2 – ekskuus. 3 MR MAHLANGU: If you could just repeat 4 from the beginning. 5 GENERAAL-MAJOOR ANNANDALE: Daar is vae 6 verwysing na spesifieke besonderhede. 7 MR MAHLANGU: There's reference to 8 specific in – 9 CHAIRPERSON: There are vague references 10 to specific events, I think. 11 MR MAHLANGU: Vague? Vague? 12 CHAIRPERSON: Vae, vague. 13 MR MAHLANGU: Yes. 14 GENERAAL-MAJOOR ANNANDALE: Omdat dit nie 15 'n pertinente beplande gebeurtenis was, soos in die geval 16 wat ons 'n voorafgoedgekeurde byeenkoms moet polisier nie. 17 MNR MAHLANGU: Soos voorheen beplan? 18 MAJOR-GENERAL ANNANDALE: As if we would 19 have planned for a previously approved plan with the 20 police. In so 'n plan sou 'n ou baie direkte besonderhede 21 gekry het. 22 MR MAHLANGU: And such a plan would have 23 had direct planned – 24 CHAIRPERSON: Particulars, I think is the 25 word you're looking for. Such a plan would have had</p>

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1 specific particulars. I think besonderhede is what he
2 said.

3 MR MAHLANGU: That's correct, yes, Mr
4 Chairman.

5 GENERAAL-MAJOOR ANNANDALE: Jy sou
6 byvoorbeeld, sonder om in te veel detail in te gaan, sou jy
7 die presiese of 'n goeie aanduiding van die aantal
8 protesteerders gehad het, jy sou tye en roetes gehad het en
9 hierdie beplanning het gedeel met 'n vloeibare situasie en
10 gevolglik het hulle dit bygevoeg dat dit 'n
11 gebeurlikheidsbeplanning is.

12 MR MAHLANGU: That is now – if I could
13 have –

14 MAJOR-GENERAL ANNANDALE: Contingency.

15 MR MAHLANGU: It was a contingency plan.

16 GENERAAL-MAJOOR ANNANDALE: Dit is my
17 kommentaar op die punt, Voorsitter.

18 MR SEMENYA SC: There are a number of
19 criticisms also made in relation to the plans up to the 13th
20 and those we will perhaps more pointedly deal with when the
21 evidence of the other witnesses comes but can I invite you
22 to - through elements Mr White will deal with while you
23 were in Marikana, and invite you to look at page 30,
24 paragraph 4.4.15.

25 [11:36] There Mr White appears to query the

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1 appropriateness of the appointment of Lieutenant-Colonel
2 Scott, and says there, "I first queried the decision to
3 select Lieutenant-Colonel Scott as the appropriate officer
4 to control the planning process." As a matter of fact, is
5 this what Lieutenant-Colonel Scott was doing?

6 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
7 verseker nie beheer nie, maar koördineer, en daardeur sê ek
8 nie hy het nie insette gehad nie; daar was insette gewees
9 van almal wat in die, wat teenwoordig was in die
10 gesamentlike Operasionele Koördineringskomitee
11 vergaderings.

12 MR SEMENYA SC: And the appropriateness
13 or otherwise of Lieutenant-Colonel Scott to coordinate?

14 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
15 soos ek vermeld het gister, en ek sal herhaal dat Kolonel
16 Scott se vermoë om multidissipline planne saam te stel is
17 welbekend in die Suid-Afrikaanse Polisiediens. Nie net was
18 hy op die Beplanningskomitee van die Sokker Wêreldbeker
19 nie, maar was ook 'n integrale deel van die beplanning vir
20 die COP17, en sy vermoë was ook –

21 CHAIRPERSON: I think we had this before,
22 but as the witness said, he mentioned it yesterday. I
23 don't know if he has to repeat it, but, unless there's a
24 particular reason why you want to raise it at this point.

25 MR SEMENYA SC: If there are elements to

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1 which you had made reference, we need not repeat them,
2 General, necessarily. As you go to the last sentence of
3 paragraph 4.4.15, there Mr White will say, "As far as I
4 have been able to see from the evidence, there was little
5 or no contribution to the plan from POP commanders." Is
6 that factually correct?

7 GENERAAL-MAJOOR ANNANDALE: Dit is
8 verseker nie so nie, Voorsitter.

9 MR SEMENYA SC: And you have told us who
10 the commanders with POP experience were that were involved
11 in the drafting of the plan.

12 GENERAAL-MAJOOR ANNANDALE: Ek het van
13 die bevelvoerders aangedui. Dit was nie beperk net tot
14 hulle insette nie, maar pertinent –

15 MR SEMENYA SC: Were there other POP
16 experience input also made over and above those that you
17 referred to yesterday?

18 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
19 die aard van die gesamentlike, of 'n makliker verwysing, na
20 die JOCOM vergadering – ek dink dis meer bekend – het
21 behels dat al die bevelvoerders teenwoordig het geleentheid
22 gehad om kommentaar te lewer. Ons het sowat 18 Openbare
23 Orde Polisiëring bevelvoerders gehad wat dan direk nog
24 steeds betrokke was by Openbare Orde, en hulle het ook dan
25 uiteraard die geleentheid gehad om kommentaar te lewer of

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1 insette te gee.

2 MR SEMENYA SC: Against paragraph 4.4.16
3 on the same page 30, Mr White will say that there appears
4 to have been little or no challenge by senior colleagues to
5 the plan that was produced, as he says, by Lieutenant
6 Scott. Is that factually accurate?

7 GENERAAL-MAJOOR ANNANDALE: Dit is
8 verseker nie akkuraat nie, nee, mnr die Voorsitter.

9 MR SEMENYA SC: And you have already told
10 us how that plan was compiled by the various elements in
11 the JOC.

12 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
13 ek wil net graag byvoeg dat die feit dat iets nie vermeld
14 is in hierdie plan nie, beteken nie dat dit nie bespreek
15 was en oorweeg was nie. Ons het die plan die heelyd onder
16 die loep geneem. Dis belangrik dat ek verduidelik dat as
17 ons 'n gebeurtenis het en daar is reeds die beplanning
18 gedoen vir die gebeurtenis, gaan ons nie elke keer as daar
19 nuwe informasie kom of 'n bespreking het dan gaan stel ons
20 'n aanhangsel tot die beplanning, dit is hoekom ons die
21 JOCOM het, want dit is 'n – in die geval is dit 'n aktiewe
22 protesaksie met deurlopende veranderlikes.

23 MR SEMENYA SC: Was the debate around the
24 appropriateness of the plan in the JOCOM as a matter of
25 fact?

<p style="text-align: right;">Page 8415</p> <p>1 GENERAAL-MAJOOR ANNANDALE: Die finale 2 plan was daar, was so goedgekeur, maar daar was debatte 3 gewees wat aanleiding gegee het tot die goedkeuring van die 4 finale plan soos ons hom nou ken. 5 MR SEMENYA SC: By way of illustration 6 are you able to tell us what was debated and considered, in 7 broad terms? 8 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 9 ek dink ek kan verwys na twee pertinente besprekings. Die 10 een was gewees die nag van die 13de, so die oggend van die 11 14de, waar daar waargeneem was dat daar 'n klein groepering 12 van persone op die koppie was en daar was vure, vure 13 opgemerk, en daar was bespreking gewees of dit gepas sou 14 wees om te gaan en daai persone te sou gaan arresteer. 15 Daar was 'n ander geval wat dit oorweeg was en wat ons 16 gekyk het na die moontlikheid om te kyk of dan voordat die 17 protesteerders die dag vergader op die koppie, die groot 18 koppie, dat ons 'n kordon reg om die koppie gaan gooi met 19 lemmetjiesdraad. Na bespreking was dit verwerp as dit net 20 'n sinnelose aksie sou wees. 21 MR SEMENYA SC: If we go to page 32, 22 paragraph 4.4.20 – 23 COMMISSIONER HEMRAJ: Sorry, before you 24 go there, Mr Semenya, the specific criticism about these 25 challenges or these discussions or debates about the plan</p>	<p style="text-align: right;">Page 8417</p> <p>1 omgewing was sodanig dat die groep net elders bymekaar kan 2 kom. Dit sou beteken het dat ek moes addisionele 3 hulpbronne na hierdie gebied dan moet stuur om dan in die 4 nag byvoorbeeld, of dan deur die dag ook, dat ons die bates 5 beskerm wat ons dan daar ontplooi het. 6 MNR MAHLANGU: As u net kan herhaal? 7 MAJOR-GENERAL ANNANDALE: That we will 8 then have to commit additional resources to protect the 9 assets, en dan die koppie het homself voorgedoen as eintlik 10 'n ideale gebied aangesien ons 'n afstand gehad het tussen 11 persone wat nie wil betrokke wees nie, so daar was 'n 12 duidelike – dit was eenkant van die woonbuurte. Ek het 13 gister gemeld dat dit bitter moeilik is vir die polisie om 14 orde te handhaaf as daar ander onskuldige, nie-betrokke 15 partye is en daar ook ander eiendom is wat potensieel 16 beskadig kan word. 17 [11:56] MR SEMENYA SC: Let's now go to page 32, 18 that's paragraph 4.4.19. There Mr White will say, "With a 19 plan unimpeachable from a POP perspective, then these 20 criticisms may not be particularly significant. However, 21 in my view the plan contained what I consider to be serious 22 tactical mistakes which ought to have been identified by 23 those reviewing the plan prior to its approval." The 24 first, he says, "The plan was unclear about whether it was 25 a plan to disperse the protesters, or a plan to encircle,</p>
<p style="text-align: right;">Page 8416</p> <p>1 are not mentioned in the minutes. Do you know about that? 2 GENERAAL-MAJOOR ANNANDALE: Kommissaris, 3 dit is so. Ek sal die eerste een wees wat erken dat ons 4 nie omvattende en behoorlike rekordhouding gedoen het nie. 5 As ek net kan meld, ons het, buite JOCOM vergaderings sou 6 die GOS-vertegenwoordigers wat agtergebly het, want daar's 7 'n deurlopende verteenwoordiging van die verskeie eenhede. 8 MR MAHLANGU: I'm not too quite sure of 9 this, Mr Chairperson. U sê? 10 VOORSITTER: Herhaal, asseblief. 11 MAJOR-GENERAL ANNANDALE: Outside of the 12 JOCOM meetings we had JOC representatives that would 13 represent the various disciplines, en waar daar ook 14 besprekings was, so dit was, ons het dit gesit en bespreek 15 een-op-een en nie noodwendig neergeskryf nie. Lonmin, mnr 16 Sinclair sal kan bevestig, op 'n stadium het ek vir hulle 17 gevra wat is die beskikbaarheid van doringdraad sodat as 18 ons so 'n opsie oorweeg, dat ons weet ons het die nodige 19 hulpbronne tot ons beskikking. 20 MR SEMENYA SC: Earlier you said that the 21 idea of cordoning off the entire koppie would be senseless. 22 Can you explain why that view was held? 23 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 24 ek dink eerstens en die belangrikste is dat dit nie in die 25 gees van onderhandeling is nie. Dan die topografie van die</p>	<p style="text-align: right;">Page 8418</p> <p>1 disarm, and arrest the protesters." What's your comment to 2 that? 3 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 4 die probleem wat ek met daai stelling het is dat die woord 5 gebruik word "of." Dit moet eerder 'n "en/of" wees, want 6 dit was 'n kombinasie van die aktiwiteite, soos vermeld. 7 Gedeeltes van die groep sou uiteengegryf word, ander sou op 8 hulle eie uiteengegaan het. Party groepe sou op hulle eie 9 uiteengegaan het maar nie ontwapen het nie, en dan sou daar 10 'n uiteendryf-aksie wees van hierdie pertinente groep, en 11 die uiteendryf-aksie was bedoel gewees teen die groep wat 12 uiteraard dan nog gewapen is, met die doel om hulle te 13 ontwapen en te arresteer. So ek dink dit wys net dit was 14 gekombineer, dat die een gebeur vir die ander een om plaas 15 te vind. 16 MR SEMENYA SC: Then the last sentence to 17 that paragraph, Mr White will say, "Given that those with 18 weapons might have numbered in the thousands, this lack of 19 clarity was problematic." Was it anticipated that those to 20 be disarmed would have numbered in thousands? 21 GENERAAL-MAJOOR ANNANDALE: Dit was 22 verseker nie die beplanning of die intensie nie, 23 Voorsitter. 24 MR SEMENYA SC: As a matter of fact, 25 those who were to be disarmed, did they number in</p>

