

RealTime Transcriptions

TRANSCRIPTION OF THE

COMMISSION OF INQUIRY

MARIKANA

BEFORE TRIBUNAL

THE HONOURABLE MR JUSTICE FARLAM (RETIRED) - CHAIRPERSON
MR TOKOTA SC
MS HEMRAJ SC

HELD ON

DAY 106 13 JUNE 2013 PAGES 11366 TO 11482



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1 [PROCEEDINGS ON 13 JUNE 2013]
 2 [09:45] CHAIRPERSON: The Commission resumes.
 3 We're pleased to welcome back Adv Bizos from his successful
 4 lecture tour to France. Major-General, nice to see you
 5 back as well. We've had a bit of a delay; I suggest you
 6 stand up, I'll swear you in again. Do you swear that the
 7 evidence you'll give before this Commission will be the
 8 truth, the whole truth, and nothing but the truth? Please
 9 raise your right hand and say, "I swear, so help me God."
 10 WILLIAM MPEMBE: I swear, so help me God.
 11 CHAIRPERSON: Thank you, you may be
 12 seated. Mr Semenya is back with us too; welcome back. Mr
 13 Ngalwana, you have more questions in examination-in-chief,
 14 I believe.
 15 EXAMINATION BY MR NGALWANA (CONTD.):
 16 Yes, thank you, Chair. Morning, General.
 17 MAJOR-GENERAL MPEMBE: Morning, Advocate.
 18 MR NGALWANA: General, you will recall
 19 that when we adjourned, I think it was on Monday we were
 20 dealing with the issue bloodshed. Remember this is the
 21 evening meeting that you had with NUM and AMCU and
 22 management. I want to take you to page 2 of GGG4, which is
 23 the paginated page 225 at the bottom right-hand corner of
 24 the documents bundle. It's the documents bundle, volume A,
 25 pagination 225.

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1 CHAIRPERSON: Page number again? Sorry,
 2 I didn't hear.
 3 MR NGALWANA: Pagination 225.
 4 CHAIRPERSON: 225, thank you.
 5 MR NGALWANA: I'm going to read a
 6 passage, General, and I'd like you to very briefly just
 7 explain to the Commission what you sought to convey to the
 8 meeting. It begins at the fourth line from the bottom, the
 9 sentence beginning, "We do not want to be seen." You see
 10 that?
 11 MAJOR-GENERAL MPEMBE: That's correct,
 12 Advocate, Chairperson.
 13 MR NGALWANA: You say, "We do not want to
 14 be seen as the police that go in there and more," and then
 15 inaudible, "that is what," and then inaudible, "citizens,
 16 are the situation, the president, I heard, I understand and
 17 I have seen, but the issue that he also raised, some of
 18 your members, they're very, very angry. That's to say they
 19 are there against their will," and this is you addressing
 20 the meeting. "Secondly," you say, "is that others they are
 21 also injured, so we need also to be addressed to that
 22 because that is what we need to address in terms of, but
 23 the issue of whether they hand in firearms or they hand in,
 24 because we can just want to assure you the intelligence is
 25 they are hiding in their blankets. It is going to be

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1 bloodshed. We still have to resolve that. We still have
 2 to resolve that and we are also no more prepared. We have
 3 already lost two police officers. We are no more prepared
 4 and we are not going to lose another police officer." Are
 5 you still with me, General?
 6 MAJOR-GENERAL MPEMBE: Correct,
 7 Chairperson.
 8 MR NGALWANA: "So I do not know what you
 9 are going to do, but we are putting this to you as the
 10 leadership and we trust you to say that this will have to
 11 be resolved. I am going to also see AMCU people, but I
 12 need to put it to you to say you cannot come and do like
 13 this. We do not know how many people might die tomorrow or
 14 tonight, and people are dying. I know that you also come
 15 up and say but why police are not intervening, but they
 16 cannot intervene in the situation that is seen that it is
 17 going to cause more harm than good." What did you seek to
 18 convey to the trade union when you said what you said
 19 there, General?
 20 MAJOR-GENERAL MPEMBE: Chairperson, I was
 21 persuading the, Mr Zokwana to convince the protesters at
 22 the koppie to hand in weapons voluntarily. Chairperson, on
 23 Saturday the firearms – on Sunday the firearms from the
 24 security personnel were taken. On Monday –
 25 MR NGALWANA: Sorry, General, by whom

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1 were those firearms taken from security?
 2 MAJOR-GENERAL MPEMBE: By protesters. It
 3 is allegedly by protesters. On Monday the police firearms
 4 and radios were taken also by protesters, and also there
 5 was an intelligence that others, particularly coming from
 6 the media that they saw others that they had firearms
 7 underneath their blankets. The reason for such a serious
 8 persuasion, it was to put in the right context of how they
 9 should see the situation like myself. The most preferred
 10 due to our doctrines, it was the leadership to take a stand
 11 to let the people voluntarily hand over their weapons,
 12 rather than the police doing the dispersal process.
 13 Chairperson, when a dispersal has to take place, obviously
 14 force has to be used and that is what I was referring to in
 15 terms of the situation of what might have appeared.
 16 MR NGALWANA: Yes, okay. You referred to
 17 bloodshed there in the middle of that –
 18 MAJOR-GENERAL MPEMBE: That's correct,
 19 Chairperson.
 20 MR NGALWANA: May I proceed, Chair? I
 21 saw the Commissioners were conferring.
 22 CHAIRPERSON: Yes.
 23 MR NGALWANA: General, you refer to
 24 bloodshed. What in your estimation then was going to cause
 25 bloodshed?

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1 MAJOR-GENERAL MPEMBE: Chairperson, I
 2 said I know that we do not know how many people might die
 3 tomorrow or tonight, and people are dying. That was the
 4 situation that was taking place. So the bloodshed that I
 5 was referring to, it's what has happened and what is
 6 happening currently, and what might also happen in what, in
 7 the future. By that time I did not know that the incident
 8 of the 16th will happen, but I did also see that if the
 9 dispersal has to take place, there might be shooting taking
 10 place either from the police, or either from the protesters
 11 and also from the police.

12 CHAIRPERSON: In other words the blood
 13 that you thought was going to be shed would be the blood of
 14 strikers or police, or both. Is that correct? That's
 15 because the strikers were in possession of firearms which
 16 they'd taken from the security guard and the police and
 17 might use them, and of course the police in disarming them
 18 would use firearms as well. Is that the way you saw it?

19 MAJOR-GENERAL MPEMBE: Chairperson, when
 20 a dispersal process takes place we do not use sharp
 21 ammunition, but what I'm saying is that the individuals,
 22 those that had firearms, they might also shoot at the
 23 police and the police might defend themselves, the
 24 individuals.

25 CHAIRPERSON: That's why what you're

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1 saying, as I understand you – I just want to make sure I
 2 understand you correctly – is that the strikers who are
 3 being disarmed might use their firearms, even I suppose
 4 might use pangas and so forth, and that would cause
 5 bloodshed on the part of the police, shed police blood.
 6 Equally the police in defending themselves would presumably
 7 have to regard it necessary to fire back, in which case
 8 some of the strikers' blood could also be shed. Is that
 9 the way you understand it?

10 MAJOR-GENERAL MPEMBE: That's correct,
 11 Chairperson, but I was not only referring on the following
 12 day, but what I was referring to, and that maybe is what I
 13 wanted – that's why I was saying there "tomorrow or
 14 tonight, and people are dying."

15 MR NGALWANA: General, you also – it may
 16 be put to you by those who may cross-examine you that you
 17 considered that there might be bloodshed if the police went
 18 and did the dispersion, say on the 15th, but then on the
 19 16th, barely 24 hours later, the police implemented the
 20 dispersal action. What had changed by the 16th?

21 CHAIRPERSON: I'm sorry, Mr Ngalwana,
 22 before you answer that question, shouldn't you put some of
 23 the other passages in this debriefing transcript to him as
 24 well so that we can better understand his argument,
 25 particularly the passage at the foot of page 230 going on

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1 to the top of page 231?

2 MR NGALWANA: Chair, you'll recall I read
 3 through all of this on Monday.

4 CHAIRPERSON: [Inaudible] exactly
 5 explained fully what he meant surely by the passage at the
 6 foot of 230 and the top of 231. Wouldn't it answer the
 7 question that you asked him a moment ago, be easier to
 8 understand against that background also?

9 MR NGALWANA: Okay. General, for the
 10 sake of completion, may I take you also to paginated 228.
 11 That will be page 5, for those who don't have the
 12 pagination. That will be page 5 of GGG4. At the bottom
 13 you continue, you say three lines from the bottom, "Now I
 14 need to do my job and you all also call me to remove
 15 firearms. I cannot go there and disarm people; it will be
 16 bloodshed. So then I need to," and then it becomes
 17 inaudible, and you continue to say, "and go to a specific
 18 house, disarm, and so on." You see that?

19 MAJOR-GENERAL MPEMBE: Chairperson, yes.

20 MR NGALWANA: You go on later in the same
 21 excerpt, talking about "beating this elephant bit by bit
 22 because me going there to the mountain, disarming people,
 23 it is going to be bloodshed." You see that?

24 MAJOR-GENERAL MPEMBE: Chairperson,
 25 that's correct.

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1 MR NGALWANA: Later on the same page
 2 towards the bottom of the page around lines, perhaps 16,
 3 17, you say, "They will have to act and we are also not
 4 prepared to use less bullets, and I know that you do not
 5 want us to shoot, shoot."

6 CHAIRPERSON: You said line 16, but it's
 7 actually 26.

8 MR NGALWANA: Yes, sorry. Yes,
 9 Chairperson, about line 26. You then continue and say,
 10 "Here it is that the police are shooting, are killing
 11 people, and we do not want to go that route, but at the
 12 same time we are also not prepared that our members should
 13 die, but we have a duty to disarm." You then at the bottom
 14 of the page, that's 230 pagination, page 7 of GGG4, about
 15 line 28, three lines from the bottom, you say, "I cannot go
 16 to the mountain. It is not, has never been strategically
 17 in my training. I have not thought because I must disarm
 18 somebody, how do I disarm somebody with an axe and I have a
 19 firearm? It will never work. There is no training in the
 20 whole world to be like that." You see that?

21 MAJOR-GENERAL MPEMBE: Correct,
 22 Chairperson.

23 MR NGALWANA: Now we need to put these in
 24 perspective. I will also read what Mr Mathunjwa says. Can
 25 I take you to page 234, pagination page 234, page 11 of

<p style="text-align: right;">Page 11374</p> <p>1 GGG4. You testified either on Friday or Monday that what 2 you understood Mr Mathunjwa to be saying when he said, "So 3 our impression," this is about line 8, starting at about 4 line 8 on that page, "So our impression is that, is they 5 are willing to go back to work but we must come at 9 6 o'clock." He is giving now a report-back of what his 7 impression was from the mountain when he was addressing 8 those people. 9 [10:04] He said, "Their overall impression," that is Mr 10 Mathunjwa and his group, their impression, "was that they 11 did welcome us and they are prepared that by tomorrow 12 surely there will be a way forward by all these things will 13 be over. That is our impression, not even an 14 interpretation. That is what they said." I think here 15 just to put in perspective, I don't want to ask you the 16 same questions. You've given evidence of what you 17 understood Mr Mathunjwa to be saying there, that Mr 18 Mathunjwa meant that people will lay down their arms. 19 MAJOR-GENERAL MPEMBE: Chairperson, 20 correct. 21 MR NGALWANA: There was a second factor, 22 on the next page, pagination 235, page 12 of GGG4, round 23 about line 10, where Mr Mathunjwa says, "So that is our 24 belief that this thing will be over by tomorrow, but they 25 made it clear," by they of course he's referring to the</p>	<p style="text-align: right;">Page 11376</p> <p>1 that page. Sorry, am I interrupting the interpreter? Line 2 7 where you testified that this was Major-General Annandale 3 who said, "Then also we absolutely welcome the fact that 4 you are saying you are denouncing the violence and that 5 that will mean that these people will hand in their 6 firearms so that we can then sit with yourselves and 7 leadership. We can then have a practical plan in terms of 8 that, so that people will be in a position to then in that 9 demarcated area put down their pangas and spears and 10 whatever," to which Mr Mathunjwa responds several lines 11 down, "I mean from tomorrow when we engage them, maybe 12 some, the way forward maybe will be say wherever, just 13 leave whatever and then police come and collect it. Maybe 14 sometimes if I come and bring it to you there will be that 15 sort of," and then it trails off. You testified, General, 16 that that was also in your understanding a clear indication 17 that Mr Mathunjwa was saying the people are going to disarm 18 voluntarily tomorrow. Do you confirm? 19 MAJOR-GENERAL MPEMBE: Chairperson, 20 confirmed. 21 MR NGALWANA: You then play devil's 22 advocate and you said, "Well, if they don't disarm, then 23 what?" 24 MR MADLANGA SC: Mr Chairman, 25 Commissioners, I did hear my learned friend when he first</p>
<p style="text-align: right;">Page 11375</p> <p>1 people at the koppie, "they made it clear that they do not 2 want NUM there." Then in line 14 to 16 you ask him a 3 pointed question. You say to him, "Are you saying tomorrow 4 they will hand in their weapons, they will disperse?" to 5 which he responds, "Yes." 6 CHAIRPERSON: I'm not sure that this is 7 an unequivocal affirmative reply that he gives – 8 MR NGALWANA: Yes, Chair, I'll – 9 CHAIRPERSON: Because he said some other 10 stuff as well – 11 MR NGALWANA: Yes. 12 CHAIRPERSON: So it's a bit misleading 13 just to say he says yes and then put a full stop there when 14 it isn't on the transcript. 15 MR NGALWANA: He gives an affirmative 16 answer. He then proceeds to lament the fact that AMCU 17 should not be seen as a union that encourages violence. 18 You testified that what you understood Mr Mathunjwa to be 19 saying in clear and unambiguous terms was that people were 20 going to lay down their arms and this thing would be 21 resolved tomorrow. You confirm that? 22 MAJOR-GENERAL MPEMBE: Chairperson, 23 confirmed. 24 MR NGALWANA: The third point is on the 25 next page, page pagination 236, page 13 of GGG4, line 7 on</p>	<p style="text-align: right;">Page 11377</p> <p>1 started along this line that in a way he was put in context 2 to what the Chairman, but now he's going on and on and on, 3 and it's a repetition of what we have heard already. Is it 4 really necessary? 5 MR NGALWANA: Chair, this will become 6 clear when we come back to the question that I was posing. 7 CHAIRPERSON: I think this line of 8 questioning is in order. He was going to put the question 9 which he thought would be put in cross-examination. I'm 10 not sure whether you can put the other side's cross- 11 examination to your own witness in chief, but we'll get 12 there if we have to. He was going to put the question to 13 the witness, what are you going to say if someone asks you 14 in cross-examination why was Thursday different to 15 Wednesday in the light of what you said, and he put one 16 passage, and I said well shouldn't you put some of the 17 others, because there were more specific passages coming 18 which I thought were necessary to form the context for the 19 answer to the question that was going to be asked by way of 20 anticipating the cross-examination, and I think to be fair 21 to him, I think he's still doing that, so I don't think I 22 can stop him. 23 MR NGALWANA: Thank you, Chair. You 24 then, General – and this is the last pointer to Mr 25 Mathunjwa's, to what you understood Mr Mathunjwa to be</p>

<p style="text-align: right;">Page 11378</p> <p>1 meaning – you play devil's advocate and say, "Well, if 2 there's no voluntary disarmament by the protesters or 3 strikers, then what?" and you understood him to say he 4 wasn't prepared to even entertain a negative answer to the 5 question of whether or not these people would disarm. You 6 remember that? That is clear from line – 7 CHAIRPERSON: Sorry, I don't see that on 8 page 237, overall number 14. He says, "I don't have a 9 specific answer." 10 MR NGALWANA: No well, let me read the 11 whole – the witness has already given an answer, but let me 12 read the whole thing. Line 12, Mr Mathunjwa – pagination 13 237, page 14 of GGG4, Mr Mathunjwa to the question, "If 14 they do not hand over tomorrow, what next?" Then at line 15 12, beginning 12 this is what Mr Mathunjwa says, "Yes, I 16 think it is quite normal to answer that question" - the 17 question "If they don't hand over tomorrow, then what?" – 18 "because all our desire is a positive adherence to our 19 call, that everyone when you say you denounce violence, 20 leave whatever that will be injuring people. So I do not 21 have a specific answer what next will happen because I 22 believe that tomorrow will be a day of joy for everyone, so 23 I have not point in that direction of negativity, of saying 24 no, people will say no to violence or whatever, and again 25 when we say weapons, what do we mean, yes pangas and what</p>	<p style="text-align: right;">Page 11380</p> <p>1 you said police cannot go and disarm people because there 2 might be bloodshed, yet less than 24 hours later you do 3 exactly that; you go as the police to disarm people. So 4 what had changed on the 16th that the police could go and 5 effect the dispersal action that couldn't be done the 6 previous day? 7 MAJOR-GENERAL MPEMBE: Chairperson, when 8 I was persuading the two union leadership, I did testify 9 that on the 14th the plan was considered and approved by the 10 JOCCOM and a dispersal process was also adopted as a 11 principle. On the 15th when I was persuading, and 12 passionately persuading the two union leadership, I could 13 not tell them what we as the police when we had the 14 constitutional mandate of preventing crime, what are we 15 busy doing, because that is a high confidentiality plan. 16 Chairperson, on the 16th August 2012 things completely 17 changed. Negotiations by the SAPS directly with the 18 protesters themselves since Monday when I intercepted with 19 them at the railway line, had failed. Chairperson, 20 negotiations with the protesters through the presidents of 21 the two trade unions had failed. Chairperson, I did 22 testify that despite what happened on Monday, we even 23 called upon the negotiation by the hostage negotiators, and 24 it was simultaneously done while I was busy negotiating 25 with the management and the trade unions. The negotiators</p>
<p style="text-align: right;">Page 11379</p> <p>1 exactly," and I ask you, General, what you understood Mr 2 Mathunjwa to be saying, to which you responded, "He was not 3 even prepared" – I'm paraphrasing – "He wasn't even 4 prepared to entertain any negativity on whether or not 5 people were going to voluntarily disarm," and you confirm 6 that? 7 MAJOR-GENERAL MPEMBE: Chairperson, it's 8 confirmed. 9 MR NGALWANA: Now can I take you back to 10 the question that I put. On the evening of the 15th you say 11 to Mr Zokwana the police cannot intervene in this 12 situation. You've testified that you meant that it's 13 better if they as union leaders go and address those 14 people, get them to disarm voluntarily, instead of the 15 police implementing a dispersal action, because there might 16 be bloodshed inasmuch as the police, the protesters with 17 the firearms under their blankets may shoot at the police, 18 and the police may have to shoot back in self-defence. You 19 recall that? You confirm that that was the evidence 20 earlier this morning? 21 MAJOR-GENERAL MPEMBE: Chairperson, 22 correct. 23 MR NGALWANA: Now what I was saying, what 24 I was asking you, General, was in cross-examination a 25 question may very well be put to you that says on the 15th</p>	<p style="text-align: right;">Page 11381</p> <p>1 were negotiating with the protesters, so the negotiation 2 took place according to me since Monday, Tuesday, 3 Wednesday, and even the morning of Thursday. I did testify 4 earlier on to say people were being attacked; people were 5 maimed and killed by the protesters for going to work. In 6 the process of them being killed, they were robbed of their 7 phones and firearms. Chairperson, there was always the 8 danger and risk of further killings because the employer 9 and employees continued to refuse talking to each other, 10 even though I passionately pleaded with them and trying to 11 show them the situation that the police are faced with. 12 Chairperson, the Commission will recall that on 13 the Monday morning and when I was resuming the negotiations 14 with the leaders themselves, there were people that were 15 killed; there were people that were injured going to work 16 and going off work. Chairperson, I may continue to say Mr 17 Twala was killed at the mountain. There is a name of a 18 person that I could not reveal for his safety, that he was 19 left to dead on Monday morning. 20 MR NGALWANA: Chair, that's the statement 21 of Mr Y that I indicated on Monday that I said we were 22 going to submit later. We will submit that statement 23 later. 24 [10:24] MAJOR-GENERAL MPEMBE: Chairperson, on 25 the 16th through the commanders that were sitting there</p>

