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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 86 6 MAY 2013 PAGES 9036 TO 9146

HELD AT

CIVIC CENTRE, RUSTENBURG, NORTH WEST PROVINCE



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1 [PROCEEDINGS ON 6 MAY 2013]
 2 [10:07] CHAIRPERSON: The Commission resumes.
 3 Generaal-Majoor, u is nog steeds onder eed, maar voor u met
 4 die getuienis voortgaan sal daar argument wees in verband
 5 met die vrae wat Vrydag aan u gestel is. Mr Semenya, are
 6 you also ready to deal with the – we've been given some
 7 heads in relation to the questions of personal
 8 responsibility and questions about that. Have you also got
 9 some heads for us?
 10 MR SEMENYA SC: Chair, I have just been
 11 given a copy of these heads now. I have had an opportunity
 12 to look at them and I have indicated to Mr Bizos that I do
 13 not have any difficulties in relation to the conclusion
 14 that he seeks to draw on paragraph 8 of this document,
 15 paragraph 8 and 9.
 16 CHAIRPERSON: I take it that the
 17 questions that he wanted to ask can be asked.
 18 MR SEMENYA SC: Can be asked, Chair. We
 19 will see what the connotation is of what is called personal
 20 liability. I don't know what it means but we'll have to
 21 confront it when we get to it.
 22 CHAIRPERSON: Yes, I was thinking about
 23 the matter after we adjourned. It occurred to me that
 24 inasmuch as we are called upon to make recommendations as
 25 to whether persons, as to whether the prosecuting authority

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1 should consider prosecuting certain persons, I take it that
 2 that would include making recommendations as to possible
 3 prosecution in relation to those who approved of and put
 4 into operation the plan if, in fact, the allegations about
 5 the plan are correct, but I'm not saying that is
 6 necessarily so but that's something that would be within
 7 our terms of reference to consider. So effectively you
 8 withdraw your opposition to the questions Mr Bizos wanted
 9 to ask but you say, subject to keeping an eye on individual
 10 questions which may go over the line, that you are prepared
 11 to concede. Is that a fair summary?
 12 MR SEMENYA SC: Indeed, indeed, Chair.
 13 CHAIRPERSON: Perhaps that's got to be
 14 interpreted to those in the auditorium who didn't
 15 understand our exchange.
 16 MR BIZOS SC: I went back, when I had to
 17 stand up, in order to –
 18 CHAIRPERSON: You can sit down without
 19 losing your standing before this Commission. May I say
 20 something? Thank you very much for these heads which I've
 21 had a very quick glance through. You refer to some
 22 documents which may well assist us, which we haven't got
 23 copies of. The Hefer Commission of Inquiry report –
 24 MR BIZOS SC: Yes.
 25 CHAIRPERSON: - and a judgment of the

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1 Supreme Court of Canada in 1997. I'd be grateful if copies
 2 of those could be made available to us because it looks as
 3 if it may well be of assistance, not only in relation to
 4 the particular matter we were dealing with on Friday but
 5 also perhaps broader questions and I take it you'll be
 6 referring to it and possibly your learned friends will as
 7 well, in the submissions at the end.
 8 MR BIZOS SC: Yes. We will be able to
 9 make those documents available during the short adjournment
 10 in mid-morning.
 11 CHAIRPERSON: I'm not sure we need them
 12 today.
 13 MR BIZOS SC: We have them and I'm also
 14 indebted to my learned friend Mr Semenya, to his attitude.
 15 I expected it. He was there on the same side before Mr
 16 Justice Richard Goldstone and if I may just place on
 17 record, I was also involved in the Hefer Commission so it
 18 was with some confidence that I put the questions that I
 19 tried to put on Friday.
 20 CHAIRPERSON: You seem to make a habit of
 21 appearing before these commissions, Mr Bizos.
 22 MR BIZOS SC: Yes.
 23 CHAIRPERSON: But anyway, thank you very
 24 much for this. I'm sure it will be of assistance to us and
 25 you say that then you and Mr Semenya were on the same side

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1 – of course we're all together on the same side in this
 2 Commission, searching for the truth from different angles
 3 and we will be better able to find the truth if the various
 4 points of view are presented forcefully but fairly by all
 5 those participating, not so?
 6 MR BIZOS SC: Well, it's merely perhaps –
 7 I just wanted to make it known that I was there and he was
 8 there.
 9 CHAIRPERSON: Yes. If you'd like now to
 10 proceed with your cross-examination.
 11 CROSS-EXAMINATION BY MR BIZOS SC (CONTD.):
 12 Thank you, Mr Chairman. General, I want to refer you to a
 13 statement of Lieutenant-Colonel Vermaak, exhibit GGG17.
 14 Have you got it in front of you?
 15 MAJOR-GENERAL ANNANDALE: Good morning.
 16 Yes, Chairperson, I do.
 17 MR BIZOS SC: Yes. Would you turn over
 18 to the second page, paragraph 5, and go down just after the
 19 middle of that long paragraph with the words, "Ek het lede
 20 gepos." Do you see that? I think could you read that
 21 portion of the record in Afrikaans onto the – into the
 22 record please, General?
 23 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 24 ek gaan dan voort. "Ek het lede gepos om die toneel te
 25 bewaar en teruggekeer na die aanvanklike toneel."

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1 CHAIRPERSON: I'm sorry, Mr Bizos. In my
2 search for the papers I missed the paragraph number. I've
3 now found the document but where must I look?
4 MR BIZOS SC: Paragraph 5 –
5 CHAIRPERSON: Yes?
6 MR BIZOS SC: That is the last one third
7 of the paragraph on page – “het lede.”
8 CHAIRPERSON: Yes, “gepos” – that
9 passage. Yes, I see, thank you.
10 GENERAAL-MAJOOR ANNANDALE: “Van die lede
11 het saam met my teruggeeloop en was baie ontsteld gewees en
12 aan my gemeld dat hulle Generaal-Majoor Mpembe kwalik neem
13 vir die lede wat dood is en dat hy verkeerde opdragte gegee
14 het. Hulle het aan my gesê dat Majoor-Generaal Mpembe” –
15 CHAIRPERSON: I'm sorry to interrupt you.
16 I didn't hear, perhaps I wasn't listening properly, I'm not
17 sure that the words “en dat hy verkeerde opdragte gegee
18 het” were read or translated.
19 MR MAHLANGU: That was –
20 CHAIRPERSON: They blamed Major-General
21 Mpembe –
22 MR MAHLANGU: For giving –
23 CHAIRPERSON: - for the members who were
24 dead and that he gave wrong, wrong orders.
25 MR MAHLANGU: Yes, that's correct, Mr

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1 Chairman. Thank you.
2 GENERAAL-MAJOOR ANNANDALE: “Hulle het
3 aan my gesê dat Majoor-Generaal Mpembe vandag nog saam met
4 daardie lede op die grond gaan lê, want hulle gaan hom
5 skiet.”
6 MR MAHLANGU: They mentioned that General
7 Mpembe should go and lie on the ground next to those
8 members and that they were going to shoot him.
9 CHAIRPERSON: I'm sorry, not that he
10 should, not that he should, that he would. They said to me
11 that today he was going to lie together with those members
12 on the ground because they were going to shoot him.
13 GENERAAL-MAJOOR ANNANDALE: “Ek het
14 dadelik besef dat dit 'n baie plofbare situasie is en het
15 ek die Provinsiale Kommissaris gebel en haar meegedeel van
16 die bedreiging en haar meegedeel dat ek hom van die toneel
17 af gaan verwyder.”
18 MR MAHLANGU: I immediately realised that
19 this was an explosive situation and I then told the
20 Provincial Commissioner –
21 CHAIRPERSON: Phoned, telephoned,
22 telephoned the Provincial Commissioner.
23 GENERAAL-MAJOOR ANNANDALE: “Ek het direk
24 na hom toe gegaan en hom meegedeel dat ek hom van die
25 toneel af gaan verwyder weens die dreigement op sy lewe.

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1 Ek het 'n Nyala-voertuig met twee lede gereël om die
2 generaal weg te vat na die ops toe. Kaptein Oosthuizen en
3 sersant Venter het intussentyd, of het intussen die een
4 beseerde lid met die helikopter na die hospitaal toe
5 vervoer. Ons het die ondersoekbeamptes verder hulp verleen
6 op die toneel met lugfoto's.”
7 CHAIRPERSON: [Inaudible]
8 MR BIZOS SC: No, because –
9 CHAIRPERSON: My colleague Adv Hemraj is
10 just making a comment to me based upon the piece of the
11 statement that's just been read but she's finished now.
12 I'm sorry we interrupted you.
13 MR BIZOS SC: No –
14 CHAIRPERSON: Please proceed.
15 MR BIZOS SC: General, have you any
16 reason to doubt the veracity of the affidavit of
17 Lieutenant-Colonel Vermaak?
18 GENERAAL-MAJOOR ANNANDALE: Ek het geen
19 rede nie, Voorster.
20 MR BIZOS SC: When did that portion of
21 his affidavit come to your notice for the first time?
22 GENERAAL-MAJOOR ANNANDALE: Voorster,
23 Luitenant-Kolonel Vermaak het dit aan my meegedeel die
24 Maandag toe ek op die toneel was.
25 MR BIZOS SC: Did you accept his veracity

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1 at that time?
2 GENERAAL-MAJOOR ANNANDALE: Ek het sy
3 oordrag so aanvaar.
4 MR BIZOS SC: Well, before I –
5 CHAIRPERSON: If I may ask, why you said
6 at that time? Are you suggesting that he later didn't
7 accept it or what is the relevance of –
8 MR BIZOS SC: No, no.
9 CHAIRPERSON: - those, of that phrase “at
10 that time.”
11 MR BIZOS SC: Well, just for the sake of
12 completeness because I want to deal with what steps, if
13 any, but before I ask that question, would you agree that
14 what was disclosed to you by Lieutenant-Colonel Vermaak was
15 a very serious misconduct of one or more members of the
16 South African Police?
17 GENERAAL-MAJOOR ANNANDALE: Voorster,
18 ek het dit in die konteks nie gesien as 'n ernstige vergryp
19 nie. Ek het dit gesien dat lede emosioneel is, ek het
20 gesien dat hulle emosioneel is aangesien daar twee van
21 hulle kollegas gesterf het.
22 MR BIZOS SC: Whatever the reason –
23 sorry. Whatever the reason, emotional reason there may
24 have been, can there be a greater lack of discipline than
25 having members of the police force threatening to kill

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1 their commander?
 2 GENERAAL-MAJOOR ANNANDALE: Dit is vir
 3 seker 'n ernstige aantygung wat hulle gemaak het,
 4 Voorsitter.
 5 MR BIZOS SC: What steps, if any, did you
 6 take against the persons that made that threat?
 7 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 8 die situasie was reeds gerapporteer aan die Provinsiale
 9 Kommissaris. Generaal-Majoor Mpembe dien nie onder my
 10 bevel nie, hy dien wel onder die bevel van die Provinsiale
 11 Kommissaris, Noordwes. Ekself het geen stappe geneem nie,
 12 Voorsitter.
 13 [10:27] MR BIZOS SC: Do you know whether the
 14 commissioner took any immediate steps to rectify this major
 15 discipline problem?
 16 CHAIRPERSON: I take it you're referring
 17 to the Provincial Commissioner? I take it you are
 18 referring to the Provincial Commissioner?
 19 MR BIZOS SC: The Provincial
 20 Commissioner.
 21 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 22 ek is nie bewus nie.
 23 MR BIZOS SC: Did it occur to you when
 24 this information came to your notice, General, that General
 25 Mpembe did not have the confidence, in your view, of being

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1 the – what was he – the overall commander of the proposed
 2 plan?
 3 GENERAAL-MAJOOR ANNANDALE: Voorsitter
 4 nee, en ek het ook nie Generaal Mpembe aangestel nie. Hy
 5 was aangestel, soos vereis, deur die Provinsiale
 6 Kommissaris, sy is die oorhoofse bevelvoerder.
 7 MR BIZOS SC: As a fellow general, did
 8 you not feel that you owed it to him to speak to him, to
 9 ask him how he felt and ask him whether, in the
 10 circumstances, was it wise to have him continue as the
 11 overall commander?
 12 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 13 Generaal Mpembe is reeds in, ek dink 2001, is hy op sy
 14 huidige rangvlak aangestel. Hy is 'n ervare offisier en ek
 15 het reeds aangedui ek is nie sy bevelvoerder nie.
 16 MR BIZOS SC: Do you remember what the
 17 question was, General?
 18 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 19 nee, ek het dit nie met hom bespreek nie. Hy het wel aan
 20 my meegedeel die oorwegings wat hy geneem het toe hy die
 21 besluit geneem het dat die groep voortgaan toe hulle
 22 opgestaan het.
 23 MR BIZOS SC: May I appeal to you,
 24 General, so that we can get on, that you merely answer the
 25 question. No, I did not do what you are asking me.

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1 CHAIRPERSON: Mr Bizos, he's entitled to
 2 qualify and explain his answer.
 3 MR BIZOS SC: But first answer the
 4 question and then he can qualify it, Mr Chairman. I am
 5 trying to get some progress without long speeches from this
 6 witness.
 7 CHAIRPERSON: I don't think it's fair to
 8 say that he's been making long speeches. Some of his
 9 answers have been long but he obviously considers it
 10 necessary to say what he said in order to explain his
 11 answer, but I'm sure he'll bear in mind what you've said.
 12 MR BIZOS SC: Thank you, Mr Chairman.
 13 Threatening to kill a commander you've told us was a very
 14 serious police transgression. Did you take any steps to
 15 exclude from the force those members who made the threat
 16 as, because there would be – because, what is the word that
 17 you used, that there were – what is it? They were upset,
 18 emotional –
 19 CHAIRPERSON: Traumatized would probably
 20 be a good word. I'm not sure that's the word he used but
 21 having gone through this experience, not only having
 22 expressed his views about their commanding officer but
 23 having seen the hacking to death of their colleagues, one
 24 would have expected them to have been emotionally
 25 traumatized. I think that's the word you're looking for,

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1 Mr Bizos, is that right?
 2 MR BIZOS SC: Did it occur to you that
 3 these emotionally traumatized people were not fit and
 4 proper people to have guns, facing a hostile crowd?
 5 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 6 ek het reeds verduidelik dat die situasie gerapporteer was
 7 aan die Provinsiale Kommissaris. Daar was nie 'n
 8 verwagting op my nie.
 9 CHAIRPERSON: Do you know whether the
 10 people who were involved on the 13th, the members of the
 11 service who were involved on the 13th, whether they were in
 12 fact at the scene and took part in what happened, the
 13 operations on the 16th or had they been removed to receive
 14 counselling and so on, to enable them to deal with the
 15 experience that they'd undergone? Or is it something that
 16 you don't know about?
 17 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 18 ek weet dat daar deur ons EHW, Employee Health and Wellness
 19 mense, dat hulle berading gedoen het aan die lede. Ek weet
 20 nie eers wie is die lede wat na bewering gedreig het dat
 21 hulle Generaal Mpembe sou skiet nie en ek is ook nie bewus
 22 wie van die lede op die 13de in getalle of by name, was op
 23 die 16de ontplooi nie.
 24 CHAIRPERSON: I don't know whether fit
 25 and proper is necessarily the correct word, but if I may

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1 ask your opinion, do you think it would have been desirable
 2 to have employed or deployed those who were involved in the
 3 events – the members of the service, I mean – involved in
 4 the events of the 13th, at the scene on the 16th or was
 5 there a danger that they might be induced, as a result of
 6 the experiences of the 13th, to go beyond what is
 7 appropriate and possibly to exact revenge for what had
 8 happened?
 9 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 10 dit is vir my bitter moeilik om 'n opinie te lig behalwe
 11 dat terapeute wie sou die ontlofting gedoen het, hulle sou,
 12 waarskynlik sou hulle 'n aanduiding gegee het as daar
 13 individue is wat hulle sodanig gevoel het. So ek sal dink
 14 dat 'n ou swaar leun op die sodanige aanbeveling van 'n
 15 geskikte terapeut. Voorsitter, maar dan die aard van
 16 polisiëring is ook sodanig dat partykeer het 'n mens nie
 17 die luuksheid om heeltemal te onttrek uit polisiëring uit
 18 na so 'n voorval nie.
 19 MR BIZOS SC: How many JOC meeting were
 20 held from the time that you heard about this threat to the
 21 time that the last JOC meeting took place? How many JOC
 22 meetings were there between the 13th and the 16th?
 23 GENERAAL-MAJOOR ANNANDALE: Ek is seker
 24 die advokaat verwys na JOCOM vergaderings, ons hou nie JOC
 25 vergaderings nie.