<p style="text-align: right;">Page 8419</p> <p>1 thousands?</p> <p>2 GENERAAL-MAJOOR ANNANDALE: Daar was twee</p> <p>3 duidelike groepe gewees. Daar was 'n groot groep wat</p> <p>4 sekerlik omtrent 3 000 was, en dan was daar 'n aparte groep</p> <p>5 wat sekerlik sowat 400 was, en dit is hierdie groep wat</p> <p>6 pertinent die wapens gedra het, wat ons beskou het as die</p> <p>7 sogenaamde uiters gevaarlike wapens, maar ons het ook</p> <p>8 voorsien dat selfs daai kleiner groeple, dat daar van die</p> <p>9 mense vrywillig sal onttrek en hulle wapens neerlê. So die</p> <p>10 intensie was op 'n persentasie van hierdie groep.</p> <p>11 MR SEMENYA SC: For the record, that</p> <p>12 paragraph is 4.4.20. The next serious tactical mistake, Mr</p> <p>13 White will say, is against paragraph 4.4.21. It reads,</p> <p>14 "Secondly, to the extent that it was a plan which required</p> <p>15 the disarmament and arrest of significant numbers of</p> <p>16 people, it was inherently high risk." What is your comment</p> <p>17 towards that? What is the number of people according to</p> <p>18 plan that were being targeted for this disarmament?</p> <p>19 GENERAAL-MAJOOR ANNANDALE: Voorsitter,</p> <p>20 ons het voorsiening gemaak vir vyf polisietrokke en daar</p> <p>21 was aangedui dat daar sowat 170 beskikbare aanhoudings,</p> <p>22 beskikbaarheid, aanhouding-sel beskikbaarheid was, en dit</p> <p>23 was nie eers die getal wat ons voorsien het dat ons sou</p> <p>24 arresteer nie.</p> <p>25 MR SEMENYA SC: General, you'll see from</p>	<p style="text-align: right;">Page 8421</p> <p>1 moet afneem en dat ons dan na die tyd moet die arrestasies</p> <p>2 uitvoer, ek dink hy verstaan verkeerd in terme van wat die</p> <p>3 risiko's was in terme van hierdie – want by implikasie moes</p> <p>4 dan mense afneem wat onwettig byeenkom, en wat besit is, in</p> <p>5 besit is van gevaarlike wapens. Nou ons risiko was juis</p> <p>6 wat sou gebeur nadat hierdie gewapende groep terugbeweeg na</p> <p>7 die nedersettings en die woonbuurte en die hostelle.</p> <p>8 CHAIRPERSON: He says the hostels and the</p> <p>9 informal settlement, what would happen if this armed group</p> <p>10 went back to the hostels and the informal settlement.</p> <p>11 MR MAHLANGU: Yes, I said the residential</p> <p>12 area, the informal settlement, yes.</p> <p>13 GENERAAL-MAJOOR ANNANDALE: Voorsitter,</p> <p>14 ek is gister daarna verwys hoekom die situasie verander het</p> <p>15 op die 16de, en sonder om onnodige tyd in beslag te neem</p> <p>16 kan ek net meld dat die onderhandelings vanaf 'n polisie</p> <p>17 perspektief, daar was nie meer verdere onderhandelings nie.</p> <p>18 Daar was pertinente dreigemente geuite. Daar was 'n</p> <p>19 verandering te bespeur in die hele houding van die kleiner</p> <p>20 400 groep, en selfs die president van AMCU kon nie daarin</p> <p>21 slaag om sy lede te oortuig om wapens neer te lê nie. So</p> <p>22 die situasie het drasties verander. Kan ek net verduidelik</p> <p>23 wat gebeur as daar so 'n gewapende groep in woonbuurte</p> <p>24 ingaan waar persone onskuldige omstaanders kan gebruik as</p> <p>25 skilde, die potensiaal op beskadiging van eiendom,</p>
<p style="text-align: right;">Page 8420</p> <p>1 the penultimate paragraph of that paragraph, Mr White will</p> <p>2 say, "Often the making of arrests can provoke violent</p> <p>3 responses, which place both the police and the protesters</p> <p>4 at higher risk of injury," and continues to say, "Where</p> <p>5 arrests need to be made it is generally better to make</p> <p>6 those arrests after the event, having recorded evidence of</p> <p>7 criminality by video during the event itself." What</p> <p>8 comment can you give there?</p> <p>9 GENERAAL-MAJOOR ANNANDALE: Voorsitter,</p> <p>10 tydens arrestasie, die aard van polisiëring is sodanig dat</p> <p>11 tydens arrestasie is daar altyd 'n risiko dat daar</p> <p>12 beserings kan plaasvind. Ons het die risiko probeer</p> <p>13 mitigeer deur 'n groter groep op te breek in 'n kleiner</p> <p>14 hanteerbare groep. Ons eerste aksie-lyn dan in terme van</p> <p>15 die beplanning was dan ook Openbare Orde Polisiëring. In</p> <p>16 die verhouding van polisiebeamptes wat dan teenoor</p> <p>17 protesteerders wat moet gearresteer word –</p> <p>18 MNR MAHLANGU: Ek is jammer, die</p> <p>19 verhouding?</p> <p>20 GENERAAL-MAJOOR ANNANDALE: Die</p> <p>21 verhouding, die getalverhouding tussen –</p> <p>22 CHAIRPERSON: The relationship.</p> <p>23 GENERAAL-MAJOOR ANNANDALE: - sou</p> <p>24 heeltemal anders gewees het as wat mnr White hierso</p> <p>25 voorstel. Die arrestasies wat na verwys word dat ons net</p>	<p style="text-align: right;">Page 8422</p> <p>1 intimidasie en die besering van mense, om nie te praat van</p> <p>2 die potensiaal tussen konflik weereens tussen AMCU en NUM.</p> <p>3 Die video-opname sou dus nie wees van dit nie, Voorsitter.</p> <p>4 MNR MAHLANGU: Sou nie van dit gewees het</p> <p>5 nie?</p> <p>6 GENERAAL-MAJOOR ANNANDALE: Ja, want dit</p> <p>7 sou nie waargeneem gewees het nie. Ons sou video's gehad</p> <p>8 het van mense maar wat nie gekoppel is aan enige so 'n</p> <p>9 aktiwiteit wat ek nou beskryf het nie.</p> <p>10 CHAIRPERSON: It could only have been</p> <p>11 videoed if the video operators had still been there, of</p> <p>12 course.</p> <p>13 MR MAHLANGU: I beg your pardon, Sir?</p> <p>14 CHAIRPERSON: It could only have been</p> <p>15 videoed if the operators were still there.</p> <p>16 GENERAAL-MAJOOR ANNANDALE: Ek hoor wat u</p> <p>17 sê, Voorsitter. Ja, so enige opname sou nie gehelp nie dat</p> <p>18 daar menseleuens en verliese voorkom word nie.</p> <p>19 MR SEMENYA SC: And Mr White will say</p> <p>20 under that very paragraph that, "That is not to say that</p> <p>21 arrests should never be made, but that a plan to make large</p> <p>22 numbers of arrests in a crowd numbering in the thousands</p> <p>23 was inherently risky and was unlikely to comply with the</p> <p>24 Standing Order 262 requirements." What comment do you make</p> <p>25 in regard to that?</p>

