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TRANSCRIPTION OF THE

COMMISSION OF INQUIRY

MARIKANA

BEFORE TRIBUNAL

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

HELD ON

DAY 202

14 MARCH 2014

PAGES 24721 TO 24830



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<p style="text-align: right;">Page 24721</p> <p>1 [PROCEEDINGS ON 14 FEBRUARY 2014] 2 [09:07] CHAIRPERSON: The Commission continues. 3 Major-General, you're still under oath. 4 GENERAL NAIDOO: Still under oath, Chair. 5 CHAIRPERSON: Mr Mpfu? 6 GENERAL NAIDOO: s.u.o. 7 CROSS-EXAMINATION BY MR MPOFU (CONTD.): 8 Thank you, Chairperson. Good morning, General. 9 GENERAL NAIDOO: Good morning, Advocate. 10 MR MPOFU: Yes, I just wanted us to round 11 off the point that we were busy with yesterday before we 12 move on, when unfortunately we had to stop the proceedings. 13 I asked you a few questions and the Chairperson clarified 14 where I was going and the point I was making really was 15 simply this, General, you would agree that even if one 16 accepts your statement that what you've defined in your 17 statement as drastic escalation, even if we accept that it 18 was caused by two factors and one of those factors was the 19 investigation of what you call the murders of the previous 20 few days and hours or whatever, you will agree with me that 21 the predominant issue that caused that drastic escalation 22 could not have been the investigation of the murders. 23 Would you agree with that? 24 GENERAL NAIDOO: Chair, I think I broke 25 the question down in my response to indicate how we arrived</p>	<p style="text-align: right;">Page 24723</p> <p>1 those didn't run into the hundreds, correct? 2 GENERAL NAIDOO: Chair, I think my 3 answer, the second part of my answer was quite clearly 4 indicating that the proportion of personnel that were 5 required for the public order or, sorry, the crowd 6 management aspect, was also one of the factors that were 7 looked in. So – 8 CHAIRPERSON: You also said something 9 about the investigation. I understood you to say that 10 depending upon what information was got by the intelligence 11 people, you might have required the assistance of the 12 special task force to conduct searches to trace weapons 13 which had – 14 GENERAL NAIDOO: I just indicated that 15 without mentioning the special task force. I mention that 16 now. 17 CHAIRPERSON: Because – and we've had 18 evidence from other witnesses that when, the idea for 19 cordon and search is normally to use the STF people to 20 actually go into the houses to do the search and the cordon 21 is normally formed by members of the service from other 22 units, is that correct? 23 GENERAL NAIDOO: That's correct, Chair, 24 the high risk co-operation, sir. 25 MR MPOFU: Well, for the record, the</p>
<p style="text-align: right;">Page 24722</p> <p>1 at the resource requirement, that the people representing 2 the different disciplines sat down and indicated that we 3 would need X amount of people for crowd management, we 4 would need tactical assets to assist with the tracking and 5 arrest of suspects and recovery of weapons, so to arrive at 6 what we actually needed, that drastic escalation, there was 7 input from the people that were responsible for the 8 different areas of the operation that lay before us. 9 MR MPOFU: Yes. No, that I accept, 10 General. All I'm saying is that for the leg, for the – 11 let's call it the investigation leg of the escalation, all 12 you would have needed is just an extra number of 13 detectives, correct? 14 GENERAL NAIDOO: Chair, not necessary. I 15 also testified that there was a large contingent of 16 intelligence personnel that were brought in, both from the 17 province as well as from Gauteng, to assist with the 18 investigation. 19 MR MPOFU: Yes, no, that I accept. 20 GENERAL NAIDOO: Yes. 21 MR MPOFU: So let's say for the 22 investigation leg you would have needed extra detectives 23 and extra intelligence operatives. 24 GENERAL NAIDOO: Yes. 25 MR MPOFU: Correct? That's all, and</p>	<p style="text-align: right;">Page 24724</p> <p>1 witness never said connected to the STF and all those 2 people, to the investigating – 3 CHAIRPERSON: No, for the record – 4 MR MPOFU: The Chair might have that view 5 – 6 CHAIRPERSON: For the record, Mr Mpfu, 7 sometime ago before you were here he did say that one of 8 the reasons why the STF people were called was to assist in 9 searches and we had previous evidence from other witnesses 10 that when a cordon and search operation is carried out, the 11 STF people are the ones who actually go into the houses to 12 do the search and other members of other units form the 13 cordon. So that is evidence before us. He didn't say that 14 expressly – 15 MR MPOFU: Yes. 16 CHAIRPERSON: He did say earlier, though, 17 when he was questioned before you came back – 18 MR MPOFU: No, I've read the record, 19 Chairperson. I've read all the record. Whether I came 20 back or not is irrelevant, I read all the record – 21 CHAIRPERSON: Well, I don't want to be 22 involved in an argument with you because you and I have a 23 very harmonious relationship and I'm sure it will continue 24 that way to the end. 25 MR MPOFU: Thank you.</p>

<p style="text-align: right;">Page 24725</p> <p>1 CHAIRPERSON: He did give evidence, I'm 2 sure from both sides it will – 3 MR MPOFU: Thank you. 4 CHAIRPERSON: He did give evidence 5 earlier, a sentence or two, that's why the STF were sent 6 there. 7 GENERAL NAIDOO: Chair, I think I 8 possibly even yesterday, I think I mentioned it as well 9 when we were dealing with the same matter. 10 CHAIRPERSON: You did mention it earlier 11 as well – 12 GENERAL NAIDOO: As well, yes. 13 CHAIRPERSON: - when one of the other 14 counsel cross-examined. 15 GENERAL NAIDOO: That's correct, Chair. 16 MR MPOFU: Anyway, the point I'm making 17 to you is very simple, which is even if one accepts that 18 there were those two legs, you would accept that the 19 hundreds of people from the mounted unit, K9, TRT, NIU, STF 20 and all those are not exactly your typical investigating 21 units, correct? 22 GENERAL NAIDOO: Chair, that's why I 23 indicated the two focus areas. One was dealing with the 24 issues around crowd management and policing of the public 25 order situation and I dealt with, separately, the issue of</p>	<p style="text-align: right;">Page 24727</p> <p>1 covers all the people that were murdered up to that time, 2 yes. 3 MR MPOFU: Okay, so who murdered those 4 people? 5 GENERAL NAIDOO: I beg your pardon, 6 Chair? 7 MR MPOFU: Who murdered those people that 8 you included, the two people who, the two protesters who 9 died on the 13th? 10 GENERAL NAIDOO: Chair, at this stage it 11 would occur that they died from a clash with the police. 12 So there's no, at this stage, clear indication of this 13 person was shot by, specific to the police or was shot by 14 his colleagues or counterparts in the clash with the police 15 but I know he was shot and they were killed in the clash 16 with the police, yes. 17 MR MPOFU: Okay, so in as far as those 18 murders are concerned, those people would have been 19 murdered by the police possibly? 20 GENERAL NAIDOO: Chair, I am not aware of 21 who they could possibly – I indicated the circumstances of 22 their deaths. The investigations of those murders are 23 being handled by the Independent Police Investigating 24 Directorate. 25 MR MPOFU: Okay, so that's as far as your</p>
<p style="text-align: right;">Page 24726</p> <p>1 the investigation just to indicate how we arrived at the 2 resources that were required. 3 MR MPOFU: Yes. And I accept the 4 interrelationship that you and the Chairperson are talking 5 about. All I'm saying is that you would agree that K9, 6 TRT, NIU, STF are not primarily investigative units. 7 GENERAL NAIDOO: No, they are support 8 units. 9 MR MPOFU: Thanks. And we have also, you 10 and I, I think, have agreed that the disposition or the 11 approach of the police in this, in sponsoring or proposing 12 this drastic escalation was that there had been murder of 13 policemen who had been attacked by the protesters, correct? 14 GENERAL NAIDOO: Chair, I think there 15 were two things that I mentioned. In paragraph 31 I 16 indicated the public order situation and the murders and 17 the attacks which occurred on police officials and in 18 paragraph 35 I put it in context where I said several 19 deaths, including those of the miners, mine security 20 officials as well as police officials, which had been 21 caused by armed strikers. 22 MR MPOFU: Right and did your 23 considerations include the murder of the three persons who 24 died on the 13th? 25 GENERAL NAIDOO: Chair, paragraph 35</p>	<p style="text-align: right;">Page 24728</p> <p>1 disposition with regard to the so-called murder was 2 concerned. And then your, the second part of your 3 disposition was that these people, or rather the protesters 4 had attacked the police, is that correct? 5 GENERAL NAIDOO: That was as far as my 6 understanding is concerned, yes. 7 MR MPOFU: Did you gain that 8 understanding from interacting with the people who had been 9 at the scene? 10 GENERAL NAIDOO: Chair, yes. From the 11 briefing that we had received, yes. 12 MR MPOFU: Did anyone during that 13 briefing tell you that the police version was that that 14 commotion there was sparked by the police throwing teargas? 15 GENERAL NAIDOO: Chair, I don't remember 16 specifically that fact but there was an indication that 17 they were trying to channel them away from some settlement, 18 yes. 19 MR MPOFU: No, I'm not talking about 20 settlements. Did anyone there indicate that the deaths 21 there were sparked by the police throwing teargas at the 22 marchers? 23 GENERAL NAIDOO: Chair, that's what I 24 indicate. I don't remember that specific fact at that 25 time, no.</p>

<p style="text-align: right;">Page 24729</p> <p>1 MR MPOFU: But okay, whatever was said 2 there, let's deal with the impression that this commotion 3 was caused by the protesters attacking the police. 4 GENERAL NAIDOO: That's correct, Chair. 5 MR MPOFU: So are you prepared to accept 6 that you might have been acting on the basis of false 7 information? 8 GENERAL NAIDOO: Chair, I'm not sure 9 which information forms that basis. 10 MR MPOFU: Okay. Well, would you agree 11 that if – that there's a difference or not just a 12 difference, that the two are diametrically opposed if (a) 13 the commotion was sparked by an attack by the protesters or 14 if (b) it was sparked by the police throwing teargas at the 15 protesters? 16 GENERAL NAIDOO: Chair, as I indicated, I 17 did not have that specific detail as to what sparked the 18 attack. What I had was, there was an attack. So whether 19 it was sparked by the protesters turning or it was sparked 20 by the teargas would not change the fact that there was an 21 attack on the police. 22 MR MPOFU: So, but isn't that completely 23 illogical? If the murders, as you call them, had been 24 sparked by the police, how could it be a remedy to then 25 bring another 600 police? It would mean you just have more</p>	<p style="text-align: right;">Page 24731</p> <p>1 firearms, police firearms as well as other firearms in 2 circulation which would have a direct impact on the 3 stability and the violence in the area. 4 MR MPOFU: Yes, General. I think I did 5 say to you that I accept your two-leg theory and we've 6 dealt with the issue of the murders. I'm now talking about 7 specifically the relationship between the escalation and 8 the attack as a separate leg. 9 GENERAL NAIDOO: Chair – 10 MR MPOFU: So all I'm saying to you is 11 that you, in your statement at paragraph 31 – that's 12 JJJ108, Chairperson – at paragraph 31 you say, "It was 13 decided that a drastic escalation," the very last sentence, 14 "It was decided that a drastic escalation of the police 15 resources would be necessary to both stabilise the public 16 order situation as well as facilitate the investigation of 17 the murders and attack which had occurred on the police 18 officials." Do you understand that? 19 GENERAL NAIDOO: Chair, once again I'm 20 saying, you know, that counsel is just reading paragraph 31 21 in isolation. I think with the issue of the operation and 22 the way it was facilitated, I'm dealing with it from 23 paragraph until paragraph 35. For purposes of convenience, 24 yes, they are numbered separately but they collectively 25 deal with the issue of the drastic escalation of resources</p>
<p style="text-align: right;">Page 24730</p> <p>1 murders, you're just bringing more petrol to the fire but 2 if the murders were sparked by the protesters then it would 3 make a difference, that you can bring police so that to 4 prevent them from sparking it again. It makes a whole lot 5 of difference. There's no point of bringing more police to 6 spark more murders if they are the cause of the murders. 7 GENERAL NAIDOO: Chair, I don't think 8 even if there was this issue of the firing of teargas, that 9 would be a proportionate or an adequate response to then, 10 when, if the police fired teargas to then murder the 11 police. So I'm looking at it in that angle. 12 MR MPOFU: Ja, but that's just, you're 13 just talking now. The point of the matter is that at that 14 time, according to your statement, your disposition and 15 your promotion of the so-called drastic escalation was 16 based on the fact that it was the strikers who had attacked 17 the police. 18 GENERAL NAIDOO: No, Chair. I indicated 19 quite clearly that the attack and murder of police 20 officials, I think the sentence said, as well as the public 21 order situation, so it was not just what I am now being 22 asked, to consider whether it was this perception. I said 23 it was the murders as well as the attack to further police 24 and the reason why I emphasise the attack, because one of 25 the factors of the attack was that now there were several</p>	<p style="text-align: right;">Page 24732</p> <p>1 and the deployment of those resources. 2 MR MPOFU: Now, Chair, if you'd just bear 3 with me for – ja, you see my problem, General, is that in 4 your consolidated statement which came much later, I will 5 argue that you tailored this evidence, some of the evidence 6 that you are now referring me to. Your original statement 7 does not mention anything about the other murders on the 8 civilians, on the protesters as you call them. It simply 9 says, and that's paragraph DD or rather exhibit DD, 10 Chairperson, on paragraph – page 2, there when you are 11 dealing with the same topic you say, "It was decided" – 12 that's the second last paragraph from the bottom starting 13 with the words "The National Commissioner" on page 2. Just 14 go further down, the National – yes, that's correct. On 15 that version which is your original version, you say, "It 16 was decided that a drastic escalation of the police 17 resource would be necessary to both stabilise the public 18 order situation as well as facilitate the investigation of 19 the murders and attack which had occurred on police 20 officials. The escalation of police resources was 21 facilitated by NATJOC" and so on. And the next paragraph, 22 as you can see you then jump to, "On Tuesday the 14th" which 23 is a different day. 24 GENERAL NAIDOO: Chair, if you carry on 25 with that paragraph and the following, the last sentence in</p>