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1 CHAIRPERSON: JOC is the centre, JOCOM is
 2 the committee, so it's a matter of terminology. JOC is
 3 just the joint operations centre –
 4 MR BIZOS SC: Yes.
 5 CHAIRPERSON: And JOCOM is the Joint
 6 Operations Centre Commission, Committee.
 7 MR BIZOS SC: Yes, commission, the
 8 committee.
 9 CHAIRPERSON: Yes.
 10 MR BIZOS SC: How many meetings of the
 11 committee were there during this period?
 12 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 13 ek het verneem dat daar een was op die 14de wat ek nie by
 14 teenwoordig was nie, dan self het ek voorgesit op die 15de
 15 en die 16de, sesuur die oggend.
 16 MR BIZOS SC: How many briefings were
 17 there during that period?
 18 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 19 dis moeilik. Briefings sluit ook in as parades toegesprek
 20 word, die briefing wat Luitenant-Kolonel Scott gaan gee het
 21 en dan ook die nabetragtings op die 15de, die aand, en die –
 22 maar in die JOC was daar dan die 14de, die aand was daar
 23 nabetragting en die 15de was daar nabetragting.
 24 MR BIZOS SC: Was the National
 25 Commissioner present at any of the briefings that you, as

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1 the head of JOC, attended? Was she present?
 2 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 3 ek gaan net weer verduidelik. Ek was nie die hoof van die
 4 pos nie. Ek het al telkens daarna verwys dat ek nie die
 5 hoof was van die JOC nie. Die hoof van die JOC, sogenaamd,
 6 word verwys na die CJOC, dit is die oorhoofse bevelvoerder.
 7 Die Nasionale Kommissaris was nie teenwoordig tydens enige
 8 JOCOM vergadering nie.
 9 MR BIZOS SC: I thought that I asked you
 10 about the Provincial Commissioner. I'm sorry if I made a
 11 mistake. I want to know just –
 12 CHAIRPERSON: Last time I corrected you –
 13 sorry, last time I corrected you, I'm sorry I didn't do it
 14 this time.
 15 MR BIZOS SC: Yes. I want a simple
 16 answer, not the titles and everything else. Was the
 17 Provincial Commissioner at any meeting which you attended
 18 or not?
 19 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 20 die Provinsiale Kommissaris was teenwoordig op die
 21 Maandagaand. Sonder om na enige titels van enige
 22 vergaderings te verwys, sal ek dan enige sodanige byeenkoms
 23 wat sy teenwoordig was na verwys. Sy was teenwoordig
 24 tydens drie geleenthede op die Maandagaand soos daar reeds
 25 na verwys was in getuienis. Die eerste een was 'n

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1 toeligtig aan die Nasionale Kommissaris, die tweede was 'n
 2 samespreking tussen Lonmin-bestuur en die polisiebestuur.
 3 MR BIZOS SC: Was the – sorry, one more
 4 interpretation.
 5 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 6 as ek kan voortgaan, die derde een was 'n vergadering die
 7 aand tussen die polisie, polisiebestuur, en dan was sy
 8 teenwoordig tydens die sogenaamde Special JOCOM vergadering
 9 op die 16de.
 10 [10:47] MR BIZOS SC: Did the Provincial
 11 Commissioner at any of those meetings raise the question
 12 that you had reported to her, that General Mpenbe's life
 13 was in danger, did she mention it at any of those meetings?
 14 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 15 korreksie. Ek het dit nie aan die Provinsiale Kommissaris
 16 gerapporteer nie. Ek het gemeld in my getuienis dat
 17 Luitenant-Kolonel Vermaak aan my meegedeel het, soos ook in
 18 sy verklaring vermeld, dat hy dit telefonies aan die
 19 Provinsiale Kommissaris gerapporteer het.
 20 CHAIRPERSON: It's in the statement,
 21 Lieutenant-Colonel Vermaak's statement, that he reported to
 22 the Provincial Commissioner.
 23 MR BIZOS SC: Yes, I'm sorry.
 24 CHAIRPERSON: And the witness was then
 25 told by Lieutenant-Colonel Vermaak that he had reported it

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1 to the Provincial Commissioner. He himself, the witness,
2 hadn't reported it to her but he accepted –
3 MR BIZOS SC: I'll change the question
4 but I would still ask for an answer. Did the Commissioner
5 mention – I beg your pardon.
6 CHAIRPERSON: Provincial Commissioner.
7 MR BIZOS SC: Did the Provincial
8 Commissioner mention the problem at any of the meetings
9 that you have spoken to us about?
10 GENERAAL-MAJOOR ANNANDALE: Ek aanvaar
11 die probleem is die dreigement deur die lede teen die lewe
12 van Generaal Mpmembe.
13 MR BIZOS SC: Did she mention it that we
14 have a problem with the overall commander, what are we
15 going to do about it? Did she mention it at all?
16 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
17 nie sover ek kan onthou op die vergaderings wat ek
18 teenwoordig was nie.
19 MR BIZOS SC: I am going to insist,
20 General, on an affirmative or negative answer. Are you
21 asking the Commission to believe that it was – it may have
22 been a matter which may have been mentioned but that you
23 have forgotten about it? Is that what you are saying? Yes
24 or no?
25 CHAIRPERSON: I understood him to say it

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1 was not mentioned at the meetings he attended, unless I
2 misheard but that's –
3 MR BIZOS SC: He added, as far as I can
4 remember, Mr Chair.
5 CHAIRPERSON: U het nou die vraag gehoor,
6 wat is u antwoord daarop?
7 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
8 ek het reeds in my getuienis gesê dat van hierdie
9 vergaderings, soos met Lonmin, was ek nie die heelyd
10 teenwoordig nie. Ek het gesê terwyl ek teenwoordig was,
11 het sy glad nie so 'n vermelding gemaak nie.
12 COMMISSIONER HEMRAJ: May I just enquire,
13 may I just enquire whether this matter, the threat to
14 General Mpmembe, is the sort of matter that would be on the
15 agenda of any of these meetings that you've referred to?
16 GENERAAL-MAJOOR ANNANDALE: Kommissaris,
17 nie op die agenda nie. Ek dink dit is iets wat pertinent,
18 stappe wat potensieel geneem kan word deur die Provinsiale
19 Kommissaris, maar geskei.
20 MR BIZOS SC: Don't you think that the
21 matter was of sufficient concern to all of you in leading
22 positions that it ought to have been discussed?
23 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
24 die Provinsiale Kommissaris stel 'n oorhoofse bevelvoerder
25 aan en die Provinsiale Kommissaris het ook die reg om 'n

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1 oorhoofse bevelvoerder te vervang.
2 CHAIRPERSON: Isn't it a matter – sorry,
3 interpret first into isiXhosa and then I'll ask my
4 question. Please, Mr Boozi, carry on interpreting into
5 isiXhosa. Was it a matter for the judicial – sorry, was it
6 a matter for the JOCOM to consider? The Provincial
7 Commissioner has appointed somebody as the overall
8 commander who is, I take it, a member of the JOCOM. Is it
9 a matter that you would expect the JOCOM to raise, discuss
10 and give attention to as to whether the overall commander
11 should be replaced or consideration should be given to
12 replacing him or is that a matter simply straight, simply
13 between the Provincial Commissioner and the person whom she
14 has appointed as overall commander?
15 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
16 dit kan tweeledig wees. Dit kan wees dat, gegewe dat die
17 Provinsiale Kommissaris sekerlik die persoon is wie haar
18 bevelvoerders die beste ken, dat sy so 'n besluit sou neem
19 en as sy dit nie neem nie, dat 'n mens berus daarby, maar
20 as dit 'n pertinente bekommernis is dan sal 'n mens aanvaar
21 dat lede van die JOCOM, dat dit, hulle sal opper en dit was
22 nie geopper nie.
23 MR BIZOS SC: Did you perhaps discuss it
24 with any other senior member of the police force along the
25 lines, haven't we got a problem here? If General Mpmembe

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1 has been threatened with death, how can he possibly
2 exercise any authority among the people that he was to
3 command on the 16th? Surely as a senior officer, never mind
4 the formality of meetings or appointments, you as a senior
5 officer, did you discuss it with anybody and did you
6 express any fear that he may not be an effective commander
7 for such an important event?
8 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
9 ek het geen rede gehad dat hy nie geskik is om die taak te
10 doen nie en ek het ook nie so 'n voorstel gemaak dat hy
11 moet vervang word nie.
12 MR BIZOS SC: Now, we have the evidence
13 of Mr Joseph Mathunjwa on page – in exhibit NN paragraph 78
14 – that Major-General Mpmembe advised him on the 16th of
15 August sometime after 13:30 outside of the JOC meeting,
16 that he was no longer in charge of the operation and that
17 the national, the Provincial Commissioner was in charge, on
18 page 23 of his statement.
19 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
20 ek het nie die betrokke verklaring voor my nie maar ek sal
21 aanvaar wat mnr Bizos gesê het.
22 MR BIZOS SC: Well, exhibit NN and I have
23 read from the statement.
24 CHAIRPERSON: What's the question based
25 upon that passage you've read to him?

<p style="text-align: right;">Page 9056</p> <p>1 MAJOR-GENERAL ANNANDALE: If I can just 2 get the specific paragraph please, Chairperson. 3 MR BIZOS SC: Paragraph 78, first 4 sentence. 5 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 6 ek kan kommentaar daarop lewer. 7 MR BIZOS SC: Before you comment, do you 8 accept the correctness of the statement of the person or 9 not? 10 GENERAAL-MAJOOR ANNANDALE: Nee, dit is 11 nie korrek nie, Voorsitter – 12 CHAIRPERSON: It would be more 13 appropriate to ask him if he's able to do so. Was he 14 present? This was a discussion I think, from the passage 15 you read, outside the JOC. If he wasn't present at the 16 time he won't know whether that statement of Mr Mathunjwa 17 was correct or not. So mustn't you ask him that first? 18 MR BIZOS SC: I'll amend the question. 19 Have you any reason to doubt the veracity of the deponent 20 of this statement? Have you any reason to doubt his 21 credibility? 22 CHAIRPERSON: Do you mean credibility in 23 general or do you mean the credibility of this particular 24 statement? 25 MR BIZOS SC: This particular statement.</p>	<p style="text-align: right;">Page 9058</p> <p>1 ANC torch bearing ceremony. Ek weet dat tydens die 2 spesiale JOCOM vergadering wat gehou was tussen 13:30 en 3 14:00 het Luitenant-Generaal Mbombo haarself verskoon, te 4 wete dat sy vir Luitenant Baloyi in die hospitaal wou gaan 5 besoek. Dis my kommentaar dan daarop. 6 MR BIZOS SC: There were no – you've 7 already told us that there were no private discussions 8 among your colleagues about the position of Mr Mpembe. 9 GENERAAL-MAJOOR ANNANDALE: As dit 10 privaat besprekings was, dan was ek nie teenwoordig en 11 bewus daarvan nie. 12 MR BIZOS SC: We know from the transcript 13 in the meeting you and General Mpembe had with union 14 leaders on the 15th appearing in exhibit GGG4, that Mpembe 15 had very firm and strong views on how the operation should 16 be conducted, do you recall that? 17 CHAIRPERSON: What page are you referring 18 to, Mr Bizos? 19 MR BIZOS SC: Page 675, Chair. 20 CHAIRPERSON: You'll understand this is 21 part of the police hard drive. It's the debriefing by 22 General Mpembe on the 15th of August, firstly with NUM and 23 then with AMCU and so the page number of the document is 24 page 6 but the overall page number in the police hard drive 25 is 675.</p>
<p style="text-align: right;">Page 9057</p> <p>1 CHAIRPERSON: Ja. You mean the accuracy, 2 I think. You mean the accuracy. What counsel wants to 3 know from you is, have you reason to think that that 4 statement is in any way inaccurate? 5 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 6 ja, ek dink nie dis korrek nie. Twee redes – die eerste, 7 13:30 is die tyd toe ons die spesiale JOCOM vergadering 8 gehad het en die enigste tyd wat ek van bewus is wat beide 9 the Provinsiale Kommissaris, mnr Mathunjwa en Generaal 10 Mpembe saam teenwoordig was, was waarskynlik so tussen 11 kwart oor 11 die oggend en so net voor 12 op die oggend van 12 die 16de, maar ek sien mnr Mathunjwa sê hy's nie seker van 13 die tyd nie. Ek wil net daarop wys dat dit onwaarskynlik 14 is dat dit 13:30 was. Dan sien ek in sy paragraaf 78 15 verwys hy het, dis 'n interaksie tussen homself en Generaal 16 Mpembe, so ek kan nie getuig oor wat daar plaasgevind het 17 nie maar wel vroeër toe ons almal teenwoordig was, was 18 Generaal Mbombo voorgestel aan mnr Mathunjwa deur Generaal- 19 Majoor Mpembe en sy was voorgestel as synde die Provinsiale 20 Kommissaris van die Noordwes Provinsie te wees en daar was 21 gemeld dat sy in beheer is van die provinsie van Noordwes. 22 So in my teenwoordigheid was daar nie verwysing gemaak dat 23 sy nou in beheer is van die operasie as die oorhoofse 24 bevelvoerder nie. En dan – ekskuus net, laaste ding 25 Voorsitter, en dan sien ek word daar melding gemaak van 'n</p>	<p style="text-align: right;">Page 9059</p> <p>1 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 2 as ek net asseblief die bewysstuknommer kan kry? 3 CHAIRPERSON: It's GGG4. 4 GENERAAL-MAJOOR ANNANDALE: En dan net, 5 jammer, die bladsy? 6 CHAIRPERSON: Page 6 of the document and 7 675 of the overall police hard drive. 8 GENERAAL-MAJOOR ANNANDALE: Dankie, ek 9 het dit. 10 CHAIRPERSON: Which line are you 11 referring to, Mr Bizos? 12 [11:07] MR BIZOS SC: Yes, line 9. 13 CHAIRPERSON: Mr Bizos, forgive me 14 interrupting but I think to be fair to the witness and 15 possibly to General Mpembe ultimately, it might be fairer 16 if you start – I'm not suggesting you're being unfair but 17 just to give, put the whole picture, it might be fairer if 18 you start a bit earlier. If I can make a few suggestions – 19 MR BIZOS SC: Yes. 20 CHAIRPERSON: At the foot of page 3, page 21 672, there's a statement there at line 29 which I think is 22 Mr Zokwana speaking and he says, "Our feeling is that 23 either those guys are disarmed or dispersed but as long as 24 they continue to stay that in that mountain, people are 25 continuing to do their rallies, we've got comrades who are</p>

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1 working at east side where we were today" – and he goes on
 2 about how they're going to be, there are threats and
 3 they're going to be attacked and so on and he says, "What
 4 we are fearing, of losing lives. Disarm those guys. We're
 5 going to lose lives of innocent people staying in the
 6 hostels at Eastern Plats." And then – so he is asking for
 7 these people to be disarmed and as I read it, General
 8 Mpembe isn't happy with that suggestion and he starts
 9 discussing it, for the purposes that you're busy with at
 10 the moment, at the foot of page 5 – that's 674 – about line
 11 26, that "Thanks. President, lastly, then it will be a
 12 process. This is a process and I need to communicate. You
 13 said to us the members they are" – and then inaudible –
 14 "Now I need to do my job and you all also call me to remove
 15 firearms. I cannot go there and disarm people, it would be
 16 bloodshed. So then I need to" – and then something, the
 17 passage is inaudible and he says – "and go in a specific
 18 house, disarm them, that's the only way. I cannot just
 19 wake up and say I go to that house, I'm not going to tell
 20 you what should I do but you have your members there
 21 inside. You have your members who are armed and I wanted
 22 that facilitation should take place. I'm here to" –
 23 inaudible – "I need to be told, I need to go to the house
 24 because that's the only way." So it looks in the context
 25 as if he's saying NUM must please give me information as to

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1 where, which houses the arms are in and we'll go there and
 2 get them. Then he goes on, "Beating this elephant bit by
 3 bit because me going there to the mountain, disarming
 4 people, it's going to be bloodshed, it's going to be
 5 bloodshed, that one I can assure you. Those blankets they
 6 have and those things, I saw being cut by a police officer
 7 in front of me, they did that. So now basically what I'm
 8 saying, the leadership are calling upon" - and then he goes
 9 on. So it would seem he was reluctant to go to the
 10 mountain and disarm, presumably because of what he'd seen
 11 on the 13th and he feared going that way would lead to
 12 bloodshed, whereas going to specific houses, beating the
 13 elephant bit by bit was a more appropriate way. I think in
 14 fairness to the witness, if one puts the whole passage in
 15 context, as I've endeavoured to do –
 16 MR BIZOS SC: Thank you, Mr Chair.
 17 CHAIRPERSON: - you can then cross-
 18 examine him –
 19 MR BIZOS SC: Yes, these are the passages
 20 that I have over lined, we have underlined on our copy.
 21 Thank you. I went – they were read before by my learned
 22 friend Mr Budlender. I thought I would – and they are on
 23 record – I thought I would expedite.
 24 CHAIRPERSON: I'm not criticising you, I
 25 just thought to be fair to the witness, he might like to be

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1 reminded of the context. That's now been done, now you can
 2 carry on.
 3 MR BIZOS SC: You were at this meeting,
 4 General.
 5 GENERAAL-MAJOOR ANNANDALE: Ek was
 6 teenwoordig.
 7 MR BIZOS SC: Do you agree that the
 8 passages read out, to put it mildly, was of great concern
 9 to General Mpembe?
 10 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 11 die hele situasie by Marikana was vir ons almal 'n
 12 bekommernis en ek aanvaar ook Generaal Mpembe s'n.
 13 MR BIZOS SC: Please let me put this
 14 question so that we can cut it short, if we can. Was it a
 15 clear indication to you that General Mpembe had serious
 16 objections to the plan of dispersing, disarming and
 17 arresting? Is it a correct interpretation of what has been
 18 read out?
 19 GENERAAL-MAJOOR ANNANDALE: Dit is vir
 20 seker nie so nie, Voorsitter.
 21 MR BIZOS SC: Right, you disagree.
 22 CHAIRPERSON: Mr Semenya wants to say
 23 something.
 24 MR BIZOS SC: Yes?
 25 MR SEMENYA SC: I was going to say we had

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1 this question and we had the answer previously, Chair.
 2 GENERAAL-MAJOOR ANNANDALE: Ons gaan net
 3 terug en terug en terug.
 4 MR BIZOS SC: I don't remember it but it
 5 can't do any harm.
 6 CHAIRPERSON: Well, it does harm if we
 7 ask questions over and over again and we get the same
 8 answer every time, it doesn't take the progress forward but
 9 may I suggest we take the tea adjournment now, you can
 10 marshal your forces and proceed in a non-repetitious way
 11 thereafter? We'll take the adjournment.
 12 [COMMISSION ADJOURNS COMMISSION RESUMES]
 13 [11:47] CHAIRPERSON: The Commission resumes.
 14 Generaal-Majoor, u is nog steeds onder eed. Mr Bizos, you
 15 were going to continue with the cross-examination you were
 16 busy with before we adjourned or are you moving on to a new
 17 topic?
 18 CROSS-EXAMINATION BY MR BIZOS SC (CONTD.):
 19 Mr Chairman, with respect, it is correct that the question
 20 was asked on Friday but there was no definitive answer from
 21 him –
 22 CHAIRPERSON: [Inaudible] get a
 23 definitive answer.
 24 MR BIZOS SC: Yes, because there was an
 25 interjection, if you remember Mr Chairman, by the learned

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1 Commissioner, that he was speaking to trade unionists, you
2 recall, and the question was not answered.