<p style="text-align: right;">Page 11382</p> <p>1 monitoring the process, trying also to talk to the 2 protestors themselves, they reported to the JOC that the 3 mood of the crowd has changed for the worse. Chairperson, 4 and I feared they might take their frustrations out on 5 innocent bystanders. There was also on the radio from the 6 negotiators that there were already threats made against 7 the police that they would die in Marikana that day. 8 Chairperson, these are the factors that I considered in 9 terms of changing because as the police we have a 10 constitutional mandate. 11 COMMISSIONER HEMRAJ: General, what does 12 it mean when you say they might take their mood out on 13 innocent bystanders? What are you referring to? 14 MAJOR-GENERAL MPEMBE: I was saying they 15 might take out their frustration on innocent bystanders. 16 CHAIRPERSON: Who were the bystanders you 17 had in mind? 18 MAJOR-GENERAL MPEMBE: Chairperson, there 19 were also reports that there were women and there were 20 people that were coming from the informal settlement and 21 also the other part of the informal settlement that was 22 next to where they were sitting. 23 CHAIRPERSON: Were these the women who 24 were actually urging the men to go from the informal 25 township to the koppie? They're not likely taking out</p>	<p style="text-align: right;">Page 11384</p> <p>1 escape the wrath of the justice. They will be pursuing the 2 individuals until such time," I take it by "they" he was 3 referring to the police. "They will be pursuing the 4 individual until such time - this is a challenge that 5 everyone should use for the betterment of everyone." Now I 6 know you were not at the koppie when Mr Mathunjwa on the 7 16th addressed the protestors or strikers, correct? 8 MAJOR-GENERAL MPEMBE: Chairperson, it's 9 correct. 10 MR NGALWANA: But we do at least have a 11 transcript of one of his two addresses and that is 009. 12 Before I take you to 009, may I ask you this General? Did 13 you receive any report that Mr Mathunjwa had advised the 14 people during his address at the koppie about the things 15 that he says he would advise them, at pagination 240? 16 MAJOR-GENERAL MPEMBE: Chairperson, when 17 I have checked the exhibit 009 I did not see the words, but 18 what I heard, what I saw is that he did encourage the 19 protestors to leave the mountain. But specifically to say 20 "Leave whatever you have there and the police will come and 21 process it and get evidence and those that they are being, 22 or they will be found that they have committed a crime, 23 justice will pursue them," that one I do not see it in 24 exhibit 009. 25 COMMISSIONER HEMRAJ: General, on the 16th</p>
<p style="text-align: right;">Page 11383</p> <p>1 their frustrations on them; these women were on their side 2 weren't they? 3 MAJOR-GENERAL MPEMBE: Chairperson, based 4 on my experience, when people they become angry they would 5 go and start destroying, and that's the frustration that 6 I'm talking about and that is what I feared at the time. 7 CHAIRPERSON: What time was this? "This 8 is what I feared at the time," you say. When did you come 9 to that conclusion? 10 MAJOR-GENERAL MPEMBE: Chairperson, it 11 was between 13:00 and 13:30. 12 CHAIRPERSON: This was long after the 13 Provincial Commissioner's press conference and media 14 statement at 9:30 that morning. Is that right? 15 MAJOR-GENERAL MPEMBE: Correct, 16 Chairperson. 17 MR NGALWANA: Thank you, General. Could 18 I then finally on the 15th of August 2012 take you to page 19 17 of GGG4, which is pagination 240, line 7 where Mr 20 Mathunjwa says, "We will advise them," he's now talking 21 about what he will say to the people the following day 22 August 16th, "We will advise them the easiest way. Wherever 23 you are just leave anything there and move away and then 24 from there I think things will work better. But do not 25 think that if those weapons are not brought back you will</p>	<p style="text-align: right;">Page 11385</p> <p>1 itself did you receive any report whatsoever about what Mr 2 Mathunjwa says in his address to the strikers on the 3 koppie, on the 16th itself? 4 MAJOR-GENERAL MPEMBE: The report that I 5 had, Chairperson, was that he did address the protestors to 6 say they should leave the koppie. He kneeled down, 7 pleading with them to leave the koppie. That report I did 8 receive on the 16th but what I was referring it was that 9 "Leave whatever you have and then justice will be pursued," 10 that is the one that I'm referring to. 11 MR NGALWANA: General, let's put it this 12 way - 13 CHAIRPERSON: Sorry to interrupt you. Of 14 course Mathunjwa spoke twice. We have a transcript of his 15 first address, which is the one to which you referred. We 16 haven't got a transcript of the second one, I don't think 17 it was recorded. He also went down on bended knees and 18 pleaded with the people and warned them that there was 19 going to bloodshed if they didn't leave the koppie and so 20 on. We haven't got a transcript of that, as far as I 21 understand, and did you know in any event on the 16th at all 22 what Mr Mathunjwa said on the second occasion when he spoke 23 to the strikers? 24 MAJOR-GENERAL MPEMBE: No, Chairperson, 25 the only one is the one that I know that what he said when</p>

<p style="text-align: right;">Page 11386</p> <p>1 he was pleading with them.</p> <p>2 COMMISSIONER HEMRAJ: General, did you -</p> <p>3 CHAIRPERSON: Sorry, he pleaded with them</p> <p>4 twice, on both occasions. You only know about the first</p> <p>5 occasion, that's correct, isn't it?</p> <p>6 COMMISSIONER HEMRAJ: General, did you</p> <p>7 receive a report on the 16th to the effect that Mr Mathunjwa</p> <p>8 did not tell the strikers to lay down their arms?</p> <p>9 MAJOR-GENERAL MPEMBE: Chairperson, what</p> <p>10 - the report that I got is that he was pleading with them</p> <p>11 to leave the koppie, but as to what precise pleading and</p> <p>12 the words of that pleading, I did not get it on the 16th.</p> <p>13 CHAIRPERSON: Does that mean that you</p> <p>14 weren't told whether or not he told the people to leave</p> <p>15 their arms behind?</p> <p>16 MAJOR-GENERAL MPEMBE: I'm sorry,</p> <p>17 Chairperson, may I understand the question?</p> <p>18 CHAIRPERSON: I'll repeat the question</p> <p>19 again. You said you didn't know exactly what words he</p> <p>20 used, you were told that he told the people to leave the</p> <p>21 koppie. Then you said you didn't know exactly how he put</p> <p>22 it, what words he used. I asked you does that mean that</p> <p>23 you weren't told whether or not he told the people to lay</p> <p>24 down their arms? The question of laying down arms,</p> <p>25 mentioning that or not mentioning it wasn't conveyed to</p>	<p style="text-align: right;">Page 11388</p> <p>1 Paragraph 88 he says, "I knelt down, I pleaded with them.</p> <p>2 I was on my knees holding the microphone, I said Comrades,</p> <p>3 it had already been decided, please leave this place."</p> <p>4 Paragraph 89 he says, "I recall that some of the workers</p> <p>5 came to the microphone to speak and explain how they had</p> <p>6 come to be on the koppie. They explained that they were</p> <p>7 marching to NUM's offices when they were shot by NUM</p> <p>8 officials." Paragraph 90 he says, "Other workers came and</p> <p>9 said that they appreciated the effort that I had made as</p> <p>10 president of AMCU. They then said to me that I should</p> <p>11 leave because I had tried everything. They said that the</p> <p>12 employer did not want to speak to them, they would remain</p> <p>13 on the koppie. They had not attacked anyone. They said</p> <p>14 let the police come and kill them." Lastly paragraph 91 he</p> <p>15 says, "I said to them that it was not necessary that they</p> <p>16 must please," or "I said to them that it was not necessary</p> <p>17 and that they must please leave the koppie." It continues,</p> <p>18 "I explained to them that the life of a black worker was</p> <p>19 cheap, that they would be replaced and that their demands</p> <p>20 would not have been realised. I pleaded with them to leave</p> <p>21 the koppie." General, on the evening of the 15th Mr</p> <p>22 Mathunjwa says to you that he will go to the koppie - I'm</p> <p>23 paraphrasing now - and say to these people they must leave</p> <p>24 their weapons where they are; that if they don't leave</p> <p>25 their weapons where they are, they will not escape the</p>
<p style="text-align: right;">Page 11387</p> <p>1 you. Is that a fair summary of what you're saying?</p> <p>2 MAJOR-GENERAL MPEMBE: The one of weapons</p> <p>3 and dispersing and going back to work, I did not hear it.</p> <p>4 MR NGALWANA: General, may I refer you,</p> <p>5 while we're on this point, to Mr Mathunjwa's statement?</p> <p>6 You'll find this in the statements bundle, bundle B at</p> <p>7 pagination 151, exhibit NN.</p> <p>8 MAJOR-GENERAL MPEMBE: Yes, I did find</p> <p>9 it, I just want to find the page -</p> <p>10 MR NGALWANA: Well, I'll refer you</p> <p>11 specifically to page 176 pagination, top right-hand corner,</p> <p>12 which is page 26 of exhibit NN, paragraph 87. In dealing</p> <p>13 with this line of enquiry I suppose one can do no better</p> <p>14 than looking at what Mr Mathunjwa himself says he said to</p> <p>15 those people. Paragraph 87 Mr Mathunjwa says, "I then</p> <p>16 proceeded to the koppie." I take it this - and anyone who</p> <p>17 wishes to dispute it can say so - this is the second visit,</p> <p>18 the one that was not recorded. He says, "I told the</p> <p>19 workers that there was no-one to whom I could give a report</p> <p>20 of what the workers wanted." May I ask the interpreter if</p> <p>21 I can read the entire paragraph and then he can do the</p> <p>22 interpretation? "I pleaded with them, I said to them that</p> <p>23 if they do not leave the koppie the police were going to</p> <p>24 kill them. I said that AMCU did not want people to be</p> <p>25 killed but rather that their demands be addressed."</p>	<p style="text-align: right;">Page 11389</p> <p>1 wrath of justice, that's the second thing, and the third</p> <p>2 thing he says, he says he was going to tell them that the</p> <p>3 police will pursue perpetrators until they are brought to</p> <p>4 justice. Now from the passages I've just read, did Mr</p> <p>5 Mathunjwa say any of these things to those people on the</p> <p>6 koppie?</p> <p>7 [10:44] MAJOR-GENERAL MPEMBE: Chairperson, no.</p> <p>8 MR NGALWANA: Now that should conclude</p> <p>9 the events of the 15th. Is there anything, General, of</p> <p>10 significance that happened on the 15th that you consider</p> <p>11 important to bring to the attention of the Commission?</p> <p>12 MAJOR-GENERAL MPEMBE: Chairperson, no.</p> <p>13 MR NGALWANA: Now on the 16th, we are now</p> <p>14 in the morning -</p> <p>15 COMMISSIONER HEMRAJ: Mr Ngalwana, before</p> <p>16 you go to the 16th, General, the discussions held at this</p> <p>17 meeting with the presidents, you conveyed what happened at</p> <p>18 this meeting to other commanders?</p> <p>19 MAJOR-GENERAL MPEMBE: That's correct,</p> <p>20 Chairperson.</p> <p>21 COMMISSIONER HEMRAJ: Would you like to</p> <p>22 deal with that, Mr Ngalwana?</p> <p>23 MR NGALWANA: Can you run that by me</p> <p>24 again -</p> <p>25 COMMISSIONER HEMRAJ: Whether he conveyed</p>

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1 what happened at the meeting and the so-called undertaking
 2 given, whether he conveyed that to other commanders.
 3 MR NGALWANA: General, did you convey the
 4 discussions at the meeting reflected in GGG4 to the
 5 Provincial Commissioner?
 6 MAJOR-GENERAL MPEMBE: Chairperson,
 7 correct.
 8 MR NGALWANA: In brief terms – or let me
 9 start by asking you this. When and where did you convey
 10 that to the PC?
 11 MAJOR-GENERAL MPEMBE: On the 15th on,
 12 immediately after the debriefing meeting. I phoned the
 13 Provincial Commissioner, I explained to him what has
 14 transpired in that meeting.
 15 CHAIRPERSON: Her.
 16 MAJOR-GENERAL MPEMBE: I'm sorry,
 17 Chairperson, her. I informed her what has happened and
 18 that we are going to brief the members and then we will see
 19 what is going to happen on the 16th.
 20 MR NGALWANA: Just tell the Commission in
 21 fairly precise terms, as precisely as you can remember,
 22 what it is that you told the PC about the discussions in
 23 this meeting, General.
 24 MAJOR-GENERAL MPEMBE: I said to the
 25 Provincial Commissioner that the AMCU president Mr

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1 Mathunjwa gave us the assurance that the crowd will lay
 2 down their weapons on Thursday, 16th August, at 9 o'clock,
 3 and disperse peacefully.
 4 MR NGALWANA: Yes, is that all you told
 5 her? Is there anything else you told her?
 6 MAJOR-GENERAL MPEMBE: I said to her, "We
 7 prefer that solution; we will see what will happen
 8 tomorrow," and that's all, and the Provincial Commissioner
 9 said that she agreed with me.
 10 MR NGALWANA: Is there anyone else you
 11 told about those discussions, other commanders, General?
 12 For example, did you tell Major-General Annandale?
 13 CHAIRPERSON: Wasn't Major-General
 14 Annandale present in the discussion you had with Mr Zokwana
 15 and Mr Mathunjwa? So why do you have to tell him about
 16 what Mr Mathunjwa said?
 17 MR NGALWANA: Mea culpa, Chair. Which –
 18 CHAIRPERSON: I think you'll have to
 19 interpret that for the interpreter. Mea culpa means my
 20 fault. It's Latin.
 21 MAJOR-GENERAL MPEMBE: Chairperson, on
 22 the 16th also in the morning we start first with a JOCCOM
 23 and we also briefed the commanders about the feedback of Mr
 24 Mathunjwa.
 25 MR NGALWANA: Do you recall which

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1 commanders were present at the – you're talking about the
 2 6AM JOCCOM meeting, General?
 3 MAJOR-GENERAL MPEMBE: Chairperson,
 4 correct.
 5 MR NGALWANA: And you're saying that is
 6 where you told the various other commanders about the
 7 discussions and Mr Mathunjwa's, shall we call them
 8 indications? Let's not call them undertakings; shall we
 9 call them Mr Mathunjwa's indications about what he
 10 understood was going to happen the next morning. Are you
 11 saying you conveyed those discussions to the other
 12 generals, the other commanders in the morning JOCCOM
 13 meeting at 6 o'clock on 16 August 2012?
 14 MAJOR-GENERAL MPEMBE: Correct,
 15 Chairperson.
 16 MR NGALWANA: Who was there? Can you
 17 recall which commanders were present?
 18 MAJOR-GENERAL MPEMBE: Chairperson –
 19 COMMISSIONER HEMRAJ: Doesn't that appear
 20 from the minutes –
 21 MAJOR-GENERAL MPEMBE: I just want to go
 22 to the minutes of that meeting.
 23 MR NGALWANA: The minutes are TT4 and
 24 there's no list of attendees. Do you recall, General,
 25 which commanders were present?