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1 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
2 daar was nie die intensie om 'n groot getal mense in so 'n
3 groot skare soos wat mnr White na verwys wat in hulle
4 duisende is, te arresteer nie.
5 MR SEMENYA SC: The third tactical
6 criticism Mr White will level at the operation is that
7 there's no evidence of any other options having been
8 properly presented to the JOC for consideration. What's
9 your comment?
10 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
11 ek dink ons plan is duidelik dat daar verskillende fases
12 is. Om van dit te noem, ons praat van die sektor
13 polisiëring konsep; ons praat van hoë sigbaarheid. Ons het
14 ook die onderhandeling in die magsvertoon en al die fases
15 soos uiteengesit is; dit is nie beperk net tot – soos ek
16 vroeër vermeld het, het ons ook ander opsies oorweeg, maar
17 dis nie sodanig gereflekteer nie.
18 [12:16] MR SEMENYA SC: Mr White would say that,
19 for instance, he deals with the options that he says could
20 have been taken under section 4.7, which is on page 42 of
21 that report.
22 MAJOR-GENERAL ANNANDALE: Page 42?
23 MR SEMENYA SC: Yes. Firstly for the
24 record, the reason I go there is that to that criticism
25 there is a footnote 36 which then says, "Below at section

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1 4.7 I suggest other options that might have been available
2 to the SAPS." Do you see that?
3 GENERAAL-MAJOOR ANNANDALE: Dit is
4 korrek. Ek merk dit op.
5 MR SEMENYA SC: But perhaps just in
6 sequencing, we will get to those criticisms when we do.
7 Can we just continue on page 33? Against paragraph 4.4.23
8 on page 33 there is another tactical criticism offered by
9 Mr White there. It reads, "Fourthly, stage 3 of the plan
10 anticipated that when seeking to disperse the crowd into
11 smaller groups, the main positive attraction point was the
12 open ground to the west of koppie 1." Continues to say,
13 "The evidence available, including slides 91, 116, 152, and
14 160, of exhibit L, suggest that many of the protesters had
15 approached the koppie via the main pathway from the
16 informal settlement. As such, it should have been
17 anticipated that this would be a main positive attraction
18 for the crowd on being dispersed." At the bottom of the
19 paragraph then says, "By planning to block this attraction
20 point with razor wire and/or with armed officers, the plan
21 increased the risk of confrontation at this point."
22 Yesterday you testified about what we see on exhibit
23 EEE14.1 and 14.2. Correct?
24 MAJOR-GENERAL ANNANDALE: That is the two
25 aerial photographs, yes.

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1 MR SEMENYA SC: Mr White will say that
2 the informal settlement section would have been a better
3 positive attraction point. What's your comment?
4 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
5 ons moet dit sien –
6 CHAIRPERSON: I'm sorry to interrupt. I
7 don't think you summarised it entirely correctly, Mr
8 Semenya. What he seems to be saying was that the pathway
9 would have been, the main pathway from the informal
10 settlement would have been the main positive attraction,
11 not the settlement itself, but that particular pathway. I
12 think that's the point he's making.
13 MR SEMENYA SC: Yes, indeed. Indeed,
14 Chair. What's your comment to that? Was that pathway a
15 positive attraction at all in your assessment?
16 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
17 in hierdie konteks is dit dan positief teenoor negatief, or
18 positive as opposed to negative, en ek sal verduidelik dat
19 hulle wel 'n persentasie van die skare potensieel 'n area
20 kan sien as positief vir hulle, is daar ander redes en
21 ander faktore wat ons in ag neem wanneer ons dit moet
22 bepaal. Wat belangrik is wanneer ons dit bereken is die
23 gebied en die geleentheid wat jy vir protesteerders bied om
24 dan uiteen te gaan.
25 CHAIRPERSON: I'd like to take a short

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1 adjournment at this stage until 25 to. The Commission will
2 adjourn until 25 to.
3 [COMMISSION ADJOURNS COMMISSION RESUMES]
4 [12:32] CHAIRPERSON: The Commission resumes.
5 Dit is nie nodig vir my om u daaraan te herinner dat u nog
6 steeds onder eed is nie.
7 CHARL ANNANDALE: s.o.e.
8 CHAIRPERSON: Mr Semenya?
9 EXAMINATION BY MR SEMENYA SC (CONTD.):
10 General, you had just finished in your evidence relating to
11 whether that path was a positive or a negative attraction.
12 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
13 ja, as ek kan voortgaan. Ons is baie attent daarop dat as
14 so 'n groep uiteengaan, dat daar genoegsame spasie is sodat
15 daar nie 'n vertrapping kan plaasvind nie. Die area wes
16 van die koppie was ideaal daarvoor, en alhoewel ek nie na
17 die foto's gekyk het waarna mnr White verwys nie, aanvaar
18 ek dat die foto's wys dat 'n oorgrootte meerderheid van
19 mense vanaf een kant kom. Dit is egter nie so nie. Mense
20 het van 360 grade het hulle daardie koppie benader. Ek
21 aanvaar ook die nedersetting waarna hy verwys is die
22 Nkaneng nedersetting, maar daar is ook ander nedersettings,
23 ander woonbuurte, en dan het ons 'n Karee Hostel aan die
24 een kant en ons het 'n Wonderkop Hostel aan die ander kant,
25 een kant oos en die ander kant wes. Ek het ook waargeneem

<p style="text-align: right;">Page 8427</p> <p>1 op die twee foto's wat gister aan my getoon was - die 2 bewysstuknommers wat ek nou nie kan onthou nie – maar dat 3 daar verskeie voetpaaie is, ook breër paaie wat eerder sal 4 lyk of daar 'n voertuig ook kan ry, en dat daar nie een 5 sogenaamde "pathway" is in daardie omgewing wat net na die 6 koppie toe loop nie.</p> <p>7 Voorsitter, ek het ook gemerk dat as mens kyk op 8 die foto's, dan daarso is baie mense wat op geen paadjie is 9 nie, want die veld is kort; daar is net 'n totale oop area, 10 so jy kan regtig op enige gedeelte daar stap om in 'n 11 rigting te gaan.</p> <p>12 Dan my laaste kommentaar op die positief en 13 negatief, Voorsitter, is dat die posisie van die polisielyn 14 was bepaal deur die protesteerders hulleself, want soos wat 15 hulle plaasgevind – of wat hulle hul posisie ingeneem het 16 op die koppie, het hulle in 'n oostelike rigting gekyk. 17 Dit sou half nie sin gemaak het vir die polisie om 18 byvoorbeeld aan die westelike kant te gaan posisie inneem 19 nie. Ons was egter bekommerd oor die nabyheid van daardie 20 nedersetting wat sekerlik omtrent maar 400 meter weg was 21 van die koppie, vir die redes wat ek reeds vermeld het, 22 maar toegang was steeds beskikbaar na die Nkaneng 23 nedersetting deur net 'n bietjie noord te beweeg en dan oos 24 in te beweeg in Nkaneng nedersetting, waar daar meer as een 25 groot pad is wat inlei in die gebied.</p>	<p style="text-align: right;">Page 8429</p> <p>1 fundamentally, the plan was such that it was close to 2 inevitable that the POP members would need the support of 3 the TRT, STF, and National Intervention Unit teams, and 4 therefore require the use of threat-of-life ammunition." 5 What's your reaction to that?</p> <p>6 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 7 dit was nie voorsien of antisipeer dat die gebruik van 8 skerp-punt ammunisie noodsaaklik sou wees nie. Die draad 9 was dan juis ontplooi om enige benadering tot die 10 polisielyn te ontmoedig, maar ook fisies te voorkom.</p> <p>11 MR SEMENYA SC: Against paragraph 4.4.26 12 on the same page the opinion, the recording of the 13 statement reads, "Notwithstanding the known likelihood that 14 part of the crowd would respond violently to the offensive 15 police action, Lieutenant-Colonel Scott's plan anticipated 16 POP member advancing towards the crowd without any 17 protection by shields, but with a backup from TRT, NIU, and 18 STF." That, Mr White will say, was a fundamental error. 19 Your comment?</p> <p>20 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 21 eerstens was daar nie 'n offensiewe aksie gewees deur die 22 polisie nie. Dit was 'n defensiewe aksie. Ek het ook 23 verduidelik dat histories is ek nie bewus in my loopbaan 24 dat as mens 'n kordon uitsit of 'n padblokkade doen of 'n 25 gebied afsper, dat mense neig om juis soontoe te beweeg</p>
<p style="text-align: right;">Page 8428</p> <p>1 COMMISSIONER HEMRAJ: The people you say 2 approached from 360 degrees. Was this your observation 3 over the days, or is this documented somewhere?</p> <p>4 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 5 ek weet nie wat gedokumenteer is nie. Ek weet daar is 6 pertinent deur die observasiepunt en deur die helikopter is 7 daar gedokumenteer, maar daar was radioverslae dat mense 8 van orals af – wat my aanvaarding was dat dit beteken alle 9 rigtings.</p> <p>10 MR SEMENYA SC: Can I invite you, 11 General, to have a look at exhibit EEE8.2?</p> <p>12 MAJOR-GENERAL ANNANDALE: 8.2?</p> <p>13 MR SEMENYA SC: Yes.</p> <p>14 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 15 die bewysstuk is nie beskikbaar nie. Maar daar is hy nou, 16 baie dankie.</p> <p>17 MR SEMENYA SC: Would that give us 18 another depiction of the various pathways that are 19 available there?</p> <p>20 GENERAAL-MAJOOR ANNANDALE: Dit is so, 21 Voorsitter.</p> <p>22 MR SEMENYA SC: Can I now ask you to go 23 back to page 34, paragraph 4.4.24 at the top of the page, 24 which records another tactical error that Mr White will 25 want to testify about. It reads, "Fifthly, and</p>	<p style="text-align: right;">Page 8430</p> <p>1 nie; hulle beweeg tradisioneel weg van dit af. Dan skilde 2 het ek gister na verwys dat sonder dat ek enige – wat is 3 dit? - bewyse het, pertinente bewyse het van wat is die 4 beskermingsvlak van ons skilde, kan ek net nie sien dat 5 daardie skilde sal voldoende wees om as beskerming te dien 6 vir die tipe wapens wat daar – vernaam die skerp-gemaakte 7 metaalwapens en die kapmesse wat ons waargeneem het. Ek 8 het ook verwys gister dat persone wat sal twee, of tipies 9 is daar persone wat twee wapens dra, een in elke hand, en 10 dat dit nie ongewoon is dat die persone tydens aanval sal 11 laag en hoog gelyktydig gaan nie.</p> <p>12 Voorsitter, die gebruik van skilde is pertinent 13 een van die metodes waarna daar in die sogenaamde Franse 14 benadering verwys word, Franse benadering tot skarebestuur, 15 en die gebruik van skilde is baie geskik as mens 'n skare 16 het wat nie gewapen is nie en die Openbare Orde lede 17 formasies vorm om dan die skare terug te druk of in 'n 18 rigting te druk of te probeer kanaliseer.</p> <p>19 Die verdere beperking is dat dit gewoonlik 20 saamgaan met 'n "tonfa" stormloop sodat jy 'n "tonfa" ook 21 het as dit nodig is dat jy dan mense met "tonfas" kan 22 verder terugdruk. Die situasie in Marikana was verseker 23 nie 'n situasie wat ons so kan hanteer nie.</p> <p>24 'n Verdere beperkende faktor sou dan wees dat as 25 die polisiebeampte die skild in sy een hand het en hy het</p>