3 CHAIRPERSON: I'm giving you permission
4 now to ask the question again.

5 MR BIZOS SC: Thank you, Mr Chair.
6 General, the passages that were read out by the Chairman of
7 the Commission, read out by me yesterday and read out by Mr
8 Budlender make it, I put to you, very clear that he was
9 against the plan. Do you agree or disagree?

10 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
11 ek stem nie saam nie.

12 MR BIZOS SC: Well, I'm not going to
13 argue with you. I am going to put to you that you're
14 denying the obvious and one would've expected, would have
15 expected his senior colleagues in rank to debate it and not
16 to apparently dismiss his concerns.

17 CHAIRPERSON: Give Mr Booi a chance to
18 interpret your question into isiXhosa before the witness
19 replies.

20 MR BIZOS SC: Yes.

21 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
22 as ek kan kommentaar lewer, die bespreking wat ons gehad
23 het die aand van die 15de moet gesien word in die konteks.
24 Dit was nie 'n bespreking van die polisie se strategie of
25 plan nie. Daar was baie fokus deur Generaal Mpembe op die

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1 insameling van intelligensie en inligting. Hy het
2 deurlopend die erns van die situasie beklemtoon en hy het
3 gehamer op die belangrikheid van die rol wat die unies moet
4 speel, beide om die polisie van informasie te voorsien,
5 maar ook die rol wat die presidente veral moet speel in
6 terme van om die situasie te ontloft. Ek kan dit onomwonde
7 stel dat Generaal Mpembe –

8 MNR MAHLANGU: Ek is jammer?

9 CHAIRPERSON: I can state without
10 equivocation that General Mpembe –

11 GENERAAL-MAJOOR ANNANDALE: - het sy
12 goedkeuring gegee aan die plan, dat hy deelgeneem het aan
13 die besprekings rondom die samestelling van die plan en dat
14 hy as oorhoofse bevelvoerder nie beswaar gehad het teen
15 enige van die stappe van die plan nie.

16 MR BIZOS SC: General, your comment is
17 inconsistent with the clear words that, by General Mpembe,
18 that to go into the crowd with guns –

19 CHAIRPERSON: Sorry Mr Bizos, what words
20 are you actually relying on? It would help, I think, if
21 you actually quoted the words –

22 MR BIZOS SC: Yes.

23 CHAIRPERSON: Because I think you're
24 paraphrasing rather broadly. It might just help if he has
25 the ipsissima verba.

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1 MR BIZOS SC: Yes. Nothing can be
2 clearer, Mr Chairman, at the bottom of page 676. "I cannot
3 go to the mountain. It is not, has never been
4 strategically in my training. I have not taught because I
5 must disarm somebody, how do I disarm somebody with an axe
6 and I have a firearm? It will never work. There is no
7 training in the whole world to be like that." Read
8 together with the other statements, Mr Chairman, relating
9 to the – not to the plan as a whole but the objective of
10 surrounding, disarming and arresting. This is what he
11 says. It's all very well for the general in the witness
12 box to ignore those words –

13 CHAIRPERSON: No, Mr Bizos, you're now
14 making a speech. I thought you were asking questions. I
15 thought you would also refer to the passage at page 675,
16 line 22. "If you were their president you could count how
17 many people, between 3 to 4 000, but to charge those people
18 with the number of police you have, with what they have –
19 with what they have cut the people, they're also psyched
20 up. Definitely anyone would come up with that, whatever
21 thing, they will have to act. We're also not prepared to
22 use less bullets. I know you didn't want us to shoot-
23 shoot. Here it is, the police are shooting and killing
24 people, we do not want to go that route. At the same time
25 we're not prepared that our members should die but we have

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1 a duty to disarm." I think that's the passage you're
2 talking about.

3 MR BIZOS SC: Yes.

4 CHAIRPERSON: Now, I'm not quite sure
5 whether that necessarily supports your case but that, I
6 imagine, is the passage you –

7 MR BIZOS SC: Yes.

8 CHAIRPERSON: Let's hear what the witness
9 has to say about it.

10 MR BIZOS SC: Yes.

11 CHAIRPERSON: But you don't have to make
12 a speech, the passage has been read to him.

13 MR BIZOS SC: Yes.

14 CHAIRPERSON: He must now give us his
15 answer.

16 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
17 ek sê weer eens dat ons nie die plan of die pertinente
18 polisie strategie tydens daardie vergadering bespreek het
19 nie. Dit is dan juis hoekom ons hele plan bestaan het uit
20 ses vlakke. Voorsitter, ek probeer regtig net 'n antwoord
21 gee en ek probeer nie toesprake maak nie.

22 CHAIRPERSON: No, it's Mr Bizos making –

23 GENERAAL-MAJOOR ANNANDALE: Voorsitter
24 nee, mnr Bizos het nou so pas die opmerking gemaak that I'm
25 going to make another speech.

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1 CHAIRPERSON: This is an important part
2 of the case and it's very important that we should
3 understand your evidence on the point. I don't want you to
4 feel inhibited in any way. This is a point on which
5 clearly you're going to be criticised in argument. You
6 must get a chance to answer from your point of view why you
7 say the criticism will be unfair and incorrect and I'm not
8 going to stop you from explaining it as fully as you
9 consider appropriate.

10 GENERAAL-MAJOOR ANNANDALE: Baie dankie.
11 Voorsitter, dis dan juis hoekom ons pertinent vlak 2 gehad
12 het, die draad ontplooiing [onduidelik] *11:57 en dan die
13 oorgaan tot vlak 3 met die pertinente fases, die drie fases
14 van vlak 3. So dit was nooit die bedoeling, soos wat mnr
15 Bizos dit gestel het, wat hy gesê het dat ons beplan het om
16 hulle te surround nie. Dit was wel om die groter groep
17 uiteen te dryf sodat dit in hanteerbare groepies is vir
18 ontwapening en dan gevolglike arrestasie. So dit is reg
19 wat Generaal Mpembe gesê het, dat dit was nie ons bedoeling
20 om in hierdie groter groep soos hulle daar op die koppie
21 sit, in te gaan om op hulle 'n arrestasie of ontwapening
22 uit te voer nie. Voorsitter, en ek het vroeër in my
23 getuienis daarna verwys dat ons nie die presiese detail van
24 die strategie gaan, daardie aand op die vergadering gaan
25 bespreek het nie.

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1 MR SEMENYA SC: Chair, can I raise the
2 references in the statement of General Mpembe which point
3 to the fact that the proposition Mr Bizos is putting is not
4 correct –

5 CHAIRPERSON: Yes, well –

6 MR SEMENYA SC: At paragraph 8 read with
7 paragraphs 24, 5 and 6. Paragraph 26 even ends up saying,
8 "After consulting everyone at JOCOM I then approved both
9 the operational strategy and the mission statement."

10 CHAIRPERSON: Yes, I would prefer,
11 frankly, if that were dealt with – and I would say this to
12 Mr Bizos as well, as I said to him on Friday – most of this
13 debate can more properly take place with General Mpembe.
14 It's his words that are being interpreted in terms of in
15 the sense that the meaning is being puzzled out, it's more
16 appropriate to ask him the questions but Mr Bizos will say
17 this witness was present when General Mpembe said those
18 things but Mr Bizos, have we not reached the stage now
19 where this becomes a matter of argument? We know what
20 General Mpembe said in the transcripts, we will hear in due
21 course what General Mpembe says when he goes to the witness
22 box. The answers, the witness has given his answer which
23 you either accept or not. If you don't accept it, it's a
24 matter for argument I would've thought. So I'm not sure
25 there's much juice left in this particular lemon at this

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1 point, unless you pick up another one out of the basket.
2 MR BIZOS SC: Yes, I will – I am going to
3 put to you that the words of General Mpembe are clear in
4 their meaning and that he was sidelined because of what he
5 said in exhibit GGG4 and we will leave the rest for
6 argument, irrespective of what your answer –

7 CHAIRPERSON: That was the point you put
8 on Friday and the witness answered you on Friday. If you
9 do not accept that his answer is correct you'll be free to
10 argue it and also obviously raise it with General Mpembe
11 and I suppose even with the National Commissioner, but I
12 think, if I may say so, I think you've spent enough time
13 with the witness on this point.

14 MR BIZOS SC: Yes.

15 CHAIRPERSON: And I'm sure you've got
16 other points to raise with him.

17 MR BIZOS SC: Yes we do, Mr Chairman, and
18 I will go to them now. Now, I know that this question of
19 the negotiations was canvassed by our learned friend Mr
20 Budlender. There is just one short matter that I want to
21 put to you. In your evidence-in-chief you said that your
22 instructions to the negotiators were that they should
23 remain in a Nyala positioned close to the protesters and
24 use the public address system to communicate with persons
25 who had been identified, for dialogue.

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1 CHAIRPERSON: I don't understand that to
2 be his instructions. I think those were the instructions
3 given –

4 MR BIZOS SC: Yes.

5 CHAIRPERSON: But I don't think this
6 witness gave those instructions, did he?

7 MR BIZOS SC: I have a note, Mr Chairman,
8 unfortunately I haven't got a reference. Well, let the
9 witness – do you deny that, you never said that?

10 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
11 ek het my verklaring wat GGG1 bewysstuk is, dan in
12 paragraaf 8 op bladsy 3 en dan die vierde reël wat begin
13 met "The negotiators" en ek haal aan, "The negotiators
14 under the command of Lieutenant-Colonel McIntosh arrived
15 and they were briefed by Brigadiers Calitz and Fritz on
16 their expected role." So ek het hulle nie self toegelig
17 nie, nee.

18 [12:06] MR BIZOS SC: Did you know that they were
19 sent to negotiate from the Nyala?

20 GENERAAL-MAJOOR ANNANDALE: Dit is
21 korrek.

22 MR BIZOS SC: Did you know that the
23 protesters insisted that a representative of their employer
24 should come and speak to them?

25 CHAIRPERSON: You must interpret the

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1 question, please, before the witness answers.
 2 MR BOOI: Could I have it again?
 3 MR MAHLANGU: He has interpreted. He
 4 interpreted it, Mr Chairman.
 5 CHAIRPERSON: [Inaudible].
 6 MR MAHLANGU: What, the question –
 7 CHAIRPERSON: Mr Bizos's latest question
 8 hasn't been interpreted.
 9 MR BOOI: May I ask that the question be
 10 repeated please?
 11 MR BIZOS SC: Did you know that the
 12 persons that were going to do the negotiation, they were
 13 going to do it from a Nyala?
 14 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 15 ek was bewus daarvan.
 16 MR BIZOS SC: Do you know that the
 17 protesters insisted on, a representative of their employer
 18 should come to speak to them?
 19 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 20 die terugvoering aan die JOC het aangedui dat hulle versoek
 21 om te praat met iemand van Lonmin.
 22 MR BIZOS SC: Did you think that there
 23 was any meaningful negotiation possible between a person in
 24 a Nyala and a crowd that was calling for their employer to
 25 come and negotiate with them?

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1 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 2 ek het so gedink, ja.
 3 MR BIZOS SC: And in your evidence-in-
 4 chief you suggested to Brigadier Calitz and said that the
 5 people must remain within the Nyala and that they should
 6 make use of the public address system that is an accessory
 7 to the Nyala, to actually communicate with these people.
 8 CHAIRPERSON: I understood him to say
 9 that that was said to them by Brigadiers Calitz and Fritz,
 10 but does it matter whether it was by him or by them?
 11 MR BIZOS SC: Yes.
 12 CHAIRPERSON: That instruction was given,
 13 that's common cause.
 14 MR BIZOS SC: Yes.
 15 CHAIRPERSON: I don't know how it – I
 16 don't want to stop you, you may – if you've got a point
 17 that will help us, but –
 18 MR BIZOS SC: Yes.
 19 CHAIRPERSON: It doesn't matter whether
 20 he said it or whether Brigadiers Calitz and Fritz said it.
 21 MR BIZOS SC: Did you think that that was
 22 meaningful negotiation?
 23 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 24 dit is korrek, ja. Die omstandighede het die polisie
 25 genoop om sodanig in dialoog te tree.

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1 MR BIZOS SC: I'm going to put to you
 2 that this was an unfortunate thought that did not amount to
 3 proper attempts to negotiate, that this was just a front.
 4 CHAIRPERSON: Before you answer, Major-
 5 General, the counsel for the police, Mr Semenya, wants to
 6 say something.
 7 MR SEMENYA SC: Chair, would Mr Bizos
 8 edify us, what is the basis for that proposition?
 9 MR BIZOS SC: Well, Mr Chairman, I think
 10 that it's obvious. If you want to negotiate in good faith
 11 with people that say bring our employer here to speak to
 12 us, to put somebody in a police vehicle with a megaphone to
 13 speak to them is not proper negotiation. My learned friend
 14 may disagree with it but there's nothing wrong with the
 15 question with –
 16 CHAIRPERSON: The witness has explained
 17 that the circumstances were such that the police were
 18 obliged to adopt that expedient. You know what the
 19 circumstances were, I don't want to elaborate. So his
 20 answer, I imagine, doesn't relate to what would be best
 21 practice in an ideal situation. His answer was what was
 22 the only thing they could do practically in the situation
 23 they found themselves in. So then you're now suggesting
 24 that despite those circumstances, getting the negotiator to
 25 speak from a Nyala with a public address system was going –

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1 was a kind of a farce and a stunt and something that wasn't
 2 – that's what you put. I suppose it's, to some extent, a
 3 matter for argument. Mr Semenya, do you want to say
 4 anything further? Right, so what's your answer to that,
 5 Major-General?
 6 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 7 die omstandighede was ongelukkig sodanig dat 'n pertinente
 8 groep was swaar bewapen gewees, maar ook die gebruik van
 9 die publieke adresseringsstelsel het ten voordeel gehad dat
 10 die groter groep ook die polisie se intensies gehoor het en
 11 dat dit nie beperk was tot die klein groepie van vyf
 12 persone nie. Voorsitter, hulle was ook dan, deurgaans was
 13 hulle aangemoedig om terug te keer na hulle werkstasies toe
 14 sodat daar deur die vaste strukture dan verdere
 15 onderhandeling kan plaasvind. Voorsitter, dan kan ek ook
 16 onthou van 'n pertinente foto wat, ek dink dis mnr Noki,
 17 wat hy dan pertinent voor op die Nyala se buffer gestaan
 18 het en met die onderhandelaars gepraat het.
 19 MR MAHLANGU: I also remember a pertinent
 20 photo, Mr Chairperson, I think it was Mr Noki that came to
 21 the police Nyala and had a discussion with the police in.
 22 CHAIRPERSON: He stood on the bumper,
 23 that's the point. He stood on the bumper of the Nyala.
 24 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 25 dit was vir seker nie 'n front van die polisie nie, dit was

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1 'n ernstige en opregte poging deur ons. Voorsitter, ek is
 2 een persoon in terme van my opleiding as 'n onderhandelaar,
 3 ek is maar terdeë bewus en ek kan na letterlik honderde
 4 gevalle verwys –
 5 MR MAHLANGU: I am literally –
 6 CHAIRPERSON: I am thoroughly aware and I
 7 can refer literally to hundreds of cases.
 8 MR MAHLANGU: Hundreds of cases –
 9 CHAIRPERSON: Instances.
 10 GENERAAL-MAJOOR ANNANDALE: - wat
 11 onderhandeling tot 'n positiewe uitkoms gelei het en ek is
 12 'n groot voorstander daarvan.
 13 CHAIRPERSON: I'm a great supporter
 14 thereof. Are these instances where negotiations took place
 15 with one negotiator in a police Nyala and a public address
 16 system and, despite that, the negotiations were successful?
 17 Is that what you're saying?
 18 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 19 die honderde gevalle wat ek na verwys is nie dieselfde
 20 omstandighede nie, maar ek kan na een pertinente voorval
 21 verwys. Voorsitter, en ek is maar te bewus van die tyd wat
 22 ons nie het nie, so ek gaan regtig vinnig daarna verwys.
 23 Voorsitter, dit was 'n geval wat hom afgespeel het in
 24 Orange Grove, Johannesburg, wat 'n persoon geloop het op
 25 straat en 'n hond doodgeskiet het. Die voorval was onder