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1 MAJOR-GENERAL MPEMBE: Chairperson, we
 2 have the commanders, the operational commander Brigadier
 3 Calitz was there and all other commanders, Brigadier Fritz,
 4 and also the commanders of the sections, they were all at
 5 that meeting.
 6 MR NGALWANA: Alright –
 7 CHAIRPERSON: Were the same commanders
 8 there at 6 o'clock in the morning as were there later at
 9 the meeting at 1:30PM?
 10 MAJOR-GENERAL MPEMBE: Chairperson, may I
 11 understand the question well?
 12 MR NGALWANA: Can I make it easier; can I
 13 take you to EE – Chair, if you don't mind. It's pagination
 14 page 269. Have you found it, General? Exhibit EE, first
 15 page. There's an attendance list there. Do you see that,
 16 General, under paragraph 2?
 17 MAJOR-GENERAL MPEMBE: Chairperson,
 18 correct.
 19 MR NGALWANA: Now at the meeting of the
 20 16th, that's the minute of the special JOCCOM. We are now
 21 talking about the minutes, or the meeting of the morning, 6
 22 o'clock meeting on Thursday the 16th of August 2012. Was
 23 Lieutenant-General Mbombo present in the morning meeting?
 24 MAJOR-GENERAL MPEMBE: Lieutenant-General
 25 Mbombo was not in the meeting of 6 o'clock, but what I'm

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1 saying is all command structures, those that are on the
 2 ground, they were there at the meeting of 6 o'clock.
 3 That's why I'm talking about Brigadier Calitz and all other
 4 commanders that were actually working on the ground, and
 5 those that were representing the units in the JOCCOM, all
 6 of them, at 6 o'clock they were there.
 7 MR NGALWANA: As I understand it, the
 8 Commissioners seem to want precisely the names of the
 9 people who were there. If I can take you, perhaps let's do
 10 it this way, back to TT4, General, on page 252. Well, take
 11 you to 251. We know that Lieutenant-Colonel Scott was
 12 there, if you look at the middle of the page. There's an
 13 entry that says, "Lieutenant-Colonel Scott further
 14 indicated to the meeting that the timeline for deployment
 15 will be as follows," and there it gives 6 o'clock, 7
 16 o'clock, and so on. So Lieutenant-Colonel Scott was there,
 17 correct?
 18 MAJOR-GENERAL MPEMBE: Correct,
 19 Chairperson.
 20 MR NGALWANA: At the top of the – well,
 21 sort of 1, 2, 3, 4, 5, 6, 7 lines from the top of that page
 22 there's reference that Brigadier Calitz will be in charge
 23 of this group with Colonel Makhubela –
 24 CHAIRPERSON: I'm sorry, Mr Ngalwana, I'm
 25 going to cut you short. If you go to the next page 252

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1 under paragraph 3.3, the various JOCCOM role-players give
 2 input. So it's quite clear from that at least all those
 3 people were there. That's a quicker way of doing it, I
 4 think. But let's go to that quickly and then we'll take
 5 tea.
 6 MR NGALWANA: Okay. Well, that's how the
 7 witness had answered that question. So all the various
 8 role-players who were going to participate in the
 9 operations were present at that meeting in the morning of
 10 the 16th. Is that correct, General?
 11 MAJOR-GENERAL MPEMBE: That is correct,
 12 Chairperson.
 13 MR NGALWANA: Now the meeting starts 6
 14 o'clock in the morning. What was the agenda?
 15 MAJOR-GENERAL MPEMBE: Chairperson,
 16 normally when the meeting starts, General Annandale was the
 17 chairperson and as an overall commander, and I need to
 18 indicate at this stage that since the operation has started
 19 and as an overall commander, there were times where I had
 20 to pursue other role-players to engage them, then that's
 21 why Major-General Annandale had to chair the meeting. In
 22 some of the meetings since from Monday I was not there, he
 23 was chairing the meeting. I just wanted to clear that one.
 24 That's also the main reason that you'll see Major-General
 25 Annandale chairing the meeting on a regular basis, and when

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1 I'm there I will also sit and also give, listen and also
 2 give some comments to understand that the operation is
 3 going in the right direction. According to the brief
 4 minutes we will start first with the overall intelligence
 5 briefing.
 6 MR NGALWANA: Was that the first item in
 7 that meeting?
 8 MAJOR-GENERAL MPEMBE: Chairperson,
 9 despite the meeting procedures of each and every one,
 10 attendance list and the others, the first presentation it
 11 will be what does the intelligence say in relation to where
 12 we are and where we are getting to.
 13 MR NGALWANA: General, you are talking in
 14 general terms. Is that what in fact happened on that
 15 meeting? Was there an intelligence report given at the
 16 beginning of that meeting?
 17 MAJOR-GENERAL MPEMBE: It's correct,
 18 Chairperson.
 19 CHAIRPERSON: On that note we'll take the
 20 adjournment.
 21 [COMMISSION ADJOURNS COMMISSION RESUMES]
 22 [11:33] CHAIRPERSON: The Commission resumes.
 23 Major-General, you're still under oath.
 24 WILLIAM MPEMBE: s.u.o.
 25 CHAIRPERSON: Mr Ngalwana, further

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1 questioning in examination-in-chief.
 2 EXAMINATION BY MR NGALWANA (CONTD.):
 3 Yes. General, at the very real risk of incurring the wrath
 4 of the Chair, may I take you back slightly and ask you
 5 this; at the evening meeting, the debriefing meeting on the
 6 15th, you said to the trade union leaders that if the police
 7 were to implement a dispersal action there will be
 8 bloodshed. Did you convey that same sentiment at the JOC?
 9 MAJOR-GENERAL MPEMBE: Chairperson, no.
 10 MR NGALWANA: Why didn't you?
 11 MAJOR-GENERAL MPEMBE: Chairperson, that
 12 was a strategy to, intended for the union leaders to take
 13 the matter seriously when they communicate to their members
 14 to lay down their weapons. I did not believe that that
 15 will happen.
 16 MR NGALWANA: When you say you did not
 17 believe that that would happen, what do you mean? What is
 18 it that you did not believe will happen, General?
 19 MAJOR-GENERAL MPEMBE: I did not believe
 20 that when the police go there, there will be bloodshed, but
 21 that's what I'm saying, is that it was a strategy intended
 22 to convince the union leaders to take the matter seriously
 23 when they communicate with their members.
 24 MR NGALWANA: Right, can I now take you
 25 to the following day, the morning – that's what we were

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1 dealing with – the morning of the 16th of August there's a
 2 JOCCOM meeting. You've explained that you started with an
 3 intelligence report. Just take the Commission through what
 4 was the content of the intelligence report.
 5 MAJOR-GENERAL MPEMBE: Chairperson, we
 6 were briefed by the intelligence that at that time, and I
 7 need just to rectify that 3 000, actually it's 300
 8 mineworkers had gathered at the koppie and we were a little
 9 bit surprised to hear that they were also in possession of
 10 dangerous weapons and a further point was that they will
 11 decline and not to surrender these dangerous weapons to the
 12 police and that they will leave the koppie, they will not
 13 leave the koppie, and that they are prepared to fight if
 14 their demands are not met, which includes resisting the
 15 police. With what has happened on the 15th, we knew that Mr
 16 Mathunjwa is still going to address them. That option was
 17 considered; he has to be given a chance to see what is
 18 going to happen in that morning. That was also where we
 19 started to say then we need also to take that into account.
 20 Chairperson, at that time the commanders also gave various
 21 feedbacks in terms of what was happening yesterday and the
 22 way forward. We also then said the deployment will be done
 23 with stage 2 of the operational strategy.
 24 MR NGALWANA: Sorry, General, if I might
 25 stop you there. During the intelligence reports or

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1 feedback at the JOCCOM, was this done verbally or was there
 2 an intelligence report that was placed before the JOCCOM?
 3 MAJOR-GENERAL MPEMBE: Chairperson,
 4 normally when the intelligence they brief us, they also
 5 prepare some sort of a report to us, or a report, yes.
 6 MR NGALWANA: Was there a written report
 7 placed before the JOCCOM?
 8 MAJOR-GENERAL MPEMBE: Correct,
 9 Chairperson.
 10 MR NGALWANA: Was this a report by
 11 Engelbrecht or by Isaacs, General?
 12 MAJOR-GENERAL MPEMBE: Chairperson, the
 13 briefing in that morning it was done by Colonel Isaacs –
 14 not Lieutenant, Colonel Isaacs.
 15 MR NGALWANA: Chairperson, there is an
 16 intelligence report that was initially part of the
 17 documents bundle. Somehow it escaped from the clutches of
 18 the lever arch file. It's a one-page document. Perhaps we
 19 could add it. I don't think my learned friends, neither my
 20 learned friends nor the Commission will be unduly
 21 prejudiced, it's got four paragraphs, three of which are
 22 one-liners.
 23 CHAIRPERSON: There is one of course at
 24 page 248 and following.
 25 MR NGALWANA: That is not the one to –

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1 CHAIRPERSON: No, sorry. It would be
 2 helpful; this would be 10.1 or 10A or something like that.
 3 Unless you want to put it at the end after -
 4 MR NGALWANA: We could put it immediately
 5 after TT5, and perhaps we can call it TT5A or something.
 6 CHAIRPERSON: Yes, yes, yes, and the
 7 pages would have to be also 249A and B or something like
 8 that. But it's only one page, I think, isn't it?
 9 MR NGALWANA: It's only one page, Chair.
 10 CHAIRPERSON: So 249A and we'll mark it
 11 TT5.1, shall we?
 12 MS PILLAY: Chair, the page is part of
 13 TT5 already, the existing TT5. This is the last page of
 14 the existing TT5.
 15 CHAIRPERSON: Oh, I see. I see. So it's
 16 already an exhibit. The only problem is it's not in the
 17 bundle. Alright, so all we do is we make it 249A then and
 18 it will fit in neatly, and we could have copies and if
 19 someone would be kind enough to punch them for us, then we
 20 could put this page in our file.
 21 MR NGALWANA: Yes, I'm not sure I follow
 22 because –
 23 CHAIRPERSON: Mr Ngalwana, listen to me.
 24 Let's take it slowly. What Ms Pillay has said is that that
 25 document you've got in your hand is actually part of

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1 exhibit TT5. When you put a copy of TT5 in your bundle,
 2 that page somehow landed on the floor. So all you have to
 3 do is to put it back, then it becomes part of your bundle,
 4 part of, under tab 10 because it's actually missing from
 5 there, but all we have to do is we have to give it a number
 6 which doesn't put things totally out of sync, so we call it
 7 249A and then we haven't got a problem. Do you understand
 8 that?
 9 MR NGALWANA: Absolutely, Chair.
 10 CHAIRPERSON: I take it that copies are
 11 being prepared for us now.
 12 MR NGALWANA: Yes, I've just learned from
 13 the attorney sitting across the room that they will be
 14 prepared in due course, Chair. I understood they had
 15 already been prepared, but –
 16 CHAIRPERSON: In any event, I think we
 17 know what's in the document because we've all read it
 18 before. So perhaps, as long as the witness has a copy, you
 19 can then proceed with your examination-in-chief on it.
 20 MR NGALWANA: Is that the report, General
 21 – thank you, Chairperson. Is that the report that served
 22 before the meeting, JOCCOM meeting at 6 o'clock? You see
 23 it's got 12 o'clock. Is that the report that served before
 24 the JOCCOM at 6 o'clock that morning of the 16th of August
 25 2012?

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1 MAJOR-GENERAL MPEMBE: Chairperson, it's
 2 correct, but what I want to indicate is that we did not
 3 have a JOCCOM meeting at 12. I don't remember having a
 4 JOCCOM meeting, but the information that was given to us in
 5 the morning, it was this one.
 6 CHAIRPERSON: The question is, you don't
 7 appear to have had a JOCCOM meeting at 12, but did that
 8 document, was it put before – I don't like the Afrikaansism
 9 "serve," it didn't – het dit voor die vergadering gedien?
 10 Was it put before the JOCCOM meeting at 1:30 or not? It's
 11 not reflected in the minutes –
 12 MR NGALWANA: 6AM.
 13 CHAIRPERSON: No, no, no, the 12 o'clock
 14 document couldn't have been put before the 6 o'clock
 15 meeting. That we know. The question is was the 12 o'clock
 16 document, the one you've just been handed which is 12
 17 o'clock, noon, was that put before, or the information in
 18 it conveyed to the 1:30 meeting of the JOCCOM? It's not
 19 reflected in the minutes which are exhibit EE, page 269 of
 20 the bundle, but that doesn't mean that it wasn't
 21 necessarily put before the meeting. So my question is, was
 22 it put before the 1:30 meeting? If you can't remember, you
 23 can't remember.
 24 MR NGALWANA: Chair, with your leave, can
 25 we take it step by step because I fear my witness might be

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1 confused –
 2 CHAIRPERSON: Alright, let's take it – we
 3 don't want to confuse the witness. Let's take it step by
 4 step. I thought I made it clear, but obviously I've fallen
 5 short of the high standard you expect of me, so you have a
 6 go.
 7 MR NGALWANA: No, Chair, you've gone
 8 rather further than –
 9 CHAIRPERSON: As you would say, mea
 10 culpa.
 11 MR NGALWANA: Tua culpa, indeed.
 12 General, the intelligence report to which you have just
 13 been referred, signed by Isaacs, was that report before the
 14 JOCCOM meeting in the morning of the 16th of August 2012,
 15 the meeting beginning at 6 o'clock that morning?
 16 MAJOR-GENERAL MPEMBE: Correct,
 17 Chairperson.
 18 MR NGALWANA: Was it written 12 o'clock
 19 at the time that it was presented?
 20 MAJOR-GENERAL MPEMBE: Chairperson, I
 21 don't remember it being written 12 o'clock, but the
 22 information contained in this document was presented at 6
 23 o'clock meeting.
 24 MR NGALWANA: Now you indicated earlier
 25 that there is a mistake, if I'm using the incorrect word,

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1 in that document. What mistake is there? Let's take it
 2 line by line. The first line says, "Approximately 3 000
 3 mineworkers are gathered at the koppie." Is that factually
 4 correct?
 5 MAJOR-GENERAL MPEMBE: Not factually
 6 correct. That's one of the type, that's a typing error
 7 which I think, because at that time we were reported that
 8 it was 300, not 3 000.
 9 MR NGALWANA: Well, perhaps the more
 10 accurate way of phrasing the question, inasmuch as you were
 11 not there at the koppie you wouldn't know whether there
 12 were 300 or 3 000. Perhaps the way to phrase it is was it
 13 reported that there were approximately 3 000 mineworkers
 14 there at the koppie when the intelligence report was
 15 presented?
 16 MAJOR-GENERAL MPEMBE: At about 300.
 17 MR NGALWANA: Now you were at the JOCCOM,
 18 General. The intelligence report is presented. What then
 19 happens?
 20 MAJOR-GENERAL MPEMBE: Chairperson, the
 21 feedback was also given of the deployment and also that the
 22 feedback of Mr Mathunjwa was given, and thereafter then we
 23 also discussed the strategy of that morning, that is stage
 24 2 of the operational plan.
 25 MR NGALWANA: When you say the feedback

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1 of Mr Mathunjwa was given, by whom was that feedback and
 2 which feedback are you referring to?
 3 MAJOR-GENERAL MPEMBE: It was given by
 4 Major-General Annandale.
 5 MR NGALWANA: Are you talking about the
 6 discussions of the previous evening, as reflected in GGG4?
 7 MAJOR-GENERAL MPEMBE: Correct,
 8 Chairperson.
 9 MR NGALWANA: May I ask you to turn to
 10 the documents bundle, bundle A I think it is. Yes, and go
 11 to pagination number 108, and for those who don't have
 12 pagination, it's SS3, and go to – ja, for those who don't
 13 have the pagination, it would be "Operation Platinum Lonmin
 14 Mine: Marikana, 16 August 2012 / Stage 2," pagination 108.
 15 May I just point out one –
 16 CHAIRPERSON: It's also apparently in the
 17 police bundle, or on the police hard drive is the correct
 18 word. It looks like 139. It's actually two slides. The
 19 top slide is 139, and the lower slide is 140, and those
 20 together are page 108 of your bundle.
 21 [11:53] MR NGALWANA: Thank you, Chair. May I
 22 also while we are here, I checked in rather artificial
 23 fashion yesterday, it appears the same document appears
 24 from pagination 88, which would be slide 102 to pagination
 25 107, which would be slide 126. Now that document appears

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1 to be exactly the same as the document beginning at page
 2 108 until page 139, the only difference being that the one
 3 beginning at page 88 is in smaller font and the one
 4 beginning at 108 is in larger font. So to page 108 we go.
 5 General, is that the document that was discussed on the
 6 morning of the 16th of August JOCCOM?
 7 MAJOR-GENERAL MPEMBE: Correct,
 8 Chairperson.
 9 MR NGALWANA: I'm told for those who
 10 don't have the pagination it's slide 65 of SS3. General,
 11 from that document - you've read, it have you not, since
 12 the meeting of the morning of the 16th? In other words,
 13 you've gone through that document, correct?
 14 MAJOR-GENERAL MPEMBE: Correct,
 15 Chairperson.
 16 MR NGALWANA: Are there any slides in
 17 that document that were not before the JOCCOM?
 18 MAJOR-GENERAL MPEMBE: Correct,
 19 Chairperson.
 20 MR NGALWANA: Can you tell us which
 21 slides those are? You'll be referring to them in terms of
 22 pagination. I'm not sure what the slides would be.
 23 MAJOR-GENERAL MPEMBE: Chairperson, it
 24 will be paginated page 117 which was done for the purpose
 25 of the Commission.