<p style="text-align: right;">Page 24733</p> <p>1 that paragraph that goes onto the next page, it quite 2 clearly says there, "In this context there were already 3 several murders, deaths, including those of miners, mine 4 security officials as well as police officials which had 5 been caused by the armed strikers." 6 MR MPOFU: Okay, so are you saying which 7 ones were caused by the armed strikers? 8 GENERAL NAIDOO: I covered it there. "In 9 this context there were already several murders, deaths, 10 including those of miners, mine security officials as well 11 as police officials which had been caused by the armed 12 strikers." 13 MR MPOFU: Ja, but that's the whole point 14 I'm trying to make to you, General. You are talking about 15 murders which were allegedly caused by the armed strikers. 16 I'm talking to you about murders on the strikers. 17 GENERAL NAIDOO: Chair, I think we 18 discussed that and I've indicated, the investigation of any 19 conduct of the police was not done by the police and we 20 discussed that yesterday as well. 21 MR MPOFU: General Naidoo, do you accept 22 that your original statement did not refer to any murders 23 perpetrated on the strikers but only on murders allegedly 24 perpetrated by them? 25 [09:27] GENERAL NAIDOO: Chair, I don't</p>	<p style="text-align: right;">Page 24735</p> <p>1 there's any point – this is not a forum where a witness is 2 allowed to be battered and hammered and so on, and you put 3 your question, you get the answer. If the answer is not 4 adequate you can argue it later. It doesn't help to repeat 5 the question and he repeats the answer, as if a needle is 6 stuck in the groove of a long-playing record. But – 7 MR MPOFU: No, Chairperson, that is 8 completely unfair – 9 CHAIRPERSON: Put the question. That's 10 not – 11 MR MPOFU: That's not what I did. 12 CHAIRPERSON: No, it's not unfair, Mr 13 Mpofu. 14 MR MPOFU: I didn't repeat any question. 15 I'm asking about the cause, who caused which murder. 16 That's a new thing. When did I repeat it? 17 CHAIRPERSON: I'd understood that you'd 18 asked the question already, but in any event, what I 19 suggest you do is reformulate the question, approach it 20 from a slightly different angle, and avoid – I understand 21 the thrust of what you're putting and I'm not sure the 22 witness does. He may or may not, he may be, but anyway – 23 MR MPOFU: Okay. 24 CHAIRPERSON: Rephrase the question and 25 let's see if we can make some progress.</p>
<p style="text-align: right;">Page 24734</p> <p>1 understand because I indicated there, there were several 2 deaths and I included those of miners, mine security 3 officials, and police officials. 4 MR MPOFU: Which had been called by the 5 strikers. 6 GENERAL NAIDOO: Yes. 7 MR MPOFU: What is it that you don't 8 understand? 9 GENERAL NAIDOO: I do – 10 MR MPOFU: Do you understand what "cause" 11 means? You wrote it in your own statement. 12 MR SEMENYA SC: Chair, maybe Mr Mpofu may 13 want to lower his temperature. There's no reason to scowl 14 at the witness. 15 MR MPOFU: No, I can't lower my 16 temperature if the witness is evading a simple question. 17 Just answer the question, please. 18 CHAIRPERSON: I don't know if it's fair 19 to say the witness is evading the question. 20 GENERAL NAIDOO: No. 21 CHAIRPERSON: The question has been 22 repeated a lot and you're putting your point to the witness 23 and he's repeating his answer. Whether his answer is an 24 adequate answer, whether it amounts to an evasion is a 25 matter that can be argued later, but I don't know that</p>	<p style="text-align: right;">Page 24736</p> <p>1 MR MPOFU: Okay. 2 CHAIRPERSON: And we can take the – 3 MR MPOFU: Thank you. 4 CHAIRPERSON: - needle further in the 5 groove. 6 MR MPOFU: Okay, thank you, Chairperson. 7 Okay, I'll take both yours and Mr Semenya's advice. I'll 8 rephrase the question and I'll lower the temperature. 9 General Naidoo, I'm saying to you that in your original 10 statement would you agree with me that the murders that you 11 refer to in that statement are murders which according to 12 that statement are perpetrated, or caused, I think to use 13 the right word, caused by the strikers? 14 GENERAL NAIDOO: Chair, not entirely. I 15 do not agree and as I indicate, I'm not a grammar expert 16 but I can indicate to you what my intention was. I had 17 indicated several deaths, which includes all the deaths, 18 and I qualified some of the deaths, including those of 19 miners, mine security officials. I qualified them, and 20 then I said as well as police officials which have been 21 caused by armed strikers, and it's a known fact that those 22 police officials died in a skirmish with armed strikers. 23 So I don't know what other answer I could give, but I can 24 only indicate to you what my intention was when I made that 25 line.</p>

<p style="text-align: right;">Page 24737</p> <p>1 MR MPOFU: Okay, well you don't have to 2 be a grammar expert. What you are doing now is to try and 3 tailor the evidence. Who according to you – 4 CHAIRPERSON: I don't think that's an 5 appropriate comment. Counsel mustn't make statements like 6 that. Counsel must ask questions. They mustn't make 7 accusations of that kind. They can argue matters at the 8 end, free to do that, but that's the kind of battering of 9 witnesses that we don't allow in this forum. 10 MR MPOFU: Okay, well without any 11 commentaries, according to your understanding who had 12 caused the deaths of the security officials? 13 GENERAL NAIDOO: Chair, as far as I 14 remember they were killed in a clash with the, some of the 15 strikers. 16 MR MPOFU: Yes, so your construction of 17 that sentence can't be what you are trying to say now. You 18 are saying of the miners, and we know that the allegation, 19 there are allegations of miners who were allegedly killed 20 by the strikers, mine security officials, those were 21 allegedly killed by the strikers, and the police officials 22 who were also allegedly killed by the strikers. So that's 23 exactly what you meant because that was what was going 24 around. 25 GENERAL NAIDOO: Chair, that includes –</p>	<p style="text-align: right;">Page 24739</p> <p>1 follows, "This escalation" – no, sorry, I must read the 2 penultimate, I must read the – 3 MR MPOFU: Yes, that's where we started – 4 CHAIRPERSON: - the penultimate sentence 5 in that paragraph. "It was decided that a drastic 6 escalation of the police resources would be necessary to 7 both stabilise the public order situation, as well as 8 facilitate the investigation of the murders and attack 9 which had occurred on the police officers." 10 MR MPOFU: Correct. 11 CHAIRPERSON: Now the new statement, the 12 second statement, the later one, that's the one which has 13 got the numbered paragraphs – 14 MR MPOFU: JJJ – 15 CHAIRPERSON: That's JJJ108. 16 MR MPOFU: 108, correct. 17 CHAIRPERSON: And it appears to me to use 18 exactly the same words. It talks about the drastic 19 escalation of the police resources, so drastic escalation – 20 sorry, I – 21 MR MPOFU: Yes, 31, it's the same. 22 CHAIRPERSON: I'll find it now. Yes, 23 "Drastic escalation of the police resources will be 24 necessary," and then we have the phrase, "to both stabilise 25 the public order situation, as well as facilitate the</p>
<p style="text-align: right;">Page 24738</p> <p>1 MR MPOFU: You're now just – 2 GENERAL NAIDOO: Chair, when I included 3 miners – 4 MR MPOFU: I'm not allowed to comment, 5 but hey – 6 GENERAL NAIDOO: Chair, when I included 7 minders I did not exclude any of the miners that were 8 killed. 9 MR MPOFU: Anyway, and your new statement 10 now of much later specifically refers to the other people 11 who were, or rather the murders upon the protesters, when 12 you didn't in your original statement. Do you accept that? 13 GENERAL NAIDOO: Chair, I'm just trying 14 to check that. 15 CHAIRPERSON: Sorry, I don't think that 16 that's right. The first statement which, as you said is 17 DD – 18 MR MPOFU: Yes, Chairperson. 19 CHAIRPERSON: - deals with this matter. 20 Unfortunately it hasn't got numbered paragraphs. 21 MR MPOFU: Yes. 22 CHAIRPERSON: But it deals with the 23 matter in the penultimate paragraph on the second page. 24 MR MPOFU: Page 2. 25 CHAIRPERSON: Ja, and that reads as</p>	<p style="text-align: right;">Page 24740</p> <p>1 investigation of the murders and attack which had occurred 2 on the police officers." It's the same wording exactly. 3 MR MPOFU: Yes, but then Chairperson, it 4 means the Chairperson doesn't understand the point I'm 5 making. That's exactly what I'm saying. The – 6 CHAIRPERSON: [Microphone off, inaudible] 7 difficulty understanding your point. That's why – 8 MR MPOFU: Yes, now the point is that – 9 CHAIRPERSON: But you see, if I don't 10 understand your point – 11 MR MPOFU: Yes, the – 12 CHAIRPERSON: - I might need to put it to 13 you then you can help me to understand it. 14 MR MPOFU: Yes, I will proceed to do 15 exactly that. 16 CHAIRPERSON: You have to be – 17 MR MPOFU: Yes. 18 CHAIRPERSON: Now I think I know your, I 19 understand your point now. Then can I endeavour to help 20 you? 21 MR MPOFU: Ja. 22 CHAIRPERSON: The way both statements are 23 phrased is it uses the words "the murders and attack which 24 had occurred on the police officers." So it looks as if 25 the expression "the murders" is also governed by the</p>

<p style="text-align: right;">Page 24741</p> <p>1 following, also defined, as it were, by the later words 2 "which had occurred on the police officers." So you've got 3 both the attack, the murders and the attack which had 4 occurred on the police officers. If the murders also 5 involved other murders, the murders of security guards, the 6 murders of the people who'd gone to work on the Sunday 7 evening at K4 and been murdered, then I would have expected 8 that phrase to be different, to have been, it would have 9 then read, "facilitate the investigation of the murders and 10 the attack which had occurred on the police officers." 11 That would make it clear that those words "which had 12 occurred on the police officers" only related back to 13 attack and not, as appears to be the case, to the murders 14 as well.</p> <p>15 What Mr Mpofo, I don't think you'll agree with 16 that, but that seems to be the way the grammar works, and 17 if that's so then Mr Mpofo's point is this. He says to you 18 – whether it's a good point or a bad point is another 19 matter, but this is his point. He says that if you were 20 only concerned, apart from the public order situation, but 21 as far as the second leg of the reasoning to escalate the 22 police resources, if the only concern there, the only other 23 concern apart from the public order situation was to deal 24 with the murders and attack on the police, then you have to 25 factor in the fact, he would say, that according to General</p>	<p style="text-align: right;">Page 24743</p> <p>1 issue around the escalation and deployment of the 2 resources, I deal with it from question 31, from paragraph 3 31 to 35. In paragraph 35, which is identical from my 4 original statement to my consolidated statement, I say in 5 this context there were already several deaths, including 6 those of miners, mine security officials, as well as police 7 officials, that have been caused by the armed strikers.</p> <p>8 MR MPOFU: Yes.</p> <p>9 GENERAL NAIDOO: So the insinuation that 10 I was tailoring what was said, I mean it's, what I said is 11 there. It has not changed.</p> <p>12 MR MPOFU: Okay. Alright, General, I 13 think let's walk together on this. There are two points 14 that arise. The first one is the one that I'm sure the 15 Chairperson has explained adequately.</p> <p>16 GENERAL NAIDOO: Okay.</p> <p>17 MR MPOFU: And the second point is 18 whether the fact that paragraph 35 only appears on your 19 second statement, and –</p> <p>20 GENERAL NAIDOO: It does not. It appears 21 in both.</p> <p>22 MR MPOFU: Okay, wait. I will deal with 23 it specifically. Let's start with the first point. Do you 24 accept that if it was understood that the deaths on the 13th 25 were sparked by actions of the police in the manner that</p>
<p style="text-align: right;">Page 24742</p> <p>1 Mpembe's evidence the – and he says he told this to the 2 Provincial Commissioner that evening [microphone off, 3 inaudible] the spark for those so-called murders and attack 4 was police action in a policeman without an order firing 5 off a teargas canister, and then another policeman also 6 with an order firing off a stun grenade. That then 7 provoked – this is his point really – the response from the 8 strikers.</p> <p>9 His argument is if the police were going to 10 refrain, in future were going to refrain from actions of 11 that kind, firing off teargas canisters without an order, 12 firing off stun grenades without an order, then the 13 strikers would not be provoked and then the problem which 14 arose was not likely to repeat itself. Therefore, he says, 15 it wasn't necessary for that reason, because what had 16 happened on the 13th, to bring in more police. Am I 17 accurately summarising your point?</p> <p>18 MR MPOFU: Exactly, Chairperson.</p> <p>19 CHAIRPERSON: Alright.</p> <p>20 GENERAL NAIDOO: Chair, ja –</p> <p>21 CHAIRPERSON: No anyway, that's his 22 point. Now I'm not sure, to be fair to you, if you quite 23 understood the point he was making, but I hope you now 24 understand the point and perhaps you can now answer it.</p> <p>25 GENERAL NAIDOO: Chair, I still say the</p>	<p style="text-align: right;">Page 24744</p> <p>1 the Chairperson described to you, that then it would be 2 illogical, an illogical reaction to that to try to cure it 3 by an escalation and bringing STF, TRT, NIU, K9 and what 4 have you, whereas if indeed those deaths had been sparked 5 by an attack by the strikers, as insinuated here, then that 6 escalation would be a logical reaction. Do you understand 7 that?</p> <p>8 GENERAL NAIDOO: I understand what you're 9 saying and I do not agree with that assertion because I 10 already just testified now that when we arrived at what 11 resources are required, the different disciplines indicates 12 in terms of supporting the investigation that we require 13 this, in terms of the crowd management, this is what we'll 14 require to proportionally handle the crowd. So even if the 15 attack was an attack sparked by the action of the police, 16 or whether it was directly by the strikers themselves, that 17 would not have changed the need for the police to address 18 the situation before them on Monday evening.</p> <p>19 MR MPOFU: Well, okay. But if it was 20 caused by the police, all you needed to do is just to tell 21 the police not to provoke another attack. This is –</p> <p>22 GENERAL NAIDOO: But Chair, that did not 23 take away from the fact that on Monday evening we still had 24 to conduct an investigation which had to be supported and 25 there was still a crowd that had to be managed.</p>