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1 die aandag van die polisie gebring en 'n polisiebeampte het
 2 gereageer na die betrokke woning waar gesien was die
 3 persoon inbeweeg het. Voorsitter, die polisiebeampte het
 4 aangeklop om navraag te doen en hy is in die proses, is hy
 5 vanuit die huis, is hy doodgeskiet. Die verdagte het
 6 homself toe - ek dink die beste beskrywing gaan ek in
 7 Engels gee, ge-barricade, so hy het homself afgesluit in
 8 hierdie woning. Voorsitter, en daar is toe 'n Nyala
 9 gebruik en die Nyala is ingetrek en die primêre
 10 onderhandelaar het ook 'n publieke adresseringsstelsel
 11 gebruik en het onderhandel met die persoon wat in die
 12 hoofslaapkamer was op die eerste verdieping en na ure se
 13 onderhandeling het sy die persoon oortuig. Sy het hom
 14 ingelig wat gaan gebeur, dat die spesiale taakmag gaan in
 15 die huis inbeweeg. Sy het vir hom presies vertel dat die
 16 deur gaan oopgebreek word, dat hy sy wapen moet neerlê en
 17 dat hy op 'n spesifieke posisie moet stelling inneem en so
 18 het hulle inbeweeg en hulle het die persoon presies so
 19 gevind en hy was gearresteer en ongedeerd. Voorsitter,
 20 daar is ander gevalle ook wat ons megafone gebruik het
 21 omdat ons net nie naby genoeg kon gaan nie, maar nie
 22 noodwendig uit 'n Nyala uit nie.
 23 MR BIZOS SC: Do you think that this is a
 24 good example to tell us about where we have a situation of
 25 over 3 000 people are gathered who are calling for their

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1 employer to come and address them and you say that the
 2 negotiation was to be done between them and two police
 3 officers in a Nyala? You say that's a parallel?
 4 [12:26] CHAIRPERSON: Mr Bizos, I'm not quite
 5 sure what point you're busy with at the moment. Are you
 6 still busy with the point that negotiation was taking place
 7 with the policemen in the Nyala and going through the
 8 public address system or are you dealing with another point
 9 the police negotiation wasn't concerned with the request of
 10 the strikers, namely that the employer should be brought to
 11 speak to them?
 12 MR BIZOS SC: Let me make it clear, Mr
 13 Chairman. What I am suggesting to the witness is that it
 14 was a doomed attempt to tell people, two policemen to tell
 15 people that were crying out for their employer to come and
 16 address them, to be addressed in – and I put it in inverted
 17 commas – “in a negotiation procedure” between the two
 18 policemen in the Nyala and the crowd. That's the point
 19 that I tried to make earlier on and I repeat it now, Mr
 20 Chairman.
 21 CHAIRPERSON: You see the point you make
 22 about the employer would be equally valid, even if the
 23 policemen had got out of the Nyala and stood next to it and
 24 spoke to the crowd because they were speaking and they
 25 weren't bringing the employer, the employer wasn't willing

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1 to come. So the Nyala just adds an extra aspect to it.
 2 MR BIZOS SC: It adds, with respect – Mr
 3 Chairman, it adds, with respect, that how honest can the
 4 negotiation be if the negotiators do not trust, in the
 5 opinion of the police officers, do not trust the
 6 negotiators.
 7 CHAIRPERSON: Okay, I think we understand
 8 the point you're making. Major-General, can you answer the
 9 question that's being put? If I understand what he's
 10 saying, he's saying that because they were in the Nyala,
 11 the policemen, police negotiators, they were conveying to
 12 the strikers that they didn't trust them because they
 13 thought if they get out of the Nyala they'll be attacked
 14 and what sort of negotiation would that be? That seems to
 15 be the point he's making. Do you have comment on that?
 16 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 17 dit sal onverantwoordelik wees van 'n bevelvoerder om
 18 onderhandelaars daar te plaas terwyl daar soveel mense is
 19 wat gewapen is en dat die vyf persone versoek was om hulle
 20 wapens neer te lê, wat self gewapen was.
 21 MR BIZOS SC: We are told that
 22 negotiations is a process of give and take, do you agree
 23 with that?
 24 GENERAAL-MAJOOR ANNANDALE: Dit is vir
 25 seker so, Voorsitter.

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1 CHAIRPERSON: Mr Bizos, I don't want to
 2 stop you unduly but you know this witness wasn't much
 3 involved with the negotiations. There was a special
 4 negotiator who was brought in, Lieutenant-Colonel McIntosh
 5 who I presume is going to be one of the witnesses. He was
 6 given instructions by the two other persons mentioned,
 7 Brigadiers Fritz and Calitz. This witness's involvement
 8 with the negotiations was very peripheral in the sense that
 9 he was present when the instructions were given. Can't our
 10 time be more profitably used with this point addressed to
 11 the people directly involved rather than the Major-General?
 12 I'm sure there are other points you can ask him about in
 13 respect of matters where he was directly involved.
 14 MR BIZOS SC: Well –
 15 CHAIRPERSON: I don't want to make it
 16 difficult for you to present your case but –
 17 MR BIZOS SC: He has given evidence that
 18 negotiations were taking place. The question is, were they
 19 bona fide negotiations or not and the question that I want
 20 to ask is, what did the two policemen that he says were
 21 negotiators, what did they offer to the crowd?
 22 CHAIRPERSON: Was he there to hear what
 23 they offered the crowd? Shouldn't they be asked that
 24 question? What they offered the crowd is set out in slide
 25 96 of exhibit L and 97, but it's not suggested that this

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1 witness was present and I imagine any evidence he would
 2 give on the point would be hearsay. So shouldn't you
 3 rather ask that question of the police negotiators,
 4 particularly of Lieutenant-Colonel McIntosh? I'll give you
 5 the fullest chance to ask him but I mean what's the point
 6 of raising that aspect with this witness? He can only give
 7 hearsay evidence and it's going to be covered, presumably,
 8 when Lieutenant-Colonel McIntosh comes anyway, isn't that
 9 so?
 10 MR BIZOS SC: Well, it was he who told my
 11 learned friend that instructions were given to the
 12 negotiators, Mr Chairman, from which one can infer that he
 13 had some role in it and I can't leave it in the air that
 14 there were negotiations –
 15 CHAIRPERSON: Alright –
 16 MR BIZOS SC: Genuine negotiations at
 17 that time.
 18 CHAIRPERSON: You've put your point to
 19 the witness. The point is no longer in the air, you've put
 20 it. Can we not move on to something else?
 21 MR BIZOS SC: Yes.
 22 CHAIRPERSON: Thank you. I'm not seeking
 23 to hamper you in presenting your case. You'll get full
 24 opportunity with Lieutenant-Colonel McIntosh.
 25 MR BIZOS SC: I've made the point that

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1 we're going to argue and I don't want – I don't think, with
 2 respect, that the witnesses *06-17 will sway the decision
 3 makers one way or the other. Thank you, Mr Chair. Now,
 4 there are a number of inconsistencies in the defence, in
 5 defence of the police conduct that I want to put to you.
 6 We are very near the end but please listen and try and
 7 respond as briefly as you can. You said to our learned
 8 friend Adv Budlender that the police operations on the 16th
 9 were aimed at protecting the old, innocent people who could
 10 be hurt by the protesters and the need to prevent
 11 intimidation and damage to property. Do you remember
 12 saying that?
 13 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 14 kan ek die transkripsie sien in terme van daardie? Is dit
 15 'n verbatim aanhaling wat ek gesê het?
 16 MR BIZOS SC: Police operations on the
 17 16th were aimed at protecting old, innocent people – your
 18 words – who could be hurt by the protesters, hurt by the
 19 protesters and the need to prevent intimidation and damage
 20 to property.
 21 CHAIRPERSON: The witness wants to know
 22 where that is in the transcript. Perhaps I can indicate to
 23 him the context, as I remember it. What was put to you was
 24 why didn't you carry out the earlier plan and attack people
 25 at night who were on the mountain and deal with the others

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1 as they came through in the day, and you said that that was
 2 not thought to be appropriate. The plan that was adopted
 3 was thought to be better because there was a fear that the
 4 people on the mountain would then go into the neighbouring
 5 township and attack innocent people there. I think that's
 6 the context of the passage to which Mr Bizos is referring
 7 you but I see that his, one of his assistants is looking at
 8 her laptop so presumably we'll get the exact page of the
 9 transcript in a moment.
 10 MR BIZOS SC: Well, just *08-42 words to
 11 this effect. I have some of it in inverted commas from our
 12 assistant.
 13 CHAIRPERSON: Did I give the correct
 14 context? Your assistant –
 15 MR BIZOS SC: Yes, yes.
 16 CHAIRPERSON: - is nodding her head,
 17 alright, so that was the context.
 18 MR BIZOS SC: Yes.
 19 CHAIRPERSON: Okay.
 20 MR BIZOS SC: That was. We are looking
 21 for the passage and I think that we will, we will be borne
 22 out by the summary that I –
 23 CHAIRPERSON: Not that anything
 24 necessarily turns on the exact words. If that was the
 25 strekking –

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1 MR BIZOS SC: Yes.

2 CHAIRPERSON: What's the English for

3 strekking?

4 MR BIZOS SC: Yes.

5 CHAIRPERSON: If that was the gist of

6 what was said, and I take it that's what you put to the

7 witness, that was the gist of what he said, then he can

8 tell us if that was the gist of what he said or –

9 MR BIZOS SC: Yes, I do recall that there

10 was concern for the old, innocent people and that if they

11 did not deal with them they would go to their homes and do

12 this, that and the other. You don't recall saying

13 something like that?

14 GENERAAL-MAJOOR ANNANDALE: Voorsitter

15 nee, ek het nie gesê ek kan dit nie onthou nie. Ek wou dit

16 net in die konteks sien want ek dink ek het – want ek het

17 meer as een keer verwys na pertinente risiko's, maar die

18 Voorsitter het dit vir my in konteks geplaas.

19 MR BIZOS SC: Yes, you also said that

20 implementing stage 3 was a last resort.

21 GENERAAL-MAJOOR ANNANDALE: Ek het dit

22 ook gesê, dis reg.

23 MR BIZOS SC: This was the increased risk

24 that such a heavily armed group could go into the

25 residential areas and communities.

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1 GENERAAL-MAJOOR ANNANDALE: Ek het dit

2 ook gesê.

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

4 that this could not have been the reason for the police

5 operations on the 16th. Do you agree?

6 GENERAAL-MAJOOR ANNANDALE: Voorsitter,

7 ek het reeds verwys wat was die redes en ek het 'n lang

8 aanloop gegee en besonderhede gegee in terme van die

9 risiko's verbonde.

10 MR BIZOS SC: Because in your –

11 GENERAAL-MAJOOR ANNANDALE: Om sodanige

12 groep, so gewapen te laat ingaan in die nedersettings en ek

13 het ook verwys na die verhoogde risikofaktore -

14 MR MAHLANGU: I also referred to the high

15 risk factor.

16 CHAIRPERSON: Increased, the increased

17 risk factor.

18 MR MAHLANGU: The increased – the

19 increased, yes, the increased risk factor.

20 GENERAAL-MAJOOR ANNANDALE: - wat

21 aanleiding gegee het tot die besluit om oor te gaan op fase

22 3.

23 MR BIZOS SC: You finished?

24 GENERAAL-MAJOOR ANNANDALE: Dankie,

25 Voorsitter.

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1 MR BIZOS SC: In your evidence you have

2 indicated that there were several paths into the Nkaneng

3 settlement. Indeed you said that all the protesters had to

4 do was go a bit north, then east to find more than one big

5 path to the settlement. Do you recall saying that?

6 GENERAAL-MAJOOR ANNANDALE: Voorsitter,

7 ek kan dit onthou en ek kan ook onthou dat ek pertinent na

8 twee bewysstukke verwys het *14-40.

9 MR BIZOS SC: Interpret your evidence

10 correctly, General, you were more than happy for the

11 heavily armed protesters to enter the settlement so long as

12 they did not do so on the main road into Nkaneng.

13 GENERAAL-MAJOOR ANNANDALE: Dis nie

14 korrek nie, Voorsitter. Dis die interpretasie wat Adv

15 Bizos gee aan my getuienis.

16 MR BIZOS SC: I want to deal with the

17 alternative actions that were available to the South

18 African Police on the 16th in order to avert the tragedy

19 that occurred. In paragraph 63 of exhibit L –

20 MR MAHLANGU: Slide, slide 63?

21 CHAIRPERSON: 63 of exhibit L, perhaps it

22 can be shown on the screen. This is a reference to the

23 meeting, I take it, of the JOCOM at 6AM on the morning of

24 Tuesday the 14th.

25 MR BIZOS SC: 14th. You say –

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1 CHAIRPERSON: Can it not be shown to us

2 on screen, slide 63 of exhibit L? Mr Wesley has gone to

3 see if he can see to it that it's put up on the screen.

4 It'll help, I think, if it's on the screen to make the

5 point more effectively perhaps, if it is a good point.

6 MR BIZOS SC: I should have forewarned.

7 CHAIRPERSON: Attempts are being made to

8 put it on the screen. Let me read it out. Slide 63 reads,

9 "Report. The group of protesters was expected to increase

10 and become more aggressive, the longer the strike

11 continued. Operational deployments at 6AM. The initial

12 interim operational strategy considered was to prevent the

13 protesters from coming to the koppie armed, by deploying a

14 filtering police line to search those approaches and were

15 moving along approach routes. Encircle the few protesters

16 at the koppie, estimated at less than 50, disarm, arrest

17 and transport for processing to Marikana police station.

18 This was deemed not feasible due to the forces called up

19 from distant locations not having arrived yet and those who

20 were there had not yet been orientated to the mission area

21 or briefed sufficiently." That's the passage in the slide

22 to which Mr Bizos refers.

23 MR BIZOS SC: Who made this alternative

24 suggestion on the 14th, who made the suggestion?

25 [12:46] GENERAAL-MAJOOR ANNANDALE: Voorsitter,

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1 ek weet nie. Ek was nie teenwoordig tydens daardie JOCOM
2 vergadering nie.

3 MR BIZOS SC: Whether you were there or
4 not, we are going to submit that it was an obvious
5 alternative. If you are concerned about armed people
6 gathering in their thousands on the koppie, surely if they
7 came in small groups from early morning to late afternoon,
8 posting police officers before they reached the koppie
9 would have been an ideal solution. You could disarm them
10 and say, you can go to the koppie if you want to but
11 without arms, it's an offence to have pangas and axes and
12 assegais, we are going to take them away from you and we
13 may even arrest some of you – whilst they were in small
14 groups approaching the koppie. Why was not that done?

15 MR SEMENYA SC: Chair, to understand – is
16 the proposition by Mr Bizos then that was a viable option
17 despite the forces who were called up from distant
18 locations not having arrived yet and –

19 MR BIZOS SC: No, with respect –

20 CHAIRPERSON: Mr Bizos, Mr Bizos, give Mr
21 Semenya a chance to finish what he has to say and then you
22 can answer him.

23 MR SEMENYA SC: And despite the fact that
24 those who were there had not been orientated to the mission
25 area or had not been briefed sufficiently, is it the

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1 proposition that is being put to the witness?

2 CHAIRPERSON: I think the question is a
3 bit ambiguous. Are you saying that once the forces called
4 up from distant locations had arrived and once those who
5 were there had been orientated and briefed sufficiently,
6 then that strategy would have been appropriate or are you
7 suggesting that that strategy would have been appropriate
8 even before the forces arrived and the orientation took
9 place?

10 MR BIZOS SC: It's the first of a number
11 of questions, Mr Chairman. I do not accept, with respect,
12 we do not accept the excuse given in paragraph 63 because
13 it was open to them to do that, not only on the 14th – and
14 if they did not have enough people, they had more people on
15 the 15th and the 16th and these are the questions I'm going
16 to ask.

17 CHAIRPERSON: I'm sorry, you're not
18 really answering the question I'm asking, which flows from
19 Mr Semenya's objection. Are you saying that even at 6
20 o'clock on the morning of the 14th they could have
21 implemented that strategy despite the fact that the people
22 hadn't come from distant locations and hadn't been briefed
23 and orientated, or are you saying that once people had
24 arrived and once the orientation had taken place and the
25 briefing had taken place, then that strategy could've been

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1 adopted. Do you understand the difference between the two?
2 Now which of those two are you putting or are you putting
3 both?

4 MR BIZOS SC: I'm putting both, I'm
5 putting both, Mr Chair –

6 CHAIRPERSON: Alright, well, let's
7 concentrate on –

8 MR BIZOS SC: The first one, the first
9 one we say that there were people there, there were core,
10 small groups, they didn't require the large number of
11 policemen, they could've done it on the 14th. Even more so
12 later than the 14th, even more so early on the 15th –

13 CHAIRPERSON: Alright –

14 MR BIZOS SC: And the 16th.

15 CHAIRPERSON: I think the question can
16 now be understood by the witness and Mr Semenya's point has
17 been adequately dealt with and we can now get the witness's
18 reply.

19 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
20 baie dankie. Ek het reeds in my *05-49 na hierdie
21 pertinente punt verwys toe my getuienis gelei was. Ook Adv
22 Budlender het pertinente stellings gemaak en vrae gevra
23 daaroor en ek het weer eens daarna verwys en ek sal met
24 graagte weer eens daarna verwys. Ek kan egter nie met
25 gesag kommentaar lewer op dit wat op slide 63 vermeld word

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1 nie, synde dat ek nie teenwoordig was nie, maar ek kan my
2 opinie gee en hoekom ons dit op 'n latere stadium verwerp
3 het as 'n konsep alternatief. Daar was nie pertinent
4 intelligensie of informasie dat in die sogenaamde groepie
5 van 50, dat 'n leierskap element teenwoordig was nie. Daar
6 was nie pertinente bevestiging dat die betrokke groepie
7 gewapen was nie.