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1 MR NGALWANA: Until what page?
 2 MAJOR-GENERAL MPEMBE: Chairperson, it
 3 will go until page 123, the, only the first part of it. If
 4 I may say there is 16, what is it, 31 there, until that
 5 one, the deployment, the call signs and the force levels.
 6 MR NGALWANA: For those who do not have
 7 paginations, there will be a part of SS3 under the 16th
 8 August Stage 2, you'll come to a part that says "Execution
 9 of Operation." Then it sets out "Execution" in the next
 10 slide. The following page is what the General says was not
 11 before the JOCCOM that morning, all the way until where it
 12 says "Coordinating instructions: 16 August," some seven
 13 pages later. Slide 72 to slide 80 did not serve before the
 14 JOCCOM that morning. Was stage 2 the only issue that was
 15 discussed that morning, General? Stage 2 of the plan.
 16 CHAIRPERSON: Mr Msimang, before the
 17 witness answers, you want to say something.
 18 MR MSIMANG: I'm trying to find the
 19 slides, I'm on SS2 but I can't find the slides that Mr
 20 Ngalwana refers to. Chairperson.
 21 MR NGALWANA: SS3, can I ask Ms Pillay to
 22 temporarily join the SAPS team?
 23 MS PILLAY: It's page 72 to page 80 of
 24 the electronic SS3.
 25 MR MSIMANG: I am on SS3, let me tell you

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1 what my SS3 says. It starts with South African Police
 2 Services, there's - in fact the other page number that
 3 appear from the hard drive of the SAPS is 1665, then it
 4 starts with the plan of the 10th of August 2012.
 5 MS PILLAY: If you look at the top of
 6 your document you'll see page 1 of 89. That's the
 7 electronic page number, towards the top of your document.
 8 MR MSIMANG: Page 1 of 89, yes.
 9 MS PILLAY: That's right, so if you go to
 10 73, that's what the witness is talking about, page 73 of 89
 11 to page 80 of 89.
 12 MR MSIMANG: Okay, thank you.
 13 MR NGALWANA: I'm indebted to Ms Pillay.
 14 General, that morning, General, was stage 2 the only issue
 15 that was discussed at that meeting, that morning meeting of
 16 JOCCOM, 16 August 2012, 6 o'clock?
 17 MAJOR-GENERAL MPEMBE: Correct,
 18 Chairperson, and the commanders were also informed that, in
 19 that meeting that the contingency plan will also be kept in
 20 mind and if there is going to be any other thing that will
 21 follow, the briefing will be done.
 22 MR NGALWANA: Just very briefly, could
 23 you take the Commission through what about stage 2 was
 24 discussed at that meeting? Perhaps if I can take you to
 25 pagination page 114 which sets out the Operational

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1 Overview.
 2 MAJOR-GENERAL MPEMBE: 114.
 3 MR NGALWANA: Slide 71, for those who
 4 don't have pagination. General, are you with us?
 5 Pagination 114 at the bottom right-hand corner, documents
 6 bundle. Do you have SS3 in front of you?
 7 MAJOR-GENERAL MPEMBE: Yes.
 8 MR NGALWANA: Go to pagination 114.
 9 MAJOR-GENERAL MPEMBE: I will also -
 10 there is also the one that I would like to take the
 11 Commission through.
 12 MR NGALWANA: Okay, go ahead.
 13 MAJOR-GENERAL MPEMBE: That will be at -
 14 if the esteemed Commissioners and the Commission have got
 15 it, it will start from 108, because that's the one that I
 16 do have of those pages, 108.
 17 MR NGALWANA: Yes that's the beginning of
 18 stage 2 of the plan.
 19 MAJOR-GENERAL MPEMBE: Yes.
 20 MR NGALWANA: What I'm asking is could
 21 you take the Commission through, fairly briefly, about what
 22 about stage 2 was discussed at the JOCCOM?
 23 MAJOR-GENERAL MPEMBE: Then I'll go to
 24 112, paginated page 112, the Operational Overview. I just
 25 want - stage 1, "Dialogue with Protestors with NUM," I

<p style="text-align: right;">Page 11410</p> <p>1 think the word is "non-aggressive police visibility, 2 protecting the members in armed vehicles." 3 MR NGALWANA: Yes, and that has been 4 going on since Tuesday. 5 MAJOR-GENERAL MPEMBE: Yes, that is then 6 the show of force. But stage 2 Operational Overview, it 7 will also go straight to paginated page, the Operational 8 Overview of stage 2 that was discussed, paginated page 114. 9 I'm just requesting that this Operational Overview, if it 10 can go to 114, please. 11 MR NGALWANA: Ja, it will be two pages 12 later from the slide that was there. Yes, General. 13 MAJOR-GENERAL MPEMBE: Stage 2, implement 14 stage 1, then add stage 2 deployment and that will be done 15 in the following manner; police neutral area, POP Nyalas, 16 and that part will be under the command of Brigadier 17 Calitz. 18 MR NGALWANA: So in short, General, what 19 appears on the slide on the screen, Operational Overview is 20 what you say was discussed at the JOCCOM? 21 MAJOR-GENERAL MPEMBE: Correct, 22 Chairperson. Show of force, that the Nyalas with the razor 23 wire will be pre-positioned. Immediate reaction force at 24 the forward holding area 1 and 2. 25 COMMISSIONER HEMRAJ: Mr Ngalwana, do you</p>	<p style="text-align: right;">Page 11412</p> <p>1 saying in the meeting of the morning of 16th stage 2 was 2 discussed. Can I ask you this, because - 3 CHAIRPERSON: Sorry, before you ask that, 4 the point Ms Pillay makes is correct, but obviously your 5 page 129 of your bundle is out of position. It clearly 6 relates to what happened at the 1:30 meeting. You're still 7 busy with the 6 o'clock meeting and this document is under 8 the heading "Outstanding Points," so it's clearly misplaced 9 and we can ignore it for the moment while we're talking 10 about the 6 o'clock meeting, is that right? 11 MR NGALWANA: Yes, correct, Chairperson. 12 COMMISSIONER HEMRAJ: If you're at page 13 114, the stage 2, the discussion at the 6 o'clock JOCCOM 14 meeting, was it in as much detail as is set out in these 15 slides? 16 MAJOR-GENERAL MPEMBE: Correct, 17 Chairperson. 18 MR NGALWANA: Thank you, Commissioner. 19 General, can I take you two pages back where it says 20 "Operational Overview," which is pagination page 112? The 21 second slide, it sets out - or the lower slide, it sets out 22 stage 1, it defines it, stage 2 and defines it, stage 3, it 23 defines it and over the page, stage 4, 5 and 6. Now that 24 morning you say only stage 2 was discussed. During the 25 discussion, was it a foregone conclusion that stage 3 would</p>
<p style="text-align: right;">Page 11411</p> <p>1 want the witness to read all of this out? 2 MR NGALWANA: Thank you, Commissioner, 3 that's precisely what I was about to say. General, you 4 don't have to read what we can see. Effectively what you 5 are saying is what appears in that slide is what was 6 discussed and that depicts stage 2 and the various layers 7 of it. Perhaps a more useful exercise would be to go to 8 slide 129, because that talks about the positioning. 9 Paginated page 129. 10 COMMISSIONER HEMRAJ: Doesn't that slide 11 deal with 14:30, Mr Ngalwana? 12 MR NGALWANA: Yes, Chair. Yes, General. 13 MAJOR-GENERAL MPEMBE: Chairperson, I 14 need to say that one of 129, it was dealt with at 13:30 15 meeting and it was presented by Colonel Scott at 14:30 to 16 the commanders. 17 MR NGALWANA: And it's also the same as 18 slide 181 in exhibit L. We'll deal with it then when we 19 come to the 13:30 meeting. 20 MS PILLAY: Chair, may I just indicate 21 that the slide, paginated page 129 doesn't appear on the 22 electronic version of SS3. 23 MR NGALWANA: It will be exhibit L, slide 24 181, Chair, but we'll come to that when we come to the 25 special JOCCOM meeting. So, General, in a nutshell you're</p>	<p style="text-align: right;">Page 11413</p> <p>1 be implemented, while you were discussing stage 2? 2 MAJOR-GENERAL MPEMBE: No, Chairperson. 3 MR NGALWANA: Then the discussion happens 4 of stage 2 in the morning, the meeting concludes, according 5 to its minutes TT4, around 7:30, if I remember correctly. 6 Is that correct, General? 7 MAJOR-GENERAL MPEMBE: Correct, 8 Chairperson. 9 MR NGALWANA: What do you then do between 10 7:30 and lunchtime? Could you take the Commission through? 11 MAJOR-GENERAL MPEMBE: Chairperson, I was 12 at the JOC. There were also various reports that we were 13 getting from the ground of those members that had been 14 deployed in that morning, and the Provincial Commissioner 15 arrived, and then when the Provincial Commissioner arrived 16 we gave her the feedback that we have briefed the members 17 about stage 2 and then we have deployed them, and that we 18 are still anticipating what will be the outcome of that 19 day. Then the Provincial Commissioner was also supposed to 20 go and address the media. Chairperson, myself and Major- 21 General Annandale, we did accompany the Provincial 22 Commissioner to the LPD office. 23 [12:13] COMMISSIONER HEMRAJ: What time - 24 MR NGALWANA: Roughly what time are we at 25 now, General?</p>

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1 MAJOR-GENERAL MPEMBE: Chairperson, it
2 was about half past, past 9 to 10 o'clock by that time.
3 I'm not sure about time, but it was more or less that time.
4 CHAIRPERSON: Who had convened the press
5 conference? Who set it up?
6 MAJOR-GENERAL MPEMBE: It was the
7 Provincial Commissioner.
8 CHAIRPERSON: Do you know when she did
9 that?
10 MAJOR-GENERAL MPEMBE: No, Chairperson.
11 CHAIRPERSON: I think it was on Lonmin
12 premises, wasn't it? Somebody must have asked Lonmin to
13 make the premises available for the conference. Is that
14 correct?
15 MAJOR-GENERAL MPEMBE: That's correct,
16 Chairperson.
17 CHAIRPERSON: And the press must have
18 then been told be there at 9:30, or whatever time was pre-
19 arranged, for the conference. Is that right?
20 MAJOR-GENERAL MPEMBE: That's correct,
21 Chairperson.
22 CHAIRPERSON: You don't know when the
23 actual convening, as it were, and the arrangements – the
24 convening took place and the arrangements were made, but
25 you say the Provincial Commissioner did that.

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1 MAJOR-GENERAL MPEMBE: That's correct,
2 Chairperson.
3 CHAIRPERSON: So we must ask her.
4 MR NGALWANA: Yes, General, you then
5 accompanied the Provincial Commissioner together with
6 Major-General Annandale to the media briefing. In your
7 recollection, what was the message that the Provincial
8 Commissioner gave? She will come and testify herself as
9 regards the exact words that she uttered there, but what
10 message did she convey?
11 MAJOR-GENERAL MPEMBE: The message was
12 just to say the matter will be resolved.
13 MR NGALWANA: In your recollection, did
14 she use words of the sort that "Today is D-day?"
15 MAJOR-GENERAL MPEMBE: Chairperson, no.
16 MR NGALWANA: What then happened? The
17 media conference is done. Could you take the Commission
18 through what then happens after that?
19 COMMISSIONER HEMRAJ: Sorry, General,
20 before you move on, before you left the JOCCOM to go to the
21 media conference, were there any reports made about what
22 was happening at the koppie apropos Mr Mathunjwa? Was
23 there anything at all about him arriving or addressing the
24 crowd, or not arriving?
25 MAJOR-GENERAL MPEMBE: No, Chairperson.

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1 MR NGALWANA: Alright, then the media
2 briefing is completed. Could you take the Commission
3 through what then happened and what role you played in
4 those events?
5 MAJOR-GENERAL MPEMBE: Chairperson, we
6 were still with the Provincial Commissioner. We went back
7 to the JOC. At about 11 o'clock the Provincial
8 Commissioner said that Major-General Annandale to check
9 with the JOC as to whether Mr Mathunjwa has already
10 addressed the protesters, and the report came to say that
11 he has not been at the koppie. The Provincial
12 Commissioner, Chairperson, I don't know whether she phoned
13 Mr Mathunjwa directly or phoned someone else, but what is
14 my recollection is that the Provincial Commissioner took
15 the initiative of contacting Mr Mathunjwa. At that time we
16 were standing outside the JOC, there is a place there
17 looking like the trash house, and we were sitting there
18 with the Provincial Commissioner in front of the JOC.
19 MR NGALWANA: I take it -
20 CHAIRPERSON: I take it your reference is
21 to a lapa?
22 MAJOR-GENERAL MPEMBE: Yes.
23 MR NGALWANA: Yes, Chairperson. I take
24 it as the Provincial Commissioner is making this call, you
25 are in her presence? In other words you are with her,

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1 General?
2 MAJOR-GENERAL MPEMBE: Correct,
3 Chairperson.
4 MR NGALWANA: What did the Provincial
5 Commissioner convey to Mr Mathunjwa over the phone?
6 MAJOR-GENERAL MPEMBE: The Provincial
7 Commissioner asked Mr Mathunjwa that he just want, she just
8 wanted to know as Mr Mathunjwa informed her senior managers
9 yesterday, how far he has gone on that morning.
10 MR NGALWANA: In other words she's
11 reminding Mr Mathunjwa of his indications the previous
12 evening of the 15th, what he said he was going to go and do
13 at the koppie. Is that correct?
14 MAJOR-GENERAL MPEMBE: Correct,
15 Chairperson.
16 CHAIRPERSON: What did she say he was
17 going to go and do? You said she spoke to him, said "You
18 didn't do what you said you were going to do," and then she
19 said what he had said he was going to do. What did she
20 say?
21 MAJOR-GENERAL MPEMBE: Chairperson, the
22 Provincial Commissioner asked Mr Mathunjwa whether he has
23 gone to the koppie to address the protesters at 9 o'clock,
24 as you have indicated, because the Provincial
25 Commissioner's concern by that time to say, "If people

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1 expected you at 9 o'clock and you are not there, they will
2 be agitated."

3 CHAIRPERSON: Did she say anything else?
4 MAJOR-GENERAL MPEMBE: Nothing,
5 Chairperson.

6 CHAIRPERSON: - reply?
7 MR NGALWANA: Of course this is over the
8 phone; you don't hear what Mr Mathunjwa is saying. Was the
9 PC's phone on speaker? Could you hear what Mr Mathunjwa
10 was communicating back to the Provincial Commissioner?
11 MAJOR-GENERAL MPEMBE: No, Chairperson.
12 CHAIRPERSON: And he then reported to the
13 lapa, didn't he?
14 MAJOR-GENERAL MPEMBE: Correct,
15 Chairperson.

16 CHAIRPERSON: And he had a conversation
17 with the Provincial Commissioner in your presence. Is that
18 right?
19 MAJOR-GENERAL MPEMBE: Correct,
20 Chairperson.

21 CHAIRPERSON: And what did she say then?
22 MAJOR-GENERAL MPEMBE: Chairperson, on
23 arrival of Mr Mathunjwa I introduced him to the Provincial
24 Commissioner and when I introduced Mr Mathunjwa to the
25 Provincial Commissioner, I said that the Provincial

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1 Commissioner, she is the Provincial Commissioner of North
2 West.

3 MR NGALWANA: Sorry, General, can you
4 just take one small step back? At the conclusion of this
5 telephone conversation between the PC and Mr Mathunjwa in
6 your presence, does the PC then tell you and Major-General
7 Annandale what it is that Mr Mathunjwa told her over the
8 phone?
9 MAJOR-GENERAL MPEMBE: No, Chairperson,
10 the only thing is that we, I saw Mr Mathunjwa arriving at
11 the lapa.
12 MR NGALWANA: Right, he arrives; you
13 introduce him to the Provincial Commissioner. Now Mr
14 Mathunjwa has said in his evidence that at that time you
15 said that the Provincial Commissioner is in charge of the
16 operation. Did you say that to Mr Mathunjwa?
17 MAJOR-GENERAL MPEMBE: No, Chairperson.
18 MR NGALWANA: Right, what then happens
19 between Mr Mathunjwa and the Provincial Commissioner at the
20 lapa, or near the lapa?
21 MAJOR-GENERAL MPEMBE: The Provincial
22 Commissioner reminded Mr Mathunjwa of the importance of his
23 assurance, or I can say the commitment and how critical it
24 was that he convince the protesters to lay down their arms.
25 Mr Mathunjwa responded by saying that he had been at the

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1 Lonmin management's offices for early morning and that
2 management did not want to commit to continued
3 negotiations. Mr Mathunjwa stated that the reason for him
4 not addressing the protesters at 9 o'clock and that he
5 emphasised - the Provincial Commissioner then emphasised
6 her concern was with his commitment to finding a peaceful
7 solution, and he further requested Mr Mathunjwa to go to
8 the koppie and convince the protesters.
9 MR NGALWANA: What was Mr Mathunjwa's
10 response?
11 MAJOR-GENERAL MPEMBE: Mr Mathunjwa said
12 to the Provincial Commissioner he will go to the koppie.
13 MR NGALWANA: What then happened,
14 General?
15 MAJOR-GENERAL MPEMBE: Chairperson, we
16 did receive the report that Mr Mathunjwa has gone to the
17 koppie and he did address the protesters, and Mr Mathunjwa
18 did come back to the JOC and when he arrived at the JOC,
19 then he requested to see the Provincial Commissioner. I
20 was in the JOC at that time, then when I saw him I went to
21 him.
22 MR NGALWANA: Roughly what time are we
23 talking about now?
24 MAJOR-GENERAL MPEMBE: Chairperson, it
25 was towards 1 o'clock, between 12 and 1 o'clock at that

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1 time.
2 MR NGALWANA: Yes, please continue.
3 MAJOR-GENERAL MPEMBE: And when he
4 arrived at the JOC he said, "I want to see the Provincial
5 Commissioner," and I informed him that the Provincial
6 Commissioner has gone to Ferncrest Hospital, and he
7 insisted to see the Provincial Commissioner. Then I phoned
8 the Provincial Commissioner -
9 MR NGALWANA: Sorry, did you tell him, or
10 did you know why, for what purpose the Provincial
11 Commissioner had gone to Ferncrest Hospital, and did you
12 convey that to Mr Mathunjwa?
13 MAJOR-GENERAL MPEMBE: Correct,
14 Chairperson.
15 MR NGALWANA: What did you convey to him?
16 What did you tell Mr Mathunjwa the Provincial Commissioner
17 had gone to hospital to do?
18 MAJOR-GENERAL MPEMBE: To visit and check
19 Lieutenant Baloyi, who was admitted since the 13th of
20 August.
21 MR NGALWANA: So he persists on seeing
22 the Provincial Commissioner, you tell him that the
23 Provincial Commissioner has gone to hospital. Then what is
24 his response?
25 MAJOR-GENERAL MPEMBE: Chairperson, I did

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1 phone the Provincial Commissioner and the Provincial
 2 Commissioner said that as an overall commander I'm still
 3 there, I should address Mr Mathunjwa and –
 4 MR NGALWANA: Please finish the sentence
 5 before the –
 6 MAJOR-GENERAL MPEMBE: And Chairperson I,
 7 when I check where is Mr Mathunjwa, I realised that Mr
 8 Mathunjwa has gone.
 9 MR NGALWANA: No, let's go back a little
 10 bit. You say the Provincial Commissioner says to you as
 11 overall commander you are there. Just say that again,
 12 because you didn't finish the sentence when the interpreter
 13 came in. What did the Provincial Commissioner say you must
 14 do as overall commander?
 15 MAJOR-GENERAL MPEMBE: The Provincial
 16 Commissioner said, "As an overall commander, communicate
 17 with Mr Mathunjwa, ask him what is it that he wants to see
 18 me about, then you will brief me."
 19 MR NGALWANA: Then what happened?
 20 MAJOR-GENERAL MPEMBE: When I check where
 21 is Mr Mathunjwa, I realise that Mr Mathunjwa he was not
 22 there, but his delegation was still standing where I left
 23 him while I was talking to the Provincial Commissioner,
 24 because I just stood a little bit, some few paces where Mr
 25 Mathunjwa was and while speaking to the Provincial

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1 Commissioner on the cell phone.
 2 [12:32] MR NGALWANA: Yes, then you came back,
 3 then what happened?
 4 MAJOR-GENERAL MPEMBE: When I came back
 5 and the delegation said no Mr Mathunjwa also wanted to be
 6 escorted to the mountain, and that he saw there were
 7 vehicles there, that those are the vehicles that were, of
 8 the Task Force which were used to escort him yesterday.
 9 Realising that the delegation is still here, then I tasked
 10 Brigadier Tsiloane to arrange for the transport and the
 11 escorting of this delegation to the mountain. Brigadier
 12 Tsiloane did report to me to say, "General, the keys of
 13 those vehicles, they were with the drivers and the members
 14 on duty, but that I also manage," if I remember well to
 15 say, "I manage to get a branded Combi from the Lonmin Mine,
 16 but I also arranged that Captain Seleke escorted them."
 17 That was the report I received at that time, and while I
 18 was still wondering why Mr Mathunjwa left, then I –
 19 MR NGALWANA: So Mr Mathunjwa was not
 20 escorted to the koppie?
 21 MAJOR-GENERAL MPEMBE: Chairperson, maybe
 22 I should also refer to the Commission to FFF25, the OB that
 23 was made by Brigadier Tsiloane.
 24 MR NGALWANA: Which entry specifically,
 25 General?