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1 ook iewers 'n "tonfa," en dan is daar iewers ook 'n
2 haelgeweer, dan raak dit 'n probleem as die persoon moet
3 pirotegniese middel aanwend of dan ook lateraan die
4 haelgeweer sou moes gebruik. Ek dink dat as die
5 operasionele bevelvoerder sou die polisieledede sodanig
6 blootgestel het aan skilde, sou dit hulle onder onnodige
7 risiko geplaas het.

8 [12:52] MR SEMENYA SC: The document then says at
9 the end of paragraph 4.4.27 that, and I read from the
10 second sentence, "The alternative that seems to be adopted
11 in this instance was for the officers who were carrying out
12 the dispersal to move forward without protection, using
13 offensive means such as water cannon, teargas, stun
14 grenades and rubber rounds. If attacked, they had no
15 protection and no alternative but to retreat to their
16 vehicles. This meant that the plan created a situation
17 that if the protesters showed significant resistance, then
18 they would quickly be confronted with a backup line of
19 armed TRT, NIU, and STF." What's your comment there?

20 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
21 ek wil eerstens meld dat dit nie beplan of voorsien was
22 nie. Ek dink dis grootliks 'n opmerking met die voordeel
23 van nabetragting. Die plan wat ons gehad het sou dat met
24 die offensiewe aksies van Openbare Orde, sou die groep so
25 opgebreek word dat dit in klein hanteerbare groepies is,

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1 maar op 'n punt sou dit buite die beperkte vermoë van
2 openbare orde se vaardighede gegaan het. Die metodes en
3 die middele wat ons tot ons beskikking het is net
4 eenvoudig, daar is 'n punt wat dit kom wat dit net beperk
5 is; daar is net niks daarna nie, en dan sal die taktiese
6 eenhede met hulle vaardighede en hulle opleiding, sou dan
7 moes oorgaan om sodanige arrestasies uit te voer. Maar dis
8 verseker iets waarna ons moet kyk, mnr die Voorsitter, en
9 ons moet deurlopend moet ons navorsing doen en ons moet
10 gaan kyk na middele en metodes wat beskikbaar is om vir ons
11 addisionele opsies te gee, maar ook om addisionele
12 beskerming aan ons lede te gee.

13 MR SEMENYA SC: Chair, I take it that the
14 transcript is in Afrikaans because we're not correcting
15 this English.

16 CHAIRPERSON: - been made for the
17 transcript to be available both in Afrikaans and with the
18 English translation as well, so those who want the
19 ipsissima verba - "die presiese woorde" - of the witness
20 will have it on the transcription.

21 MR MADLANGA SC: Mr Chairman,
22 Commissioner, when I made the request I only said the
23 Afrikaans, not the English.

24 CHAIRPERSON: I misunderstood what I was
25 told, but so there you have it. The transcript will only

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1 be in Afrikaans. The two translations into English and
2 isiXhosa will presumably not be transcribed.

3 MR HANABE: Mr Chairperson, the
4 transcriber seems to want to draw something to the
5 Chairperson's attention.

6 CHAIRPERSON: Yes.

7 MR HANABE: He says when you spoke your
8 mike was off, Mr Chairperson.

9 CHAIRPERSON: What I said was I had
10 previously misunderstood the situation and stated
11 incorrectly. The true position is, as I understand it, the
12 transcription will be made only of the Afrikaans words, the
13 exact words used by the witness, and the two translations,
14 the one into English and the other into isiXhosa, are not
15 being transcribed. That's what Mr Madlanga told me and I
16 repeated it.

17 MR SEMENYA SC: We point out, Chair, that
18 my able junior is linguistically handicapped; she won't be
19 able to understand Afrikaans at all, but it's a matter we
20 will handle with the evidence leaders. Would this be an
21 appropriate stage, Chair, to adjourn?

22 CHAIRPERSON: Yes, the Commission will
23 now adjourn until 2 o'clock.

24 [COMMISSION ADJOURNS COMMISSION RESUMES]
25 [14:09] VOORSITTER: Mnr Semenya, het u nog vrae

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1 vir die getuie?

2 MNR SEMENYA SC: Inderdaad, Voorsitter.

3 CHARL ANNANDALE: s.o.e.

4 EXAMINATION BY MR SEMENYA SC (CONTD.):
5 We had just handled, General, the use of force by POP
6 members. Is there anything between the use of rubber and
7 the use of sharp ammunition in policing?

8 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
9 as ek kyk na die kontinuum van geweld dan sal ons merk dat
10 dit die heel laaste faset is.

11 CHAIRPERSON: Have you finished with Mr
12 White's report? You were busy dealing, as I understood it,
13 with, I think it was paragraph 4.4.27 on page 34. Are you
14 going to go back to that?

15 MR SEMENYA SC: Yes, Chair, the criticism
16 there of Mr White is that obviously beyond POP the next
17 thing that happens is sharp ammunition, and the point I'm
18 trying to make, is there anything in policing – not in
19 self-defence – in policing that exists as a policing
20 measure between rubber and sharp ammunition?

21 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
22 in polisieëring weet ek nie, maar in Suid-Afrikaanse
23 Polisieëring polisieëring konteks, nee.

24 MR SEMENYA SC: Of course this is with
25 reference to Public Order management environment. Can I

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1 invite you to comment on what also appears as a criticism,
 2 the sixth one, by Mr White against paragraph 4.4.29? It
 3 reads, "Sixthly, Lieutenant-Colonel Scott's plan contained
 4 six stages. While three of the stages, i.e. 1, 2, 3, were
 5 fleshed out in some detail in the plans I've seen, there is
 6 apparently no detail for stages 4 to 6." I don't under why
 7 he will say – can you comment?
 8 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 9 fase 4 is die proressering en die verwerking van
 10 gearresterdes, asook van bewysstukke, en dit word hanteer
 11 in terme van standaard operasionele prosedures waarvan
 12 polisiebeamptes bewus is. Een aspek gaan oor die
 13 arrestasie, en die ander aspek gaan oor die
 14 beslagleggingsverantwoordelikhede.
 15 CHAIRPERSON: "Beslaglegging" is more
 16 seizure of exhibits and things of that kind.
 17 MNR MAHLANGU: Is dit beslaglegging?
 18 GENERAAL-MAJOOR ANNANDALE: Mmm.
 19 MR MAHLANGU: I'm sorry, Mr Chairman,
 20 talking about arrests and confiscation, seizure.
 21 CHAIRPERSON: Ja, taking [inaudible].
 22 MR MAHLANGU: The question was again,
 23 Sir?
 24 CHAIRPERSON: So I didn't – I'm trying to
 25 make a note and I missed the last one. The fourth, fifth

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1 and sixth stages deal with arrests. Presumably, is that
 2 the fourth stage?
 3 MAJOR-GENERAL ANNANDALE: Ja.
 4 CHAIRPERSON: The fifth is
 5 "beslaglegging," that's seizure of exhibits, I take it.
 6 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 7 in 4 is dit beide die arrestasies asook die beslagleggings.
 8 Dis beide aspekte binne die –
 9 CHAIRPERSON: So arrest and seizing
 10 possession of exhibits are 4. What's 5?
 11 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 5
 12 is die intelligensie-gedrewe operasies. Dit sou tennitvoer
 13 gebring word deur die Spesiale Taakmag lede en/of die
 14 Nasionale Intervensie Eenheid lede. Voorsitter, hierdie
 15 eenhede is almal met standaard operasionele prosedures en
 16 tydens hulle opleiding –
 17 CHAIRPERSON: They all have special
 18 operational procedures they're made familiar with during
 19 their training. Ja, and 6?
 20 GENERAAL-MAJOOR ANNANDALE: Ekskuus tog,
 21 Voorsitter, so dit sal tipies behels huispenetrasie, waarna
 22 ons verwys, huispenetrasie, so as iemand in 'n perseel
 23 wees, dan het hulle prosedures hoe hulle so 'n huis sal
 24 benader, of 'n voertuig of wat ook al die omstandighede is.
 25 Fase 6, Voorsitter, dit behels die koördinerings en