8 Adv Budlender het toe gemeld ons sou dit kon
9 bepaal het as ons 'n deursoeking gaan doen het, dan sou ons
10 geweet het of hulle gewapen is al dan nie, maar ek het
11 verdere redes gegee hoekom ons dit nie as geskik geag het
12 om die betrokke aksie uit te voer nie. Ek het gesê dat
13 tensy ons hulle sou vind met wapens, dat daar nie
14 pertinente kriminele klagtes teen die groepie sou wees nie,
15 net eenvoudig omdat hulle op die koppie was nie, maar sou
16 daar pertinente klagtes wees waarop ons hulle kon arresteer
17 dan sou die arrestasie van hierdie groep waarskynlik gelei
18 het tot 'n nuwe protesaksie en in dié geval die vrylating
19 van die persone. Ek het ook verwys na die onderhandelings
20 van die polisie en sou ons dit gedoen het, sou dit die
21 integriteit van die polisie geskaad het.

22 MR MAHLANGU: I also referred to the –

23 CHAIRPERSON: The negotiations.

24 MR MAHLANGU: The negotiations and I said
25 if these were not successful –

<p style="text-align: right;">Page 9092</p> <p>1 CHAIRPERSON: I think if this had been 2 done, that was the alternative proposal, it would have 3 damaged the – 4 MR MAHLANGU: It would have damaged the 5 integrity of the – 6 CHAIRPERSON: The integrity of the 7 process. 8 GENERAAL-MAJOOR ANNANDALE: Dat dit nie 9 in die gees van onderhandelinge is nie en die presiese 10 vertrouwe wat ons probeer bou, het ons dan nou net gaan 11 verbreek. Dan het ek pertinent verwys na die praktiese 12 uitvoerbaarheid van so 'n aksie. 13 MR MAHLANGU: I also referred to the 14 pertinently – onuitvoerbaar? 15 CHAIRPERSON: [Inaudible] 16 MR MAHLANGU: Yes, the inability of such 17 a plan being put into effect, the practicality of it being 18 put in effect has been hampered. 19 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 20 ek het pertinent verwys na die topografie van die omgewing 21 en ek het vermeld dat jy waarskynlik die koppie kan benader 22 uit 360-grade rigtings. Voorsitter, en ek het verwys 23 daarna dat dit soveel makliker is in 'n stedelike opset om 24 toegang tot roetes te beperk want daar sal waarskynlik 25 miskien twee of drie toegangsroetes wees na 'n sentrale</p>	<p style="text-align: right;">Page 9094</p> <p>1 having heard the full answer, I suggest we now take the 2 lunch adjournment for half an hour. 3 [13:36] MR MAHLANGU: Just a minute, excuse 4 me.*00-02 5 [COMMISSION ADJOURNS COMMISSION RESUMES] 6 [13:42] CHAIRPERSON: The Commission resumes. 7 Generaal-majoor, u is nog steeds onder eed. 8 CHARL ANNANDALE: s.o.e. 9 CHAIRPERSON: Mr Bizos. 10 MR BIZOS SC: Thank you, Mr Chairman. 11 CHAIRPERSON: Mr Boo's gone to the bank 12 and been delayed. So Mr Mahlangu is going to interpret 13 both, Afrikaans to English and from English to IsiXhosa, 14 which is – Afrikaans to English, English to IsiXhosa and 15 it's not always so easy, so we must be patient. But I'm 16 sure he'll do his best and I'm sure we'll manage. So, but 17 we must all speak fairly clearly and slowly. 18 MR BIZOS SC: General, you have given a 19 long response as to why the alternative that I have 20 suggested was not adopted. Would you agree that despite 21 the alleged difficulties that may have been envisaged, 22 which you have mentioned, if the alternative was adopted, 23 the tragedy of Marikana may not have occurred? 24 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 25 nee, ek kan nie saamstem nie.</p>
<p style="text-align: right;">Page 9093</p> <p>1 punt. Voorsitter, ek het verduidelik dat in praktyk sou 2 dit dan beteken het dat ons die polisie hulpbronne in 3 tientalle klein groeperings sou moes opbreek in 'n poging 4 om dan sodanige klein groeperings wat op pad is te stop en 5 te deursoek. Voorsitter, en al wat sou gebeur het is dat 6 die eerste groepie wat so gestop word, sal die informasie 7 versprei aan die res van die mense op pad en dan in plaas 8 van klein groepies sou dan die groep elders, weg van 9 sodanige polisie beheerpunte sou hulle gegroeper het en 10 dan sou ons waarskynlik vind dat daar skielik miskien 'n 11 duisend of selfs tweeduisend persone dan op een van hierdie 12 klein beheerpunte van die polisie beweeg. 13 MR MAHLANGU: We would have then found, 14 Mr Chairperson, that people would then be walking in bigger 15 groups, 1 000 or 2 000 along the police line. 16 GENERAAL-MAJOOR ANNANDALE: Chairperson, 17 not the police line, they will then all head for one of the 18 smaller groupings of police officers that is specifically 19 manning a control point. Voorsitter, en in praktyk sou dit 20 nie haalbaar gewees het nie en ek is jammer dat ek weer 21 eens moes alles herhaal maar dit was gemeld, maar ek moes 22 dit doen om volledig te wees. Ek kan nie net gaan antwoord 23 nie – 24 CHAIRPERSON: I didn't stop you, I 25 thought it only fair to let you give the full answer but</p>	<p style="text-align: right;">Page 9095</p> <p>1 MR BIZOS SC: Tell me, the alternative 2 that you chose of trying to break up the group into small 3 groups, how many small groups do you expect to have been 4 formed for the police to control, how many groups did you 5 envisage? 6 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 7 ek kan nie vir u 'n getal gee nie. Dit is maar 'n oordeel 8 van die operasionele bevelvoerder. 9 CHAIRPERSON: Before we carry on, there 10 is static on the line as it were. What's the cause of the 11 static, have you sorted it out? Is it someone's cell phone 12 or is there something wrong with the equipment. 13 MR MAHLANGU: The interpreter behind me 14 was too near the mike. He's been told to move a bit back. 15 CHAIRPERSON: Right. So we won't have a 16 problem in future. We'll monitor the situation. Can I ask 17 a question following the one Mr Bizos has asked you. Can 18 you tell us whether you had in mind or generally it's 19 appropriate to say it, what the size of the groups would 20 have been that were relatively easy to handle? 21 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 22 dit is regtig moeilik. Daar is te veel veranderlikes. 23 CHAIRPERSON: What are the variables? 24 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 25 dit sou af gehang het van die bewapening wat die betrokke</p>

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1 groepe het en ook hoeveel polisie manne dan nou beskikbaar
 2 is op daai stadium om dit te hanteer.
 3 CHAIRPERSON: I'm not sure that those
 4 factions necessarily had played a role. I mean after all
 5 the idea was to break the group of 300, 400 down to a
 6 number of smaller groups by means of water canon, tear gas
 7 and rubber balls, right, and stump grenades. Now that –
 8 those resources as it were, would have obviously broken the
 9 group down to some extent, but can we – do we know what the
 10 size of the resulting groups would have been after they had
 11 received a barrage of tear gas, stump grenades, water and
 12 rubber balls, because those were the factors that would be
 13 relevant surely in relation to breaking the group down into
 14 smaller groups?
 15 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 16 ek sal aanvaar as ek moet waag dat dit waarskynlik groepies
 17 van kleiner as 10 sou wees.
 18 CHAIRPERSON: I was thinking – I suppose
 19 I must give the interpreters a chance to interpret. I was
 20 also thinking in terms of groups of about 10 and smaller.
 21 So if it was – if the groups were 10, then we're looking at
 22 about probably 30 groups. I understand your point is that
 23 some of the – the front group would probably have gone
 24 away, wouldn't have stayed. They would have been
 25 dispersed, so driven away. But assuming you had 300 left,

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1 groups of 10 or smaller – groups consisting of 10 or fewer
 2 people, you then have about 30 or more groups. Is that
 3 fair assumption?
 4 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 5 as almal sou bly, ja, waarskynlik dan sou 30, maar ons het
 6 aanvanklik voorsiening gemaak vir so 170, maar potensieel,
 7 ja, kon dit al 300 kon gebly het.
 8 MR BIZOS SC: The steps taken of tear
 9 gas, stun grenades and the other steps before the shooting,
 10 were they against the small group only, or to the larger
 11 group or portions of it, of the 3 000?
 12 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 13 ek het getuig dat die uiteendryf-aksie sou gewees het teen
 14 almal wat sou gebly het, maar pertinent dan gefokus op die
 15 groepie van tussen 300 en 400.
 16 CHAIRPERSON: I take it that means that
 17 the assumption was that the other people, the larger group,
 18 would have been dispersed on their own, that only the hard
 19 core of the front smaller group would, as you envisaged it,
 20 remain, is that a fair assumption?
 21 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 22 dit was die aanname en dis dan ook hoe dit gebeur het toe
 23 ons die draad uit gerol het, toe het die groter groep self
 24 uiteen gegaan.
 25 MR BIZOS SC: Did you have any

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1 intelligence as to whether either the small group or the
 2 small group plus a number of others would voluntarily hand
 3 over their weapons?
 4 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 5 nee, nie intelligensie nie.
 6 MR BIZOS SC: The intelligence was to the
 7 contrary, was it not?
 8 GENERAAL-MAJOOR ANNANDALE: Die
 9 intelligensie was dat pertinent hierdie groep dan nie sou
 10 hulle wapens neerlê nie, dit is korrek.
 11 MR BIZOS SC: - You expect them to resist
 12 the police that tried to break them up into groups?
 13 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 14 soos ek reeds getuig het dat dit 'n klein groepe openbare
 15 orde lede benodig om selfs 'n groot groep uiteen te dryf.
 16 Ons het dan ook terug geval op historiese gebeure in terme
 17 van oor soveel jare soveel gevalle waar daarmee gedeel was,
 18 dat dit juis is wat gebeur. Advokaat Bizos het verwys na
 19 'n verklaring van luitenant-generaal Merafi, wat hy dan
 20 juis in die verklaring meld van iets soos 11 000 mense wat
 21 dan ook deur 'n baie klein groepie openbare orde lede
 22 suksesvol uitmekaar gedryf is.
 23 CHAIRPERSON: Exactly 15 000.
 24 GENERAAL-MAJOOR ANNANDALE: Dankie vir
 25 die korreksie.

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1 MR BIZOS SC: Was there any briefing of
 2 the policemen involved as to how they should react if the
 3 smaller group refused to be divided and refused to abandon
 4 their arms? Was there a briefing what they should do?
 5 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 6 ek was nie teenwoordig tydens die voorligting wat gegee was
 7 deur luitenant-kolonel Scott nie en ek was ook nie
 8 teenwoordig toe die onderskeie bevelvoerders hulle
 9 onderskeie lede verder gaan toelig het nie. Ek kan nie
 10 daarop kommentaar lewe nie.
 11 MR BIZOS SC: Did you not ask before the
 12 shooting, what are policemen going to do if the people,
 13 broken up into groups or even not broken up into groups,
 14 how they are going to – how the police are going to react
 15 to that resistance?
 16 CHAIRPERSON: You mean if they resist and
 17 decline to hand over their weapons?
 18 MR BIZOS SC: Yes, if they declined, we
 19 will not be broken up, we will not surrender our weapons,
 20 what were the police going to do then?
 21 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 22 die beplanning was die heelyd gewees dat hulle sal
 23 opgebreek word in kleiner groepe na oordeel van die
 24 operasionele bevelvoerder. Histories was ons nog altyd
 25 suksesvol gewees om 'n groep op te breek in kleiner groepe.

<p style="text-align: right;">Page 9100</p> <p>1 Die openbare orde polisie se metodes en benadering het nog 2 altyd gewerk. In terme van die individuele benadering van 3 persone, is die lede sodanig opgelei. Hulle het sodanige 4 vaardighede. Dis dan juis hoekom ons TRT lede daar gehad 5 het.</p> <p>6 MR BIZOS SC: I ask the question again, 7 General. What were the police going to do if the 8 protestors did not respond favourably to the police?</p> <p>9 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 10 gunstig in terme van om uiteen te dryf, sal ek eerste 11 verduidelik. Dan sou daar na oordeel van die operasionele 12 bevelvoerder voortgegaan moet gewees het met die aanwending 13 van waterkannon, pirotegnies of hael geweer-rubber.</p> <p>14 CHAIRPERSON: - stun grenades. 15 Pyrotechnics is stun grenades.</p> <p>16 GENERAAL-MAJOOR ANNANDALE: In terme van 17 individuele persone wat genader sou gewees het, en wat nie 18 hulle wapens sou wou neerlê nie, is daar staat gemaak op 19 die vaardighede en opleiding van individuele 20 polisiebeamptes verbonde aan die TRT om so 'n persoon of 21 persone dan te ontwapen.</p> <p>22 MR BIZOS SC: Did you expect anybody to 23 be – if gas was used or the water cannon, to drop their 24 gun, their weapons, or to even become more determined to 25 keep them for their own purposes?</p>	<p style="text-align: right;">Page 9102</p> <p>1 any instructions or advice – was the advice given of the 2 nature of Mr Bizos asks about, in respect of the – any 3 members who received any instructions in your presence?</p> <p>4 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 5 nie in my teenwoordigheid nie, maar ek weet daar is 6 verwysing gemaak deur van die bevelvoerders en ook in 7 Bewysstuk L dat ek dink die woorde wat gebruik is, “the 8 rules of engagement”, was weer bevestig of oorgedra.</p> <p>9 COMMISSIONER HEMRAJ: It actually appears 10 in slides 182 and 183.</p> <p>11 GENERAAL-MAJOOR ANNANDALE: Dankie, 12 kommissaris.</p> <p>13 MR BIZOS SC: I know that and I wrote 14 next to it, what were they? What were the rules of 15 engagement that were conveyed?</p> <p>16 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 17 die individuele bevelvoerders sal daarvoor kan getuig. Ek 18 kan nie, maar hoe ek dit verstaan in terme van my oordrag 19 aan lede sou dit wees, dan sal dit tweeledig wees. Die een 20 sou wees in die konteks van openbare skade-bestuur. Dan 21 sou dit wees die gebruik van geweld in kontinuum. En 22 andersins die gemeenregtelike beginsels van 23 selfverdediging, noodweer en beskerming van eiendom.</p> <p>24 CHAIRPERSON: It's the common rules of 25 self-protect and protection of property.</p>
<p style="text-align: right;">Page 9101</p> <p>1 [14:01] GENERAAL-MAJOOR ANNANDALE: Voorsitter, 2 weer eens in terme van die geskiedenis wat ons het in terme 3 van tipiese optrede, was dit verwag dat die persone 4 vrywillig hulle wapens sou neerlê. Maar daar was 5 voorsiening gemaak dat daar individue sou wees wat 6 arrestasies sou teengaan of verset teen arrestasies sou -</p> <p>7 MR BIZOS SC: Was there any guidance 8 given to the police officers before the shooting of how 9 dangerous shooting may lead to very serious consequences 10 and it must be avoided at all cost?</p> <p>11 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 12 ek het verduidelik dat ek nie teenwoordig was by die 13 toeligtingsessies nie. Polisiebeamptes is behoorlik 14 opgelei in die gebruik van hulle vuurwapens en hulle 15 deeglik bewus van die omstandighede wanneer hulle sodanige 16 wapen kan gebruik en wat die uitwerking is van die gebruik 17 van so 'n wapen.</p> <p>18 MR BIZOS SC: The question was whether on 19 this occasion the police were reminded of the dangers of 20 using weapons against the crowd?</p> <p>21 CHAIRPERSON: I understand his answer to 22 be that he wasn't present when the final instructions were 23 given by the various commanders to the members under their 24 command. I think that's his answer. Perhaps you could – 25 we could take it this way. In your presence, was – were</p>	<p style="text-align: right;">Page 9103</p> <p>1 MR BIZOS SC: Were they told when to 2 engage without instruction?</p> <p>3 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 4 ek het vermeld dat ek nie teenwoordig was nie. So ek kan 5 nie gaan namens elke bevelvoerder praat nie. Ek kan net 6 meld dat die beginsel van instruksie of handeling en bevel 7 in terme van die gebruik van 'n vuurwapen. In terme van 8 Staatorde 262 is dit toepaslik op die verskillende vlakke 9 van gebruik van geweld in kontinuum. Maar dis nie 10 toepaslik in gevalle van selfverdediging nie.</p> <p>11 CHAIRPERSON: I think it is only 12 appropriate in cases of private self-defence or private 13 defence, is that right?</p> <p>14 GENERAAL-MAJOOR ANNANDALE: Instruksies 15 is nie toepaslik in gevalle van selfverdediging en -</p> <p>16 MR BIZOS SC: I am going to put to you 17 that to say to an inflamed police force unit or units –</p> <p>18 CHAIRPERSON: Mr Bizos, that's a double 19 question. You first got to ask whether the police force 20 was inflamed or put it that they were inflamed and then you 21 can proceed to ask the next question. If the question 22 assumes something that's not already on the table, then 23 it's not a good question. So reformulate the question, 24 please.</p> <p>25 MR BIZOS SC: I'll reformulate. To tell</p>

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1 the people that were going to go into the third stage that
 2 you can engage without instruction, you can engage without
 3 instruction as the 182 records, is a strange thing to say
 4 for people that were going to break up the crowd into
 5 groups?
 6 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 7 ek het dit nie gesê nie.
 8 MR SEMENYA SC: Chair, we don't
 9 understand what could be strange? What could be strange to
 10 say in self-defence require no instruction?
 11 CHAIRPERSON: That's a point that you
 12 have to answer, Mr Bizos?
 13 MR BIZOS SC: Mr Chairman, I'm entitled
 14 to ask him why was it necessary to remind people that were
 15 going to go into this operation that they can shoot without
 16 command? That's really what it amounts to –
 17 CHAIRPERSON: But there are two problems,
 18 aren't there? The first is, he doesn't know they were
 19 reminded that, because he wasn't present when they received
 20 their instructions. Secondly, Standing Order 262 actually
 21 says that. So what's the problem in reminding them about
 22 the pertinent provisions of standing order 262 if that
 23 command was in fact given?
 24 MR BIZOS SC: We would submit that
 25 careful commanders would be very careful in saying that you