<p style="text-align: right;">Page 24745</p> <p>1 MR MPOFU: Ja.</p> <p>2 GENERAL NAIDOO: Those facts didn't</p> <p>3 change, whether it was an attack provoked by the police or</p> <p>4 by the miners themselves.</p> <p>5 MR MPOFU: No, all I'm saying to you,</p> <p>6 General - and I'm going to move on now - is that you have</p> <p>7 to accept that the, you see, okay let me maybe assist you</p> <p>8 by, let me assist you by telling you, I'll assist you by</p> <p>9 telling you where I'm going. Usually in cross-examination</p> <p>10 we don't do that, but I'll do it. Where I'm going is that</p> <p>11 I'm going to argue at the end that one of the contributory</p> <p>12 factors to the massacre was this, what you've called the</p> <p>13 drastic escalation of the forces. What I'm busy doing with</p> <p>14 you now is to show you that that drastic escalation was</p> <p>15 caused, or was occasioned on false premises. That's all</p> <p>16 I'm doing.</p> <p>17 GENERAL NAIDOO: Chair, that's why I am</p> <p>18 indicating that the situation that we had to appraise and</p> <p>19 deal with on Monday evening, whether the policemen and the</p> <p>20 miners that were killed in that incident were killed by an</p> <p>21 incident sparked by police action, or whether it was by the</p> <p>22 miners themselves who initiated it, we faced a situation on</p> <p>23 Monday evening which we would have to deal with</p> <p>24 irrespective of that, that there were investigation to be</p> <p>25 supported and there was a particular crowd that had to be</p>	<p style="text-align: right;">Page 24747</p> <p>1 weapons that they now had might be used for similar</p> <p>2 purposes.</p> <p>3 GENERAL NAIDOO: I testified to that</p> <p>4 yesterday and today -</p> <p>5 CHAIRPERSON: I know you testified to</p> <p>6 that. I'm -</p> <p>7 GENERAL NAIDOO: And today.</p> <p>8 CHAIRPERSON: - just reminding you what</p> <p>9 you said. So that seems to be a factor which presumably</p> <p>10 was weighed. But can I - I hope Mr Mpofu will forgive me,</p> <p>11 as he normally does, for interfering, just by asking one</p> <p>12 more question. When you sat down in this discussion, did</p> <p>13 you go through the various areas, as it were, in respect of</p> <p>14 which extra resources were required, and did somebody write</p> <p>15 down on a piece of paper what do we need for this, do we</p> <p>16 need anymore for this, do we need anymore for that, and was</p> <p>17 this written down or how was the figure of the</p> <p>18 reinforcements who were ultimately sent, how was that</p> <p>19 figure arrived at or was it just done on a sort of a -</p> <p>20 GENERAL NAIDOO: No, Chair -</p> <p>21 CHAIRPERSON: - a rough guess basis?</p> <p>22 GENERAL NAIDOO: What occurred then when</p> <p>23 we sat down, as I said there was consensus, there were two</p> <p>24 broad issues that we had to deal with. One is to support</p> <p>25 the investigation because the, obviously the task team that</p>
<p style="text-align: right;">Page 24746</p> <p>1 managed.</p> <p>2 CHAIRPERSON: There was another factor</p> <p>3 you mentioned and that was that whoever was responsible for</p> <p>4 what happened on the afternoon of the 13th, there were</p> <p>5 several results from that incident. One was the deaths of</p> <p>6 five people and injuries of others.</p> <p>7 GENERAL NAIDOO: Okay.</p> <p>8 CHAIRPERSON: The other was the fact that</p> <p>9 the strikers were now in possession of weapons that they</p> <p>10 didn't previously have -</p> <p>11 GENERAL NAIDOO: That's what I</p> <p>12 indicated -</p> <p>13 CHAIRPERSON: - and the radio. Well,</p> <p>14 never mind the radio -</p> <p>15 GENERAL NAIDOO: That's correct.</p> <p>16 CHAIRPERSON: But they had weapons.</p> <p>17 GENERAL NAIDOO: That's correct.</p> <p>18 CHAIRPERSON: Including an R5 I think.</p> <p>19 GENERAL NAIDOO: R5, shotgun, pistols,</p> <p>20 yes.</p> <p>21 CHAIRPERSON: Yes, yes, now I would</p> <p>22 imagine that the fact that the strikers were now in</p> <p>23 possession of those weapons, which they didn't have before,</p> <p>24 might, regard being had to the behaviour of we assume some</p> <p>25 of them on the Sunday, might have caused concern that these</p>	<p style="text-align: right;">Page 24748</p> <p>1 has been put together to deal with the murders from Sunday,</p> <p>2 now their cases had arrived at about nine. Of the nine,</p> <p>3 two of them were dealt with by IPID, so seven cases by the</p> <p>4 task team. What resource they require, I indicated that</p> <p>5 additional intelligence officials were brought in to assist</p> <p>6 them. There was then, they worked on the premise that in</p> <p>7 the follow-up, because the urgency of tracing, tracking the</p> <p>8 people that had the firearms was emphasised. The Special</p> <p>9 Task Force was brought in to assist them with the accessing</p> <p>10 of areas to arrest suspects, recover weapons, etcetera. So</p> <p>11 there was a whole discussion around that.</p> <p>12 The head of the investigation team was Brigadier</p> <p>13 van Zyl who is in charge of the task team that's conducting</p> <p>14 all the investigations, and indicated what would his</p> <p>15 challenges be and what would his assistance and the input</p> <p>16 from the various people, including the two provincial</p> <p>17 commissioners and the other operational people in terms of</p> <p>18 how they could assist was made and that's how they dealt</p> <p>19 with the investigation side.</p> <p>20 And then on the crowd management side in terms of</p> <p>21 the numbers we had, such as the available resources in the</p> <p>22 province and what could be provided from the other</p> <p>23 provinces was discussed, and that's how they eventually,</p> <p>24 the two disciplines determined what they need and that's</p> <p>25 the, formed the basis of the resources that were acquired.</p>

<p style="text-align: right;">Page 24749</p> <p>1 MR MPOFU: Okay, alright, we'll leave the 2 rest for argument. Now I said there's a second leg to that 3 and on this one I owe you an apology. I suggested that 4 you, the issue of murders outside of the police murders, 5 alleged murders, that you only mentioned it in your second 6 statement. 7 [09:46] You are quite correct that you mentioned it in 8 your first statement as well but the point I'm making is 9 this, in both statements you have, you did not deal with 10 any murders that were allegedly perpetrated upon the 11 strikers. You dealt with murders that were caused by the 12 strikers, would you accept at least that? 13 GENERAL NAIDOO: Chair, and that would be 14 for not specifically mentioning any of the issues that the 15 SAPS was not - primarily because those issues are dealt 16 with by IPID. 17 MR MPOFU: Okay. 18 GENERAL NAIDOO: So I would not - 19 CHAIRPERSON: It must, it must follow 20 from that that you didn't require what was described as a 21 drastic escalation of police resources in order to 22 investigate, in order to assist the IPID investigation of 23 the cases, the dockets they'd opened against - 24 GENERAL NAIDOO: Chair, I testified that 25 our support was to the police side of the investigation. I</p>	<p style="text-align: right;">Page 24751</p> <p>1 was clearly related to the killing of the policemen and not 2 the killing of anyone else. 3 CHAIRPERSON: Well, that's the point that 4 you put. I think we'll give the witness a last chance to 5 respond to it. 6 MR MPOFU: Yes. 7 CHAIRPERSON: And then perhaps you can 8 move on to a new point. 9 MR MPOFU: Yes, yes. It was just to 10 round off the point. 11 CHAIRPERSON: Yes, yes, I know. How do 12 you respond to the point being put? 13 GENERAL NAIDOO: Chair, the killing of 14 police officials is taken seriously by us, the SAPS, as 15 employers. I'm not saying that it's, that any other 16 killings are taken less seriously but we, you must 17 understand we are an employer as well and we have 18 responsibilities as employer. If we tell our employees 19 that we don't take their deaths and their killings 20 seriously, what would we be telling our employees - on the 21 first thing. And the reference to the so-called frenzy of 22 activity, there was indeed a lot of activity to upscale the 23 operation so that we could have a proportionate police 24 presence and we emphasised and it was indicated that the 25 police presence was, a larger police was seen as one of the</p>
<p style="text-align: right;">Page 24750</p> <p>1 testified to that - 2 CHAIRPERSON: I think that's the point. 3 That's the point you make, Mr Mpofo. 4 MR MPOFU: Yes. 5 CHAIRPERSON: He says he's testified to 6 that already anyway. Whether he did or he didn't, you've 7 now got it on record. 8 MR MPOFU: Ja, well, okay. That's fine. 9 And where I'm going with that one is to say that it was, 10 certainly the murders on the strikers were not your concern 11 and did not play any role in what I've previously called 12 the frenzy of activity which followed the killing of the 13 policemen. 14 GENERAL NAIDOO: Chair, you can't say 15 that it was not my concern because the whole idea of the 16 escalated operation was to stabilise the area and not to 17 have any more murders committed or not to also require the 18 police to have to act. 19 MR MPOFU: Yes, okay. Well, just to 20 close that I just want to say that the statement that I've 21 just made to you has been put to previous witnesses and I 22 won't go there but just to alert you, let you know that 23 both the calling up of Annandale, the calling up of Scott, 24 the calling up of McIntosh and all that which I 25 collectively call a frenzy of activity, from the statements</p>	<p style="text-align: right;">Page 24752</p> <p>1 ways of stabilising the area with a show of force and 2 discouraging the violence that we had seen. So I will no 3 way downplay that we take the killing of police officials 4 seriously but at the same time it was not the only reason 5 that we were there. We still had our duties to execute as 6 police officials. 7 MR MPOFU: Okay. Alright, no, fine. No, 8 I think I must put this last one - I promise, Chairperson. 9 So much so that the relationship between the killing of the 10 policemen and the potential for the massacre was stated by 11 no less than the Provincial Commissioner who said, and I'm 12 paraphrasing now, that due to what had happened emotions 13 are high and we can have a situation where 20 people are 14 killed. So there was foreseeably a clear connection 15 between the killing of the policemen, the heightened 16 emotions and the potential for a massacre. 17 GENERAL NAIDOO: Chair, I think the 18 heightened emotions were on both sides. We can't say that 19 it was only on the side of the police. I think we work 20 from the point of departure that the police officials are 21 not allowed to have emotions and to exclude themselves from 22 what they experience and see around them. I don't think 23 that is realistic but we are taking, we take measures to 24 try and mitigate those things as we confront them and we 25 have protocols in terms of debriefing of people and</p>

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1 ensuring whether they are fit to carry on with their duties
 2 before we put them back in the field. We don't force a
 3 person to stay on duty who has been through a traumatic
 4 experience or an experience like that and we give them
 5 every opportunity to withdraw from that duty. So the fact
 6 that the Provincial Commissioner mentions it, it indicates
 7 that we are sensitive to the fact but it's not only the
 8 police officials who could have been emotional and who
 9 could have been impacted by the incident. So would be the
 10 miners and their responses obviously will be influenced by
 11 those emotions as well and these are factors that we took
 12 into account and this is why we, we agreed to take a
 13 negotiated approach, to engage them and to try and calm the
 14 tempers. Since from Tuesday until Thursday morning that is
 15 what we have done, it was not 12 hours. And in the light
 16 of the situation where there were armed people, et cetera,
 17 we tried to take into account those factors, calm down the
 18 situation, engage them, bring in anybody who could assist
 19 us to engage them as well.
 20 MR MPOFU: Yes, yes, General. I fully
 21 accept that emotions would have been high on both sides and
 22 in fairness I think, although I'm paraphrasing, I think the
 23 Provincial Commissioner said exactly that but the point I'm
 24 making, we are now busy scrutinising the conduct of SAPS.
 25 So my reaction to what you are saying, and I want your