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1 deursoekingsaksies. Ter voorbereiding daarvan het ek 'n
 2 taak ingegee aan offisiere verbonde aan Spesiale Taakmag,
 3 National Intervention Unit, vir koördinerings deur
 4 Luitenant-Kolonel Scott. Daar was dan ook 'n raamwerk
 5 opgestel vir sodanige optredes. Daar was planne bekom deur
 6 die verteenwoordiger van Lonmin wat vir ons planne
 7 beskikbaar gestel het van die hostelle, en die raamwerk is
 8 saamgestel die oggend van die 16de Augustus.
 9 Voorsitter, addisioneel daartoe was daar ook 'n
 10 artikel 13.7 van die Polisiewet koördinerings en deursoeking
 11 magtigings deur die Provinsiale Kommissaris van Noord-Wes
 12 betreffende optrede vanaf die Donderdag, 16 Augustus, die
 13 middag.
 14 MNR MAHLANGU: Ek het nie dit gekry nie.
 15 GENERAAL-MAJOOR ANNANDALE: Vanaf die
 16 Donderdag, 16 Augustus, 12 uur die middag, tot en met die
 17 Vrydag, die 17de Augustus, ook 12 uur.
 18 MR SEMENYA SC: And the stages are
 19 actually then captured in slide 71 of exhibit L. Am I
 20 right?
 21 GENERAAL-MAJOOR ANNANDALE: Dit is soos
 22 dit gereflekteer is in die betrokke "slide."
 23 MR SEMENYA SC: So stage 5 and 6 are
 24 really handled in terms of standard operating procedures.
 25 GENERAAL-MAJOOR ANNANDALE: Pertinent 4

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1 en 5. 6 behels bietjie meer die besonderhede.
 2 CHAIRPERSON: The details also appear in
 3 slide 82. Majoor-Generaal, u het my nie gehoor nie. As 'n
 4 mens kyk en ons kyk na 82, die volle besonderhede daar.
 5 GENERAAL-MAJOOR ANNANDALE: Baie meer
 6 deeglike beskrywing, u is korrek, mnr die Voorsitter.
 7 MR SEMENYA SC: The other area of
 8 criticism relates to the briefing. You will see it
 9 commences at pages 35 onwards of exhibit WW2 of Mr White.
 10 Against paragraph 4.5.2 says, or will say Mr White, "In
 11 respect of the operation at Marikana there is a dearth of
 12 evidence in respect of the briefing that took place for
 13 each of the units present. I note that it is unlikely that
 14 adequate briefing took place, given that the operation
 15 appears to have a spontaneous reaction, rather than a
 16 carefully planned engagement." Do you see that?
 17 GENERAAL-MAJOOR ANNANDALE: Ek sien dit
 18 ja, Voorsitter.
 19 MR SEMENYA SC: As a matter of fact, do
 20 we know how the briefings were conducted of the various
 21 units?
 22 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 23 met die uitsluiting van die 13de Augustus, kan ek getuig
 24 oor 14, 15 en 16 en die prosesse wat gevolg was.
 25 Voorsitter, dit behels die byeenroep van 'n JOCOM

<p style="text-align: right;">Page 8439</p> <p>1 vergadering, en dan terwyl die bevelvoerders, die 2 oorgrootte meerderheid bevelvoerders die JOCOM vergadering 3 bygewoon het, sou die oorblywende bevelvoerders dieselfde 4 tyd, sou hulle solank die lede geparadeer het. 5 Dan tydens die JOCOM vergadering het ons dan 'n 6 volledige oorsig gegee van die dag se gebeure, die beplande 7 benadering was bespreek, insette was verkry vanaf die 8 bevelvoerders en dit was sodanig verwerk. Voorsitter, ek 9 het vroeër verduidelik dat dit 'n PowerPoint "presentation" 10 was wat dan vertoon was tydens die vergadering, en ons het 11 dan deur die fasette gegaan. 12 Daar was ook ander aspekte bespreek, logistieke 13 aspekte en beskikbaarheid van radio's en in hierdie 14 vergadering het, op die Woensdag was hierdie vergadering 15 sekerlik tot baie naby aan 9 uur die oggend, en die 16 Donderdag het ons sekerlik tot so na 8 het ons vergader, en 17 na afloop van die vergadering was daar verwag van 18 bevelvoerders om terug te gaan na die groter parade en dan 19 het daar 'n oordrag van hierdie besonderhede wat ons 20 bespreek het tydens die JOCOM plaasgevind. 21 Op die 16de was daar die addisionele voorligting, 22 nadat daar besluit was op 'n fase 3 ontplooiing. 23 Voorsitter, en dan die detail wat ek gegee het van 24 Luitenant-Kolonel Scott en Brigadier Pretorius wat nou 25 gegaan het na die "forward holding" area, en dan was daar</p>	<p style="text-align: right;">Page 8441</p> <p>1 operators. You testified about that yesterday, didn't you? 2 Is that right? 3 GENERAAL-MAJoor ANNANDALE: Ekskuus tog, 4 dit is doodreg so, ja. 5 MR SEMENYA SC: On page 37 against 6 paragraph 4.5.6 – 7 CHAIRPERSON: I'm sorry, you haven't 8 dealt with the point at the top of page 37. You see, the 9 point made by Mr White relates to slide 170 of exhibit L, 10 that the video, the plainclothes video operators had 11 already left the scene at 13:25, and you then gave an 12 instruction at the JOC meeting held at 13:30, that's five 13 minutes afterwards, that, where you specifically 14 highlighted the requirement to ensure that video camera 15 operators were deployed to record events. He says, "It's 16 notable this instruction came after the alleged withdrawal 17 of the plainclothes video operators from the koppie." So 18 he then makes the point it's unclear why there's no video 19 evidence of a briefing, or for that matter evidence of the 20 implementation of stage 3. Now how do you deal with that 21 point? 22 GENERAAL-MAJoor ANNANDALE: Voorsitter, 23 die – ons was nie bewus dat die video operateurs totaal 24 onttrek het nie. Ek was bewus dat hulle onttrek het van 25 waar hulle reg voor was tussen gewone ander media. Hulle</p>
<p style="text-align: right;">Page 8440</p> <p>1 dan 'n pertinente voorlegging gemaak aan die hand van 'n 2 spesifieke kaart wat ontwikkel was met grafieke en 3 diagramme. 4 Dan die enigste kommentaar wat ek kan lewer oor 5 die 13de, dit was 'n spontane reaksie, en daar is dan op 6 daardie, na die waarneming van Generaal Mpembe, ek dink 7 hulle het dit op CCTV gesien, het hulle toe direk reageer. 8 Ek weet daar was samesprekings tussen hom en van sy 9 bevelvoerders. Ek is nie bewus wat die besonderhede was 10 van enige voorligting wat daar sou plaasvind nie. 11 [14:29] MR SEMENYA SC: The other criticism about 12 that is that whereas Standing Order 262 contemplates 13 written briefings, that in this instance the briefings were 14 not in writing. Were the briefings in writing? 15 GENERAAL-MAJoor ANNANDALE: Voorsitter, 16 die toeligtings was nie vervat in pertinente geskrewe 17 planne nie, soos wat ek sien mnr White verwys in sy laaste 18 sin wat hy sê "detailed written plans." Ek het ook vroeër 19 verwys dat dit 'n aktiewe protes omgewing was en dat daar 20 eenvoudig net nie die luuksheid is om altyd te gaan sit en 21 nou planne, en geskrewe planne in te dien en te vervat nie. 22 MR SEMENYA SC: Against paragraph 4.5.4 23 the criticism is targeted at the peremptory provisions of 24 Standing Order 262 relating to video camera operators. We 25 have heard your evidence in relation to the video</p>	<p style="text-align: right;">Page 8442</p> <p>1 vorige posisies, voordat hulle ontplooi was reg voor waar 2 die ander media ontplooi was, was juis in hierdie voorste 3 vyf Nyalas wat die heelyd die moniteringsgroep was. Dan 4 was daar ook die twee waterkanonne wat ons onder die indruk 5 was dat dit werkend is. 6 CHAIRPERSON: He says it's an impression 7 that the cameras were in working order. 8 GENERAAL-MAJoor ANNANDALE: Dan laastens, 9 Voorsitter, dan ook – 10 MR SEMENYA SC: The water cannons. 11 GENERAAL-MAJoor ANNANDALE: - die 12 addisionele taking gereël deur Brigadier Van Zyl dat 13 Luitenant-Kolonel Botha ook dan aan boord gaan om 14 addisionele opnames te maak. 15 CHAIRPERSON: Now when you highlighted 16 the requirement to ensure that video camera operators were 17 deployed to record events at the JOC meeting at 13:30 on 18 the 16th of August, to who was the highlighting of this 19 instruction directed? In other words, whose responsibility 20 was it to ensure that that requirement was complied with? 21 GENERAAL-MAJoor ANNANDALE: Voorsitter, 22 dit, die twee video operateurs van Openbare Orde asook die 23 waterkanonne sal dan die verantwoordelikheid wees van 24 Openbare Orde bevelvoerders. 25 CHAIRPERSON: So they weren't at the JOC</p>

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1 meeting, were they? So someone there had to go away from
 2 the JOC meeting and see to it that that requirement was
 3 complied with. Now who was that?
 4 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 5 dit sal tweeledig wees; een sal op die radio sal dit
 6 gekommunikeer word uit die JOC uit, en die ander een,
 7 sonder dat ek bevestiging het, die aanname dat dit sodanig
 8 oorgedra sou word tydens die persoonlike toelgting wat sou
 9 plaasvind by "forward holding area" 1.
 10 CHAIRPERSON: Forgive me if I say you
 11 haven't answered my question yet. Who was responsible for
 12 that? Who was going to have to convey that at forward
 13 holding area 1? Who was supposed to do that?
 14 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 15 die enigste twee persone wat teenwoordig was in die JOCOM
 16 vergadering wat [onhoorbaar] oorweeg het, was Brigadier
 17 Pretorius en Luitenant-Kolonel Scott, alhoewel my take nie
 18 pertinent aan hulle was gaan dra die totale inligting oor
 19 nie, maar gaan gee toelgting rondom die operasionele plan
 20 van fase 3.
 21 CHAIRPERSON: You did say that this
 22 requirement to ensure that video camera operators were
 23 deployed was specifically highlighted by you at the
 24 meeting, so I would imagine if you highlighted it, you
 25 would have expected someone who was at the meeting was