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1 MAJOR-GENERAL MPEMBE: The entry,
 2 Chairperson, it will be 1004.
 3 MR NGALWANA: That's on pagination page
 4 181, page 24 of FF25. Now it reads, "Situation report,"
 5 it's at 11:55, "Brigadier Tsiloane reported that the
 6 president of AMCU just left the base on his own to visit
 7 the group at the koppie, and he left the rest of the group
 8 of AMCU behind and the Lonmin branded Combi with other
 9 members of AMCU drove to the koppie and Captain Seleke of
 10 Mobile Operations escorted them." Is that the entry to
 11 which you wish to refer?
 12 MAJOR-GENERAL MPEMBE: Chairperson,
 13 correct.
 14 MR NGALWANA: So Mr Mathunjwa left before
 15 he could be escorted. Is that what you're saying?
 16 MAJOR-GENERAL MPEMBE: Correct,
 17 Chairperson.
 18 MR NGALWANA: Did you then receive any
 19 report – we've covered this ground, but since we are here
 20 now let's do it for sake of completion. Did you then
 21 receive further reports about what Mr Mathunjwa had said at
 22 the koppie?
 23 MAJOR-GENERAL MPEMBE: No, Chairperson.
 24 MR NGALWANA: Right, so Mr Mathunjwa has
 25 gone back to the koppie. Did he come back after that?

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1 MAJOR-GENERAL MPEMBE: Chairperson, in my
 2 understanding and also my recollection this was the second
 3 time that he went to the koppie.
 4 CHAIRPERSON: I'm sorry, what's the entry
 5 number in the occurrence book?
 6 MR NGALWANA: He says 1004, Chairperson.
 7 CHAIRPERSON: Well, that's 11:55 -
 8 MR NGALWANA: Yes.
 9 CHAIRPERSON: And Mr Mathunjwa in his
 10 evidence says this problem about the transport occurred
 11 before his first address at the koppie. This is what he
 12 says in his statement, which is an exhibit before us, and
 13 the occurrence book entry clearly relates to the first
 14 visit, not the second.
 15 MR NGALWANA: General, perhaps while we
 16 are here, let's deal with the time –
 17 CHAIRPERSON: Just to give you the
 18 information that you want, in the bundle that you've given
 19 us of statements, Mr Mathunjwa's statement is, which is
 20 exhibit NN, it's behind the tab 13 in your bundle, the
 21 second bundle, and in paragraph 69, which is on page 171,
 22 he refers to the problem about transport, and that I take
 23 it is what the witness is talking about. That he says
 24 happened before the first visit. He was quite clear on the
 25 context, and that also appears to be the case, if one has

<p style="text-align: right;">Page 11426</p> <p>1 regard to entry 1004, the time of which is 11:55, and it 2 quite clearly refers to what happened before the first 3 visit because that's dealt with in 1010, and then in 1014 4 we see that there's a situation report that the union rep, 5 which is obviously a reference to Mr Mathunjwa, wants to go 6 to the koppie, this is obviously for the second time now, 7 to tell the group that the mine management doesn't want to 8 negotiate. General Naidoo to talk to the union rep as he 9 requested to talk to the SAPS management. That's something 10 the witness will be getting to. So it's quite clear that 11 there's something wrong with this evidence on this point, 12 but it's probably a genuine mistake, so perhaps we can sort 13 – but let's, I can't see that there's any sinister aspect, 14 so perhaps you can sort it out now.</p> <p>15 MR NGALWANA: Yes. General, while we are 16 on this point, can you take the Commission briefly through 17 how FFF25 was recorded? The process of recording FFF25 18 regards the time and the details. Are these entries 19 contemporaneous? In other words is the entry entered at 20 the time that the event to which the entry relates happens, 21 or at the time that the report about the event is conveyed 22 to the JOC?</p> <p>23 MAJOR-GENERAL MPEMBE: Chairperson, at 24 this time maybe I need just to put it in the correct 25 perspective, is that OB entry 1004, it was in the morning</p>	<p style="text-align: right;">Page 11428</p> <p>1 to speak to the Provincial Commissioner, and he's already 2 told us about that, and then eventually Mr Mathunjwa left 3 before he could speak to him again, and shortly after he 4 left he sent an SMS, which is at 2:15, which is quoted in 5 paragraph 47 of his statement.</p> <p>6 MR NGALWANA: Yes, and what's your 7 answer, General? Do you agree?</p> <p>8 MAJOR-GENERAL MPEMBE: Yes, I agree, 9 Chairperson.</p> <p>10 MR NGALWANA: And of course we will find 11 it in slide 186 of exhibit L. That's where the times and 12 the SMSes are set out. But mine is a more general question 13 in anticipation of cross-examination on the precise time 14 entries in exhibit FFF5. Could you take the Commission 15 through very briefly, General, in general terms, since you 16 were at the JOC you observed how FFF25 was prepared, the 17 entries there were entered. What was the process? What 18 processes were followed that culminate in an OB entry?</p> <p>19 MAJOR-GENERAL MPEMBE: Chairperson, at an 20 operation such as that and when members are on the ground 21 and the commanders are talking on the radio, we have a 22 member of the service who is called an occurrence book, 23 he's referred to the OB as in abbreviation occurrence book, 24 who registers the entries.</p> <p>25 MR NGALWANA: Yes, what process does he</p>
<p style="text-align: right;">Page 11427</p> <p>1 after the, Mr Mathunjwa spoke to the Provincial 2 Commissioner and that is correct, and then when he came for 3 the second time and when I wanted to check after I spoke 4 with the Provincial Commissioner, I couldn't find him, and 5 then that's the time then he sent Major-General Annandale 6 the SMS. I just wanted to put that in that perspective.</p> <p>7 CHAIRPERSON: And that's the SMS that you 8 referred to in paragraph 47 of your statement, which is 9 GGG12, which was at about 2:15 in the afternoon.</p> <p>10 MAJOR-GENERAL MPEMBE: Chairperson, may I 11 just check the page?</p> <p>12 CHAIRPERSON: Ja, sure. In the bundle 13 that we've got, I think it's the second bundle at page 20 14 is the paragraph 47 of your statement GGG12, and there you 15 refer to this SMS you got from Mr Mathunjwa soon after he 16 left, which you quote, and which you say he sent it to you 17 at about 14:15, in other words 2:15 in the afternoon.</p> <p>18 MR MAHLANGU: The question was again, 19 Sir? I was looking at this.</p> <p>20 MR NGALWANA: May I proceed?</p> <p>21 CHAIRPERSON: That what is it – he 22 corrected the evidence he'd given earlier and said that the 23 problem about the vehicles and the transport actually took 24 place before Mr Mathunjwa went to the koppie the first 25 time. Then he said when Mr Mathunjwa came back he wanted</p>	<p style="text-align: right;">Page 11429</p> <p>1 follow that culminates in the occurrence –</p> <p>2 CHAIRPERSON: I think you'll find it's a 3 she; it's Brigadier Pretorius.</p> <p>4 MAJOR-GENERAL MPEMBE: Brigadier 5 Pretorius, I need also to put it clear that she was in 6 charge of those people. She was not doing it personally. 7 If a report comes a member will write it on a separate 8 paper and construct the sentence and transfer it to FFF25.</p> <p>9 MR NGALWANA: And would the event that is 10 reported from the ground to the JOC, would that have been 11 conveyed at the same time as that event was happening?</p> <p>12 MAJOR-GENERAL MPEMBE: No, Chairperson, 13 it does sometimes happen that when it's reported, maybe it 14 might have happened earlier, it might, it already happened 15 and also it does happen that when the member actually made 16 the entry in the occurrence book, the time might also 17 differ.</p> <p>18 COMMISSIONER HEMRAJ: Would not the 19 original notes that the person made have the time at which 20 the report was received?</p> <p>21 MAJOR-GENERAL MPEMBE: Chairperson, I 22 just wanted to find – because are you referring to the 23 notes of the members making?</p> <p>24 COMMISSIONER HEMRAJ: Yes.</p> <p>25 MAJOR-GENERAL MPEMBE: Normally –</p>

<p style="text-align: right;">Page 11430</p> <p>1 COMMISSIONER HEMRAJ: When a member 2 receives a report and writes down what was reported, is not 3 the time recorded on that piece of paper as well? 4 MAJOR-GENERAL MPEMBE: The member takes, 5 when the report comes the member takes the time in the JOC 6 at that time and writes it there, but it does happen that 7 if the incidents they happen faster, you might find the 8 member might not be able to cope to write the times 9 correctly. 10 MR NGALWANA: Let's try and clarify this 11 by way of example, General. Say an event happens at 11, it 12 is reported to the JOC at 11:15; the person who is doing 13 the JOC entry, the OB entry, enters it in the, does the OB 14 entry at 11:30. Which time will the person who is entering 15 that event at the OB entry, will he use? Will he use 11 16 o'clock or 11:15 or 11:30? Is it clear? General, just 17 stop paging. Just listen to me. You're going to run ahead 18 of me here. The event happens at 11. The interpreter 19 doesn't have to reinterpret this, it's exactly the same – 20 the event happens at 11. It is reported to the JOC by 21 radio at 11:15. The person who does the OB entry, does the 22 OB entry at 11:30. 23 CHAIRPERSON: Well, are you suggesting 24 that he or she went off and had tea in the meanwhile? I 25 could understand if things are happening fast and furious.</p>	<p style="text-align: right;">Page 11432</p> <p>1 MR NGALWANA: What time did that happen? 2 MAJOR-GENERAL MPEMBE: It does, it did 3 happen at 13:30, but it was recorded as it has happened at 4 15:10. 5 CHAIRPERSON: That answer isn't entirely 6 correct. What happened was that the meeting started at 7 1:30. Various things happened at the meeting, and one of 8 the things is that there was operation tactical briefing 9 given by Lieutenant-Colonel Scott. Another thing that 10 happened was the Provincial Commissioner gave certain 11 instructions, and we know from the minutes of that meeting, 12 it was quite a lengthy meeting, a number of things were 13 said. At the end of the meeting, obviously, or shortly 14 thereafter, Brigadier Pretorius made this report, but you 15 can't say this happened at 1:30 because this includes a 16 reference to the tactical briefing given by the Lieutenant- 17 Colonel Scott, which must have taken some time. The 18 meeting started at 1:30, it ended – well, we're not quite 19 sure when, but obviously a considerable time later, and 20 this entry was made some time thereafter, but it doesn't 21 relate to something that happened at 1:30; it relates to 22 something that started at 1:30. Isn't that correct? 23 MAJOR-GENERAL MPEMBE: Chairperson, 24 according to the Standing Order how the occurrence book has 25 to be written, it should have said late entry and then it</p>
<p style="text-align: right;">Page 11431</p> <p>1 I can understand for example with entry 1018 where it seems 2 there are a whole series of different entries all recorded 3 under one and messages are coming in very quickly. I can 4 understand the pieces of paper get out of, in the wrong 5 order and you can't rely on the times exactly, but here 6 you've got, if you've got an entry that says something 7 happens at 11 that's not relevant, it's reported at 11:15, 8 written down by somebody, you say they'll only transfer 9 that into the occurrence book quarter of an hour later and 10 I ask you is it suggested they went and had tea in the 11 meanwhile? 12 MR NGALWANA: No – 13 CHAIRPERSON: That sounds a bit of a 14 silly suggestion, if I may so say. 15 MR NGALWANA: Let me start again. 16 General, let me take you to paginated page 182 of FFF5, 17 that's page 25 of FFF25, and take you to entry 1015. 18 [12:52] Now there is an entry there that says, 19 "Provincial Commissioner instructed that the tactical 20 intervention proceed." Do you see that? Did that happen 21 at 10 past 3 that afternoon? 22 MAJOR-GENERAL MPEMBE: No, Chairperson, 23 when I was paging when the legal representative was saying 24 he do not want to page, I just wanted to use this entry as 25 an example –</p>	<p style="text-align: right;">Page 11433</p> <p>1 should state this incident started at 13:30 and then it 2 does explain that. This is what I'm trying to explain, and 3 the key word will say special JOCCOM and then it does 4 explain exactly what happened. That's why I said that the 5 first key word it will be late entry, and then it will 6 state that the incident happened at 13:30. 7 MR NGALWANA: Yes, thank you - 8 COMMISSIONER HEMRAJ: General, the JOCCOM 9 meeting, does that take place in the same premises where 10 these recordings were made, recorded? 11 MAJOR-GENERAL MPEMBE: Correct, 12 Chairperson. 13 MR NGALWANA: Let me see if I understand 14 the question, or rather let me phrase a question. General, 15 as the JOCCOM meeting is happening, is the OB entry being 16 entered? Are the recordings in the JOCCOM entry book 17 happening at the same time as the JOCCOM meeting? 18 MAJOR-GENERAL MPEMBE: No, Chairperson. 19 What I mean is that if the incident happened at 13:30 and 20 the entry has to be made, it will be made as it's done at 21 15:10, and then it will say late entry, the key word, and 22 then it has, it will state that the incident happened at 1 23 o'clock, at 13:30 and then the time when it was made, it 24 will explain what has happened between that time, as the 25 Chairperson said it earlier on.</p>

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1 MR NGALWANA: So the entries that are in
2 the OB entry do not necessarily – well, do not happen, or
3 are not done at the same time as the JOCCOM meeting is
4 going on. Is that correct?
5 MAJOR-GENERAL MPEMBE: Correct,
6 Chairperson.
7 MR NGALWANA: Now then these SMSes have
8 happened. Mr Mathunjwa has gone to the koppie, he's
9 addressed them. He sends an SMS to Major-General
10 Annandale, who then responds at about half past 2 in the
11 afternoon. What then happens at the JOC?
12 MAJOR-GENERAL MPEMBE: Chairperson, it
13 has happened that the Provincial Commissioner did come back
14 from the hospital and when she came back she was also, she,
15 we, myself and Major-General Annandale we were sitting at
16 the lapa in front of the JOC, and there were reports that
17 were coming since from that time, including the one of Mr
18 Mathunjwa having gone and addressed the protesters, and at
19 that time we were still outside with the Provincial
20 Commissioner, just between 30 and, 13:00 and 13:30. I did
21 brief the Provincial Commissioner about the happenings and
22 when I was briefing her and then she also wanted to know
23 how far are the people now, Mr Mathunjwa has addressed
24 them, what is the progress. Chairperson, between that time
25 of 13:30 I advised the Provincial Commissioner –

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1 MR NGALWANA: You mean before 13:30?
2 Before 13:00 and 13:30?
3 MAJOR-GENERAL MPEMBE: It was between –
4 ja, it was before the special JOCCOM meeting at 13:30.
5 MR NGALWANA: You brief the Provincial
6 Commissioner about what? Just take the Commission through
7 what it is that you briefed the Provincial Commissioner on
8 –
9 CHAIRPERSON: Well perhaps we can take –
10 I'm sorry to interrupt, perhaps we can do that after lunch.
11 I take it he's dealing with paragraph 23 of his
12 supplementary statement at this point. Perhaps we can deal
13 with that after the lunch adjournment, unless you want to
14 deal with it now? I'm in your hands; you're leading the
15 witness.
16 MR NGALWANA: Time flies. Yes, we can
17 resume with this aspect after lunch.
18 CHAIRPERSON: We'll now take the lunch
19 adjournment till 2 o'clock.
20 [COMMISSION ADJOURNS COMMISSION RESUMES]
21 [14:09] CHAIRPERSON: The Commission resumes.
22 Major-General, you're still under oath.
23 WILLIAM MPEMBE: s.u.o.
24 CHAIRPERSON: Mr Ngalwana, you still have
25 questions for the witness.

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1 MR MAHLANGU: Just before Mr Ngalwana
2 speaks, Mr Chairperson, if I may. I've been given an
3 assistant here, this young man, to interpret, to help me in
4 the isiXhosa language he's now going to take over.
5 CHAIRPERSON: Put yourself on record.
6 MR MAHLANGU: The name is?
7 MR NTSINGILA: My name is Zanele
8 Ntsingila.
9 CHAIRPERSON: Yes, I swore both him and
10 his colleague, Ms Ruth who's here as well. They have been
11 sworn in as interpreter and join the staff of the
12 Commission and I want to extend a welcome to both of them.
13 We look forward to hearing and seeing their contribution to
14 our work.
15 MR MAHLANGU: Thank you, Chairperson.
16 CHAIRPERSON: So you have an assistant
17 now, Mr Mahlangu, so if you can sit next to him and keep an
18 eye on him for a moment, alternatively you can go outside
19 and relax for a while.
20 MR MAHLANGU: I think at the moment I'll
21 just like to sit around with him, help him where it is
22 necessary.
23 CHAIRPERSON: Well, as long as he doesn't
24 mind, we'll allow that.
25 EXAMINATION BY MR NGALWANA (CONTD.):

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1 Thank you, Chair. General, we are now on the 16th of August
2 2012 between about 12 midday and 1 in the afternoon. The
3 Provincial Commissioner has returned from hospital. You
4 brief her about something. Tell the Commission briefly
5 what it is that you brief the Provincial Commissioner
6 about.
7 MAJOR-GENERAL MPEMBE: Chairperson, with
8 the various reasons that they have been reported to the
9 JOC, that they have been given to me, that they've also
10 been given to General Annandale, and I briefed the
11 Provincial Commissioner in terms of the circumstances at
12 that time, the incidences that happened between that, since
13 in the morning until before 14:30, and my reasons were
14 similar to those that in paragraph 17 of my supplementary
15 statement, that, "General, I realise that the negotiations
16 by the SAPS directly with them as from the Monday the 13th,
17 the Tuesday, Wednesday, and even today, they have failed.
18 The negotiations with them through the president of the two
19 trade unions AMCU and NUM has failed." I also brief her
20 about Papa1 reported the mood of the crowd, and that the
21 people since from that week in terms of were also being
22 attacked, were being maimed and killed.
23 CHAIRPERSON: Perhaps the interpreter can
24 be given a copy of your statement. What you have said is
25 set out in para 17 and then repeated again in para 23.