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1 comment, is this. If indeed there was foreseeably a
 2 connection between the killing of the policemen, the
 3 heightened emotions on the side of SAPS members and the
 4 potential for a massacre, that would impose a duty on
 5 people such as yourself who are the leaders, broadly
 6 speaking, to take specific measures to ensure that those
 7 with those heightened emotions – and I accept what you're
 8 saying, that policemen are also people and exactly because
 9 they are also people and have emotions, to ensure that
 10 those who have been so affected are not then put in a
 11 situation where they might mete out a revenge and be
 12 inclined to want to kill those people that they have seen
 13 as having attacked and killed their colleagues. What do
 14 you say to that?
 15 GENERAL NAIDOO: Of course, if there was
 16 that potential that existed it would be foolish for me to
 17 say we identified this potential and then we ignored it but
 18 I am saying we did not ignore it and immediately after the
 19 incident of the 13th we activated our helping profession,
 20 people were on the scene, they gave feedback in terms of
 21 any possible person that may be badly affected. People
 22 were given the option that they could withdraw and return
 23 to their homes, to their bases, all that process went
 24 through as part of mitigating that possibility.
 25 MR MPOFU: Yes. Yes, General Naidoo, and

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1 there has been evidence to that effect but what I'm going
 2 to argue at the end was that that was highly irresponsible
 3 because it was not sufficient to give the people the option
 4 to self-diagnose themselves as to the extent of how much
 5 they have been traumatised but to do what, the obvious
 6 thing to do was to make sure that those who had
 7 participated, those 70 people at least who had participated
 8 there were removed completely and not participated – we
 9 know now that they did – in the massacre itself.
 10 GENERAL NAIDOO: Chair, no, I disagree
 11 with that. Number 1, these members did not self-diagnose
 12 themselves. I indicated that our helping professions were
 13 on hand. They did not flag any person as being a person
 14 who would be critical. In addition to the fact that they
 15 did not identify any of these people that, they did not red
 16 flag any of these people who were being, who were part of
 17 the incident as being people that should be removed, in
 18 addition to that the members themselves were still given an
 19 opportunity to indicate, look, I can't carry on now, I need
 20 to draw back and help myself to deal with the situation.
 21 So I don't know where the irresponsible part comes –
 22 CHAIRPERSON: These health professionals
 23 –
 24 GENERAL NAIDOO: Yes.
 25 CHAIRPERSON: - who were called upon to

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1 make this diagnosis, were they doctors or social workers?
 2 GENERAL NAIDOO: Psychologists and social
 3 workers as well as the chaplains, yes.
 4 CHAIRPERSON: Chaplains, social workers,
 5 psychologists.
 6 GENERAL NAIDOO: That's correct, Chair.
 7 CHAIRPERSON: I see.
 8 MR MPOFU: Alright. Anyway, so you're
 9 saying that SAPS did everything that it could to ensure
 10 that those motivated by revenge were not at the scene or
 11 the massacre scene.
 12 GENERAL NAIDOO: Chair, no, that's not
 13 what I'm indicating. I'm indicating that in terms of our
 14 protocol we took all the necessary steps to eradicate
 15 people who would probably not be in an emotional state or a
 16 psychological state to continue with their duties and I'm
 17 not a professional in any one of those disciplines so we
 18 rely on the evaluations or the results of the evaluations
 19 that they have given us.
 20 MR MPOFU: Are you aware, and if you're
 21 not I won't press any further because I don't have the
 22 reference at hand right now but are you aware for example
 23 that during the briefings on the 16th a Captain Kidd went so
 24 far as to remind his unit before, just a minute before the
 25 massacre that they must remember that these people had

<p style="text-align: right;">Page 24757</p> <p>1 killed a policeman?</p> <p>2 GENERAL NAIDOO: I was not aware at that</p> <p>3 stage but I think at some stage I heard somebody mention it</p> <p>4 in the Commission, yes.</p> <p>5 MR MPOFU: Yes, okay. No, we'll deal</p> <p>6 with it if and when he comes. So, well, if that happened</p> <p>7 as you say you've heard about it, if that happened you</p> <p>8 would agree that even those who might have by that time had</p> <p>9 their feelings assuaged or cooled down, statements like</p> <p>10 that might have reignited their emotions.</p> <p>11 GENERAL NAIDOO: Chair, I would not</p> <p>12 necessarily agree with that. I think I would need to know</p> <p>13 what the context was. He could be referring to firearms,</p> <p>14 he could be referring to – so you know, just giving me a</p> <p>15 line and asking me to make that assumption I don't think</p> <p>16 will be correct. As I said, the context would be important</p> <p>17 as well.</p> <p>18 CHAIRPERSON: Sorry, do we know whether</p> <p>19 any of the people who were under Captain Kidd's command</p> <p>20 were present on the 13th? I'm asking because I don't know</p> <p>21 but do you know?</p> <p>22 GENERAL NAIDOO: I don't think so, Chair.</p> <p>23 CHAIRPERSON: Maybe we can investigate</p> <p>24 that.</p> <p>25 GENERAL NAIDOO: Yes, but I don't –</p>	<p style="text-align: right;">Page 24759</p> <p>1 GENERAL NAIDOO: Chair, as I said, I only</p> <p>2 heard it during, at some stage during testimony at the</p> <p>3 Commission, so I can't comment on that, no.</p> <p>4 MR MPOFU: Ja, well, what we do know is</p> <p>5 that Captain Kidd was one of the commanders of the TRT,</p> <p>6 correct?</p> <p>7 GENERAL NAIDOO: Chair, what I know is</p> <p>8 that Captain Kidd was not involved on the 13th. He came in</p> <p>9 from the Johannesburg TRT with a subsequent deployment.</p> <p>10 MR MPOFU: Please answer the question,</p> <p>11 General Naidoo. Do you know that Captain Kidd is one of</p> <p>12 the commanders of the TRT?</p> <p>13 GENERAL NAIDOO: I am aware of that, yes.</p> <p>14 MR MPOFU: Thank you. And do you know</p> <p>15 that the massacre was carried out by the TRT?</p> <p>16 GENERAL NAIDOO: Chair, I know that</p> <p>17 Captain Kidd was in forward holding area 2, so he was not</p> <p>18 involved in the issues of scene 1.</p> <p>19 MR MPOFU: Please answer the question,</p> <p>20 General Naidoo. Do you know that the massacre was carried</p> <p>21 out by members of the TRT?</p> <p>22 GENERAL NAIDOO: Chair, can I have a more</p> <p>23 specific, which –</p> <p>24 MR MPOFU: The massacre -</p> <p>25 CHAIRPERSON: Sorry –</p>
<p style="text-align: right;">Page 24758</p> <p>1 CHAIRPERSON: The point made, of course,</p> <p>2 is if they were it might have been an unwise thing to say</p> <p>3 on the part of Captain Kidd. Of course it could work in</p> <p>4 two ways. He either would have said, remember what they</p> <p>5 did on the 13th – in other words, they're dangerous, be</p> <p>6 careful –</p> <p>7 GENERAL NAIDOO: Mm.</p> <p>8 CHAIRPERSON: Or he could have meant</p> <p>9 remember what they did and teach them a lesson.</p> <p>10 GENERAL NAIDOO: Chair, yes.</p> <p>11 CHAIRPERSON: It could have meant either</p> <p>12 of those or it could be both. It could have meant – I</p> <p>13 don't know how much of that was recorded but let me repeat</p> <p>14 it just in case. Firstly, we don't know whether any of the</p> <p>15 people he spoke to were there on the 13th, so that's</p> <p>16 something we can investigate. What he said could operate</p> <p>17 in two ways, either to say remember, they killed people on</p> <p>18 the 13th therefore they're dangerous, therefore be careful,</p> <p>19 or it could mean they killed people on the 13th and teach</p> <p>20 them a lesson because of what they did.</p> <p>21 GENERAL NAIDOO: Mm.</p> <p>22 CHAIRPERSON: Of course the,</p> <p>23 alternatively of course, what was said could have had both</p> <p>24 effects but I take it that's as far as one can take it, is</p> <p>25 it?</p>	<p style="text-align: right;">Page 24760</p> <p>1 MR MPOFU: - carried out two massacres –</p> <p>2 CHAIRPERSON: Mr Mpofo, sorry, let me try</p> <p>3 and sort it out. I think what Mr Mpofo has talked about is</p> <p>4 scene 1. I think it's common cause that the firing at</p> <p>5 scene 1 was done by a row of 50-odd TRT people.</p> <p>6 GENERAL NAIDOO: Chair.</p> <p>7 CHAIRPERSON: As the strikers advanced</p> <p>8 towards them, either towards them or towards Nkaneng,</p> <p>9 that's one of the issues in debate but they were TRT</p> <p>10 people. Your point is, I take it, that Kidd's people who</p> <p>11 were at forward holding area 2 weren't part of any, of the</p> <p>12 TRT members who were at scene 1.</p> <p>13 GENERAL NAIDOO: That's correct.</p> <p>14 CHAIRPERSON: But they were, of course,</p> <p>15 at scene 2 which is –</p> <p>16 GENERAL NAIDOO: That's correct, Chair.</p> <p>17 CHAIRPERSON: - will be the next point</p> <p>18 that Mr Mpofo will get to in five minutes or 10 minutes.</p> <p>19 MR MPOFU: Ja, ja, no, I will spend one</p> <p>20 question, to your surprise, Chairperson. You correctly</p> <p>21 said which massacre. You are right, there were two</p> <p>22 massacres and I was talking about the first one. The</p> <p>23 Chairperson was correct. Were Captain Kidd's TRT people</p> <p>24 involved in the –</p> <p>25 CHAIRPERSON: Mr Mpofo, I think we need</p>

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1 to stop this now. I think we must make it a rule from now
 2 on. I know that people use the word massacre commonly in
 3 relation to what happened at Marikana and it's one of the
 4 issues we have to decide at the end, whether it really was
 5 a massacre.

6 MR MPOFU: Well –

7 CHAIRPERSON: But if, as is alleged by
 8 the police, people were being shot in self-defence or
 9 private defence, I don't think it would be appropriate to
 10 use the word "massacre." That's a matter that is still
 11 under debate. So I think it cools the temperature if we
 12 don't use the word "massacre" which presupposes a finding
 13 which may or may not be made. Let's talk about the
 14 killings, it's a neutral expression, we'll all understand.
 15 The point is there were two areas of killings, one was
 16 scene 1, the other was scene 2. I think the witness
 17 understands.

18 MR MPOFU: Yes. Chairperson, I'll
 19 respect what you say but if you'd just allow me to say
 20 this, massacre means a killing of a large number of people
 21 so whether they were killed in self-defence or killed in
 22 whatnot, they were massacred, full stop, but let's, I'll –

23 CHAIRPERSON: It's a connotation of the
 24 word "massacre" but anyway, to me I must say massacre does
 25 imply an unjustified, unlawful killing and not one that was

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1 arguably justified.

2 MR MPOFU: Ja.

3 CHAIRPERSON: We will find at the end of
 4 the day, I hope, whether the evidence indicates there was
 5 justification or not and if we find there wasn't, it would
 6 then appropriately be called a massacre but I don't think
 7 we should call it that just yet. Let's –

8 MR MPOFU: It's okay, Chairperson, I was
 9 just -

10 CHAIRPERSON: It's a matter of
 11 connotation. In the English I use "massacre" doesn't cover
 12 justified killing but anyway –

13 MR MPOFU: Okay, that's fine.

14 CHAIRPERSON: You may use the word
 15 differently but let's agree to differ on it.

16 MR MPOFU: No, it's not me, Chairperson,
 17 it's the dictionary but it's fine. The dictionary simply
 18 says it's a killing of a large number of people, but that's
 19 fine. Can we then go to the issue of Annandale, your role
 20 in calling up Annandale. You explained, I asked you a few
 21 questions yesterday. Now, did anyone give you an
 22 instruction to invite Annandale?

23 GENERAL NAIDOO: Chair, I testified to
 24 the fact that on Monday when we were informed of the
 25 killings of the police officials, at that stage we had not

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1 been informed exactly whom it was although we knew that the
 2 police officials, some of the police officials that were
 3 not from this province had been injured and subsequently
 4 one passed away. I testified that in terms of police
 5 protocol we have to immediately inform the commanders of
 6 those members.

7 [10:06] Now, the previous day I had testified that I had
 8 activated these members from the NIU through General
 9 Annandale for assistance at Marikana. So when I got the
 10 information from the Provincial Commissioner that these
 11 members had been injured and possibly killed, one was
 12 already killed, I then in terms of our protocol immediately
 13 informed General Annandale that there's a possibility that
 14 one of, one or more of his members had been injured or
 15 killed. We do this primarily, we don't want firstly the
 16 families of these members to find out about these things,
 17 families and their commanders to find out about these
 18 things in the news. We have a particular protocol in terms
 19 of that as soon as we do hear to try and establish
 20 connection with the families as fast as possible so that we
 21 can deal with it.

22 So it was in that context, and I did indicate to
 23 him also that we would, depending on the assessment that we
 24 had when we got to, back to Marikana, that we will also
 25 require some assistance in the nature of which I will be

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1 able to communicate with him. So General Annandale
 2 together with the commander of the NIU, the brigadier in
 3 charge of the NIU, Brigadier Tsiloane, in turn also,
 4 because it took us nearly two hours to get back to Marikana
 5 from Potchefstroom, took the initiative of coming to the
 6 scene to establish what is the situation, as the commander
 7 of the members that had deployed them.