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1 going to go to the area where the video camera operators
 2 were supposed to be deployed, would have taken that
 3 message, as it were, and seen to it that that requirement
 4 is complied with. Do I understand you to say that the
 5 people to whom we must look for compliance with that
 6 instruction or requirement were Lieutenant-Colonel Scott
 7 and Brigadier Pretorius?
 8 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 9 dit was die aanvaarding, alhoewel dit nie my direkte taking
 10 was nie. Ek dink dis 'n aanname as 'n mens dit so sê dat
 11 die betrokke verantwoordelike persone soos Brigadier Van
 12 Zyl het gaan reël vir Luitenant-Kolonel Botha.
 13 CHAIRPERSON: Now did Brigadier Pretorius
 14 stay at the JOC, or did she actually leave the JOC and go
 15 into the field?
 16 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 17 beide van hulle het vertrek van die JOC af.
 18 MR MSIMANG: Chairperson, it is –
 19 CHAIRPERSON: Must I call upon you by
 20 name, Mr Msimang?
 21 MR MSIMANG: Thanks, Chairperson. After,
 22 I know we had an agreement that the witness should be led
 23 and Mr Semanya will be able to lead on those aspects that
 24 he wants to challenge the report of Mr White. It appears
 25 what is happening now is that it is being challenged, that

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1 report, on the basis that he did not have sufficient
 2 information –
 3 CHAIRPERSON: No, anyway, what is
 4 happening is that Mr White's criticisms are being put to
 5 the witness to enable him to answer, and that is what Mr
 6 Semanya said he'd do and that he's doing, and he's dealing
 7 at the moment with the criticism in paragraph 4.5.4 on page
 8 37 of Mr White's report and I then just asked a follow-up
 9 question because it seemed to me that the point made by Mr
 10 White hadn't been dealt with by the witness and he's now
 11 dealing with the point, and that's where we are at the
 12 moment. There's no problem, so I don't think in any way –
 13 let's carry on, Mr Semanya.
 14 MR SEMENYA SC: So we'll have the
 15 evidence of at least Colonel Scott as to how that message
 16 was communicated to the video operators?
 17 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 18 dit is, dis – ja, ek is seker hy sal daarvoor kan getuig.
 19 Ek kan ook net sê dat die duisende Openbare Orde optredes
 20 wat ons hanteer is daar weinig meer as een kamera
 21 teenwoordig tydens so 'n opname, of tydens so 'n
 22 protesaksie, en in hierdie geval het ons addisioneel ekstra
 23 probeer kry weens die omvang van die grootte van die
 24 operasie.
 25 MR SEMENYA SC: There is also criticism

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1 addressed against paragraph 4.5.6 at the bottom of that
 2 page 37. Mr White will say, quote, "I would have expected
 3 that in an operation where the police were 'required' to
 4 use lethal force, all officers involved would have been
 5 required to provide detailed statements addressing inter
 6 alia the briefing that was received, as it is important to
 7 understand not only what the commanders of individual units
 8 said in a briefing, but also what the members of those
 9 units understood the briefing to mean."
 10 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 11 ek stem saam, volledige verklarings moet verskaf word. Ek
 12 weet egter nie wat in die verklarings vervat word nie, so
 13 ek weet nie na watse pertinente verklarings hy verwys nie.
 14 Ek het nie insae in die verklarings nie. So ek weet ook
 15 nie of lede, op watse gedeeltes sal hulle fokus, sal hulle
 16 meer fokus op die skietvoerval.
 17 MR SEMENYA SC: Maybe in the first
 18 instance, was there a requirement for the use of lethal
 19 force, as indicated here, for the –
 20 CHAIRPERSON: No, I'm sorry, Mr Semanya,
 21 I don't think you're understanding Mr White correctly.
 22 You'll notice he puts "required" in quotation marks. I
 23 think what he means is their case is that they had to use
 24 lethal force in self-defence, or private defence, and in
 25 that sense he's using the word "required." I don't think

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1 he means "required" in the sense of instructed, or that
 2 they were carrying out, obeying an order. I think he means
 3 "required" in the sense of obliged to do it in the exercise
 4 of a right of self or private defence where – I think
 5 that's what he means. I think that's the reason why he's
 6 got those quotation marks around "required." So I think
 7 you – you know, if I'm right, then the question must be
 8 reformulated.

9 MR SEMENYA SC: I understand that
 10 paragraph to be pointing to the requirement to provide
 11 detailed statements regarding that operation, where, in
 12 inverted commas, lethal force would be required. Now my
 13 question is, is there such a thing?

14 MAJOR-GENERAL ANNANDALE: That lethal
 15 force were required in the operation, in the planning?

16 MR SEMENYA SC: There is a requirement to
 17 provide detailed statements where lethal force, in inverted
 18 commas, is required in an operation of this nature.

19 GENERAAL-MAJOOR ANNANDALE: Ekskuus,
 20 Voorsitter. Ek interpreteer dit soos wat u dit oorgedra
 21 het; nadat dit plaasgevind het, en is ek reg dan om te sê
 22 dat die advokaat vir my vra dat is daar dan so 'n vereiste
 23 in die polisie dat daar sekere goed vermeld word?

24 MR SEMENYA SC: Standing Order 262 would
 25 tell us that where there is force deployed, there would

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1 have to be written statements about that. Correct?

2 GENERAAL-MAJOOR ANNANDALE: Kan ek 262
 3 lees en net sien of dit sê "written statements" of 'n
 4 verslag of iets? Ekskuus.

5 MR BURGER SC: Chair, are we busy with an
 6 interpretation of 262, or with closing argument, or with
 7 semantics, or what are we busy with?

8 [14:48] CHAIRPERSON: I think what the problem
 9 is, is it's really a double point. The witness wants to
 10 know, the witness is asked whether it's required, whether
 11 it's compulsory, as it were, for a policeman who's
 12 participated in an operation where lethal force was used,
 13 to provide a detailed statement. That's the first part,
 14 and the second part is that if so, must the detailed
 15 statement go so far as to include details of the briefing
 16 which was received and the way the briefing was understood.
 17 That appears to be the point Mr White is making by way of
 18 criticism of the police's case, and the witness is trying
 19 to answer that, and the witness just wants to refresh his
 20 memory as to whether 262 requires any kind of complete
 21 written report in such a situation. Am I explaining it
 22 correctly?

23 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 24 99% daar, want die verskil is vir my –

25 CHAIRPERSON: I'm sorry about the 1%.

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1 GENERAAL-MAJOOR ANNANDALE: - 'n
 2 verklaring of 'n verslag, want daar is vir my 'n verskil in
 3 terme van verklaring en verslag.

4 CHAIRPERSON: I had a quick look at 262;
 5 it doesn't say anything about a statement. It talks about
 6 a debriefing. It doesn't make it clear, as I read it, that
 7 it has to be in writing, but presumably if lethal force
 8 were used, statements would have to be taken; there'd be an
 9 inquest to release it, so the answer to that presumably
 10 must be that some kind of statement is required from the
 11 people involved, in writing. The question is, must it be
 12 detailed enough to include references to the briefing that
 13 the member received and the way he or she understood the
 14 briefing, and perhaps you can just concentrate on that and
 15 we can move on.

16 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 17 ek sou verwag dat as jy 'n vuurwapen gebruik het in enige
 18 omstandighede, dat jy sal sekere besonderhede vermeld in
 19 sodanige verklaring.

20 MR SEMENYA SC: Can we now go to –

21 CHAIRPERSON: The next point is, Mr
 22 White's point, he says where you're making a statement
 23 dealing with such an incident, he says shouldn't you – he
 24 suggests you should – shouldn't the statement not only say
 25 what the commanders of the unit said in the briefing

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1 beforehand, but also what the members understood the
 2 briefing to mean. That's the point he's making.

3 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 4 ek weet nie hoe ver moet 'n ou gaan om te meld nie want as
 5 jy dit meld dan kan jy ook ander aspekte moet meld, so
 6 lateraan kan dit nogal 'n omvattende verklaring wees.

7 MR SEMENYA SC: Okay, can we deal with
 8 the other criticism appearing against paragraph 4.6.4, page
 9 39. There the criticism is that he says "It's a
 10 significant concern that the most senior officers involved
 11 in this incident almost completely omit any reference to
 12 the shooting incidents in their statements." What is your
 13 response to that?

14 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 15 ek sal moet die konteks verstaan wat hy bedoel met senior
 16 offisiere, want in die polisie is 'n senior offisier
 17 enigiemand van 'n majoor-rang af op.

18 CHAIRPERSON: No, that's not the point.
 19 He talks about the most senior officers. His point is that
 20 the most senior officers, in other words he's referring to
 21 the people with quasi military rank of a high nature,
 22 namely the lieutenant-generals, the major-generals, the
 23 brigadiers, I take it those are the most senior officers,
 24 and he says they almost completely omit any reference to
 25 the shooting incidents in their statements, and that's the

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1 criticism he makes.

2 GENERAAL-MAJOOR ANNANDALE: Voorsitter,

3 dan by name sal dit wees Luitenant-Generaal Mbombo, myself,

4 Mpembe, Naidoo en Calitz. Van al daai offisiere weet ek

5 dat Generaal Naidoo self sy vuurwapen gebruik het, en ek is

6 seker hy sou dit vermeld het in sy verklaring. Dan ekself,

7 ek was nie getuie van enige van die insidente nie.

8 Generaal Mpembe was in die helikopter gewees, en by die JOC

9 en ook Generaal Mbombo was by die JOC area gewees. Ek kan

10 nie vir hulle praat nie. Ek kan vir myself praat, maar as

11 daar moes detail vermeld word oor skietery sou ek net moes

12 eenvoudig wat aan my oorvertel is, moes ek gaan,

13 besonderhede gaan vermeld van dit in my verklaring.

14 MR SEMENYA SC: And the statement of

15 Brigadier Calitz does make reference to some shooting,

16 particularly scene 2, as we now know it.