<p style="text-align: right;">Page 11438</p> <p>1 Perhaps if he had it in front of him it would help him to 2 interpret it.</p> <p>3 MR NGALWANA: General, effectively what 4 you briefed the Provincial Commissioner on between 12 5 midday and 13:00 is what is set out on page 7A, paginated 6 page 7A of the bundle B, the statements bundle, in which 7 you record the factors that you put to her. Can I just get 8 a confirmation, are those the factors that you conveyed to 9 the Provincial Commissioner as the factors that informed 10 you in making the decision to move to stage 3? And that is 11 paragraph 17, page 7 of HHH3, for those who don't have the 12 pagination.</p> <p>13 CHAIRPERSON: There are five bullet 14 points in para 17. Those, each one of those, is a 15 particular factor that was mentioned to the Provincial 16 Commissioner. Is that correct?</p> <p>17 MAJOR-GENERAL MPEMBE: Chairperson, with 18 regard to those that have come to my knowledge at that 19 time.</p> <p>20 MR NGALWANA: What was the Provincial 21 Commissioner's response to your briefing?</p> <p>22 MAJOR-GENERAL MPEMBE: She agreed with 23 me.</p> <p>24 MR NGALWANA: Then what happened 25 immediately after the briefing, your briefing the</p>	<p style="text-align: right;">Page 11440</p> <p>1 MR NGALWANA: Yes, that's the one I'm 2 talking about.</p> <p>3 MAJOR-GENERAL MPEMBE: Thanks, it's just 4 lying around here.</p> <p>5 MR NGALWANA: Just to describe it, it's 6 written at the top of the page "Crime intelligence input at 7 JOC pertaining to the decision to disarm people." It's 8 dated 2012/08/16, 12 o'clock. You see that?</p> <p>9 MAJOR-GENERAL MPEMBE: Correct, 10 Chairperson.</p> <p>11 MR NGALWANA: It's a one-page document. 12 Did that document, or rather, shall I say did it serve? 13 Was that document before the special JOCCOM meeting at 14 13:30?</p> <p>15 MAJOR-GENERAL MPEMBE: Correct, 16 Chairperson.</p> <p>17 MR NGALWANA: Can you take the Commission 18 through, very briefly, General, what the discussion, the 19 primary discussion was at 13:30? Perhaps let me start this 20 way. I know there was no written agenda, but what was the 21 first item that was discussed at that special JOCCOM 22 meeting?</p> <p>23 MAJOR-GENERAL MPEMBE: Chairperson, that 24 was the meeting to assess the situation and the Provincial 25 Commissioner also did give the purpose of the meeting and</p>
<p style="text-align: right;">Page 11439</p> <p>1 Provincial Commissioner, General?</p> <p>2 MAJOR-GENERAL MPEMBE: Chairperson, while 3 I was still briefing the Provincial Commissioner at the 4 lapa, the Provincial Commissioner tasked Major-General 5 Annandale to call up a special JOCCOM meeting.</p> <p>6 MR NGALWANA: I take it you briefed the 7 Provincial Commissioner orally. Is that correct?</p> <p>8 MAJOR-GENERAL MPEMBE: Correct, 9 Chairperson.</p> <p>10 MR NGALWANA: What time was then the 11 special JOCCOM called by Major-General Annandale?</p> <p>12 MAJOR-GENERAL MPEMBE: The meeting 13 started at 13:30.</p> <p>14 MR NGALWANA: And if we go to EE, exhibit 15 EE, we know who was there. That's the pagination 269 of 16 exhibit EE. Now if we can read this, it's what the 17 Chairperson who had been running rather far ahead of us at 18 the time, can I take you back to TT5 and just deal with 19 that issue? TT5 you will find at pagination 248. You 20 should now have a document whose pagination is 249A, and 21 that is the crime intelligence report from Isaacs. You 22 have that before you, General?</p> <p>23 MAJOR-GENERAL MPEMBE: Chairperson, I did 24 see it here. No, it's not this one. I don't see it. It 25 was here. The one of, that is written at 12 o'clock.</p>	<p style="text-align: right;">Page 11441</p> <p>1 when she addressed the meeting, she did not mentioned that 2 I did brief her earlier on and the different commanders 3 also they did give the feedback in terms of what was 4 happening in the morning until at that time. Then the 5 decision was taken that the dispersal process can be 6 implemented.</p> <p>7 MR NGALWANA: Now I take it there was an 8 intelligence report that was given. Is that correct? At 9 that meeting.</p> <p>10 MAJOR-GENERAL MPEMBE: Correct, 11 Chairperson.</p> <p>12 MR NGALWANA: And I take it it's the one 13 that we've referred to earlier, the crime intelligence 14 input at JOC at page 249A, the Isaacs report.</p> <p>15 MAJOR-GENERAL MPEMBE: Correct, 16 Chairperson.</p> <p>17 MR NGALWANA: Now the purpose of the 18 meeting is self-evident from the first paragraph. It reads 19 in paragraph 3, "The Provincial Commissioner, Lieutenant- 20 General Mbombo, informed the meeting that she was involved 21 in meetings with leadership of AMCU, namely Mr Joseph 22 Mathunjwa, to resolve the current situation, for the whole 23 morning. Mr Mathunjwa was supposed to indicate at 9 24 o'clock [AM] whether the protesters on the koppie were 25 prepared to lay down their weapons. Mr Mathunjwa failed to</p>

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1 provide feedback as agreed.” Is that what happened at that
 2 meeting? Is that the report-back that the Provincial
 3 Commissioner gave to the meeting?
 4 MAJOR-GENERAL MPEMBE: Correct,
 5 Chairperson. The only matter that was not included under
 6 that paragraph, it is the briefing that I did give to the
 7 Provincial Commissioner earlier on.
 8 MR NGALWANA: Of course the briefing was
 9 not done at the special JOCCOM meeting. Is that correct?
 10 MAJOR-GENERAL MPEMBE: Correct,
 11 Chairperson.
 12 MR NGALWANA: You were the overall
 13 commander, General, of the operation.
 14 MAJOR-GENERAL MPEMBE: Correct,
 15 Chairperson.
 16 MR NGALWANA: And the entry in those
 17 minutes and also in FFF5, and also in the Provincial
 18 Commissioner’s statement is that she instructed Major-
 19 General Annandale to proceed with implementation of stage 3
 20 of the operational plan. You see that?
 21 MAJOR-GENERAL MPEMBE: Correct,
 22 Chairperson.
 23 MR NGALWANA: By whom was the decision to
 24 implement stage 3 taken?
 25 MAJOR-GENERAL MPEMBE: Chairperson, I

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1 took a decision; I briefed the Provincial Commissioner, and
 2 after briefing her she agreed and it was also discussed in
 3 the special JOCCOM meeting, and all commanders agreed for
 4 dispersal.
 5 MR NGALWANA: Let me see if I understand
 6 you. You say you took the decision that stage 3 be
 7 implemented. You briefed the Provincial Commissioner about
 8 it. Special JOCCOM happened. At the special JOCCOM
 9 meeting she then instructed the chairperson to implement
 10 stage 3. Is that a fair assessment?
 11 MAJOR-GENERAL MPEMBE: Correct,
 12 Chairperson. The agreement was also done in the special
 13 JOCCOM meeting.
 14 COMMISSIONER HEMRAJ: Sorry, do I
 15 understand that it was your decision initially?
 16 MAJOR-GENERAL MPEMBE: Yes, Chairperson.
 17 CHAIRPERSON: Was it your decision or
 18 your advice to the Provincial Commissioner?
 19 MAJOR-GENERAL MPEMBE: I said I advised
 20 the Provincial Commissioner so that this is the reasons
 21 that I do have, but obviously when I advised the Provincial
 22 Commissioner I will expect that it should be discussed and
 23 also at the special JOCCOM meeting it will be discussed,
 24 but for the fact that all of us we agreed, the decision was
 25 taken.

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1 [14:29] COMMISSIONER HEMRAJ: I’m sorry, it’s not
 2 clear to me, and forgive me for putting this again,
 3 General, but I need to understand. Was it your decision,
 4 did you convey that to the Provincial Commissioner and say
 5 to her these are my decisions, or my reasons for arriving
 6 at this decision, or did you say to her this is my advice
 7 that stage 3 now be implemented?
 8 MAJOR-GENERAL MPEMBE: Chairperson, what
 9 I’m saying is that I made a decision and I gave reasons, so
 10 I expected maybe the Provincial Commissioner to say I agree
 11 or disagree, and then also at the JOCCOM meeting they could
 12 have differed with me and it could not have been done if
 13 that – that’s how I understand it.
 14 CHAIRPERSON: But whose decision was it
 15 at the end of the day? Who bears ultimate responsibility
 16 for this decision? You or the Provincial Commissioner?
 17 MAJOR-GENERAL MPEMBE: Chairperson, as a
 18 Deputy Provincial Commissioner, if I have taken a decision
 19 before I implement something, I will brief my Provincial
 20 Commissioner. The understanding is that I took a decision,
 21 I briefed her and she agreed with me.
 22 CHAIRPERSON: That’s not the way it’s put
 23 in your first statement. The first statement you made,
 24 which is before us as exhibit GGG12, the statement you made
 25 in November last year, doesn’t put it that way at all.

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1 This is something that is in your supplementary statement
 2 for the first time. Is there a reason for that?
 3 MAJOR-GENERAL MPEMBE: I just want to
 4 check, Chairperson –
 5 CHAIRPERSON: You can check. I may be
 6 wrong. You can check.
 7 MR NGALWANA: Yes, if I may refer you to
 8 page 18 of the paginated statements bundle, General,
 9 paragraph 41 of your original statement GGG12 I think it
 10 is.
 11 CHAIRPERSON: You see, if one reads
 12 paragraph 39 which starts on page 17 and then goes on to
 13 40, and then 41, that’s the way the story is told in your
 14 first statement. There’s no mention of your having made a
 15 decision. There’s no mention of your having briefed the
 16 Provincial Commissioner beforehand. In fact, the first
 17 sentence of paragraph 40 says that at about 13:30 the
 18 chairperson of the special JOCCOM, Major-General Annandale,
 19 acting on the instructions of the Provincial Commissioner,
 20 called a special JOCCOM meeting “to evaluate the current
 21 strategy and possible implementation of stage 3.” You,
 22 according to your evidence, had already decided it would be
 23 implemented. You persuaded the Provincial Commissioner
 24 that that was so, and you then go on to say that, in para
 25 41, “After evaluating the situation and based on reports on

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1 the ground, the Provincial Commissioner instructed the
 2 special JOCCOM to proceed." Now that's not the same tale
 3 that you're now telling in paragraphs 22 and following of
 4 your supplementary statement. Can you explain that to us?
 5 MR NGALWANA: Perhaps this might be of
 6 assistance, Chair. The supplementary statement is
 7 precisely that, it covers areas –
 8 CHAIRPERSON: No, I said that.
 9 MR NGALWANA: - because they were not
 10 covered in the –
 11 CHAIRPERSON: I said that it wasn't in
 12 the first statement, not in the second – sorry, it's not in
 13 the first. It is in the second. Would he explain why it's
 14 not in the first. That's the question.
 15 MR NGALWANA: General?
 16 MAJOR-GENERAL MPEMBE: Chairperson –
 17 CHAIRPERSON: I said there may be a
 18 perfectly satisfactory explanation. I just want to know
 19 what it is.
 20 MAJOR-GENERAL MPEMBE: Chairperson, when
 21 I made this statement it was the way in which it was also
 22 recorded at, with the OB. The only thing that I need to
 23 explain is that earlier on I did brief the – the only part
 24 that was not there is the briefing to the Provincial
 25 Commissioner.

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1 MR NGALWANA: May I proceed, Chair?
 2 COMMISSIONER HEMRAJ: I just have still
 3 something –
 4 CHAIRPERSON: My colleague Adv Hemraj
 5 wants to ask a question.
 6 COMMISSIONER HEMRAJ: In terms of
 7 protocol, although you were the overall commander, when the
 8 Provincial Commissioner was present would you defer to her
 9 in matters of taking decisions?
 10 MAJOR-GENERAL MPEMBE: Correct. She is
 11 the one that appoints me as the overall commander. So all
 12 the decisions that I have to take I need to communicate
 13 with her.
 14 MR NGALWANA: Thank you, Chair. Of
 15 course some of these matters will become matters of
 16 argument regarding delegare delegatus potest, and all that.
 17 General, may I take you to Operation Platinum of the 16th of
 18 August, paginated page 130. I'm not sure what the slide
 19 would be now for people who don't have the pagination. SS3
 20 –
 21 CHAIRPERSON: Sorry, was this document
 22 that you've referred to, was that put before or was this
 23 perhaps a slide that was shown at the meeting, special
 24 JOCCOM meeting, or is this document put together
 25 afterwards? Do you know?

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1 MAJOR-GENERAL MPEMBE: Chairperson, the
 2 plan as I have indicated earlier, it was, the principle was
 3 agreed upon on Tuesday, but what was presented also on, at
 4 13:30 it is that slide which we spoke about, slide 181.
 5 CHAIRPERSON: So this slide that we see
 6 here at page 130, which was 183 of the police hard drive,
 7 was that slide shown to the special meeting of the JOCCOM?
 8 MR NGALWANA: For the rest, it's slide
 9 85. Do you remember the question, General? Was this slide
 10 before the special JOCCOM, the one Operation Platinum,
 11 Lonmin Mine: Marikana, 16 August 2012, Stage 3, was that
 12 slide before the special JOCCOM?
 13 MAJOR-GENERAL MPEMBE: The slide that was
 14 presented at the JOCCOM, it is, Chairperson, not that page,
 15 not page 130. It is the plan. The Risk Assessment Stage 3
 16 Mission, Strategic Guidelines and the Operational Overview.
 17 CHAIRPERSON: So even though it's phrased
 18 in the present tense, "Lieutenant-General Mbombo has
 19 evaluated the situation and instructed Major-General
 20 Annandale to proceed, the threat level is increasing, the
 21 deadline has not been honoured," those written like that in
 22 the present tense, that slide wasn't actually shown at the
 23 JOCCOM. Is that right? Special JOCCOM.
 24 MAJOR-GENERAL MPEMBE: It's correct,
 25 Chairperson, that's what the –

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1 CHAIRPERSON: It was written afterwards.
 2 MAJOR-GENERAL MPEMBE: Yes, Chairperson.
 3 CHAIRPERSON: I see.
 4 MR NGALWANA: Can you take us through
 5 briefly what about stage 3 was discussed the special
 6 JOCCOM, General?
 7 MAJOR-GENERAL MPEMBE: Chairperson, I'll
 8 go to paginated page 132 and I will talk about operational
 9 overview and in talking with the operational overview I'll
 10 state that this was the only stage that has got phases, and
 11 also the phase 4, stage 4, 5 and 6, it was also discussed.
 12 Chairperson, in discussing this I would like to do a
 13 presentation with regard to slide 181 to explain how we,
 14 how I envisaged the dispersal has to take place.
 15 MR NGALWANA: Yes, may I ask the
 16 technicians to put exhibit L, slide 181 –
 17 CHAIRPERSON: I think that's also on page
 18 134 of the bundle, that picture is there also, slide.
 19 MR NGALWANA: No, it's 129, Chairperson.
 20 It's not the same – or yes, it is. The one we are looking
 21 at was the one at 129.
 22 CHAIRPERSON: It is there.
 23 MR NGALWANA: Yes, General, could you
 24 explain briefly how the formation was made and the
 25 discussion that was going on at the special JOCCOM in

<p style="text-align: right;">Page 11450</p> <p>1 regard to this formation?</p> <p>2 MAJOR-GENERAL MPEMBE: Correct, I thought</p> <p>3 that the Chairperson maybe wants to ask a question.</p> <p>4 CHAIRPERSON: No, no, I was just telling</p> <p>5 it's also on the other page, page 134 as well.</p> <p>6 MAJOR-GENERAL MPEMBE: Okay.</p> <p>7 CHAIRPERSON: For those who have got the</p> <p>8 bundle in front of them it might be helpful for them to see</p> <p>9 it. That's all.</p> <p>10 COMMISSIONER HEMRAJ: I just want to know</p> <p>11 who did this presentation, General?</p> <p>12 MAJOR-GENERAL MPEMBE: The presentation</p> <p>13 was put by Lieutenant-Colonel Scott. I just want to point</p> <p>14 out that though at this current slide the blue lines were</p> <p>15 not there when we were presenting it at 13:30. That was</p> <p>16 included after the discussion of those blue lines at 13:30</p> <p>17 to go and brief the members at the forward holding and all</p> <p>18 the commanders by Lieutenant-Colonel Scott, as well as</p> <p>19 Brigadier Pretorius. Chairperson, I need just to indicate</p> <p>20 that red line there then that I point out, it is the</p> <p>21 koppie. Between this line somewhere there was that</p> <p>22 belligerent group, and I also want to explain, this POP</p> <p>23 line and that TRT line, I wanted the Commission should</p> <p>24 understand that it should still be here, then I will</p> <p>25 explain how they will go there. Chairperson, the whole</p>	<p style="text-align: right;">Page 11452</p> <p>1 there's something else we must repair, an omission we must</p> <p>2 repair while we're about it. Remember he said that the, on</p> <p>3 the slide one sees the TRT, NIU, STF, what he called the</p> <p>4 second line, which is described as the second line, and he</p> <p>5 also referred to the first line, which is the POP people.</p> <p>6 Now he indicated that in fact they were originally not as</p> <p>7 they are depicted on the slide, but they were to the right</p> <p>8 of it, if one looks to the right of it and to the right</p> <p>9 effectively of where the barbed wire line was going to be,</p> <p>10 there are some other figures there, one red one, which is a</p> <p>11 Nyala, I take it, and six other – I'm not quite sure what</p> <p>12 they are, but six blue shapes, and what he indicated was,</p> <p>13 as I understood him, that the first and second line were</p> <p>14 originally there.</p> <p>15 [14:49] If I misunderstood him I hope I'll be corrected,</p> <p>16 but you know, he said they weren't here, they're there.</p> <p>17 That's what he meant, and if that's correct we can then</p> <p>18 move on to the further point that you want to have</p> <p>19 expressed in words so that, because the record, as you say,</p> <p>20 doesn't indicate what here and there means. But am I</p> <p>21 correct in my first explanation?</p> <p>22 MR NGALWANA: It appears so, Chair.</p> <p>23 Let's take it through step by step. General, just in</p> <p>24 general terms, just explain to the Commission how the</p> <p>25 envisaged the formation being done -</p>
<p style="text-align: right;">Page 11451</p> <p>1 part of this one, it is the power station that was there.</p> <p>2 The unfolding of the operation, how I envisaged dispersal,</p> <p>3 how I envisaged it, it was that we have already these six</p> <p>4 Nyalas with razor wire well positioned. I want the</p> <p>5 Commission should take that this part is here.</p> <p>6 MR NGALWANA: For purposes of the record,</p> <p>7 we need to explain, General, can I try and assist. Phase 1</p> <p>8 of the deployment, what did it include?</p> <p>9 MAJOR-GENERAL MPEMBE: Chairperson, I'm</p> <p>10 going to explain that one that the first phase of phase 1,</p> <p>11 deployment of the barbed wire, is that the operational</p> <p>12 commander will give the command to place the barbed wire</p> <p>13 first as to protect the safe area and the people and the</p> <p>14 media.</p> <p>15 MR NGALWANA: And that is to the east of</p> <p>16 the koppie.</p> <p>17 MAJOR-GENERAL MPEMBE: Now it will also</p> <p>18 move here, that barbed wire.</p> <p>19 MR NGALWANA: What I'm trying to avoid,</p> <p>20 you see the – sorry, General – the record doesn't pick up</p> <p>21 here and there.</p> <p>22 MAJOR-GENERAL MPEMBE: Okay.</p> <p>23 MR NGALWANA: So we must explain it in</p> <p>24 words, using the things that you have there on the map.</p> <p>25 CHAIRPERSON: While you're doing that,</p>	<p style="text-align: right;">Page 11453</p> <p>1 MAJOR-GENERAL MPEMBE: Okay.</p> <p>2 MR NGALWANA: - as regards the, you know,</p> <p>3 the placing of the barbed wire, where the first line was,</p> <p>4 how far the next line would be after the POP line, with</p> <p>5 what the POP people were deployed there with, and so on,</p> <p>6 starting with the barbed wire. What did you envisage?</p> <p>7 MAJOR-GENERAL MPEMBE: The deployment</p> <p>8 will –</p> <p>9 MR NGALWANA: Sorry, General, just a</p> <p>10 second.</p> <p>11 COMMISSIONER HEMRAJ: To obviate this</p> <p>12 difficulty, doesn't slide L81 have a better view of the</p> <p>13 deployment of stage 3, so that one doesn't have to deal</p> <p>14 with lines that ought not to be on the slide, or anything</p> <p>15 like that?</p> <p>16 CHAIRPERSON: It has the advantage also</p> <p>17 of telling us what K1, which I take it is koppie 1, where</p> <p>18 that is, and K3, which is presumably the second scene, the</p> <p>19 third koppie, and it's also got something which is not on</p> <p>20 this present slide, and that is not forward holding area 2,</p> <p>21 but also forward holding area 1, which is above the area</p> <p>22 depicted on the present slide. So it does look as if L81</p> <p>23 may help us forward more quickly than the present slide. I</p> <p>24 think to be fair, the witness hasn't got L81 in front of</p> <p>25 him at the moment, so someone must give it to him so that</p>

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1 he can then respond to the point put.