8 MR MPOFU: Okay, sorry, then I'm accusing
 9 you falsely. So it's just to confirm that Annandale
 10 invited himself there; it was not you.

11 GENERAL NAIDOO: Chair, he was executing
 12 his responsibilities as a commander of the members that
 13 were involved in the action.

14 MR MPOFU: So did you invite any of the
 15 other commanders of the members who had been involved in
 16 the action, like the supreme commander of the TRT or
 17 whatever you call them?

18 GENERAL NAIDOO: As far as I know, Chair,
 19 there were no members of the TRT that were injured or
 20 killed there. The member of the Public Order Police, the
 21 command structure of the Public Order Police were there, it
 22 was Brigadier Calitz and Lieutenant Colonel Merafe, who is
 23 the unit commander of the members that were killed. So
 24 they were on the scene.

25 CHAIRPERSON: They were both North

<p style="text-align: right;">Page 24765</p> <p>1 Western people.</p> <p>2 GENERAL NAIDOO: That's correct, Chair.</p> <p>3 CHAIRPERSON: Yes, I think Mr Mpfu is</p> <p>4 interested in people from other provinces, interested in</p> <p>5 the circumstances in which they arrived there, just to</p> <p>6 found an argument in the end that they were trespassers and</p> <p>7 they shouldn't have been there. That's where his going to.</p> <p>8 MR MPOFU: Yes.</p> <p>9 CHAIRPERSON: Whether he'll ever get</p> <p>10 there is a matter we'll see.</p> <p>11 MR MPOFU: Okay, would you answer the</p> <p>12 question?</p> <p>13 GENERAL NAIDOO: Sorry, Chair, can we</p> <p>14 have the question –</p> <p>15 MR MPOFU: Just aside of the sarcasm.</p> <p>16 GENERAL NAIDOO: Can we have the question</p> <p>17 again, please?</p> <p>18 MR MPOFU: The question is if the logic</p> <p>19 is what you are describing, then the supreme commanders, or</p> <p>20 the national commanders of the other units would have</p> <p>21 equally been invited or informed like Annandale was, and</p> <p>22 they would also have invited themselves onto the scene.</p> <p>23 GENERAL NAIDOO: Chair, I think we need</p> <p>24 to place on record that General Annandale's portfolio</p> <p>25 includes the Public Order Police, as well as the TRT, as</p>	<p style="text-align: right;">Page 24767</p> <p>1 history of that; we don't repeat that. General Annandale</p> <p>2 operated as a sort of, as a conduit. He then fixed the</p> <p>3 time when that would happen and gave the instruction that</p> <p>4 the Provincial Commissioner's order should be executed at</p> <p>5 3:30. That's correct.</p> <p>6 MR MPOFU: No, fair enough.</p> <p>7 CHAIRPERSON: So you didn't put it quite</p> <p>8 correctly.</p> <p>9 MR MPOFU: Yes.</p> <p>10 CHAIRPERSON: I think I understand the</p> <p>11 point you wanted to make –</p> <p>12 MR MPOFU: I accept that.</p> <p>13 CHAIRPERSON: But anyway, in the light of</p> <p>14 my explanation what is said is that General Annandale who</p> <p>15 came in, and the reasons, the circumstances you've</p> <p>16 explained, ended up fixing the time for the implementation</p> <p>17 of the instruction which the Provincial Commissioner had</p> <p>18 given. I think that's what you wanted to say really.</p> <p>19 MR MPOFU: Yes, that's correct,</p> <p>20 Chairperson. Thank you, Chairperson.</p> <p>21 CHAIRPERSON: That's his question as</p> <p>22 reformulated. I take it you agree with that?</p> <p>23 GENERAL NAIDOO: Chair, can I have that</p> <p>24 question, the reformulated question now?</p> <p>25 MR MPOFU: Okay. Thank you, no fair</p>
<p style="text-align: right;">Page 24766</p> <p>1 well as the Special Task Force and the National</p> <p>2 Intervention Unit. So at head office level he was the</p> <p>3 general responsible for those functions.</p> <p>4 MR MPOFU: So even if one – alright,</p> <p>5 let's then say he dutifully wanted to enquire as to whether</p> <p>6 his members, or the circumstances under which his members</p> <p>7 might have been killed, and so on and so on, but what we</p> <p>8 know is that he ended up being the person who gives the</p> <p>9 command for the killings.</p> <p>10 CHAIRPERSON: No, no, no, Mr Mpfu,</p> <p>11 that's not right either, is it? Isn't it correct to say</p> <p>12 that the Provincial Commissioner instructed that the</p> <p>13 tactical option be proceeded with? What General Annandale</p> <p>14 did was he determined the time when that would happen, and</p> <p>15 that is half of what you're putting. I'm not suggesting</p> <p>16 you can't put that, but he didn't give the order for the</p> <p>17 killings. The order for the killings actually – well,</p> <p>18 let's phrase it more carefully otherwise Mr Semanya will be</p> <p>19 turning his light on. The fact that the order was given</p> <p>20 for the tactical option to be proceeded to you would argue</p> <p>21 was the – I won't use the word "trigger" because that's</p> <p>22 unfortunate – that was the factor which put in chain a</p> <p>23 series of events which culminated in the killings. That</p> <p>24 order that the tactical option be proceeded with was given</p> <p>25 by the Provincial Commissioner and we've gone into the</p>	<p style="text-align: right;">Page 24768</p> <p>1 enough, General. What I'm saying is that even if we accept</p> <p>2 your explanation of the circumstances under which General</p> <p>3 Annandale would have dutifully taken it upon himself to go</p> <p>4 and enquire as to the circumstances under which his members</p> <p>5 may have been killed, that would not explain how if that</p> <p>6 was his reason for coming there, how he ends up being the</p> <p>7 person who determines the time at which the killings</p> <p>8 actually happened.</p> <p>9 GENERAL NAIDOO: Chair, I think we –</p> <p>10 MR SEMENYA SC: Chair, General Annandale</p> <p>11 did not decide the time of the killings.</p> <p>12 MR MPOFU: He did.</p> <p>13 CHAIRPERSON: No, no, Mr Mpfu, I tried –</p> <p>14 MR MPOFU: Go to exhibit EE.</p> <p>15 CHAIRPERSON: No, no, no, I tried to</p> <p>16 reformulate it. He fixed the time for the implementation</p> <p>17 of the tactical option, and if the tactical option had</p> <p>18 succeeded in the sense that the water cannon and the</p> <p>19 teargas and the stun grenades had been enough to prevent</p> <p>20 what happened thereafter, then there wouldn't have been any</p> <p>21 killings. But the point you're making is it was the first</p> <p>22 step in the chain of events which culminated in the</p> <p>23 killings - that part is correct – and the person who fixed</p> <p>24 the time for the taking of that first step and the putting</p> <p>25 into operation of the tactical option was General</p>

<p style="text-align: right;">Page 24769</p> <p>1 Annandale, who hadn't come there presumably to do that kind 2 of thing, but had come there in the circumstances the 3 witness described. 4 MR MPOFU: That's correct. 5 CHAIRPERSON: That's the point. 6 MR MPOFU: That's really the point. 7 Thank so much, Chairperson. 8 CHAIRPERSON: You understand the point, 9 General? 10 GENERAL NAIDOO: I understand, Chair, 11 but – 12 CHAIRPERSON: Alright, now perhaps you 13 can answer it. 14 GENERAL NAIDOO: Ja, what I – that's just 15 the clarity that I wanted. I think we start at the 16 beginning of the chain, do the first link and then we skip 17 all the other links and get to the last link. I think 18 that's a problem that we have to remedy. When General 19 Annandale came there, he came for the reasons as I 20 indicated and he arrived there and yes, then he attended 21 the meeting because he was there already and the National 22 Commissioner and all the other generals arrived, and he 23 attended the meeting that evening where the assessment of 24 the situation was done, which I referred to earlier today, 25 and as part of that he was then tasked to facilitate the</p>	<p style="text-align: right;">Page 24771</p> <p>1 part. 2 GENERAL NAIDOO: Chair, that 3 circumstances I can't really comment – as I said I'm 4 testifying in terms of what I have in terms of my knowledge 5 of the time. 6 MR MPOFU: Yes, Chairperson, if you'll 7 allow me just to round off this point. I know you've 8 already ruled in my favour and you don't like concurring 9 judgment, but just to round off the point about the issue 10 raised by Mr Semenya. At L179, the second bullet point, 11 General, you can use the screen, it's just a small short 12 sentence. The police version is that "Major General 13 Annandale instructed Lieutenant Colonel Scott to report 14 back at the JOC at 15:15 as he wanted the operation to 15 commence at 15:30," and that's backed up by the minute 16 called exhibit EE. I'm just putting that just for the sake 17 of completion. 18 CHAIRPERSON: While we're about that, 19 while we're interested in completion, exhibit EE, which is 20 the minutes of the special JOCCOM meeting at 13:30, which 21 is a minute which was handed over before Roots to IPID, so 22 it has a cogency which perhaps isn't always present for 23 some of the minutes – 24 MR MPOFU: Yes. 25 CHAIRPERSON: But that says in the end of</p>
<p style="text-align: right;">Page 24770</p> <p>1 resources that were under his command. 2 So he did not then just invite himself into the 3 operation; he was then tasked at that meeting to make these 4 resources available and to support the province and in 5 supporting the province, and he was given a specific task 6 as it's indicated, to chair the JOCCOM meetings because 7 General Mpembe was running shuttle diplomacy, trying to 8 cover various facets, it was a massive operation, and 9 that's what he did. So in executing that responsibilities 10 he was given subsequent to that of chairing the JOCCOM, 11 which looked at how to implement the Provincial 12 Commissioner's decision, is how his involvement is. So he 13 didn't just fly out there and then suddenly make a 14 decision. 15 CHAIRPERSON: Ja, there's one fact you've 16 left out, which it doesn't necessarily detract from your 17 answer but it's necessary for the purposes of completeness. 18 At the 1:30 JOCCOM meeting, which you of course didn't 19 attend, but at that meeting the Provincial Commissioner 20 instructed him, not General Mpembe who was the overall 21 commander, but instructed General Annandale, who was 22 actually the chief of staff and chairman of the JOCCOM, 23 instructed him to proceed to implement the tactical option. 24 I'm paraphrasing, but I think I paraphrased more or less 25 accurate. So that's really a factor which is an important</p>	<p style="text-align: right;">Page 24772</p> <p>1 the first paragraph, sorry, the end of the third paragraph, 2 "The Provincial Commissioner instructed Major General 3 Annandale to proceed with the implementation of stage 3," 4 and then at the end of the minutes, the penultimate 5 paragraph is the one that you've read or referred to, 6 "Major General Annandale instructed Brigadier Pretorius and 7 Lieutenant Colonel Scott to report back at the JOC at 15:15 8 as he wants the operation to commence at 15:30." 9 MR MPOFU: That's correct. 10 CHAIRPERSON: So that's all the relevant 11 material on the point you're now making. 12 MR MPOFU: Thank you, Chairperson. 13 MR SEMENYA SC: Chair – 14 MR MPOFU: Now moving on – sorry. 15 CHAIRPERSON: Mr Semenya? 16 MR SEMENYA SC: The objection was that 17 General Annandale did not determine the time of the 18 killing. 19 CHAIRPERSON: No, I upheld that 20 objection, I thought. Didn't you hear me? I said to Mr 21 Mpofo he hadn't put it correctly and I reformulated it and 22 so on. I upheld you. So you can put a tick on the paper 23 and we can carry on. 24 MR MPOFU: Thank you, Chairperson. We'll 25 leave the rest for – we'll leave that for, as to whether</p>