17 CHAIRPERSON: Mr Semenya, I don't know if

18 we need waste time on this at the moment. Brigadier Calitz

19 is – I'm not being unkind – Brigadier Calitz is going to

20 give evidence; you can deal with it then, can't you?

21 MR SEMENYA SC: Chair, the point is I –

22 CHAIRPERSON: I don't want to stop you.

23 I'm just trying to save time.

24 MR SEMENYA SC: I'm anxious as well,

25 Chair, but I just resist the possibility that it would

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1 later be said I did not take issue.

2 CHAIRPERSON: We wouldn't want anyone to

3 say that, so you'd better carry on.

4 GENERAAL-MAJOOR ANNANDALE: Voorsitter,

5 ek hoor wat die advokaat sê dat daar vermelding gemaak is

6 in Brigadier Calitz se -

7 MR SEMENYA SC: At the top of the page,

8 paragraph 4.6.3, the criticism is that the statements

9 provided by the SAPS are lacking in detail in a number of

10 respects. How were the statements of members of the SAPS

11 who were in the operation taken, as a matter of fact? How

12 were those taken and by who?

13 GENERAAL-MAJOOR ANNANDALE: Voorsitter,

14 van ons het ons eie verklarings gaan skryf. Baie

15 verklarings weet ek was afgeneem deur IPID ondersoekers.

16 Baie verklarings was afgeneem deur ons prokureurs,

17 aangestelde prokureurs op versoek van die IPID

18 ondersoekers.

19 MR SEMENYA SC: Chair, I see it is 3

20 o'clock.

21 CHAIRPERSON: [Inaudible] Alright, I've

22 received the point Adv Hemraj wants me to make, and this is

23 therefore a suitable stage for us to take the tea

24 adjournment.

25 [COMMISSION ADJOURNS COMMISSION RESUMES]

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1 [15:18] CHAIRPERSON: The Commission resumes.

2 Majoor-Generaal, u is nog steeds onder eed.

3 CHARL ANNANDALE: s.o.e.

4 CHAIRPERSON: Mr Semenya?

5 EXAMINATION BY MR SEMENYA SC (CONTD.):

6 Thank you, Chair. At the bottom of page 39 going forward,

7 Mr White's report deals with what he said is lack of

8 leadership at scenes 1 and 2.

9 CHAIRPERSON: I notice that in the text

10 that follows he deals specifically with the Provincial

11 Commissioner Mbombo, Major-General Mpembe, and Brigadier

12 Calitz. He doesn't refer to this witness. I don't know

13 whether it's necessary for you to deal with it in any

14 detail with him, but I don't want to dictate to you what

15 you can you and can't do, but prima facie it seems to me

16 there's not much this witness needs say about this.

17 MR SEMENYA SC: What is important for

18 your comment perhaps, General, is that Mr White described

19 the Provincial Commissioner General Mbombo as the overall

20 command of the operation. Was she in overall command of

21 the operation?

22 GENERAAL-MAJOOR ANNANDALE: Nee,

23 Voorsitter.

24 MR SEMENYA SC: Okay, we will deal with

25 the other commanders when they testify –

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1 CHAIRPERSON: Who was in overall command

2 then? Do you know?

3 GENERAAL-MAJOOR ANNANDALE: Generaal-

4 Majoor Mpembe.

5 MR SEMENYA SC: The one other critical

6 criticism that is made appears at the top of page 43

7 against subparagraph 4.7.2, and this is in relation to

8 scene 1. There Mr White will say that firstly there is no

9 clear rationale for the decision to implement stage 3 of

10 the plan at the time it was implemented. What do you have

11 to say to that?

12 GENERAAL-MAJOOR ANNANDALE: Voorsitter,

13 ek het gister in taamlike detail verduidelik dat daar eers

14 voorligting was deur Generaal Mpembe aan die Provinsiale

15 Kommissaris, en na die voorligting het die Provinsiale

16 Kommissaris gesê dat ons moet oorgaan tot die betrokke fase

17 3, en ek weet nie watse verduideliking, of gebruik aan

18 verduideliking word na verwys wat in Generaal Mbombo se

19 verklaring is nie, behalwe om te aanvaar dat sy dan nie die

20 stappe soos ek dit verduidelik het, of die redes vervat het

21 in haar verklaring nie.

22 MR SEMENYA SC: Now yesterday you

23 testified about the rationale to implement stage 3,

24 including the fact that the negotiations had come to a

25 halt. Remember that?

<p style="text-align: right;">Page 8455</p> <p>1 GENERAAL-MAJOOR ANNANDALE: Ek onthou 2 dit, Voorsitter. 3 MR SEMENYA SC: Including that Mr 4 Mathunjwa had now left. Can we now look at another point 5 which is raised on page 44 against the subparagraph 4.7.6? 6 There is reads, "It appears that there were a number of 7 alternatives that were available to the police, instead of 8 implementing stage 3, that is, including simply sitting and 9 waiting and monitoring the situation." What is your 10 response to that? 11 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 12 daar was deurlopende monitering wat plaasgevind het vanaf 13 die Dinsdag, maar die risiko het sodanig verander soos wat 14 reeds na verwys is, dat daar 'n noodsaaklikheid was om oor 15 te gaan tot die fase 3. Ek kan net meld dat daar nog 16 steeds 'n onwettige byeenkoms was met die toon van 17 gevaarlike wapens, pertinente dreigemente tot die lewe van 18 die, of dreigemente tot die polisie. Die groep het steeds 19 nie, het steeds geweier om te ontwapen. 20 MR SEMENYA SC: Sorry, let me interrupt 21 you, General. You have testified about the need to 22 implement this stage at the time you did. What Mr White is 23 saying is that instead of that, you could simply have sat 24 still and waited it out. 25 GENERAAL-MAJOOR ANNANDALE: Voorsitter,</p>	<p style="text-align: right;">Page 8457</p> <p>1 bereik het; dit sou nie in die gees van onderhandeling 2 gewees het nie; ons het nie geweet, of daar was nie 3 bevestigde inligting dat die leierskap element deel is van 4 daai sogenaamde 50 wat na verwys word nie. Ons weet nie of 5 hulle wapens gehad het nie. Ek weet nie waarvoor moes ons 6 hulle arresteer nie, tensy ons op 'n suiwer onwettige 7 byeenkoms gefokus het. 8 Voorsitter, dan kan ek net dink dat as ons die 9 mense sou arresteer en daar was nou 'n klagte teen hulle en 10 ons het hulle gaan, dan nou gaan toesluit, dan tydens die 11 vrylating van die persone sou daar dan net 'n nuwe rede, of 12 tydens hulle aanhouding sou daar net 'n nuwe rede vir 13 betoog gewees het. Dan het ons 'n betoog gehad vir hulle 14 vrylating en dan in elk geval al was dit tydens vrylating, 15 of direk na hulle vrylating, sou ons dan met die posisie 16 gesit het dat ons nou net nie meer, ons het nie meer 17 vertrou nie. Ons het nou die eie vertrou wat ons probeer 18 opbou het, het ons dan net weggegooi. Ook die integriteit 19 van die polisie, dat ons gaan onderhandel en dan terwyl 20 ons, ons so voorgegee het dan gaan arresteer ons mense. 21 MR SEMENYA SC: The other alternative 22 postulated is that the police could have moved in at first 23 light, but before the majority of the protesters had 24 returned to the koppie. What's your reaction to that? 25 GENERAAL-MAJOOR ANNANDALE: Ek dink vir</p>
<p style="text-align: right;">Page 8456</p> <p>1 daar's 'n grondwetlike verpligting op die polisie om wet en 2 orde te handhaaf en ons kan nie ons plig in die verband 3 versak nie. Ons was die heelyd bewus van die risiko in 4 terme van hierdie groep wat elke keer teruggaan, so ek 5 verstaan nie die sit en wag nie. Ek weet nie – gesien in 6 die konteks wat ek oor gesê het die pertinente risiko, die 7 verhoogde risikofaktore. 8 MR SEMENYA SC: The other alternative 9 postulated is that there could be a night-time action 10 targeted at 50-odd people that were on the koppie. 11 Firstly, was there intelligence that there were 50-odd 12 people who remained at night? 13 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 14 ek weet nie van intelligensie nie. Die eerste nag, daai 15 Maandagnag/Dinsdagoggend was daar 'n groepie waargeneem. 16 MR SEMENYA SC: Was that a viable option 17 to do the night-time action of cordoning the koppie and 18 doing the search there with the use of artificial light? 19 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 20 ek dink met respek, en ek aanvaar mnr White het nie al die 21 besonderhede tot sy beskikking nie, maar ek het vroeër 22 verduidelik dat ons, daar was oorweging gewees, een van die 23 opsies om dan so 'n groepie te arresteer, sou daar so 'n 24 groepie op die koppie wees, en ek sal met u vergunning net 25 'n paar van daardie verwysings weer maak. Ons sou weinig</p>	<p style="text-align: right;">Page 8458</p> <p>1 dieselfde redes, Voorsitter. Ek sien daar word gemeld, "to 2 have secured and dominated the ground." Ek weet nie wat 3 sou ons daardeur bereik nie. 4 MR SEMENYA SC: Okay, against 5 subparagraph 4.7.8 says the report, "That the decision to 6 implement stage 3 at a time chosen appears unjustified by 7 the situation on the ground, carried significant risks, and 8 was likely to escalate rather than de-escalate conflict." 9 What's your response to that? 10 GENERAAL-MAJOOR ANNANDALE: Ek dink oor 11 die ongeregverdigde optrede en die risiko het ek reeds 12 getuig. Ek weet nie, Advokaat, of u wil hê ek moet weer 13 daaroor praat, en of ek moet fokus op die de-eskalasie of 14 eskalاسie van konflik nie. 15 MR SEMENYA SC: Can we focus, was the 16 implementation of stage 3 a de-escalation or an escalation 17 of the conflict environment? 18 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 19 in terme van hoe dit beplan was, was dit nie 'n eskalاسie 20 nie. Ons het nooit daarby uitgekóm nie want met die – ons 21 het net gekóm by die defensiewe aksie van die uitrol van 22 die lemmetjiesdraad. 23 [15:38] Maar belangriker, ons, de-eskalاسie was gefokus 24 op die risiko verbonde aan hierdie gewapende groep, met al 25 die redes wat ek gegee het, op die dag wat sou ingaan in</p>

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1 die gemeenskap in.