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1 don't have to wait for a command from me before shooting.
 2 CHAIRPERSON: Well, I don't think that to
 3 rephrase what the witness is saying. I can imagine the
 4 commander would have said, this is what you must do, but
 5 you understand that if you have to defend yourself or
 6 defend one of your colleagues, then the ordinary rules of
 7 self-defence and private defence apply and you don't have
 8 to wait for a command, because otherwise it may be too
 9 late. I mean I take it that's essentially what would – is
 10 that – Mr Semanya's point is, what is strange about that?
 11 MR BIZOS SC: It is passing strange that
 12 there should be a reminder that they don't have to wait for
 13 a command to shoot. That's all I'm saying.
 14 CHAIRPERSON: The point is, it's self or
 15 private defence, when they're under threat. I understand
 16 if it was simply you don't have to wait for a command
 17 before you shoot, that would be very strange, particularly
 18 in the light of all we know.
 19 MR BIZOS SC: Yes.
 20 CHAIRPERSON: But if it's – with those
 21 qualifications having been added, then it's not so strange.
 22 Perhaps it's inappropriate for us to have a debate. It is
 23 more a matter of argument really, but put your question to
 24 the witness.
 25 MR BIZOS SC: I'll leave it for argument,

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1 Mr Chairman.
 2 CHAIRPERSON: And in any event, isn't –
 3 aren't these questions that should be put to the commanders
 4 of the – who gave the instructions to the members before
 5 the operation? Ja, I think so. I think that would be more
 6 appropriate if I may say so.
 7 COMMISSIONER MAHAJ: General, do I
 8 understand that these rules of engagement were never
 9 discussed at the Jocom meeting, were not part of any
 10 briefing there?
 11 GENERAAL-MAJOOR ANNANDALE: Kommissaris,
 12 soos ek kan onthou, was dit gemeld, die rules of
 13 engagement, maar ons het die nie gaan opbreek soos wat ek
 14 dit nou opgebreek het in terme van die twee fasette, die
 15 een skade-bestuur, Staande Orde 262 en die ander een -
 16 COMMISSIONER MAHAJ: And during which
 17 briefing would that have been?
 18 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 19 dit sou waarskynlik gewees het op die Woensdag, of die
 20 Woensdagaand se nabetragting. Ek kan regtig nie pertinent
 21 onthou nie.
 22 CHAIRPERSON: Wednesday was the 15th.
 23 GENERAAL-MAJOOR ANNANDALE: Ekskuus.
 24 CHAIRPERSON: Wednesday was the 15th.
 25 GENERAAL-MAJOOR ANNANDALE: Dit kon selfs

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1 gewees het, Voorsitter, in die special Jocom vergadering op
 2 die 16de. Ek kan regtig nie onthou nie.
 3 CHAIRPERSON: You see which is it, a
 4 special, must I take it, it means the 1:30 one, is that
 5 right?
 6 GENERAAL-MAJOOR ANNANDALE: Dis korrek.
 7 CHAIRPERSON: Yes.
 8 MR BIZOS SC: It has been said by you and
 9 previous witnesses that have given evidence on behalf of
 10 the police, that Marikana was a unique event and an
 11 unprecedented event. Do you share that view?
 12 CHAIRPERSON: It's been said by himself
 13 several times during the course of his evidence. So unless
 14 he's changed his mind since he testified last week, he
 15 still shares that view.
 16 MR BIZOS SC: Well, it's a preparatory
 17 question for what is to follow, Mr Chairman.
 18 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 19 ek het so gesê.
 20 MR BIZOS SC: Are you aware of the events
 21 that occurred particularly in Kwazulu-Natal in
 22 confrontations between the police and people – I see that
 23 someone – that comes someone who comes from the province is
 24 smiling, but let me continue with my question. Are you
 25 aware of the history of clashes between armed groups and

1 the police in Natal during the late 80's and early 90's,
 2 some of them even continued into the new era?
 3 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 4 adv Bizos het dit reeds aan my gestel en hy het ook vir my
 5 gesê toe ek sê ek kan nie die pertinente besonderhede
 6 onthou nie, het hy vir my gesê dat history is against me.
 7 MR BIZOS SC: I may have asked you in
 8 general terms, but this is specific that I'm asking you
 9 about what happened in Kwazulu-Natal.
 10 [14:21] GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 11 ek weet nie of die advokaat my gaan help om meer pertinent
 12 te wees, spesifieke gebeure te stel nie.
 13 MR BIZOS SC: I want to give you a
 14 passage and a judgment of Judge Didcott. I'll give the
 15 reference, Mr Chairman. *Senole v State President of RSA,*
 16 *1992(3) South Africa 37D (ad 43 to 44)*. Spokesmen for the
 17 police made various points in reply. The main ones were
 18 these. "The police force had insufficient manpower to cope
 19 with all the work that was expected to perform. Works
 20 which the unrest had increased vastly, straining its
 21 resources. That attachment of policemen encountering armed
 22 mob were likely to find themselves badly outnumbered. To
 23 disarm such a mob was a tricky business, even for the large
 24 enough squad. Excitement ran high on occasions of that
 25 kind. Defiance of the police could not be discounted and

1 the attempt to enforce commands that were given, but
 2 disobeyed by its meet with resistance, inflaming the
 3 situation and leading perhaps to blood shed.
 4 Simply keeping a watch of things in case they got
 5 out of hand, was often the wiser course. Success in
 6 disarming the men entailed in turn its own risks."
 7 You've heard what I've read? Would you agree or
 8 disagree with the Learned Judge?
 9 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 10 ek is nie bewus van die saak nie. Ek hoor dit ook nou, so
 11 ek weet nie wat die omstandighede was nie.
 12 CHAIRPERSON: I don't have it – I
 13 remember that case very vaguely, but I don't remember the
 14 facts, but my understanding from the passage that was read
 15 to you, what happened was Judge Didcott was actually
 16 summarising what had been said to him in argument by
 17 counsel for the police, explaining the difficulties the
 18 police have. It was a case, as far I remember, about the
 19 emergency regulations, justification for the emergency
 20 regulations because of the problems the police would have
 21 had otherwise. I think that's the context of the passage.
 22 But the point – what is relevant, I think, for Mr Bizos's
 23 question, is not the particular factor of the case, but I
 24 think turned on legal questions about the emergency
 25 regulations. It's whether you agree with what the Judge

1 says the police counsel put to him as being the problems
 2 that the police were having, particularly in relation to
 3 disarming large groups of people with arms. Am I
 4 summarising correctly, Mr Bizos?
 5 MR BIZOS SC: Correct.
 6 CHAIRPERSON: And it was – the evidence –
 7 I think that the case was on motion, so it was presumably a
 8 summary by Judge Didcott of what was said in the affidavit
 9 by one or other of the police officers and what counsel
 10 wants to know from you, is whether you agree with what the
 11 police officer is alleged to have said?
 12 MR BIZOS SC: And also the Judge's
 13 comment about how the police should deal, despite their
 14 difficulties?
 15 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 16 ek het geen manier wat ek kan verskil daarmee nie. Dis 'n
 17 uitgewysde saak, so dis 'n bevinding wat so gemaak is en
 18 onderteken is.
 19 MR BIZOS SC: On another topic, in your
 20 evidence in chief and in response to our colleague, Mr
 21 Budlender, that what happened at scene 1 was a case of self
 22 defence or private defence. Do you agree with that?
 23 CHAIRPERSON: I'm not sure the witness
 24 said that, because the witness wasn't there. The witness
 25 can only comment upon what he was told. He was in the JOC

1 and you'll remember the evidence about when exactly they
 2 learnt in the JOC that there had been shooting and - So I'm
 3 not sure, I don't remember him putting it as boldly as you
 4 put it now –
 5 MR BIZOS SC: Mr Chairman, I have a
 6 careful note, I have a careful note.
 7 CHAIRPERSON: Share your careful –
 8 MR BIZOS SC: He expressed a view about
 9 scene 1 and refused to comment on scene 2, because he was
 10 not there. This is what his evidence is. He characterised
 11 scene 1 as self defence. When he was asked about scene 2,
 12 he said because he was not there, he couldn't say. And I
 13 have a simple question. We have a simple question. How
 14 can you express a view about scene 1 without being there
 15 and refuse to say anything about scene 2 because he was
 16 also not there?
 17 CHAIRPERSON: I don't remember him saying
 18 that, but anyway, let him answer for himself –
 19 COMMISSIONER HEMRAJ: Did he not – sorry.
 20 Did he not in fact say that he was not aware that there was
 21 a scene 2? Wasn't that what the witness said?
 22 MR BIZOS SC: I don't think he went as
 23 far as that, but I have a note that in scene 2 you – if he
 24 was not at the scene and you did not have information, I
 25 put it that, "I have no information at my disposal". You

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1 were asked, have you not done a reconstruction and did you
2 not take statements of the members involved or interviewed.
3 Indeed, you said, it would be arrogant for me to make an
4 analysis without having been there. And what I am – the
5 question that I'm putting is, to you, is that you had no
6 difficulty in absolving your colleagues from any liability
7 in relation to scene 1, but you had a different view of
8 scene 2.

9 CHAIRPERSON: Mr Semenya?

10 MR SEMENYA SC: Chair, would Mr Bizos
11 favour us with the reference in the transcript. We have a
12 running transcript.

13 MR BIZOS SC: I haven't got a ready made
14 reference, but –

15 CHAIRPERSON: The difficulty –

16 MR BIZOS SC: But the person that drew
17 this note has put it in italics, which means to me that he
18 looked at the screen and –

19 CHAIRPERSON: Well, all three of us here
20 have, up here at the Commission table, as we can't remember
21 the evidence given in those terms. And it looks if Mr
22 Semenya shares our difficulty. Let's cut it short and ask
23 the witness. Can you remember saying that, Major General?

24 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
25 dit is vir my moeilik. Dit is asof 'n gedeelte van my

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1 getuienis aangehaal word uit konteks wat vooraf gesê is of
2 wat daarna gesê is. Ek sal graag die transkripsie onder oë
3 wil hê dat ons pertinent dit in totale – totaliteit kan
4 lees. Voorsitter, ek het ook in my getuienis het ek gesê
5 dat ten tye van die voorvalle was ons nie bewus dat daar 'n
6 pertinente toneel 1 en 'n toneel 2 was nie.

7 CHAIRPERSON: - Two scenes, he wasn't
8 aware of the fact that there were two scenes, around about
9 page 8336.

10 COMMISSIONER MAHAJ: Hm.

11 CHAIRPERSON: But I can't find the
12 specific passage which Mr Bizos has put. If it's there
13 somewhere, it's certainly not on that page. Anyway, it
14 seems sensible to wait to get the exact passage that you
15 have in mind, Mr Bizos, or those instructing you, in
16 fairness to the witness, because as I say, I don't remember
17 him saying that and I think if he had to, that I would have
18 remembered it, but maybe I'm wrong in that respect.

19 MR BIZOS SC: Mr Chairman, we can leave
20 it open as a question and he will be cross-examined by
21 others, I am told, and we can refurbish the page numbers
22 that we have and it will speak for itself.

23 CHAIRPERSON: Those who are advising you
24 actually is handing a laptop to one of the others, you are
25 advising that to Ms -

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1 MR BIZOS SC: Yes.

2 CHAIRPERSON: If that's the passage, then
3 maybe –

4 MR BIZOS SC: It's an email from an
5 absent member, Mr Chairman.

6 CHAIRPERSON: Right. It doesn't help
7 that particular – all right, okay. So we won't tally at
8 this point for the moment. We'll move on.

9 MR BIZOS SC: The Provincial Commission
10 is recorded as having said at the 6 o'clock meeting, "We
11 will end this matter today."
12 Do you recall that?

13 CHAIRPERSON: Sorry, what 6 o'clock
14 meeting are you talking about?

15 MR BIZOS SC: The –

16 CHAIRPERSON: The media briefing was at
17 9:30. I don't think he was at the Joc-com at 6 o'clock –

18 MR BIZOS SC: It may have been the
19 briefings.

20 CHAIRPERSON: Well, if it was the
21 briefing, then it was 9:30.

22 MR BIZOS SC: Oh, I'm sorry, I got it
23 wrong. It was at 9:30. It was a 9:30 media briefing with
24 Lieutenant General Mbombo which said clearly and
25 unambiguously that the police will ask the protestors to

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1 leave, but if they don't, she does not want to say what
2 will happen, but that the matter will be ended today. Do
3 you agree that obviously this meant that stage 3 will be
4 activated if the protestors did not disperse and disarm
5 before the end of the day?

6 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
7 ek stem nie saam nie.

8 MR BIZOS SC: You don't agree. Did you
9 say that this is the first time that you hear these words
10 being said to have been uttered by the Provincial
11 Commissioner?

12 GENERAAL-MAJOOR ANNANDALE: Dit sê ek ook
13 nie, Voorsitter, ek het die woorde gehoor.

14 CHAIRPERSON: He says he didn't
15 understand it the way you put them to him. I think that's
16 my understanding of his evidence. In other words, he heard
17 you say that, words to that effect, but he didn't
18 understand them to have the meaning that you say they have.
19 I think that is it.

20 GENERAAL-MAJOOR ANNANDALE: Dit is korrek
21 so.

22 CHAIRPERSON: How is this going to help?
23 Is she going to come and give evidence? Someone is going
24 to ask her, did she say that and if she admits it, then she
25 will be asked what she meant. And if she doesn't admit it,

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1 then other things may happen, but is there any point in
2 asking this witness how he understands the words, the words
3 of the concerned –
4 MR BIZOS SC: Mr Chairman, if there was a
5 decision taken at 9:30 that it will end today, it is a
6 matter of some importance of the intention that is
7 expressed.
8 CHAIRPERSON: Proceed. Proceed with the
9 question.
10 MR BIZOS SC: I'm sorry I didn't hear
11 that?
12 CHAIRPERSON: Proceed with the question.
13 MR BIZOS SC: Yes. Was there any
14 particular hurry why the matter should be dealt with on the
15 16th?
16 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
17 ek het nou twee vrae gekry wat nie noodwendig dieselfde is
18 nie.
19 CHAIRPERSON: Please concentrate on the
20 second one, why Thursday?
21 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
22 die konteks soos ek dit verstaan het, wat die provinsiale
23 kommissaris gesê het, sy was bewus van die gesprekvoering
24 wat plaasgevind het die aand van die 15de en dit was ook so
25 aan haar oorgedra. En sy het die optimisme gedeel dat die

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1 president van AMCU die persone sou oortuig of die stakers
2 sou oortuig om hulle wapens neer te lê. Voorsitter, en
3 daar was geen haas gewees om 09:30 om na 'n vlak 3 toe oor
4 te gaan nie.
5 MR BIZOS SC: I'm sorry, I was reading
6 the document. Do you mind repeating, Mr Interpreter.
7 MR MAHLANGU: He said there was no hurry
8 at 9:30 that they should resort to stage 3.
9 MR BIZOS SC: Yes, and there was no
10 reason for the Provincial Commissioner to say so, that it
11 would be finished on that day?
12 CHAIRPERSON: You and the witness are
13 talking passed each other. He says, there is no haste or
14 hurry at 9:30. You're not talking about 9:30. You're
15 talking about the Thursday, that day?
16 MR BIZOS SC: Yes.
17 CHAIRPERSON: So if you ask one question
18 and he understands you to ask another, then we're not going
19 to get anywhere. So I suggest you repeat the question and
20 make it clear you're not confining your question up to
21 9:30?
22 MR BIZOS SC: Yes.
23 CHAIRPERSON: But it's the whole day.
24 [14:41] MR BIZOS SC: What was the hurry, why did
25 the matter have to be finished that day?