2 MR NGALWANA: Perhaps if he can be given

3 the exhibit L, Chairperson.

4 CHAIRPERSON: I think he has been.

5 MR NGALWANA: I'm not sure if slide 81

6 would assist because it would seem that it's a stage later,

7 Chair. Perhaps slide – is it 41? Slide 149 could perhaps

8 assist. General, do you have slide 149 of exhibit L before

9 you? I can see it on the big screen, but do you have it in

10 front of you?

11 MAJOR-GENERAL MPEMBE: No, I don't have

12 it here, but I wanted to –

13 MR NGALWANA: But you can see it on the –

14 MAJOR-GENERAL MPEMBE: I wanted to use

15 slide 181 so that I should also show the movements of how,

16 with the command as quick as possible, if I may be allowed.

17 MR NGALWANA: Okay. Have you seen slide

18 81?

19 MAJOR-GENERAL MPEMBE: Slide 81 is not

20 here in front of me.

21 MR NGALWANA: May I ask the technicians

22 to put slide 81, because, just to see if that may assist

23 you.

24 MR CHASKALSON SC: Sorry, Mr Chairperson,

25 and I must apologise, I think we do need to go back to 181

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1 because a problem with all of these slides, alternative

2 slides that have been put forward as possibilities is they

3 show the deployment of the barbed wire before it was

4 reoriented at about 11 o'clock, and so it wouldn't be fair

5 to this witness to ask to comment on this, which wasn't

6 what was put before the JOC at 1:30 or the commanders at

7 2:30. This barbed wire line turns up to the left. In fact

8 by 1:30 the barbed wire line had been pushed back to the

9 right, which was on the original slide which was put to the

10 witness.

11 MR NGALWANA: General, what was the first

12 line on –

13 CHAIRPERSON: Sorry, if you want 181,

14 then let's have 181 then. Sorry, yes.

15 MR NGALWANA: Take us through the various

16 deployments, the various lines and stages.

17 MAJOR-GENERAL MPEMBE: The operational

18 commander from here, because here it will, the first line

19 of the POP will be here; the operational commander will be

20 in front. 100 metres away it will be the TRT and STF. The

21 operational commander here will first give the warning to

22 the protesters.

23 MR NGALWANA: Would this be before or

24 after the barbed wire has been deployed?

25 MAJOR-GENERAL MPEMBE: First of all I

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1 said the barbed wire will be deployed to create a safe

2 area. Operational command will give a first warning.

3 CHAIRPERSON: Mr Ngalwana, would you be

4 kind enough when he says "the operational commander here,"

5 to put into words what "here" means? It's easier for you

6 because it's actually, as you can see, above my head,

7 behind me, whereas you can see it better than I can, and I

8 take it you consulted with the witness, so you understand

9 better than I can. Now he indicated, when he said "the

10 operational commander here," if one looks at the slide one

11 sees immediately to the right of what is the barbed wire

12 line there are firstly two blue shapes and thereafter to

13 the right of them again are four, and I think when he said

14 "the operational commander here" he was pointing to one of

15 those blue shapes in the second line, which is to the – and

16 very much to the right of the highest arrow pointing from

17 the phase 1 block. Would that be correct?

18 MR NGALWANA: General, could you be more

19 specific? Just point to where you would envisage the

20 operational commander to have been again on that slide?

21 MAJOR-GENERAL MPEMBE: The operational

22 commander from here, from this point after the barbed wire

23 has been put to create a safe area, and that place there,

24 this one here, it could have been made open so that after

25 the first warning the POP will be given a command to come

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1 and position at this place.

2 MR NGALWANA: Before you proceed that

3 far, General, can I ask you, the first line of 1, 2, 3, 4,

4 5, the – is it brown or red? In that orange line, is that

5 the barbed wire? Is that where the barbed wire would have

6 been placed?

7 MAJOR-GENERAL MPEMBE: Ja, this orange

8 line it indicates where the barbed wire will be placed.

9 MR NGALWANA: Where would the POP line

10 have been in relation to that line?

11 MAJOR-GENERAL MPEMBE: The POP line will

12 be in front of the barbed wire after it has been placed,

13 but there will be a space just open there so that they

14 could be able to take position for dispersal.

15 MR NGALWANA: So to the right of the

16 orange line depicting the barbed wire, you would have the

17 POP line.

18 MAJOR-GENERAL MPEMBE: Correct,

19 Chairperson.

20 MR NGALWANA: How far from the barbed

21 wire?

22 MAJOR-GENERAL MPEMBE: From the, not very

23 far from the barbed wire, but the TRT and the STF will be

24 100 metres away from the POP line.

25 MR NGALWANA: Can I understand this;

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1 behind that barbed wire depicted by about five reds or
 2 browns and that orange line, you have some small figures -
 3 I don't know what I can call them - in green, is it green
 4 or blue? You have two in front just to the top of the
 5 longest arrow, that white arrow. You see that?
 6 MAJOR-GENERAL MPEMBE: This one?
 7 MR NGALWANA: Yes, there, that cluster,
 8 what does that represent, that cluster of blue?
 9 CHAIRPERSON: Let's give the interpreter
 10 a chance to interpret that, and I don't like, you know,
 11 this and that and here and there and so on because that's
 12 going to look terrible on the record for those poor people
 13 who have to read it later, the historians of the future
 14 sitting in the archives reading this lot, apart from us
 15 when we look at it in a few months' time. But anyway,
 16 let's give the interpreter a chance to interpret first. He
 17 doesn't have to interpret what I said about the historians
 18 of the future, and then we can carry on.
 19 MR NGALWANA: To the right, General, of
 20 where the barbed wire would have been, there's a cluster of
 21 about five or six blue. What did that cluster represent?
 22 MAJOR-GENERAL MPEMBE: This cluster
 23 should have taken position after the first warning has
 24 taken place. It represents -
 25 MR NGALWANA: No, General, sorry to

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1 interrupt. That's not where I'm talking. I'm saying to
 2 the right, behind the - ja, there, that cluster.
 3 MAJOR-GENERAL MPEMBE: Yes.
 4 MR NGALWANA: What did it represent?
 5 MAJOR-GENERAL MPEMBE: That cluster
 6 represents the TRT after the first warning has been given
 7 for the, after the first warning to the pedestrian has been
 8 given.
 9 MR NGALWANA: And how far behind the POP
 10 line would that cluster have been positioned?
 11 MAJOR-GENERAL MPEMBE: That cluster here,
 12 it should have positioned 100 metres there, but -
 13 MR NGALWANA: When you say here, here,
 14 and there, you mean -
 15 MAJOR-GENERAL MPEMBE: Oh, just behind
 16 the POP line.
 17 MR NGALWANA: And were these -
 18 CHAIRPERSON: Mr Ngalwana, sorry, it's
 19 represented to me you're not giving the interpreter a
 20 chance. I understand, you know, it's difficult to stop and
 21 wait for the interpretation. On the other hand, if the
 22 interpreter has to interpret a long slab of stuff it's very
 23 difficult for him to remember everything that you've said.
 24 So I'm afraid part of the discipline we all have to accept
 25 is - I know I'm very bad at it, but it's something we must

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1 all accept - to give the interpreter a chance.
 2 MR NGALWANA: Yes, Chair. So did I
 3 understand you correctly that the TRT line would have been
 4 - did you say 80 or 100 metres behind the POP line?
 5 MAJOR-GENERAL MPEMBE: Correct,
 6 Chairperson.
 7 MR NGALWANA: Which one? 100 or 80?
 8 MAJOR-GENERAL MPEMBE: It's 100.
 9 MR NGALWANA: Were all these phases
 10 deployed at the same time, General, or was it done
 11 gradually?
 12 MAJOR-GENERAL MPEMBE: Not at the same
 13 time.
 14 CHAIRPERSON: Let's take the tea
 15 adjournment. May I suggest, Mr Ngalwana, I know it's going
 16 to be difficult, but I'd be grateful if you'd try to
 17 formulate your questions in a way which doesn't put thises
 18 and thats and heres and theres in. So it may have to
 19 require a bit of preparation to line up the things to
 20 things that we can see on the slide. I know it's not easy,
 21 but that's why I'm asking you to do it over the tea
 22 adjournment. We'll take the tea adjournment now.
 23 [COMMISSION ADJOURNS COMMISSION RESUMES]
 24 [15:20] CHAIRPERSON: The Commission resumes.
 25 Major-General, you're still under oath.

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1 WILLIAM MPEMBE: s.u.o.
 2 CHAIRPERSON: Mr Ngalwana, now that
 3 you've regained your seat, perhaps you would like to carry
 4 on with the examination-in-chief.
 5 MR NGALWANA: Thank you, Chair.
 6 CHAIRPERSON: Can you give us an
 7 indication - I know it's difficult, but can you give us an
 8 indication as to how long you are likely to be with the
 9 examination-in-chief?
 10 MR NGALWANA: I was hoping to finish
 11 tomorrow, Chair, until I learned to my horror that tomorrow
 12 is a half day.
 13 CHAIRPERSON: But I'm sure it's only to
 14 your horror that tomorrow is a half day, but we'll - so
 15 does that mean you're going to finish on Monday?
 16 COMMISSIONER HEMRAJ: Tuesday.
 17 CHAIRPERSON: Oh, sorry, Tuesday, Monday
 18 being a public holiday. Adv Hemraj suggested to your
 19 horror also, Monday is a public holiday. So you're going
 20 to finish on Tuesday, all your horrors behind you.
 21 MR NGALWANA: Most likely, Chairperson.
 22 If we sat until 4, 4:30 tomorrow, I'd finish.
 23 CHAIRPERSON: I had thought of that, but
 24 I'm informed that some people have made bookings which they
 25 can't change, and that I'll have a revolution on my hands

<p style="text-align: right;">Page 11462</p> <p>1 if I try to impose what you want to do. I mean you and I 2 could sit here alone with the witness, but I'm not sure 3 anybody else will be here. Yes, I guess it will be an 4 unprotected strike, which is appropriate in this context. 5 MR NGALWANA: Well, thank you, Chair – 6 CHAIRPERSON: - facetious and let's get 7 on with the matter. 8 EXAMINATION BY MR NGALWANA (CONTD.): 9 Chair, we've tried to follow a more pragmatic approach. 10 Whether it's pragmatic or not, I suppose the proof of the 11 pudding will be in the eating. General, may I take you to 12 slide 149. Exhibit L is slide 149, and it will be shown on 13 the big screen. Now the formation that we now see, 14 General, can you just explain to the Commission whether 15 that was the original formation or not, as discussed at the 16 JOC? 17 MAJOR-GENERAL MPEMBE: Correct, 18 Chairperson. 19 MR NGALWANA: So was that the original 20 formation as discussed at the JOC? 21 MAJOR-GENERAL MPEMBE: Yes. 22 MR NGALWANA: Can you just explain how it 23 was envisaged, the deployment was envisaged? Remember that 24 the bottom is the south and to your right-hand side is the 25 east. To the top of that slide is the north, and to the</p>	<p style="text-align: right;">Page 11464</p> <p>1 MR NGALWANA: The letter A to the east of 2 the barbed wire, that's where the POP line would have been. 3 Correct? 4 MAJOR-GENERAL MPEMBE: The A, correct, 5 Chairperson. 6 MR NGALWANA: Now how was it envisaged 7 that the POP line would move with a view to implementing 8 the dispersal action? Using the letters A and B and C and 9 D, just explain to the Commission. 10 MAJOR-GENERAL MPEMBE: The operational 11 commander from A will give the first warning to the 12 protesters that, because the barbed wire has already been 13 placed, that they should, they will be given a reasonable 14 time to disperse and that order will also be interpreted by 15 the interpreter that we had there at, on that day, in the 16 language that the protesters understand. 17 MR NGALWANA: Now when we looked at slide 18 149, which was the deployment, right, the POP line was 19 where A was. Remember? 20 MAJOR-GENERAL MPEMBE: Correct, 21 Chairperson. 22 MR NGALWANA: It's now – can you just 23 take the Commission through where that line has now moved 24 on this slide? 25 MAJOR-GENERAL MPEMBE: After the first</p>
<p style="text-align: right;">Page 11463</p> <p>1 left is the east – west. 2 MAJOR-GENERAL MPEMBE: Chairperson, this 3 picture depicts when the barbed wire has been placed from 4 the south - northerly direction, and the red vehicles there 5 depict the Nyalas that carried the barbed wire. 6 MR NGALWANA: And the blue – 7 MAJOR-GENERAL MPEMBE: The blue vehicles 8 depict the POP line, and this line, the blue line, the blue 9 line to the north-east – 10 MR NGALWANA: So to the north-east of the 11 barbed wire and the blue cars, correct? 12 MAJOR-GENERAL MPEMBE: Correct, 13 Chairperson, depicts the position of the TRT, STF and NIU 14 100 metres away from the POP line. 15 MR NGALWANA: Was that the formation as 16 originally envisaged by the special JOCCOM? 17 MAJOR-GENERAL MPEMBE: Correct, 18 Chairperson. 19 MR NGALWANA: Now we will move to a slide 20 that shows how that formation was going to be implemented 21 in a dispersal action, and that takes us to slide 181. Now 22 we've already established, General, before the tea 23 adjournment that what we see where there is the letter A 24 there, you see? 25 MAJOR-GENERAL MPEMBE: Yes, Chairperson.</p>	<p style="text-align: right;">Page 11465</p> <p>1 command the, in encouraging the dispersal process, the POP 2 will be given a command to come to position B and take 3 their position at B point. 4 MR NGALWANA: Which is more to the north 5 of the slide. 6 MAJOR-GENERAL MPEMBE: Correct, 7 Chairperson. 8 MR NGALWANA: And the TRT, STF, NIU line, 9 where would it have moved from C? 10 MAJOR-GENERAL MPEMBE: Again in 11 encouraging the dispersal process the operational commander 12 will now give a second warning, interpreted in the 13 languages that the protesters will understand, and if still 14 nothing is happening, then the TRT from position C will 15 move 100 metres to position D – 16 MR NGALWANA: In the northerly direction. 17 MAJOR-GENERAL MPEMBE: In the northerly 18 direction, behind the POP, because this one depicts the 19 Nyalas. It will be followed by the water cannons. It will 20 also be followed by the members that will be having the CS 21 stun as well as – and the last line of POP, it will be the 22 rubber bullet. 100 metres away from the last line of POP, 23 from D it will depict TRT, NIU, as well as the STF. 24 MR NGALWANA: So do I understand you 25 correctly, General, that the dispersal action would move</p>

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1 from the eastern direction and north-eastern direction
 2 towards the west, in other words pushing people to go more
 3 towards the west? Is that correct?
 4 MAJOR-GENERAL MPEMBE: Correct,
 5 Chairperson, those blue arrows indicate the dispersal
 6 process, as well as the sweeping process by the TRT, STF,
 7 and the NIU.
 8 MR NGALWANA: Now you indicated that at
 9 the time when the deployment was discussed, the blue lines
 10 were not there. When did the blue lines form part of this
 11 picture? Do you know?
 12 MAJOR-GENERAL MPEMBE: Chairperson, I
 13 said to encourage the dispersal and the show of force,
 14 after the POP have taken up their position, after the
 15 second warning of the operational commander to the
 16 protesters and the operational commander will give a
 17 command to the TRT to take 100 metres away from the
 18 dispersal line and come at D. That will be at that
 19 position of the north.
 20 MR NGALWANA: I'm not going to take you
 21 through how the dispersal action was in fact implemented
 22 because you were not there, General. You can only comment
 23 on what the plan was and how –
 24 CHAIRPERSON: It wasn't implemented
 25 anyway. As we'd been told over and over again, it was