2 MR SEMENYA SC: And about the timing, was

3 there still any possibility in the minds of the SAPS that

4 there will be further negotiations on the 17th?

5 GENERAAL-MAJOOR ANNANDALE: Nee,

6 Voorsitter.

7 MR SEMENYA SC: Against subparagraph

8 4.7.9, the second criticism is that the South African

9 Police failed to warn the crowd before commencing stage 3

10 of the plan. We have dealt with this in your evidence

11 yesterday, didn't we?

12 GENERAAL-MAJOOR ANNANDALE: Ons het

13 daarmee gedeel, dis reg, Voorsitter, pertinent ook met

14 verwysing toe na Staande Order 262.

15 MR SEMENYA SC: And this warning about

16 defensive measure as opposed to an offensive measure.

17 GENERAAL-MAJOOR ANNANDALE: Dit is

18 korrek, Voorsitter.

19 MR SEMENYA SC: Against paragraph 4.7.10

20 the report says, "Although there is evidence that there was

21 a genuine threat posed to the police at scene 1, not least

22 by the individual who was firing a handgun, but also

23 potentially from those carrying pangas and spears, the

24 level of response from SAPS was excessive and reckless."

25 That we will leave to the Commission to determine and we'll

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1 hear Mr White on it, but may I draw your attention to what

2 appears on page 46 against the letter D, and there Mr White

3 says, "The footage by Reuters shows some officers were

4 shooting and others were not." That is not something you

5 can comment upon, is that, General, i.e. why others fired

6 and the others didn't?

7 GENERAAL-MAJOOR ANNANDALE: Voorsitter,

8 ja, dit is moeilik vir my om kommentaar te lewer, behalwe

9 dat elke persoon het sy eie persepsie van 'n dreigement en

10 van vrees. So sonder dat ek die feite ken, kan ek net dink

11 dat hierdie Kaptein Bismark, dat hy sou gereageer het as hy

12 onder direkte lewensbedreigende omstandighede gekom het, en

13 ek kan net dink dat hy waarskynlik sou reageer het as dit

14 nie was dat daar reeds van ander lede was wat reeds

15 gereageer het tot so 'n dreigement nie.

16 MR SEMENYA SC: The translation is wrong,

17 but for the record we'll keep to the Afrikaans version.

18 MR MAHLANGU: If you could possibly

19 correct it, Sir.

20 MR SEMENYA SC: That he may have not

21 reacted because there were already people who reacted to

22 that threat already. Against paragraph 4.8.8 there is a

23 second criticism there in relation to the events at scene

24 2, "That having proceeded with the plan to encircle,

25 disarm, and arrest those protesters who had fled to koppie

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1 2 and 3, the decision to do so using an NIU sweep line was

2 irresponsible for two reasons. Firstly, the police

3 believed that the protesters were violent, armed, and would

4 resist arrest. Faced with that resistance, the NIU was

5 armed only with live ammunition to ensure compliance." You

6 have dealt yesterday with the reason for the deployment of

7 the NIU unit. Is that correct?

8 GENERAAL-MAJOOR ANNANDALE: Dit is

9 korrek, Voorsitter.

10 MR SEMENYA SC: And the second reason is

11 that, "If it were true that the protesters on koppie 2 and

12 3 were violent and armed, the sweep line formed by the NIU

13 created a large target for the protesters to fire at."

14 What's your reaction to that one?

15 GENERAAL-MAJOOR ANNANDALE: Voorsitter,

16 ek kan net meld dat ek was nie bewus van 'n "scene 1" en 'n

17 "scene" 2 nie, en ook nie van die derde koppie nie. Ek was

18 bewus van twee pertinente koppies, en dan die beplanning

19 het dit nooit ten doel gehad dat NIU sou daardie vee-lyn

20 gedoen het nie. NIU was getaak gewees in terme van die

21 beplanning om die groter koppie te deursoek. TRT het

22 hierdie taking gehad, en ek verwys nou suiwer na die

23 beplanning. Soos dit uitgedraai het, het NIU toe die rol

24 oorgeneem van TRT, en dit is omstandighede wat ons nou weet

25 in nabetragting. Die beplanning was gewees dat daar was

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1 die eerste linie was gewees pantservoertuie en dan sou

2 hierdie lyn van TRT daar agterna gekom het, met ook die

3 eerste linie van die aksie, Openbare Orde Polisiëring.

4 MR SEMENYA SC: The other criticism is

5 that "To proceed with stage 3 after the shooting of 16

6 people was incomprehensible and negligent," but more

7 importantly the criticism there is that "There should have

8 been a contingency plan drawn," and that is against

9 subparagraph 4.8.6, "to cater for a situation if the plan

10 had gone wrong."

11 GENERAAL-MAJOOR ANNANDALE: Voorsitter,

12 ons het nie beplan, ons het nie voorsien, ons het nie

13 verwag, ons het nie geantisipeer, en as mnr White verwys na

14 'n "contingency plan" sien ek 'n dokument wat moet opgestel

15 word, terwyl ons voorsiening gemaak het vir gebeurlikhede,

16 en dit was ingebou in ons beplanning; van daar die ekstra

17 maatreëls wat ons getref het, waarvan die afstand tussen

18 die polisielyn en die betogers een was, die lemmetjiesdraad

19 wat ontplooi is, en dan die ontplooiing van die voorste

20 linie in gepantserde voertuie. Voorsitter, daar is nie 'n

21 plan A en 'n plan B en 'n plan C nie. Dreigemente en

22 risiko's wat redelik voorsien was, was ingebou in hierdie

23 plan wat ons dan, nou onder bespreking is.

24 MR SEMENYA SC: In the paragraph at the

25 top of page 48 you will see Mr White says in his view it

<p style="text-align: right;">Page 8463</p> <p>1 would have been better to try to contain the crowd within 2 the koppies by surrounding them and then negotiating. 3 Would that have been feasible, plausible, effective? 4 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 5 “surrounding them,” so ons sou hulle in totaal moes omring. 6 Dit beteken ons sou of moes voertuie 360 grade om die 7 koppie geplaas het, of dalk 'n versperring geplaas het reg 8 rondom die koppie, maar Voorsitter, soos ek die, die 9 oordrag aan my gemaak is, was daar individuele aksies deur 10 polisiebeamptes in reaksie op pertinente dreigemente. So 11 ek kan net nie sien in terme van hoe dit sou moontlik wees 12 nie. 13 MR SEMENYA SC: What I'm asking is, could 14 it have been sound to surround them and then negotiate with 15 them? 16 GENERAAL-MAJOOR ANNANDALE: Nee, 17 Voorsitter. 18 MR SEMENYA SC: The other criticism is 19 that the use of water cannon, instead of flushing them out 20 would have encouraged them to climb to higher ground and it 21 would have had an opposite effect. It's a criticism 22 against the use of water cannons. 23 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 24 ek weet nie of die waterkanonne kon orals bereik nie, maar 25 as jy aanhoudend mense gaan natmaak met water, en ons</p>	<p style="text-align: right;">Page 8465</p> <p>1 seven or eight yellow pages to do a finger-walking on. 2 Shall I deal with that – 3 CHAIRPERSON: - suggest you make per page 4 normally. 5 MR SEMENYA SC: It is something that I 6 think would take us 20 minutes to do. 7 CHAIRPERSON: I suggest we take those 20 8 minutes tomorrow. We've been handed a document – before we 9 adjourn – we've been handed a document which is called 10 “Call-up, debriefing and preparations for judicial 11 commission, North West 27 August, to 21 August.” Is this 12 relevant to the evidence of the witness? Must I study it 13 this evening, before tomorrow morning? 14 MR SEMENYA SC: That is the Potchefstroom 15 call-up, Chair. 16 CHAIRPERSON: Yes, I understand so, but 17 am I – do you expect me to study it before tomorrow 18 morning, or is that task one that you don't give me to do 19 tonight? 20 MR SEMENYA SC: It's one that I'm not 21 giving the Chair to do tonight. 22 CHAIRPERSON: I suppose I must be 23 grateful for small mercies. The Commission will adjourn 24 until 9:30 tomorrow morning. 25 [COMMISSION ADJOURNED]</p>
<p style="text-align: right;">Page 8464</p> <p>1 ervaring wys dit, en nou wetende hoe daardie area lyk, weet 2 ek nie wat bedoel hy by “higher ground” nie. Ek weet nie 3 of dit sou verhoed het, dat as hulle onder die rots of bo- 4 op die rots sou wees, of dit enige verskil sou maak nie, 5 maar dat persone sal uitkom. 6 MR SEMENYA SC: The other criticism says 7 given that 33 rubber rounds are used at scene 2 compared to 8 268 rounds of live ammunition, Mr White will come to a 9 conclusion that the force was disproportionate to the 10 threat encountered. That we will deal with Mr White when 11 he testifies. 12 [15:58] Then he says finally against paragraph 4.8.11, 13 “By surrounding the koppie and firing live ammunition from 14 a number of sides, the SAPS created a dangerous environment 15 for all who were on the koppie.” Are you able to comment 16 on that? 17 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 18 ek dink mnr De Rover sal in 'n beter posisie wees om te, 19 kommentaar te lewer op die betrokke punt, vir 'n 20 verskeidenheid van redes. Ek dink dis 'n komplekse 21 situasie wat hom afgespeel het by toneel 2 en ek het nie 22 die informasie tot my beskikking nie; ek was nie op die 23 toneel gewees nie. Ek het nie 'n rekonstruksie gedoen nie; 24 ek het nie lede ondervra nie. 25 MR SEMENYA SC: Chair, I only have some</p>	

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