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1 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
2 ek het telkens daarna verwys en ek sal met graagste meer in
3 die detail ingaan.
4 MR SEMENYA SC: Chair, if Mr Burger was
5 here, he was going to support my objection. We have been
6 through this evidence. He's going to tell us the
7 negotiations collapsed, there was no and the he's going to
8 repeat it until we come tomorrow.
9 CHAIRPERSON: Mr Bizos?
10 MR BIZOS SC: Mr Chairman, he's a senior
11 officer that these –
12 CHAIRPERSON: - told us already.
13 MR BIZOS SC: The -
14 CHAIRPERSON: Mr Semanya said he's told
15 us already.
16 MR BIZOS SC: Yes.
17 CHAIRPERSON: And there's answers on
18 record, he says.
19 MR BIZOS SC: Yes.
20 CHAIRPERSON: Now what do you say about
21 that?
22 MR BIZOS SC: And we now, we know that
23 you don't give up as a matter of principle on negotiations
24 why did the negotiations not continue.
25 CHAIRPERSON: But that's a different

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1 question.
2 MR BIZOS SC: Yes.
3 CHAIRPERSON: Mr Semanya's problem is you
4 wanted to get him to repeat what he said before. Now you
5 really are doing that as a prelude to attacking the reasons
6 being given.
7 MR BIZOS SC: Yes.
8 CHAIRPERSON: Acting on that basis.
9 MR BIZOS SC: Yes.
10 CHAIRPERSON: One of the factor reasons
11 being given for acting on that day without going through
12 stuff we've been through already, that's really Mr
13 Semanya's point.
14 MR BIZOS SC: Yes. But the question is,
15 I thought simple enough there was no urgency on the 16th to
16 put an end to it on that day.
17 CHAIRPERSON: Do you agree with that,
18 Major General?
19 GENERAAL-MAJOOR ANNANDALE: Mnr
20 Voorsitter, nee ek kan nie daarmee saamstem nie. Daar was
21 pertinente redes en verhoogde risiko's.
22 MR BIZOS SC: If, on the evidence as a
23 whole that we have heard thus far there was an emergency in
24 the mind of the employers and in particularly Lonmin in the
25 unprotected strike should come to an end. Had you been

<p style="text-align: right;">Page 9120</p> <p>1 told that?</p> <p>2 GENERAAL-MAJOOR ANNANDALE: Voorsitter,</p> <p>3 dat daar 'n noodgeval was en dat hierdie onbeskermd</p> <p>4 staking nou onmiddellik tot ? einde moet kom, ek weet nie</p> <p>5 van so iets nie.</p> <p>6 MR BIZOS SC: You're not aware. There</p> <p>7 was, where was your JOC office?</p> <p>8 GENERAAL-MAJOOR ANNANDALE: Voorsitter,</p> <p>9 ek het reeds verduidelik dit was op Lonmin se gronde</p> <p>10 gewees. By 'n sentrum, 'n middel kraal, ek dink middel</p> <p>11 kraal rescue centre of so iets.</p> <p>12 MR BIZOS SC: Who provided the services</p> <p>13 that were necessary by the police other then Lonmin?</p> <p>14 CHAIRPERSON: What services do you mean?</p> <p>15 What kind of services do you mean by the question?</p> <p>16 MR BIZOS SC: Telephones, catering</p> <p>17 arrangements and the other necessities for the presence of</p> <p>18 the police.</p> <p>19 GENERAAL-MAJOOR ANNANDALE: Voorsitter,</p> <p>20 telefone het ons eie sellulêre telefone gebruik. Met die</p> <p>21 uitsondering van een landlyn wat beskikbaar was in die JOC.</p> <p>22 Sover ek kan onthou was dit slegs beperk tot oproepe wat</p> <p>23 gemaak was na die JOC toe.</p> <p>24 MR BIZOS SC: Is -</p> <p>25 GENERAAL-MAJOOR ANNANDALE: Ek is besig.</p>	<p style="text-align: right;">Page 9122</p> <p>1 CHAIRPERSON: He wants to know whether</p> <p>2 the police had anything to pay because of the loan of the</p> <p>3 helicopter.</p> <p>4 MR MAHLANGU: I'll come to that, Chair.</p> <p>5 GENERAAL-MAJOOR ANNANDALE: Voorsitter,</p> <p>6 nie sover ek bewus is nie, ek dink nie daar is enige</p> <p>7 betaling gemaak deur die polisie aan Protea Coin.</p> <p>8 MR BIZOS SC: Was there a perception</p> <p>9 created that was there a friendly relationship between the</p> <p>10 police and Lonmin?</p> <p>11 GENERAAL-MAJOOR ANNANDALE: Voorsitter,</p> <p>12 my gevalle wat ek met Lonmin se bestuur gedeel het was dit</p> <p>13 totaal professioneel. So ek weet nie die verwysing na 'n</p> <p>14 friendly relationship nie, dit was ? professionele</p> <p>15 verhouding wat ons gehad het. Soos die polisie ook het met</p> <p>16 verskeie ander rolspelers.</p> <p>17 MR BIZOS SC: Was there any senior</p> <p>18 members, you or any senior member of the police conveyed to</p> <p>19 Lonmin that one of their leaders suggest to Lonmin that</p> <p>20 they should meet the demand of the protesters in going to</p> <p>21 address them.</p> <p>22 GENERAAL-MAJOOR ANNANDALE: Voorsitter,</p> <p>23 kan die vraag herhaal word, ek verstaan nie die vraag</p> <p>24 lekker nie.</p> <p>25 MR BIZOS SC: - my attention has been</p>
<p style="text-align: right;">Page 9121</p> <p>1 MR BIZOS SC: Sorry.</p> <p>2 CHAIRPERSON: - Interpreting it into</p> <p>3 Xhosa, give the Interpreter a chance otherwise people in</p> <p>4 the auditorium, many of them won't understand what's being</p> <p>5 said.</p> <p>6 GENERAAL-MAJOOR ANNANDALE: Voorsitter,</p> <p>7 die geboue pertinent, die JOC was, het behoort aan Lonmin.</p> <p>8 Dan, Voorsitter, dan het ek ook verwys in my getuienis na</p> <p>9 die mediese personeel wat deur 911 in 'n kontrak met Lonmin</p> <p>10 verskaf was, die brandweer.</p> <p>11 MR BIZOS SC: Lonmin must also provided</p> <p>12 the helicopter?</p> <p>13 GENERAAL-MAJOOR ANNANDALE: Ek weet nie</p> <p>14 of ek moet wag vir die tolk, elke keer. Voorsitter, sover</p> <p>15 dit aan my bekend is, is dit nie ? Lonmin helikopter nie,</p> <p>16 dit is wel 'n Protea Coin helikopter.</p> <p>17 MR BIZOS SC: Did the police pay the firm</p> <p>18 that you say it belonged to or was it supplied by Lonmin</p> <p>19 free of charge to the police?</p> <p>20 GENERAAL-MAJOOR ANNANDALE: Voorsitter,</p> <p>21 ek het reeds gemeld en ek het ook getuig dat die helikopter</p> <p>22 aangebied was deur 'n Mnr De Waal van Protea Coin. Dit is</p> <p>23 korrek so, weereens sover ek weet is dit nie 'n Lonmin nie</p> <p>24 en ek weet nie of Lonmin enige uitgawes gedra het rondom</p> <p>25 die helikopter nie.</p>	<p style="text-align: right;">Page 9123</p> <p>1 drawn that I interrupted the interpreter. If I did so do</p> <p>2 you want to continue? Then I will repeat the question.</p> <p>3 MR BOOI: I could also not follow the</p> <p>4 question.</p> <p>5 MR BIZOS SC: Did you -</p> <p>6 CHAIRPERSON: Perhaps you should repeat</p> <p>7 it, Mr Bizos.</p> <p>8 MR BIZOS SC: Yes. Did you or any other</p> <p>9 police officer approach Lonmin to convey to them that the</p> <p>10 protesters insisted on a high ranking official of Lonmin to</p> <p>11 go to address them?</p> <p>12 GENERAAL-MAJOOR ANNANDALE: Voorsitter,</p> <p>13 Generaal-Majoor Mpembe was die aangewese offisier wat</p> <p>14 deurgaans met Lonmin en die unies in onderhandelinge</p> <p>15 betrokke was. Voorsitter, dan was dit ook so deur die JOC</p> <p>16 via die Lonmin JOC verteenwoordiger oorgedra en dan,</p> <p>17 Voorsitter, op die 15e, die middag terwyl ons besig was met</p> <p>18 die reelings om die onderskeie presidente van AMCU en NUM</p> <p>19 met hulle delegasies te vervoer na die forward holding area</p> <p>20 het ek dit ook aan Mnr Kgotle en Kwadi genoem. Of enige</p> <p>21 ander offisier dit gedoen het kan ek nie oor getuig nie.</p> <p>22 MR BIZOS SC: You have expressed support</p> <p>23 and spoke of your compliance with the police orders, the</p> <p>24 legislation, the constitution.</p> <p>25 GENERAAL-MAJOOR ANNANDALE: Voorsitter,</p>

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1 ek het verwys daarna toe die kwessie opgehaal is na
 2 aanleiding van die polisie se openingsverklaring.
 3 MR BIZOS SC: Yes. The order that
 4 requires the police after any mishap or any action to hold
 5 a debriefing and note anything that may have been outward
 6 in order to avoid repetition that order is well known to
 7 you?
 8 CHAIRPERSON: We've covered this area
 9 before. My understanding is the police admit that what the
 10 rules says, they normally do it, they had their, they're
 11 also supposed to have a review in terms of one the other
 12 documents but they explained they deviated from that
 13 because A, they were having the Potchefstroom meeting and
 14 B, they expected this commission to in effect conduct a
 15 review and give advice as to what should happen. That may
 16 or may not be a good explanation but that point has been
 17 covered. Unless you've got a new angle on it I'm not
 18 proposing to allow you to do it but may I suggest you think
 19 about it, we take the tea adjournment and then you can,
 20 after that you, when we come back -
 21 MR BIZOS SC: I'll be very brief after
 22 the adjournment.
 23 CHAIRPERSON: Alright. We'll take the
 24 tea adjournment.
 25 [COMMISSION ADJOURNS COMMISSION RESUMES]

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1 [15:17] CHAIRPERSON: The Commission resumes.
 2 Generaal-Majoor u is nog steeds onder eed. Mr Bizos.
 3 MR BIZOS SC: You held a long meeting in
 4 Potchefstroom.
 5 CHAIRPERSON: - Deny that Mr Bizos.
 6 MR BIZOS SC: Well by way of introduction
 7 it's a question.
 8 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 9 nee dis relatief, dit was 'n kort, kort vergadering gewees.
 10 CHAIRPERSON: The cross-examination some
 11 people have to go through.
 12 MR BIZOS SC: I'll accept the
 13 qualification. Were you aware of the necessity to hold a
 14 debriefing?
 15 CHAIRPERSON: Yes, I don't want to cut
 16 you unduly short but did this witness take the decision not
 17 to have a debriefing, or did somebody else? Shouldn't we
 18 find out who made the decision?
 19 MR BIZOS SC: It was a senior officer.
 20 CHAIRPERSON: Well shouldn't we find out
 21 who made the decision and then ask that person? But anyway
 22 you're on your own ship, I'm not going to run it for
 23 you.
 24 MR BIZOS SC: I want to check his
 25 commitment to the Standing Orders and the Constitution and

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1 the legislation, Mr Chairman.
 2 GENERAAL-MAJOOR ANNANDALE: Is dit die
 3 Staande order 262 vereis dat daar 'n nabetrugting na
 4 aanleiding van 'n skade bestuur operasie.
 5 CHAIRPERSON: Sorry, there is also a
 6 requirement in the letter that - I think it was the
 7 National Commissioner signed in July 2012, only a month
 8 before the events with which we are concerned which need
 9 for a review after force was used, firearms were fired and
 10 so on, it was also repeated as far as I remember. Is that
 11 correct?
 12 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 13 ja weereens verwysend na skade bestuur operasie.
 14 MR BIZOS SC: Your predecessors in the
 15 witness box said that they didn't have a debriefing because
 16 the appointment of a commission was made by the president.
 17 GENERAAL-MAJOOR ANNANDALE: Ek hoor u sê
 18 so, Advokaat.
 19 MR BIZOS SC: Do you subscribe to that
 20 excuse or to that statement? I don't want to judge it as
 21 an excuse. Do you subscribe to that statement?
 22 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 23 ek het in my getuienis verduidelik dat in 'n mate was Potch
 24 waarskynlik 'n nabetrugting maar dit was nie 'n pertinente
 25 swart analise van die omstandighede nie. Voorsitter, laat

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1 ek verder gemeld dat staande order 262 is geskryf en dis
 2 een van die leemtes vir 'n pertinente skade bestuur
 3 operasie, hierdie was 'n hibriede situasie wat baie wyer
 4 was as net 'n staande order 262 beginsels.
 5 CHAIRPERSON: It was a hybrid, he added
 6 it was a hybrid operation, not as public order policing.
 7 GENERAAL-MAJOOR ANNANDALE: Ek het ook
 8 gemeld dat daar drie van nabetrugting is in terme van die
 9 eerste bevelvoerders, dan die volgende vlak en dan die
 10 finale vlak waar eksterne rolspelers ook betrokke is.
 11 MR BIZOS SC: Do you subscribe to the -
 12 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 13 ek is nog besig. As ek net kan voortgaan asseblief.
 14 CHAIRPERSON: He's still busy, Mr Bizos,
 15 he says can he - he asks whether he can proceed with his
 16 answer, so I don't think you heard that but I think we
 17 should let him proceed with his answer otherwise he'll just
 18 ask us again. So carry on Mr -
 19 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 20 ja en dan het ek saam gestem met die neiging dat ons nie 'n
 21 formele nabetrugting hou nie. Ek verder pertinente redes
 22 gegee daarvoor in terme ons wou nie dat ons lede dink ons
 23 is besig om hulle te oordeel nie. En ons het pertinent
 24 gevoel dat die kommissie is in die beste posisie om
 25 objektiewe oordeel te vel in terme van die omstandighede

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1 rondom Marikana.

2 MR BIZOS SC: When did the terms of

3 reference of the Commission come to your notice?

4 GENERAAL-MAJOOR ANNANDALE: Voorsitter,

5 ek kan nie presies 'n datum onthou nie, ek weet die

6 President het aangedui op die 17de dat daar 'n Kommissie

7 aangekondig gaan word. Ek weet net dat dit iewers in die

8 middel van die volgende week was.

9 CHAIRPERSON: I thought he said something

10 about he thought in the middle of the following week -

11 GENERAAL-MAJOOR ANNANDALE: The following

12 week ja.

13 CHAIRPERSON: The terms of reference came

14 out.

15 GENERAAL-MAJOOR ANNANDALE: Dit sal dan

16 die week van Maandag die 20ste wees, die week wat daarop

17 volg.

18 MR BIZOS SC: Was or were the terms of

19 reference of the Commission referred to in your discussions

20 at Potchefstroom?

21 GENERAAL-MAJOOR ANNANDALE: Dit is

22 korrek, Voorsitter.

23 MR BIZOS SC: Or particularly enquire

24 into, make findings, report on and make recommendations

25 concerning, among other things, the contact of the South

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1 African Police Services, SAPS, in particular whether by act

2 or omission or directly or indirectly caused loss of life

3 or harm to person or property." Were you aware of that term

4 of reference to the Commission whilst you were meeting at

5 Potchefstroom?

6 GENERAAL-MAJOOR ANNANDALE: Ek is bewus

7 daarvan, Voorsitter.

8 MR BIZOS SC: Is there anything in

9 exhibit L that you prepared which deals with whether by act

10 or omission it indirectly or indirectly caused loss of life

11 or harm to persons?

12 MR SEMENYA SC: Chair, I'm reading off

13 the terms of reference. Those injunctions are that of the

14 Commission. It is the Commission that is to make those

15 findings and make those recommendations.

16 MR BIZOS SC: I don't understand the

17 objection, Mr Chairman. What is it that my friend is

18 objecting to? I am asking whether anyone at the meeting in

19 Potchefstroom raised the question whether any acts or

20 omissions so that we can report to the Commission. It is

21 our duty to report it as his predecessors in the witness

22 box said that this was the purpose of exhibit L, to inform

23 the Commission. What is my learned friend's objection?

24 MR SEMENYA SC: After that way there is

25 no objection, after the previous way there was an

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1 objection, Chair.

2 CHAIRPERSON: His objecting by

3 reformulating your questions, let's carry on. Mr Bizos.

4 MR BIZOS SC: Mr Chairman, I wasn't going

5 to - I must object, Mr Chairman, to these questions which

6 are really, really -

7 CHAIRPERSON: You can't object to an

8 objection. You asked a question, Mr Semenya objected, you

9 then reformulated your question and he said his objection

10 falls away. Let's get on with the case and not argue

11 objection's objections because otherwise you'll objections

12 to objections to objections and that will waste time.

13 Let's just carry -

14 MR BIZOS SC: I would with the greatest

15 respect submit that this interruption was not a genuine

16 objection, Mr Chairman, my learned friend must be a little

17 patient with the questions. They are not to be judged by

18 him with respect. That's all I want to say, I find it

19 disruptive but I will try and keep onto the straight and

20 narrow path.

21 CHAIRPERSON: I'm sure you will, Mr

22 Bizos.

23 MR BIZOS SC: The question is did anybody

24 say look at the terms of reference, the Commission wants to

25 know whether or not we committed any act or make any

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1 omissions which led to loss of life? Did anybody ask that

2 question?

3 GENERAAL-MAJOOR ANNANDALE: Voorsitter,

4 die terms of reference was voorgehou, die pertinente vraag

5 was nie so uit een gesit soos mnr Bizos dit nou stel nie.

6 MR BIZOS SC: What question was asked

7 about how can we - what do we have to disclose to the

8 Commission in relation to our actions or our omissions

9 which may have led to loss of life? What question was put

10 in relation to that matter, General?

11 GENERAAL-MAJOOR ANNANDALE: Voorsitter,

12 ons het die feite soos bekend aan die SAPD.

13 MR BIZOS SC: I'm sorry to interrupt,

14 General, the question was did anybody ask that question in

15 those words or substantially similar phrases?

16 CHAIRPERSON: I thought he said no to

17 that. I thought he answered that question in the negative.

18 Am I wrong? Well let's see. Did anybody ask that question

19 in terms at the Potch conference?

20 GENERAAL-MAJOOR ANNANDALE: Voorsitter,

21 ek het geantwoord dat ons - die terms of reference was

22 voorgehou, die betrokke vraag was nie so daarna gestel nie.