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1 disrupted before they got to that stage. So –
 2 MR NGALWANA: By an attempted
 3 implementation. Chair, may I request that this inasmuch as
 4 it's got markings, be entered as a new exhibit? Would it
 5 be necessary to do that? Because the exhibit L slide 181
 6 doesn't have A, B, C and D.
 7 CHAIRPERSON: Yes, you're quite right.
 8 Perhaps we could have a – I don't know if you've got
 9 printed copies now or you can give them to us tomorrow
 10 morning and we will then, Ms Pillay will prepare overnight
 11 to inform us what the exhibit description should be and
 12 then you can hand it in.
 13 MR NGALWANA: Yes, thank you, Chair. Now
 14 we were still on what was discussed at that special JOCCOM,
 15 General. You've explained to the Commission that you
 16 discussed stage 3 and the implementation thereof. The
 17 special JOCCOM then ends some, well half an hour hence or
 18 an hour hence. What do you then do from the time the
 19 special JOCCOM ends to the late afternoon? According to
 20 EE, the meeting adjourned at 14:00. Is that your
 21 recollection?
 22 MAJOR-GENERAL MPEMBE: Correct,
 23 Chairperson.
 24 MR NGALWANA: Now you've testified, I
 25 think – or let me rather ask you this. Later the afternoon

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1 you said you then went to General Annandale about going
 2 onto a chopper. What time roughly was that, General, on
 3 that afternoon?
 4 MAJOR-GENERAL MPEMBE: At about 15,
 5 between 15:30 and 16:00. That time I went to Major-General
 6 Annandale to say I would like to see the dispersal, as well
 7 also listening to the radio, so whether is there the
 8 chopper that is available, and Major Annandale said the
 9 chopper that is available is the one of the Protea, which –
 10 MR NGALWANA: Okay. Between – or sorry,
 11 the interpreter –
 12 CHAIRPERSON: The interpreter.
 13 MR NGALWANA: Now between the end of, or
 14 the adjournment of the special JOCCOM and your going to
 15 Major-General Annandale to talk about going onto a chopper,
 16 what were you doing in that space of about an hour and a
 17 half or so, General?
 18 MAJOR-GENERAL MPEMBE: I was still at the
 19 JOC and listening to what was happening and also giving the
 20 command, checking as to whether all members are being
 21 briefed and posted.
 22 MR NGALWANA: Wasn't there a stage at
 23 which Mr Mathunjwa came back before you went to the
 24 chopper? Or have I got my events the wrong way around?
 25 [15:40] MAJOR-GENERAL MPEMBE: Chairperson, I did

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1 testify earlier on that Mr Mathunjwa did come and he went
 2 back and sent the SMS to Major-General Annandale and Major-
 3 General Annandale also sent. That was before the special
 4 JOCCOM meeting.
 5 CHAIRPERSON: No, no, that's not right.
 6 Special JOC meeting was 1:30 to 2, as I understand your
 7 evidence, and the minutes. The minutes I presume are
 8 correct at least on the times. Now according to your
 9 evidence you got an SMS from Mr Mathunjwa at about 2:15.
 10 In fact paragraph 46 of your statement, this is your first
 11 statement at page 20 of the bundle, says, "Mr Mathunjwa
 12 returned to the JOC at about 2 o'clock," 14:00, so it's
 13 just at the end of the JOCCOM meeting, "and stated he
 14 wanted to give the Provincial Commissioner feedback. We
 15 advised him to give us the report-back. He however left
 16 without informing us of the outcome of his meeting with the
 17 protesters at the koppie." Then you added something in, in
 18 paragraph 26 of your supplementary statement; we won't
 19 worry about that. "Then soon after he left, Mr Mathunjwa
 20 sent me an SMS at about 14:15. The SMS read," and you set
 21 out the SMS, and you showed it to General Annandale and he
 22 said he got a similar one, and you said you tried to call
 23 him but he didn't answer his mobile phone, and Major
 24 Annandale undertook to respond to the SMS, he typed the
 25 message, and Major Annandale told us about the SMS. You

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1 then say, "I requested Major-General Annandale to contact
 2 Major-General Naidoo at forward holding area 1 and tell him
 3 of the SMS and ask him to speak to Mr Mathunjwa before he
 4 addressed the protesters." He had gone back to address the
 5 protesters the second time. "Major-General Annandale
 6 contacted Major-General Naidoo and Major-General Naidoo
 7 advised Mr Mathunjwa had already driven past forward
 8 holding area by the time General Annandale called." That's
 9 what you say in your statement. So I take it that's right,
 10 unless that's –
 11 MAJOR-GENERAL MPEMBE: Correct,
 12 Chairperson.
 13 CHAIRPERSON: So therefore you were wrong
 14 when you said he came back before the JOC meeting. He came
 15 back the first time, was before the JOC meeting, and in
 16 fact he was still away when the special JOC meeting
 17 started, hadn't come with feedback yet, because he came
 18 back after that, as we've seen from the passage I read to
 19 you, and that's the passage I think Mr Ngalwana wants to
 20 get you to tell us. But you've confirmed that that
 21 paragraph in your statement is correct.
 22 MAJOR-GENERAL MPEMBE: Correct,
 23 Chairperson.
 24 MR NGALWANANA: So there's no need for us
 25 to traverse that ground again. You agree with what the

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1 Chairperson has read to you. General, as you are –
 2 CHAIRPERSON: I'd like to pose a question
 3 about that. It was obviously important to speak to Mr
 4 Mathunjwa before he spoke to the protesters again, which is
 5 why you asked Major-General Annandale to ask Major-General
 6 Naidoo to speak to Mr Mathunjwa. When you heard that he'd
 7 driven past forward holding area 1, why wasn't General
 8 Naidoo asked to go after him and try to catch up with him
 9 before he starts speaking to the protesters, if it was so
 10 important that he be – that contact be made with him, with
 11 Mr Mathunjwa, before he addressed the strikers again?
 12 MAJOR-GENERAL MPEMBE: Chairperson, in my
 13 recollection when I asked that it was already said that Mr
 14 Mathunjwa is already addressing the protesters, but in one
 15 of the members that were there with Brigadier Calitz, they
 16 already said that Mr Mathunjwa is about to address the
 17 protesters.
 18 CHAIRPERSON: If he was about to address
 19 the protesters, what exactly was Major-General Naidoo
 20 supposed to tell him?
 21 MAJOR-GENERAL MPEMBE: Chairperson, we
 22 actually wanted to know what Mr Mathunjwa wants to convey
 23 to the management, not that General Naidoo was supposed to
 24 tell him something.
 25 CHAIRPERSON: So was Major-General Naidoo

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1 asked to ask Mr Mathunjwa what he had to convey to
 2 management? Is that the message which was given to Major-
 3 General Naidoo, which he couldn't implement apparently
 4 because Mr Mathunjwa had already passed forward holding
 5 area 1?
 6 MR NGALWANANA: General, did you mean
 7 convey to management or convey to the people on the koppie?
 8 MAJOR-GENERAL MPEMBE: Mr Mathunjwa
 9 wanted to tell us something, the management, I mean SAPS
 10 management. That's what I wanted to know what is that that
 11 he wants to convey to SAPS management.
 12 MR NGALWANANA: Right, now the special
 13 JOCCOM is finished. You remain at the JOC until the time
 14 you go to the chopper. While you're at the JOC are you
 15 getting feedback about how the implementation of stage 3,
 16 in other words the dispersal action is progressing?
 17 MAJOR-GENERAL MPEMBE: Correct,
 18 Chairperson. We were receiving the feedback and while we
 19 were receiving the feedback, the dispersal process haven't
 20 yet started and then that's when then I also went to the
 21 chopper.
 22 MR NGALWANANA: Are you saying at the time
 23 you went to Annandale and talked about a chopper, you
 24 hadn't yet heard of the, whether the dispersal action has
 25 started?

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1 MAJOR-GENERAL MPEMBE: Correct,
 2 Chairperson.
 3 CHAIRPERSON: I have to stop you there.
 4 Perhaps what – I know you have difficulty in telling us
 5 exactly when you decided to do this, but there must have
 6 been some time lapse of some sort before you decided to go
 7 and fly over the area to see what was happening. What you
 8 say in your statement, paragraph 48, is "I remained at the
 9 JOC. Later I informed Major-General Annandale I wanted to
 10 fly over the area to get a view of what was happening."
 11 Now is it possible for us to ascertain when it was that you
 12 left the JOC to go into this helicopter?
 13 MAJOR-GENERAL MPEMBE: Chairperson, not
 14 so much precisely, but what I remember is that it was
 15 between 15:30 and 15:55, somewhere there.
 16 CHAIRPERSON: Let me ask you a follow-up
 17 question about that. Your understanding was that the
 18 operation was due to commence at 3:30PM. Is that right?
 19 MAJOR-GENERAL MPEMBE: Correct,
 20 Chairperson.
 21 CHAIRPERSON: We know that in fact it
 22 started a little bit later because Mr Mathunjwa was still
 23 addressing the people, the strikers, and the decision to
 24 start was accordingly held back, or the starting of the
 25 operation was held back until he was safely out of the way,

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1 but I take it you didn't know that.

2 MAJOR-GENERAL MPEMBE: Correct,

3 Chairperson.

4 CHAIRPERSON: So I would have assumed

5 that you would have been looking at your watch and you

6 would have said well, you thought it in fact started at

7 3:30, I take it. Is that right? You had no reason – or

8 could you hear from the radio that messages were coming in

9 that we can't start just yet because Mathunjwa is still

10 here?

11 MAJOR-GENERAL MPEMBE: Correct,

12 Chairperson, and knowing very well what I have said how I

13 envisaged the dispersal will take place, I knew that there

14 was still going to be the order that has to be given,

15 reasonable time, the position of the POP and so on. Then

16 that's what I know that that also has to come in after Mr

17 Mathunjwa has addressed the protesters.

18 COMMISSIONER HEMRAJ: And according to

19 your estimation, how much time would those preliminary

20 steps have taken?

21 MAJOR-GENERAL MPEMBE: Chairperson, most

22 of the time it's, the time there is determined by the

23 operational commander, but I was listening on, always

24 listening on the radio whether it has started or not.

25 COMMISSIONER HEMRAJ: That doesn't really

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1 answer the question. How much time did you envisage the

2 steps would take?

3 MAJOR-GENERAL MPEMBE: After Mr Mathunjwa

4 has addressed, 20 to 30 minutes.

5 COMMISSIONER HEMRAJ: And prior to making

6 the decision to go up in the helicopter, what report had

7 you heard over the radio?

8 MAJOR-GENERAL MPEMBE: When I was on my

9 way to the chopper I heard on the radio Chopper 1 said that

10 there is a line of protesters moving towards the TRT. Then

11 I said no, but the TRT, it could not be moving to TRT, it

12 could be moving to POP, but that is the report that I had,

13 but I was on my way to the chopper by that time.

14 CHAIRPERSON: I understand you had your

15 hand-held radio in – sorry, Mr Interpreter, carry on. Yes,

16 so I understood you to say, well you do say in your

17 statement that you and Brigadier Tsiloane who went with

18 you, had your hand-held radios with you. Is that right?

19 MAJOR-GENERAL MPEMBE: Correct,

20 Chairperson.

21 CHAIRPERSON: And is it correct that as

22 you were walking towards the helicopter, before you

23 actually got into the helicopter you heard a report about

24 the group moving forward, strikers moving forward? Is that

25 right?

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1 MAJOR-GENERAL MPEMBE: The report was

2 saying "The line is moving towards TRT."

3 CHAIRPERSON: Yes, that's right. Now it

4 would seem from what we've heard elsewhere that that was

5 the beginning of the charge forward by the strikers towards

6 the police service members who were standing there. This

7 seems to be the evidence that we have. So we can therefore

8 determine by reference to that message that you heard on

9 the radio at what time you went to the helicopter. Is that

10 right?

11 MAJOR-GENERAL MPEMBE: Correct,

12 Chairperson.

13 CHAIRPERSON: I understand that Mr

14 Chaskalson has compiled a timeline, which I think is now

15 generally accepted. Can you tell us, Mr Chaskalson, what

16 the time of that incident is as far as you can determine

17 it?

18 MR CHASKALSON SC: Mr Chair, I'll need a

19 bit more precision on the exact incident to which you're

20 referring. If you're talking about the point at which the

21 protesters advanced on the TRT line to the east of the

22 kraal, in other words a few seconds before the shooting, I

23 can give you a time.

24 CHAIRPERSON: Yes, that seems to be the

25 time that's being talked about. What is that time?

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1 MR CHASKALSON SC: The shootings

2 themselves we timed according to the ETB clock at 15:53:50.

3 So it would be a few seconds before 15:53:50.

4 CHAIRPERSON: Would you accept – sorry,

5 that should be translated first.

6 MAJOR-GENERAL MPEMBE: Chairperson, I

7 will accept it because what I know is it was just before

8 16:00.

9 CHAIRPERSON: Yes, that coincides with

10 your evidence. You estimate it at some time between 15:30

11 and 16:00 –

12 MAJOR-GENERAL MPEMBE: And 16:00, yes.

13 CHAIRPERSON: So it seems as if we're now

14 being able by reference to what you heard on the hand-held

15 radio as you walked towards the helicopter, be able to

16 determine it with greater precision. Would that be

17 correct?

18 MAJOR-GENERAL MPEMBE: Yes, Chairperson.

19 CHAIRPERSON: Thank you.

20 MR NGALWANA: Thank you, Chair. General,

21 did you have any visual aids as you were sitting at the

22 JOC? In other words could you see what was going on, on

23 the ground, when you were sitting at the JOC?

24 MAJOR-GENERAL MPEMBE: No, Chairperson.

25 MR NGALWANA: Now we know that the

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1 dispersal action, or rather the unfortunate shooting
 2 incident has not been recorded, or at least the Commission
 3 doesn't have footage of the shooting in what is now known
 4 as scene 2. Correct?
 5 MAJOR-GENERAL MPEMBE: Correct,
 6 Chairperson.
 7 MR NGALWANA: And there is no police
 8 footage of the shooting at scene 1 either. Correct?
 9 [16:00] MAJOR-GENERAL MPEMBE: Correct,
 10 Chairperson.
 11 MR NGALWANA: Do you know why?
 12 MAJOR-GENERAL MPEMBE: Chairperson, there
 13 was a time when I was informed that Captain Adriano did go
 14 to the members of the, who were taking the video, to say
 15 that their lives is in danger and that that, and with, as a
 16 result of that and the members went back to the JOC.
 17 CHAIRPERSON: Did anybody ever ask them
 18 why they didn't just go to the protected area on the other
 19 side of the wire? That was the protected area, wasn't it?
 20 The wire was there to protect the police and the media.
 21 Did anybody ever ask them why they didn't go there instead
 22 of going back to the JOC? They could at least have taken
 23 some pictures from there, couldn't they?
 24 MAJOR-GENERAL MPEMBE: Chairperson, I
 25 don't know the reason specifically, but what I know is that

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1 they have given a statement that explaining what happened
 2 there.
 3 CHAIRPERSON: The fact that they went
 4 back to the JOC doesn't say why they didn't go to the
 5 obvious place where they should have gone so that they
 6 could carry on taking pictures. But anyway, that's
 7 something you can't help us on. It's not a matter within
 8 your area of knowledge at all. Mr Ngalwana, it's now 4
 9 o'clock.
 10 MR NGALWANA: Yes.
 11 CHAIRPERSON: When you're ready, tell me,
 12 we'll then take the adjournment till tomorrow morning, but
 13 obviously you can ask such questions as you wish until that
 14 moment has arrived.
 15 MR NGALWANA: Yes, just one or two
 16 questions, Chair, then we'll adjourn, with your leave. You
 17 say, General, that the gentlemen involved have provided
 18 statements. May I take you to HHH8 of the statements
 19 bundle, bundle B, under flag 14. It's been identified, I
 20 think, as HHH8. The one is the statement of Mr, well is it
 21 Warrant-Officer Masinya. I'm looking at the paginated
 22 page, the statement beginning at 184, and I'm looking
 23 particularly at paragraph 9 of that statement at 185. In
 24 the interest of time I'll just read what Warrant-Officer
 25 Masinya says. He says, "At the time," he's obviously

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1 talking about the 16th and we know this from paragraph 6 on
 2 that same page. Paragraph 9 he says, "At the time all the
 3 media was withdrawn because it was the information that we
 4 were to be killed." In paragraph 10 he says, "I captured
 5 incidences inclusive of Mathunjwa addressing the miners.
 6 We then moved to the back row next to the TRT and it was
 7 around 12 noon." Then in paragraph 11 he gives this
 8 explanation, "Captain Adriano of Communication Services
 9 said," and he quotes, "'Are you guys from SAPS?'" "Yes,"
 10 Warrant-Officer Masinya says. I see he confuses himself
 11 and Julius Caesar, referring to himself in the third
 12 person. "You are being identified too as police spies and
 13 you should withdraw from this place as the miners said they
 14 wanted to kill you." You see that?
 15 MAJOR-GENERAL MPEMBE: Correct,
 16 Chairperson.
 17 MR NGALWANA: Is that what was conveyed
 18 to you at the JOC?
 19 MAJOR-GENERAL MPEMBE: Correct,
 20 Chairperson.
 21 MR NGALWANA: Now in the next paragraph,
 22 paragraph 12, he then says that they went back to the JOC.
 23 "The shooting started. We heard this because we were
 24 listening through the radio at the JOC." Now General, I
 25 wish to take you to his second supplementary statement.

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1 I'm not sure if that forms part of HHH8, and I promise,
 2 this is the last issue I deal with. It's pagination 187 in
 3 the top right-hand corner, the first page starts at
 4 paragraph 2, he refers to paragraph 9 of his previous
 5 statement. Then in paragraph 3 this is what he has to say,
 6 "That on the day in question I was part and parcel of the
 7 media contingent. We were approached by Joseph Mathunjwa,
 8 the president of AMCU Workers Union. He advised that we
 9 should not get close to the striking miners as they are
 10 angry and would injure us. He said it in isiXhosa, and I
 11 quote, [African language]." You see that?
 12 MAJOR-GENERAL MPEMBE: I see,
 13 Chairperson.
 14 MR NGALWANA: I see this is a statement
 15 that was deposed in May of 2013. Would you have known that
 16 fact of what Mr Masinya says Mr Mathunjwa may have conveyed
 17 to him, while sitting at the JOC on the 16th of August 2012?
 18 MAJOR-GENERAL MPEMBE: Chairperson, I
 19 heard it after that.
 20 MR NGALWANA: When did you learn about
 21 this specific fact of what Mr Mathunjwa may have said to Mr
 22 Masinya?
 23 MAJOR-GENERAL MPEMBE: Chairperson, I
 24 learned about it after the incident of the 16th.
 25 MR NGALWANA: Thank you, Chairperson, if

1 that's an appropriate time to adjourn, I'll take it.
2 CHAIRPERSON: We will take the
3 adjournment until 9:30 tomorrow morning.
4 [COMMISSION ADJOURNED]
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