<p style="text-align: right;">Page 24773</p> <p>1 the killings would have happened if Annandale had not fixed 2 the time at 15:30, that's a matter for argument. 3 CHAIRPERSON: No well, you know, there 4 are other hard points we won't go into – 5 MR MPOFU: Ja. 6 CHAIRPERSON: If the strikers had reacted 7 to the water cannon and the teargas and if various other 8 things had happened – 9 MR MPOFU: Well, there would have been no 10 water cannon – 11 CHAIRPERSON: But we won't – 12 MR MPOFU: - if Annandale hadn't – 13 CHAIRPERSON: No, no, no – 14 MR MPOFU: - the water cannon would not 15 have been there. 16 CHAIRPERSON: No, no, I understand. It 17 was – 18 MR MPOFU: Let's leave that for argument. 19 CHAIRPERSON: It was a causa of sine quo 20 non, as the law books say. It was a factor which is one of 21 the causes without which these things wouldn't have 22 happened. It was the "but for" cause. 23 MR MPOFU: Yes. 24 CHAIRPERSON: That's your point, okay. 25 MR MPOFU: Thank you, Chairperson. Yes,</p>	<p style="text-align: right;">Page 24775</p> <p>1 you yourself, you've never claimed that you discharged your 2 firearm in self-defence. 3 GENERAL NAIDOO: Chair, I don't 4 understand that question. 5 MR MPOFU: Am I correct that you never 6 claimed that you discharged your firearm in self-defence? 7 GENERAL NAIDOO: That's not correct, 8 Chair. 9 MR MPOFU: Did you make such a claim? 10 GENERAL NAIDOO: Chair, my statement 11 indicates the circumstances clearly where I had to 12 discharge my firearm. 13 MR MPOFU: Yes. It simply says there 14 that you returned fire. I'm asking you a different 15 question. 16 GENERAL NAIDOO: Yes. 17 MR MPOFU: Have you ever claimed anywhere 18 that you fired your firearm in self-defence? 19 GENERAL NAIDOO: Chair, what I said in my 20 statement, I said somebody fired upon me and I had to 21 return fire. That was the words that I used, I think. 22 MR MPOFU: Major-General, maybe you don't 23 understand the question. Am I correct that you have never 24 made the claim that you discharged your firearm in self- 25 defence?</p>
<p style="text-align: right;">Page 24774</p> <p>1 and we'll argue later whether it was approximate cause as 2 well. Alright. Chairperson, could we take the comfort 3 break now? 4 CHAIRPERSON: I was going to take the 5 comfort break a bit later, but in the interest of those who 6 would like for me to take it now I'll take it now. We'll 7 take the comfort break now. 8 MR MPOFU: Thanks, Chairperson. 9 [COMMISSION ADJOURNS COMMISSION RESUMES] 10 [10:33] CHAIRPERSON: The Commission continues. 11 Major-General, you're still under oath. 12 GENERAL NAIDOO: Still under oath. 13 CHAIRPERSON: Mr MpoFU? 14 GENERAL NAIDOO: s.u.o. 15 CROSS-EXAMINATION BY MR MPOFU (CONTD.): 16 Thank you very much, Chairperson. Major-General, I must 17 say that, before I ask you the next set of questions, to 18 say that I do have some sympathy with you. 19 CHAIRPERSON: [Microphone off, inaudible] 20 MR MPOFU: No, I'm saying before I ask 21 the next set of questions I wanted, to the Major-General 22 that I have some sympathy with him, given what you candidly 23 said yesterday that these were life-changing events which 24 have made you a different person. And before, I don't want 25 to make another false accusation to you, am I correct that</p>	<p style="text-align: right;">Page 24776</p> <p>1 GENERAL NAIDOO: Chair, I think by what I 2 said it's implied that I was defending myself. 3 MR MPOFU: Okay, I don't want to be 4 technical with you but you know it's one thing to retaliate 5 and return fire, as it were, but it's quite another to be 6 under, you know, defending your life or body or whatever 7 the technical – you know, you are a senior official, you 8 know what self-defence means. 9 GENERAL NAIDOO: I am aware. 10 MR MPOFU: You understand that 11 difference. 12 GENERAL NAIDOO: I did not use that 13 specific word, I used words to describe the circumstances, 14 yes. 15 MR MPOFU: Yes, okay. So okay, fine, 16 good. And you never made that claim or used those words 17 either at Roots or anywhere else? 18 GENERAL NAIDOO: Chair, I can't remember 19 specifically what my words were at Roots or anywhere else 20 specific to the action but as I indicated, I described 21 exactly what I experienced – 22 MR MPOFU: What happened, yes. 23 GENERAL NAIDOO: Mm. 24 MR MPOFU: Okay. Now, would it also be 25 fair or correct to say that one of the things that upset</p>

<p style="text-align: right;">Page 24777</p> <p>1 you about these events or haunt you is that you, as you've</p> <p>2 testified, is that before this you had never killed a</p> <p>3 person or seriously injured one?</p> <p>4 GENERAL NAIDOO: Or anything in that</p> <p>5 light, yes.</p> <p>6 MR MPOFU: Yes and yet now the</p> <p>7 possibility exists that you may have killed or seriously</p> <p>8 injured a person.</p> <p>9 GENERAL NAIDOO: I'm not sure how that</p> <p>10 possibility exists. At this stage it has not been shown to</p> <p>11 me, the possibility.</p> <p>12 MR MPOFU: Well, are you saying that no</p> <p>13 such possibility exists or is it not one of the things that</p> <p>14 worry you?</p> <p>15 GENERAL NAIDOO: Chair, it's always an</p> <p>16 issue for one to use a firearm, to discharge a firearm,</p> <p>17 especially at another human being. So that will always</p> <p>18 weigh on you, the fact that you, after all these years, had</p> <p>19 to eventually resort to using your firearm. It is a factor</p> <p>20 that can't be ignored.</p> <p>21 MR MPOFU: Yes. No, no, I'm with you and</p> <p>22 believe me, I genuinely sympathise with that sentiment. If</p> <p>23 you have managed throughout your police career not to have</p> <p>24 to discharge a firearm at a human being and possibly injure</p> <p>25 or kill them, it can't just be one of those days when it</p>	<p style="text-align: right;">Page 24779</p> <p>1 operation?</p> <p>2 MR MPOFU: No, in terms of the specific</p> <p>3 issue of the possibility of having killed someone or having</p> <p>4 to fire at, or injured one?</p> <p>5 GENERAL NAIDOO: Chair, at that</p> <p>6 particular time the only option I had was to either get</p> <p>7 shot or to run in the opposite direction, if you are</p> <p>8 putting it in that simple terms.</p> <p>9 MR MPOFU: Yes. Okay, yes, yes, or to</p> <p>10 evade – yes. And do you, when you are pondering these</p> <p>11 things in your head now, do you think that maybe you should</p> <p>12 have taken that option of evading –</p> <p>13 GENERAL NAIDOO: Chair, of running or –</p> <p>14 MR MPOFU: - so that you wouldn't be in</p> <p>15 this traumatic situation you are in now.</p> <p>16 GENERAL NAIDOO: Chair, if I had thought</p> <p>17 that not discharging my weapon was a better option than the</p> <p>18 option that I took, obviously it was an option that I would</p> <p>19 have taken. As I indicated that in the more than 30 years</p> <p>20 of career there were very few times where I experienced</p> <p>21 shots being fired at me personally and this was about the</p> <p>22 closest thing that I experienced in my life. So obviously</p> <p>23 if there was an opportunity for me to evade it in some</p> <p>24 other way I would have, and then to remember it was not</p> <p>25 just myself. I had, directly behind me, other members who</p>
<p style="text-align: right;">Page 24778</p> <p>1 eventually happens.</p> <p>2 GENERAL NAIDOO: Of course.</p> <p>3 MR MPOFU: Yes. Now, but what I'm saying</p> <p>4 to you is exactly in agreement with you that that is</p> <p>5 exactly one of the issues that haunt you up to this day, is</p> <p>6 the mere possibility that, sitting there now, you may have</p> <p>7 killed someone or seriously injured a human being, correct?</p> <p>8 GENERAL NAIDOO: Chair, the possibility,</p> <p>9 yes, will always trouble me. When I book on duty as a</p> <p>10 police official I don't book on with the intention of,</p> <p>11 today I'm going to kill somebody.</p> <p>12 MR MPOFU: Sure.</p> <p>13 GENERAL NAIDOO: That's not how, that's</p> <p>14 never our intention.</p> <p>15 MR MPOFU: Yes. No, and I accept that</p> <p>16 also whole-heartedly. I suppose what I'm saying is that</p> <p>17 the – okay, let me put it this way. When something like</p> <p>18 that haunts you or is staying with you for such a long</p> <p>19 time, obviously you turn it upside down and you might have</p> <p>20 thought if this, if that, if this, maybe this would not</p> <p>21 have – I wouldn't have been put in that position where I</p> <p>22 might have killed someone or injured someone. What, in</p> <p>23 your view, are the "what-ifs" that you have which you could</p> <p>24 have done differently?</p> <p>25 GENERAL NAIDOO: In terms of the</p>	<p style="text-align: right;">Page 24780</p> <p>1 were there. So the possibility of death and injury was not</p> <p>2 just on myself, it was to me and the personnel that were</p> <p>3 with me.</p> <p>4 CHAIRPERSON: You said in your statement</p> <p>5 paragraph 75, that's your second statement, you mentioned</p> <p>6 how you fired and you then said that thereafter two</p> <p>7 individuals were arrested in the area by other members.</p> <p>8 GENERAL NAIDOO: Correct?</p> <p>9 CHAIRPERSON: And you, with firearms in</p> <p>10 their possession – I'm reading from your statement.</p> <p>11 GENERAL NAIDOO: Yes, Chair.</p> <p>12 CHAIRPERSON: "One of whom admitted to</p> <p>13 firing on the police as they advanced."</p> <p>14 GENERAL NAIDOO: That's correct, Chair.</p> <p>15 CHAIRPERSON: Are you able to say whether</p> <p>16 the person that you fired at, whose fire you returned, I</p> <p>17 think to use your words, was one of the persons</p> <p>18 subsequently arrested or are you not able to say whether</p> <p>19 that is so or not?</p> <p>20 GENERAL NAIDOO: Chair, I think as I</p> <p>21 testified, he was not clearly visible. I could see his arm</p> <p>22 and portion of him. I could rather see there was a person</p> <p>23 also behind him as well. I testified to that fact. So the</p> <p>24 possibility of me saying from the three people that had</p> <p>25 been arrested, whether it was this or the other, I would</p>

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1 not be –

2 CHAIRPERSON: Yes, I would have expected

3 you to have said in terms in your statement, if you

4 specifically identified the person at whom you shot as one

5 of those whom you saw subsequently arrested, if that was

6 so, but you don't say that.

7 GENERAL NAIDOO: I, I –

8 CHAIRPERSON: You say it could have been

9 but it's possible it wasn't, is that correct?

10 GENERAL NAIDOO: The reality is I would

11 not be able to, if he was standing in an identification

12 parade, say this one for sure.

13 MR MPOFU: Yes. Yes, I think – ja,

14 that's fair. So there are only three possibilities of what

15 could have happened to the person you shot. It's either

16 you missed, which we, you and I might hope would have

17 happened, or you injured and maimed the person or you

18 killed the person, correct?

19 GENERAL NAIDOO: That's correct, Chair.

20 MR MPOFU: Thank you. Alright, we'll

21 come back to that. Now, I just want to talk to you about

22 something different and I have to situate this because it

23 has, perhaps, a sub-theme. You would accept that, and I'm

24 now talking to you, as I have said, General, as one of the

25 leaders of the operation, you would accept that in an

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1 operation of this size one of the key issues is

2 communication, proper communication, otherwise things can

3 go awry, correct?

4 GENERAL NAIDOO: That's correct, Chair.

5 MR MPOFU: And you'd also accept that

6 communication, you might have the best communication tools

7 and technology but communication is as good as the quality

8 of the information that is being communicated, correct?

9 GENERAL NAIDOO: That's correct, Chair.

10 MR MPOFU: So you want at all times good

11 communication, yes, but also good quality information.

12 GENERAL NAIDOO: That's correct, Chair.

13 MR MPOFU: Now, the first issue I want to

14 talk about in respect of that is the fact that as the

15 police, or rather even now with the benefit of hindsight as

16 Brigadier Calitz would say, you accept that – and I think

17 you and I covered this yesterday – you accept that the role

18 players, to use a neutral word, or one of the key role

19 players in this saga was Lonmin. I'm now talking about the

20 strike element of the event, correct?

21 GENERAL NAIDOO: Of course, Chair.

22 MR MPOFU: Yes, and whether at that time

23 or with the benefit of hindsight, it seems clear that

24 Lonmin wanted to skew the information in a particular way,

25 correct?

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1 GENERAL NAIDOO: Chair, I don't know. If

2 we can clarify specifically which information.

3 MR MPOFU: Okay.

4 GENERAL NAIDOO: So I don't generalise

5 it.

6 MR MPOFU: Alright. For example, Lonmin

7 informed you that the strike was being carried out by

8 faceless people.

9 GENERAL NAIDOO: That is correct.

10 MR VAN AS: No, Mr Chair. Lonmin said

11 the violence was being perpetrated by faceless people,

12 that's the allegation that was made, not that the strike

13 was being carried out by faceless people.

14 MR MPOFU: Okay, well, thank you. I

15 think the witness answered that's correct, so I was only

16 asking one witness –

17 CHAIRPERSON: I think, you know, I think

18 the counsel looking after the interests of Lonmin is

19 entitled to object.

20 GENERAL NAIDOO: Yes.

21 CHAIRPERSON: If something is put that's

22 reflecting his client's role. We can easily check it by

23 looking – my recollection was that Mr Van As's statement is

24 correct but if you challenge me, we can check.

25 MR MPOFU: Okay.

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1 CHAIRPERSON: But I'm not sure that it

2 necessarily affects the thrust of the cross-examination

3 you're putting.

4 MR MPOFU: Yes. No, it –

5 CHAIRPERSON: Certainly there was mention

6 of faceless people and you want to take the suggestion that

7 the people were faceless, even in the eyes of Lonmin, you

8 want to take that further.

9 MR MPOFU: Yes. Okay, fine. Just to

10 demonstrate that, Major-General, your recollection and mine

11 is better than that of Mr Van As and the Chairperson on

12 this aspect.

13 CHAIRPERSON: I don't know, I said let's

14 check.

15 MR MPOFU: Ja. Maybe just if I can try a

16 shortcut. The allegation of so-called faceless people was

17 refuted by the bringing about of photographs, isn't it,

18 General?

19 GENERAL NAIDOO: On the evening of

20 Monday.

21 MR MPOFU: Of the 13th, yes.

22 GENERAL NAIDOO: The 13th, yes.

23 MR MPOFU: And those photographs that

24 were brought were still photographs of people who were

25 participating in the strike, correct?