23 Ek het dit so geantwoord.

24 MR BIZOS SC: Please tell us the words

25 that were used which were different to my words in relation

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1 to whether or not a question was asked have we committed
 2 any act, have we omitted to perform any act which will be
 3 of assistance to the Commission? That is the question. I
 4 don't mind the phraseology. The substance of the question,
 5 did anybody ask it?
 6 [15:36] GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 7 die enigste manier hoe ek kan antwoord is dat ons 'n
 8 samestelling van die feite soos bekend aan ons, wat
 9 ingesluit het dokumente – het ons saamgestel.
 10 MR BIZOS SC: I ask for a ruling to the
 11 witness to answer the question.
 12 CHAIRPERSON: Yes, I think he does answer
 13 the question, he's still busy answering it. We won't know
 14 till he's finished if he's actually answered it completely.
 15 So let him carry on.
 16 MR BIZOS SC: - are known to them, Mr
 17 Chairman.
 18 CHAIRPERSON: I think Mr Bizos's problem
 19 is you simply gave us facts. You didn't set out points, of
 20 criticism, things that could have been done, that weren't
 21 done, omissions were made and so on, and I understood from
 22 Mr Semenya that in due course a document covering those
 23 matters will be put before the Commission. I think what Mr
 24 Bizos is about, is why, when this document was prepared,
 25 didn't it also deal with aspects of that kind. Why did it

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1 confine itself to the facts as you describe it? Is that
 2 basically your point, Mr Bizos?
 3 MR BIZOS SC: I would have expected, Mr
 4 Chairman, the General to say here the president is asking
 5 this question. What is our answer? This is my question,
 6 Mr Chairman.
 7 CHAIRPERSON: Alright. Now, who was the
 8 chairperson – you did tell us before, but I've forgotten,
 9 who was the chairperson at this conference?
 10 GENERAAL-MAJOOR ANNANDALE: Dit was 'n
 11 Brigadier Van Graan voorsitter.
 12 CHAIRPERSON: He is the one who should
 13 have asked that question, if it was going to be asked at
 14 all, is that right?
 15 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 16 ek het dit so verduidelik, ja, dat ek en Generaal Naidoo en
 17 Generaal Mpembe en Generaal Mbombo was nie eers deurentyd
 18 teenwoordig nie. So hy, die verwagting was op hom om die
 19 verrigtinge te lei. En die benadering was gewees as ons
 20 die feite op die tafel sit, dan sal die Kommissie besluit
 21 of daar enige iets is wat ons gedoen het of moes gedoen
 22 het, of nie gedoen het.
 23 MR BIZOS SC: Did you approve of exhibit
 24 L?
 25 MR MAHLANGU: The question is,

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1 Chairperson, the you is it used in it's plural or singular
 2 form?
 3 CHAIRPERSON: Did thou approve of.
 4 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 5 bewysstuk L is nie deur 'n individu pertinent afgeteken
 6 nie. Dit was die eindproduk van Potchefstroom waar daar
 7 kollektief deur 'n verskeidenheid van polisie senior
 8 offisiere besluit was dat dit die beste is wat die Suid-
 9 Afrikaanse polisie diens kan, en die mees omvattende hoe
 10 ons dit kan oordra, die feite aan ons bekend.
 11 CHAIRPERSON: In the most comprehensive
 12 way possible.
 13 MR BIZOS SC: Did you, yourself, draw
 14 attention to the fact that there was nothing in Exhibit L
 15 that would help the Commission come to the conclusion as to
 16 whether or not there were any acts or omissions?
 17 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 18 nee, dis darem nie waar nie.
 19 MR BIZOS SC: Directly or indirectly
 20 caused loss of life or harm to persons or property. Did
 21 you read it? Did you approve of it, despite the absence of
 22 dealing with what the president wanted to know?
 23 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 24 nee, die bewysstuk L is deurspek na verwysings in terme van
 25 handeling deur die polisie.

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1 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 2 elke verwysing wat daar is in terme van die plan, in terme
 3 van die ontplooiing van hulpbronne is sekerlik verwysings na
 4 handeling of dan acts.
 5 MR BIZOS SC: General, we are going to
 6 argue that despite our efforts to get you to give us
 7 straight answer, we are going to submit that you and the
 8 senior officers ignored a fundamental request by the
 9 president as to what he wanted, particularly from SAPS.
 10 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 11 ek hoor dat die advokaat dit gaan argumenteer, ek kan net
 12 weereens verwys na die getuienis wat gelewer is en dat
 13 pertinente feite daargestel is en so geopenbaar is, en dat
 14 sodanige feite, soos dit neergesit is, kan dui op of dit
 15 dan handeling is of die afwesigheid van sodanige
 16 handeling, hetsy dit direk of indirek gelei het tot
 17 verlies van lewens, en ek het ook verwys dat die Kommissie
 18 is 'n objektiewe gesagsliggaam.
 19 MNR MAHLANGU: As u kan net herhaal?
 20 GENERAAL-MAJOOR ANNANDALE: En ek het ook
 21 verwys dat die kommissie word geag as 'n liggaam wat
 22 objektief kan kyk na die pertinente feite soos wat dit daar
 23 gestel is.
 24 MR BIZOS SC: Let's leave Potchefstroom
 25 and come to these proceedings. If I understood the

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1 chairman correctly, you were asked in different words
 2 whether looking into the future – I'm hoping that I am
 3 correctly summarising the chairman's question to you – were
 4 there things that have to be done in the future in order to
 5 avoid the catastrophic event – he didn't use the word, it's
 6 fine – of what happened in Marikana? Do you recall that
 7 question to that effect?

8 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 9 ek kan onthou dat die voorsitter my gevra het of die
 10 polisie nou gaan wag totdat die uitslag van die Kommissie
 11 eers bekend is voordat ons enige stappe gaan neem in terme
 12 van aspekte wat duidelik moet aangespreek word.

13 MR BIZOS SC: Your response was
 14 particularly limited, we'll submit, your response was
 15 particularly limited. You dealt at some length about
 16 better batteries.

17 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 18 dis nie waar nie. Dit is verseker nie waar nie.
 19 Voorsitter, tydens my getuienis wat gelei was sal u onthou
 20 deur Adv Semenya, vir my 'n vraag gevra het en dit het
 21 verwys na die video opnames en toe het ek, met spesifieke
 22 besonderhede, het ek verwys na die proses en die geld wat
 23 ek reeds beskikbaar gestel het.

24 Voorsitter, ek het ook op 'n direkte vraag van u
 25 aan my rondom radio kommunikasie, Voorsitter, ek het verder

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1 het ek toe verwys in terme van dat die polisie reeds besig
 2 is, ons het besef die beperkings van die analoog. Ek het
 3 verwys na die geweldige kostes en ek het konserwatief
 4 verwys na 600 miljoen. Dit is per provinsie, ek het
 5 lateraan verneem dat dit waarskynlik R9 biljoen rand kan
 6 wees om die hele land van 'n digitale netwerk te voorsien.
 7 Voorsitter, ek het ook verwys na die behoefte wat ons het
 8 om termiese beeldvorming kameras op elke helikopter van
 9 die Suid-Afrikaanse polisie diens te installeer.

10 Voorsitter, ek het verder verwys na die behoefte
 11 van addisionele pertinente praktiese opleiding, simulاسie
 12 opleiding, en die gebruik van gevalle studies in sodanige
 13 opleiding. Voorsitter, ek het verder ook verwys na die
 14 leemtes wat ons het in terme van die akademies, die
 15 opleidingsterrein wat ons 'n praktiese omgewing daar te
 16 stel wat ons sodanige praktiese opleiding kan doen.

17 CHAIRPERSON: I think he said a practical
 18 environment in which practical training could be given. If
 19 that – I see his nodding his head, he agrees with my
 20 translation.

21 GENERAAL-MAJOOR ANNANDALE: Dis korrek.
 22 CHAIRPERSON: I think practical and
 23 academic training.

24 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 25 ek het ook verwys na die uitvoerende komitee of die

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1 executing authority wat daargestel is om te kyk na die
 2 implementering van 'n wye verskeidenheid aspekte, sommige
 3 wat ek vermeld en ander wat nog nie vermeld is nie.

4 MR MAHLANGU: Chairperson, I ask for
 5 assistance here, the last part.

6 CHAIRPERSON: He refers to an executing
 7 committee which is apparently going to be involved in
 8 dealing with suggestions for the future. Some of which
 9 have been mentioned already and some of which have not yet
 10 been mentioned. I think that's what he said.

11 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 12 ek het verder ook verwys na die Nasionale Mobiele Reserwe
 13 eenheid wat ons reeds een gevestig het in Pretoria.

14 [15:56] Voorsitter, ek het verwys na die werkstudie
 15 verslag wat ondersoek doen na die bereiding van die
 16 bestaande 28 eenhede na soveel as 37 eenhede van openbare
 17 order polisiëring landbou.

18 CHAIRPERSON: The work study I think, we
 19 are dealing with the expansion of the, it must be 18 POP.

20 MR MAHLANGU: It's 21.

21 CHAIRPERSON: Have I got the numbers
 22 right.

23 MR MAHLANGU: From 21.

24 CHAIRPERSON: 28 or 37 units.

25 MR BIZOS SC: Mr Chairman, with the

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1 greatest respect. I didn't ask for a catalogue of what the
 2 police are doing about the future. The question was did
 3 they have regard to what is expected from them for, in the
 4 terms of reference whether by act or omission it directly
 5 or directly cause loss of life or harm to persons or
 6 property.

7 CHAIRPERSON: Mr Bizos, you've dealt with
 8 that already. You then said to him that when you asked
 9 about the future, you only basically spoke about batteries
 10 and then he then said no, no, no I didn't, then you're not
 11 right and then he gave a long list -

12 MR BIZOS SC: I am sorry -

13 CHAIRPERSON: Sorry can I, I've been
 14 looking for an opportunity to stop him to say look we don't
 15 really need to repeat your evidence, it's enough for you to
 16 deal with the suggestion that you dealt with -

17 MR BIZOS SC: Yes.

18 CHAIRPERSON: But I think we've now
 19 reached stage where we now know that he didn't only deal
 20 with batteries. But I see it's now -

21 MR BIZOS SC: Now, Mr Chairman, I'm two
 22 or three questions -

23 CHAIRPERSON: Alright.

24 MR BIZOS SC: To finish with this
 25 witness.

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1 CHAIRPERSON: Alright.

2 MR BIZOS SC: And what I want to say in

3 response that I was going to stop him when he told us about

4 the batteries and I was going to ask him to concentrate

5 whether they acknowledge any act or omission directly or

6 indirectly caused the tragedy, Mr Chairman.

7 CHAIRPERSON: You were going to ask him

8 that, now you've now mentioned that, what he says about it.

9 MR BIZOS SC: Yes, yes because I didn't

10 want to interrupt him of repeating himself with this long

11 catalogue of what they have done in the immediate past but

12 I think the question -

13 CHAIRPERSON: I understand the reason for

14 your forbearance.

15 MR BIZOS SC: Yes.

16 CHAIRPERSON: But you've now phrased the

17 question that -

18 MR BIZOS SC: Yes.

19 CHAIRPERSON: That you're proposing to

20 ask him.

21 MR BIZOS SC: Yes.

22 CHAIRPERSON: Let's, if he's heard you

23 let's see if he can answer it.

24 GENERAAL-MAJOOR ANNANDALE: Voorsitter,

25 ek wil net eers voordat ek by die vraag uitkom, ek wil dit

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1 op rekord plaas dat ek nog nie met die hele lys gedeel het

2 en Advokate Bizos het pertinent gesê dat met die

3 uitsondering soos u gemeld het van die batterye wil ek net

4 weereens sê ek het nie ? geleentheid gehad nog om die

5 volledige lys op die tafel te sit.

6 CHAIRPERSON: Sorry, Mr Bizos, I

7 understand that but I think most of the things you've been

8 telling us now you did tell us before and we also, you'll

9 remember that Mr Semenya said that in due course the police

10 would provide us with a complete list. So I don't know if,

11 I know it's not, I don't think unnecessary, sorry I don't

12 think it's necessary for you to give us a complete list

13 now, you gave us most, most if not all of the stuff before,

14 we're going to get a complete list to Mr Semenya. You've

15 been able to refute quite convincingly the suggestion that

16 you concentrated on batteries and what you said earlier.

17 GENERAAL-MAJOOR ANNANDALE: Dankie,

18 Voorsitter. Dan – ek aanvaar dit so. As ek net die vraag

19 weer kan kry.

20 MR BIZOS SC: Did you -

21 CHAIRPERSON: The interpreter has got to

22 interpret Mr Bizos. Mr Bizos, you said you had three

23 questions

24 MR BIZOS SC: Yes.

25 CHAIRPERSON: I think you've asked the

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1 first one. I'm not sure -

2 MR BIZOS SC: Yes.

3 CHAIRPERSON: The witness answered it,

4 did he?

5 MR BIZOS SC: Was there, have you or are

6 you prepared to make known any act or omission that had

7 occurred before the tragedy? To admit to any act or

8 omission that led to the loss of life on the 16th?

9 CHAIRPERSON: Let me stop, well I take it

10 you mean it's not dealt with exhibit L, exhibit L tells us

11 what happened or the police say happened it explains how a

12 number of people were shot and died and so on. So -

13 MR BIZOS SC: I'm not talking about the

14 historical events in exhibit L, Mr Chairman.

15 CHAIRPERSON: No I wasn't saying, so your

16 question relates to acts or omissions which were not

17 covered by exhibit L?

18 MR BIZOS SC: Yes.

19 CHAIRPERSON: Okay.

20 MR BIZOS SC: Any omission directly or

21 indirectly or any act or omission directly or indirectly

22 that caused the loss of life on the 16th. Is there any

23 admission that you are prepared to make that the South

24 African Police made the following mistake in doing this or

25 not doing that.

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1 CHAIRPERSON: The question's been changed

2 but you may as well the answer the changed question, while

3 you're about it.

4 GENERAAL-MAJOOR ANNANDALE: Voorsitter,

5 ek as individu nie bewus van enige handeling of nie

6 handeling deur die Suid Afrikaanse Polisie Diens wat gelei

7 het tot die sterftes of beserings nie.

8 MR BIZOS SC: Not to prepared to admit –

9 CHAIRPERSON: In context it's, he used,

10 you must remember he answered the question by talking about

11 a mistake which the police service may had, so he wasn't

12 just in broad sense talking acts or omissions but he then

13 qualified the question to say are you aware of any mistake

14 whether by act or omission made by the members of the South

15 African Police Service which led to the death, is that a

16 fair summary.

17 MR BIZOS SC: That is the question, Mr

18 Chairman.

19 GENERAAL-MAJOOR ANNANDALE: Voorsitter,

20 ek het my getuienis verwys met die voordeel van

21 nabetrugting dat ek sou graag wou 'n gebied daar gestel het

22 so wat die polisie dan heeltemal so omring deur

23 lemmetjiesdraad en weereens met die voordeel van

24 nabetrugting wat ons nou weet, dat ons meer gepanserde

25 voertuie sou beskikbaar gehad het. As dit na sou verwys

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1 word as 'n fout wat ons gemaak het dan is dit so, maar op
 2 daai stadium het ons geglo dat ons voldoende maatreëls in
 3 werking gestel het.
 4 CHAIRPERSON: I fear we're going to have
 5 to continue with this discussion tomorrow. But –
 6 MR BIZOS SC: I don't want to forsake my
 7 last question.
 8 CHAIRPERSON: Alright. Let's hear what,
 9 let's hear your last question.
 10 MR BIZOS SC: Yes.
 11 CHAIRPERSON: Is this the last, last
 12 question?
 13 MR BIZOS SC: Last question. It's
 14 actually a comment and give him an opportunity. General,
 15 your reluctance to accept any responsibility for what
 16 happened on the 16th is an example of not allowing history
 17 to teach you that those who do not admit mistakes generally
 18 speaking are condemned to repeat them.
 19 CHAIRPERSON: Do you have any reply to
 20 that comment Mr Bizos made?
 21 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 22 ek het reeds gesê dat kollektief aanvaar die polisie
 23 aanspreeklikheid en pertinent in terme van enige handeling
 24 wat ek gedoen, Voorsitter, en dan verder is ek nie bewus
 25 nie 'n pertinente fout wat die polisie gedoen het of enige

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1 handeling of nie handeling wat gelei het tot die sterftes
 2 soos vermeld op die 16de nie.
 3 CHAIRPERSON: I am afraid that we're
 4 going to have to get you back tomorrow, General, I'm sorry
 5 but there are other people who are going to be cross-
 6 examining you I think. I'd just like to make one comment
 7 before we end today and that is, in the case of, while
 8 we're talking about it, the case of the role of hindsight,
 9 hindsight as I see it can operate at two levels. Hindsight
 10 teaches us the things we didn't know before because as we
 11 know hindsight is 20/20. But hindsight can be and one must
 12 be careful in judging whether the people made mistakes or
 13 not by being influenced to much by hindsight because
 14 obviously if it wasn't foreseeable by the people concerned
 15 then you can't blame them for something that only became
 16 apparent afterwards through hindsight. But hindsight can
 17 also help us to ask focused questions in relation to the,
 18 what we call the foreseeability aspect. Because if one
 19 knows what was not foreseen, if one knows through hindsight
 20 what went wrong but was not foreseen one is then helped to
 21 ask a focused question, namely should it have been
 22 foreseen, was it reasonable to expect it to be foreseen.
 23 But that's one of the questions that we have to think
 24 about. I'm not necessarily suggesting that you should give
 25 evidence about it but you know when one uses the expression

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1 nabetrugting or hindsight one must remember the relevance
 2 of it. Firstly to tell us actually what happened in the
 3 light of what we know later and also to focus questions in
 4 relation to what was not foreseen but actually happened to
 5 see whether it was foreseeable. So that's something that
 6 we can possibly deal with later. I don't know if you want
 7 to say something about that before we adjourn.
 8 GENERAAL-MAJOOR ANNANDALE: Ek neem
 9 kennis dan, Voorsitter.
 10 MR BIZOS SC: I have no further
 11 questions, Mr Chair.
 12 CHAIRPERSON: We will now take the
 13 adjournment until 9:30 tomorrow morning.
 14 [COMMISSION ADJOURNED]
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