<p style="text-align: right;">Page 24785</p> <p>1 GENERAL NAIDOO: That's the incident that 2 involved Major-General Mpmembe. 3 MR MPOFU: Yes, during the day. 4 GENERAL NAIDOO: That's correct. 5 MR MPOFU: In other words, what he was 6 showing them was that those people who had been marching 7 there on that day, on the 13th, were not faceless people but 8 Lonmin employees, correct? 9 GENERAL NAIDOO: Chair, some of them 10 were, yes – 11 MR MPOFU: Yes. 12 GENERAL NAIDOO: - as far as I could 13 remember. 14 MR MPOFU: F3, FFF3 is another. Yes and 15 actually the – it's paragraph 17 of FFF3, Chairperson. 16 CHAIRPERSON: Are you waiting for – 17 MR MPOFU: To be shown that, yes. I'm 18 assuming the witness doesn't have it. 19 CHAIRPERSON: I can't see, I was going to 20 say I can't see that someone's manning – 21 MR MPOFU: There you are, thank you very 22 much. 23 CHAIRPERSON: This is General Phiyega's 24 statement. 25 MR MPOFU: Yes. It's just one of many</p>	<p style="text-align: right;">Page 24787</p> <p>1 everybody else. 2 MR MPOFU: Of everyone else, let's just 3 leave it at that, Chairperson. Now yes, General, what I 4 was busy saying is the – 5 CHAIRPERSON: Not only were you right but 6 the witness was right as well. 7 MR MPOFU: And the witness was right, 8 yes. General, so what I was saying is that that's just an 9 example I was giving to you about the statement, the broad 10 statement admittedly, that I had made that as an interested 11 party Lonmin would have had an interest in skewing the 12 information in a particular way or another, as any 13 interested party would. I'm sure if you went to the 14 strikers they would also have skewed the information in 15 their favour, do you understand? 16 GENERAL NAIDOO: I understand. 17 MR MPOFU: Lonmin also informed you that 18 at the root of this was rivalry between NUM and AMCU, 19 remember that? 20 GENERAL NAIDOO: I remember that, Chair. 21 MR MPOFU: So on the second, well, on the 22 first leg of the faceless people – fortunately some of you 23 cross-examined the Lonmin people and it became clear that 24 they were not faceless people but on the second leg, that 25 is the issue that this thing had been sparked by, or rather</p>
<p style="text-align: right;">Page 24786</p> <p>1 examples. 2 CHAIRPERSON: One of various versions, it 3 – 4 MR MPOFU: Yes. 5 CHAIRPERSON: But I don't think anything 6 turns – 7 MR MPOFU: This part did not change, yes. 8 It doesn't refer to the Minister. 9 CHAIRPERSON: That's right. 10 MR MPOFU: Okay let's – 11 CHAIRPERSON: Which paragraph are you 12 specifically referring to? 13 MR MPOFU: The mine management. It's 14 paragraph 17, Chairperson, the last sentence. This is a, 15 the General says, "The mine management further stated that 16 the protesters were not their employees and are unknown to 17 them and that, as such, Lonmin found no reason to negotiate 18 with what they referred to as faceless people." 19 CHAIRPERSON: Mr Mpofu, you were quite 20 right and I was wrong. 21 MR MPOFU: Thank you, Chairperson. 22 CHAIRPERSON: And I'm pleased that the 23 correct position has been brought to my attention. 24 MR MPOFU: Thank you, Chairperson. 25 CHAIRPERSON: And to the attention of</p>	<p style="text-align: right;">Page 24788</p> <p>1 had anything to do with rivalry between NUM and AMCU, you 2 proceeded on the basis that that was accurate, correct? 3 GENERAL NAIDOO: Not entirely, Chair. 4 MR MPOFU: Party. 5 CHAIRPERSON: Substantially, didn't you? 6 I mean a lot of the doc – 7 GENERAL NAIDOO: That was part of – 8 CHAIRPERSON: Yes, a lot of the documents 9 we've seen, even relatively late ones, even Roots documents 10 talk about rivalry between NUM and AMCU. 11 GENERAL NAIDOO: As a primary reason, 12 yes. 13 CHAIRPERSON: As a primary reason. That 14 appears to have been the police belief. 15 GENERAL NAIDOO: Chair, yes, but I – 16 CHAIRPERSON: And in fact I would, I'm 17 sorry to interrupt you but I would suspect that one of the 18 reasons why Mr Mathunjwa's assurance that he was happy that 19 the problem will be solved on the Thursday morning was 20 believed – or believed is perhaps the wrong word but was 21 given a high degree of credibility despite the fact that 22 the criminal intelligence, which turned out to be right, 23 was exactly in the opposite direction – would that be fair? 24 GENERAL NAIDOO: I'd say yes. 25 MR MPOFU: And we now know that that was</p>

<p style="text-align: right;">Page 24789</p> <p>1 not the cause, correct?</p> <p>2 GENERAL NAIDOO: Chair, I was, the</p> <p>3 response that I was going to make, I said it was, yes, the</p> <p>4 primary reason but I also I think testified to the fact</p> <p>5 that there were other issues which we questioned about the</p> <p>6 rock drill operators and the framework agreement that was</p> <p>7 in place and</p> <p>8 payment of an allowance, so yes, we were aware</p> <p>9 that there were other factors that influenced this as well</p> <p>10 but the primary reason was given as the conflict, yes.</p> <p>11 [10:53] MR MPOFU: Yes, now so much so, so much</p> <p>12 so and I'll deal with this in another context but that even</p> <p>13 members of police intelligence, which some may say is an</p> <p>14 oxymoron, bought into this theory and I'm going to refer</p> <p>15 you to LLL6, paragraph 4, Chairperson. That's the</p> <p>16 statement of the then acting provincial head of crime</p> <p>17 intelligence, Brigadier Engelbrecht. I start with the</p> <p>18 sentence that says, "I then received." Are you there,</p> <p>19 General?</p> <p>20 GENERAL NAIDOO: Chair.</p> <p>21 MR MPOFU: It's towards the end of that,</p> <p>22 ja. Do you see that?</p> <p>23 GENERAL NAIDOO: "I then received," yes.</p> <p>24 MR MPOFU: "I then received a follow-up</p> <p>25 report from the handler," that's the spy.</p>	<p style="text-align: right;">Page 24791</p> <p>1 who got it presumably, as you say, from a spy or a number</p> <p>2 of spies or informants in Nkaneng and of course we know</p> <p>3 that there was ongoing trouble between NUM and AMCU,</p> <p>4 particularly at Karee but we also know from the statement</p> <p>5 of Mr Da Costa and the evidence that's been led so far that</p> <p>6 the rock drill operators appear to have made it clear they</p> <p>7 wish to act outside the confines of union activity and they</p> <p>8 were asking for the increase without regard to, without</p> <p>9 going through either of the unions. So that seems to be</p> <p>10 the evidence.</p> <p>11 MR MPOFU: Yes.</p> <p>12 CHAIRPERSON: So far, but the point</p> <p>13 you're putting now isn't right. What the handler said to</p> <p>14 Brigadier Engelbrecht wasn't necessarily based upon</p> <p>15 information which emanated from Lonmin but the first point</p> <p>16 you made is correct, that Lonmin certainly told that to the</p> <p>17 police and the evidence that we have seems to indicate that</p> <p>18 the Lonmin information was incorrect.</p> <p>19 MR MPOFU: Yes, okay. Thank you,</p> <p>20 Chairperson.</p> <p>21 CHAIRPERSON: I think I've put it</p> <p>22 correctly.</p> <p>23 MR MPOFU: Yes, I accept that. Maybe I'm</p> <p>24 making a slightly different point, okay. I think the</p> <p>25 Chairperson is right, Brigadier – rather, General – part of</p>
<p style="text-align: right;">Page 24790</p> <p>1 CHAIRPERSON: No – no, the handler is the</p> <p>2 person who deals with the spy.</p> <p>3 MR MPOFU: Oh, the handler, not the spy.</p> <p>4 CHAIRPERSON: The way it works is you</p> <p>5 have informants, then you have people who deal with them</p> <p>6 and are the handlers and then you have the people like the</p> <p>7 Brigadier who receive information from the handlers.</p> <p>8 MR MPOFU: Thank you, Chairperson.</p> <p>9 CHAIRPERSON: It wasn't the spy.</p> <p>10 MR MPOFU: I stand educated.</p> <p>11 CHAIRPERSON: Well, it's useful to get</p> <p>12 information as one gets older.</p> <p>13 MR MPOFU: Thank you, Chair. No, fair</p> <p>14 enough. It says, "I then indicated" – rather, "the report</p> <p>15 from the handler," that's the boss of the spy, "by way of</p> <p>16 SMS saying that information indicated that AMCU supporters</p> <p>17 would also target employees who supported NUM in the area</p> <p>18 of Nkaneng" and so on and so on. That, do you see where</p> <p>19 I'm getting at, that this information or misinformation,</p> <p>20 which I will argue, which had been given by Lonmin, found</p> <p>21 its way even into so-called intelligence.</p> <p>22 GENERAL NAIDOO: Chair -</p> <p>23 CHAIRPERSON: I don't think that follows</p> <p>24 from the passage you've put. This information that's</p> <p>25 reported here by Brigadier Engelbrecht came from a handler</p>	<p style="text-align: right;">Page 24792</p> <p>1 the evidence that's before this Commission involves</p> <p>2 somebody like Mr Pasha who says that at the time of these</p> <p>3 events he was a member of the National Union of</p> <p>4 Mineworkers, do you accept that?</p> <p>5 GENERAL NAIDOO: I accept that, Chair.</p> <p>6 MR MPOFU: Yes. He had been a member of</p> <p>7 the NUM for some 30 years at that point, do you accept</p> <p>8 that?</p> <p>9 GENERAL NAIDOO: If that's what he</p> <p>10 testified, Chair, yes.</p> <p>11 MR MPOFU: Ja.</p> <p>12 GENERAL NAIDOO: I don't know.</p> <p>13 MR MPOFU: So, and he was one of the</p> <p>14 protesters, one of the strikers, do you accept that?</p> <p>15 GENERAL NAIDOO: If that's what he</p> <p>16 testified, Chair, I can't say anything to the contrary.</p> <p>17 MR MPOFU: So what I'm saying is that</p> <p>18 this so-called intelligence was patently false and the only</p> <p>19 relationship – the Chairperson is quite correct, it's a</p> <p>20 separate point – the only relationship I'm putting between</p> <p>21 this intelligence is that it would have made sense to</p> <p>22 anyone who was, it would have made sense to anyone who was</p> <p>23 operating under the false belief that at the root of this</p> <p>24 conflict was rivalry between AMCU and NUM. Do you accept</p> <p>25 that?</p>

<p style="text-align: right;">Page 24793</p> <p>1 GENERAL NAIDOO: Chair, on the basis of 2 what we received, yes, that's – 3 MR MPOFU: Thank you. Thank you very 4 much. Okay thanks, we have found each other, Chairperson, 5 with the witness. Thank you very much. And you accept 6 that if – well, you've already accept that, if the basic 7 raw information is incorrect, the consequences might be 8 disastrous. 9 GENERAL NAIDOO: Chair, I'm not sure if 10 that can be expanded on in terms of – 11 MR MPOFU: Yes. No, I thought you and I 12 had agreed that, firstly, communication is important and 13 information is the basic unit of communication and the 14 quality of that information has a bearing on consequences 15 that emanate from such communication. 16 GENERAL NAIDOO: If you put it like that, 17 yes. 18 MR MPOFU: Thank you, alright. One of 19 the things that – it doesn't concern you because you were 20 not even there but one of the theories that we are going to 21 be arguing at the end is around what we call game changers 22 and we talk about the first one being the issue of the 11th. 23 Are you aware that on the 11th, if the Commission will 24 accept my theory at the end of the Commission that, among 25 other things, had the events of the 11th not happened as</p>	<p style="text-align: right;">Page 24795</p> <p>1 information. Whether they may well have acted on what they 2 saw with their own eyes later but certainly before they saw 3 anything they received information from Lonmin security 4 people which has been summarised. Now, I think that's 5 right Mr – 6 MR MPOFU: That's right, Chairperson. 7 CHAIRPERSON: Now, but you say you didn't 8 know that? 9 GENERAL NAIDOO: Chair, I testified to 10 this I think earlier this week – 11 CHAIRPERSON: Ja, no I think – 12 GENERAL NAIDOO: - that the first 13 information I had was subsequent to that incident, yes. 14 MR MPOFU: Yes. 15 MR NTSONKOTA: Sorry, Chair, Thando 16 Ntsonkota on behalf of NUM. That was not the only source 17 of information received. You will recall that one of our 18 witnesses testified that prior to the Lonmin security 19 arriving at the office on that fateful morning, he had 20 received a prior from a gentleman, a friend of his who was 21 amongst the crowd that had gathered outside the stadium 22 ahead of the security from Lonmin arriving at the office. 23 CHAIRPERSON: I don't know that Mr, I 24 don't know if Mr Mpofo intends to indicate that this the 25 only information that your client's official received was</p>
<p style="text-align: right;">Page 24794</p> <p>1 they did then the people would not even have been at the 2 koppie, then they wouldn't have armed themselves and so on 3 and so on, which I'm just giving you as a way of 4 background, the question to you is were you aware that even 5 the violence of the 11th was based on information coming 6 from these spies and faceless people, correctly in this 7 case, that the intention of the strikers in marching to the 8 NUM was to burn down the offices and all that. Are you 9 aware of that? 10 CHAIRPERSON: I'm not sure if you're 11 aware of that, Major-General. The evidence was that the 12 people in the NUM office on the Saturday morning were 13 approached by security people from Lonmin and it was 14 reported to them that a contingent or large body of people 15 - I think they were told it was rock drill operators, it 16 was certainly mineworkers - were approaching them, were 17 armed and that they were intending to burn down the offices 18 and so forth. So that information, whether accurate or not 19 is another matter but that was – we don't know yet though, 20 the evidence simply is that that was the information that 21 NUM people received. There is evidence about the people 22 coming to the office but we won't go into that, but the 23 point Mr Mpofo is putting to you is that the NUM people 24 received information which was basically Lonmin information 25 and they acted, at least partly, in the light of that</p>	<p style="text-align: right;">Page 24796</p> <p>1 from Lonmin but certainly some of the information at least 2 was. That's your point, isn't it? 3 MR MPOFU: I'm prepared to accept that – 4 CHAIRPERSON: Anyway the witness says he 5 doesn't know about that so I don't know – 6 MR MPOFU: Yes. 7 CHAIRPERSON: I don't know how much 8 further you can take it with him. 9 MR MPOFU: Ja. No, just one little 10 aspect. I'm prepared to accept that, Chairperson. The 11 thrust of the question was really not so much this debate, 12 it was that the information about the alleged intent to 13 burn down had emanated from these spies and handlers and 14 that type of source. 15 CHAIRPERSON: I don't think that's right. 16 The information was conveyed by Lonmin security people. 17 There is no suggestion, I mean you may argue later – 18 MR MPOFU: There was. 19 CHAIRPERSON: No, there's no suggestion 20 that those Lonmin security people had got hold of the 21 police information, as far as I know. They may well have 22 had their own sources and so forth but it's not clear to me 23 that there's necessarily any connection between, certainly 24 at that stage, between the Lonmin information and the 25 criminal intelligence information.</p>

<p style="text-align: right;">Page 24797</p> <p>1 MR MPOFU: Yes. No, Chairperson is 2 right. Chairperson is right. I'm not even making that 3 claim. I'm saying that and unfortunately I'll have to find 4 the passage now, I think it would be the statement of one 5 of photos people who said that they saw the 2 500 people 6 and so on. All I'm saying is that it came from these types 7 of people, the faceless people planted within the crowd and 8 I accept that they may not, those specific ones may not 9 have been planted by the police but maybe by Lonmin, so I 10 was making a more generic point here but the witness – 11 CHAIRPERSON: Or possibly planted by NUM 12 because you remember the evidence was – 13 MR MPOFU: Yes. 14 CHAIRPERSON: a NUM official said that a 15 friend of his in the crowd telephoned him and told him. 16 MR MPOFU: Yes, no, that's true. 17 CHAIRPERSON: So there are three possible 18 – 19 MR MPOFU: Or even by AMCU. Remember 20 these were neutral people. 21 CHAIRPERSON: Ja – 22 MR MPOFU: Or they might not have been 23 planted by anybody. 24 CHAIRPERSON: But there are least three 25 possible spymasters operating.</p>	<p style="text-align: right;">Page 24799</p> <p>1 other examples but the point I really want to make is this 2 and I'd invite your comment, that it is at least a 3 possibility that some of the key decisions starting from 4 the 11th, if you accept the references that I made, up to 5 and – 6 CHAIRPERSON: I'm sorry to interrupt, I 7 think someone is listening to his or her radio via the 8 earphones and that better stop otherwise I'll ask that 9 person to leave. 10 MR MPOFU: Let me put it this way, I 11 think you and I agree that we can safely say that at least 12 some of the so-called intelligence was unreliable, correct? 13 GENERAL NAIDOO: Was not verified, yes. 14 MR MPOFU: Yes, or accurate, correct? 15 GENERAL NAIDOO: That could be, Chair. 16 MR MPOFU: Yes. Now faced with that 17 possibility, do you know – you should know that one of the 18 key issues that motivated those who wanted phase 3 of stage 19 3 to be activated was the so-called intelligence that the 20 strikers would not surrender their weapons as allegedly 21 promised to Mr Mathunjwa. 22 GENERAL NAIDOO: Chair, I think I 23 testified to the fact that on the morning of the 16th that 24 was the intelligence. I was not at the meeting where the 25 decision to proceed to stage 3 would take place, so I'm not</p>
<p style="text-align: right;">Page 24798</p> <p>1 MR MPOFU: Yes. 2 CHAIRPERSON: Possibly independently. 3 MR MPOFU: Thank you. Okay, but the 4 witness is not aware. Thank you, Chairperson. 5 CHAIRPERSON: You said you had one little 6 question, a short little question to put to the witness to 7 round this point off. So if you, I suggest you ask it and 8 then we can move on. 9 MR MPOFU: No, that was it, Chairperson. 10 It was, the next question, which is not little, is that – 11 I'm just trying to develop a theme here, General. 12 Brigadier Calitz testified, I don't know if you are aware 13 of this, that on the, I think it was on the 18th which is 14 admittedly after the killings, they also received false 15 intelligence, so to speak, about what was going to happen 16 at the koppie and Brigadier Calitz candidly accepted and 17 they took all manner of precautions and brought barbed wire 18 and they were going to surround the mountain and all that 19 jazz, which turned out to have been false. Will you just 20 accept that as a fact? 21 GENERAL NAIDOO: Chair, yes, there were 22 various things that, you know, that came subsequently which 23 we tried to respond to but ja, none of them really 24 realised. 25 MR MPOFU: Yes. And there are many, many</p>	<p style="text-align: right;">Page 24800</p> <p>1 sure if that was the sole reason or what are the factors 2 that were discussed at the meeting. 3 MR MPOFU: Ja. No, it was – 4 CHAIRPERSON: Actually you're on a total 5 dwaalspoor at the moment because the evidence - for the 6 benefit of those who don't understand Afrikaans, dwaalspoor 7 means a false trail. The evidence is, you weren't there – 8 GENERAL NAIDOO: That's right. 9 CHAIRPERSON: So we're not criticising 10 you. The evidence was that the decision to proceed with 11 the tactical option was made by the Provincial Commissioner 12 on the Wednesday night at the management forum. It was 13 discussed for up to an hour by about 13 people. 12 people 14 were present, including all the Provincial Commissioners 15 and people from head office, and undertook to provide 16 resources that were needed from other provinces and the 17 minutes say, although there's an argument about that, that 18 the proposal of the Provincial Commissioner was endorsed. 19 But anyway, whatever the true impetus of what happened 20 there is, it is clear the decision was taken that night by 21 the Provincial Commissioner, communicated to the world at 22 9:30 the next morning that if they didn't lay down their 23 arms we're going to sort this thing out today and the 24 minutes of the – which, as I've told you, are perhaps more 25 reliably than these other minutes because they were handed</p>

<p style="text-align: right;">Page 24801</p> <p>1 over to IPID before Roots – the minutes of the 1:30 meeting 2 say, and I read it to you earlier – 3 GENERAL NAIDOO: Yes. 4 CHAIRPERSON: - that the Provincial 5 Commissioner said this is what was going to happen. There 6 wasn't a discussion, there wasn't a decision taken. She 7 was merely communicating a decision she had already made in 8 fact the night before. So you were starting down a false 9 trail and I've tried to pull you back to the starting point 10 so that we can then carry on. Mr Mpopu will repeat his 11 question and you can then answer. 12 MR MPOFU: Yes. Thank you, Chairperson, 13 and General I also agree with you that it may not have been 14 the sole reason but what I wanted to put to you is were you 15 aware that, at least on the version of SAPS, one of the 16 motivating factors for moving to stage 3 was that the 17 intelligence which was given to them was that despite 18 whatever Mr Mathunjwa had said that the strikers, according 19 to the handlers and all those kinds of people, were not 20 going to lay down their arms and they would fight, or 21 something to that nature. 22 GENERAL NAIDOO: Chair – 23 CHAIRPERSON: Mr Mpopu, I don't want to 24 interrupt you. I wonder whether it's necessary for you to 25 ask this question.</p>	<p style="text-align: right;">Page 24803</p> <p>1 formulation I will argue that the whole idea of having a 2 contingency plan must have been based on the doubt that was 3 sown by the intelligence on whatever it is that Mr 4 Mathunjwa had promised. Do you understand, General? 5 GENERAL NAIDOO: Yes, I understand. As I 6 indicated, at the morning meeting Intelligence did indicate 7 that there was resistance to the proposal of laying down 8 their arms from within the strikers, yes. 9 MR MPOFU: Yes. No, I think it was more 10 than that. It was basically a suggestion to rubbish, or to 11 pooh-pooh the suggestion that people were going to lay down 12 their arms ala Mathunjwa. 13 GENERAL NAIDOO: Chair, I'm putting it as 14 I understood it from the briefing, yes. 15 MR MPOFU: No, no, General, I think this 16 is an important point. What I'm saying is that – and if 17 it's not so, it's not so, but what I'm saying to you is 18 that this intelligence was presented as a piece of 19 intelligence to refute the suggestion that things were 20 going to all go very well because Mathunjwa merely said so. 21 Do you accept that? 22 GENERAL NAIDOO: Well ja, as I say I 23 didn't perceive it as strongly as that, but there was 24 resistance to Mr Mathunjwa. 25 CHAIRPERSON: Brigadier Calitz said it</p>
<p style="text-align: right;">Page 24802</p> <p>1 [11:13] The evidence that we have from Brigadier Calitz, 2 amongst others, was the at that 6:30 meeting, 6 o'clock 3 meeting rather, it was agreed that in view of the 4 intelligence that had been received it was necessary for a 5 contingency plan to be prepared to deal with the situation 6 if the weapons weren't handed down, or laid down 7 voluntarily. So you've already – and that isn't 8 challenged – 9 MR MPOFU: But that was – 10 CHAIRPERSON: So I mean you've already 11 got that point. You don't have to ask this witness. You 12 can proceed if you wish to do so on the basis that that is 13 the evidence. 14 MR MPOFU: Yes. 15 CHAIRPERSON: So that the contingency 16 plan it was agreed would be prepared to deal with the 17 contingency that the intelligence report is correct and the 18 suggestion that the arms would be laid down voluntarily was 19 incorrect. 20 MR MPOFU: Yes, that's it. Thank you 21 very much – 22 CHAIRPERSON: You've already got that. 23 MR MPOFU: Yes, thank you. Thank you, 24 Chairperson. Yes, I think I can go along with the 25 formulation of the Chairperson and in fact on that</p>	<p style="text-align: right;">Page 24804</p> <p>1 was a contingency plan, so the contingency was if they 2 don't lay down their arms voluntarily we've got to have a 3 plan in place to deal with the situation. 4 MR MPOFU: That's correct. 5 CHAIRPERSON: And so a plan had to be 6 drawn up. 7 GENERAL NAIDOO: It could not be ignored, 8 yes. 9 CHAIRPERSON: Ja. 10 MR MPOFU: Okay, I can't find the passage 11 that I'm looking for, but I think that's sufficient, ja. 12 Now if then as you and I have found some consensus that 13 some of this intelligence was just rubbish, you would agree 14 that if this – so in other words this intelligence, let's 15 give it a 50/50 chance, let's say 50% that it might have 16 been accurate, or 50% it might have been under the category 17 of just false nonsense; if it was correct, then of course 18 we know what subsequently happened, but if it fell under 19 the other category of just palpable nonsense then you would 20 agree that to that extent again the operation might have 21 been based on a false premise, correct? 22 GENERAL NAIDOO: Chair no, I think our 23 problem during the entire operation was that we did not get 24 sufficient specific and detailed intelligence, such as 25 saying so-and-so within the group would resist if such a</p>

<p style="text-align: right;">Page 24805</p> <p>1 thing was put in place, or these are the groupings within 2 the miners. We did not have that kind of specific and 3 detailed intelligence that would have assisted us in terms 4 of planning how we would handle the situation. I mean by 5 saying that there is resistance within the group to the 6 laying down of the arms did not give us the sense of how 7 much of resistance and whether it was a miner. You 8 understand? 9 One would have preferred to get more specific and 10 say these are the broad groupings within the strikers and 11 this is the nature of the resistance and this is where the 12 thing is. So the information was a bit too broad in terms 13 of making those specific assumptions for us, so it was 14 problematic. We I think at some stage discussed in the 15 absence of anything more specific we plan for the worst 16 case. 17 MR MPOFU: Yes – 18 CHAIRPERSON: I don't mean to interrupt 19 Mr Mpofo unduly, but what you're saying isn't borne out by 20 the minute, and this is admittedly the 6 o'clock minute 21 TT4, and there were a lot of questions about these minutes 22 but this particular passage I'm going to read to you – 23 GENERAL NAIDOO: Okay. 24 CHAIRPERSON: - coincides with what the 25 Intelligence people have said in another document that is</p>	<p style="text-align: right;">Page 24807</p> <p>1 are the weak players within the group, and what are their 2 positions, etcetera, when I speak about us planning 3 operations in response to intelligence. But those are 4 general statements. It does not break it down to, so that 5 we have a product with which we can work on. Say if we 6 knew who the five representatives of the strikers were when 7 they came to the Nyalas, then we could have obviously with 8 that specific intelligence know how to handle the 9 particular strikers. At this stage you, as you could see 10 the focus was on Mr Noki because he spoke most or all the 11 time. So when I indicate the quality of intelligence I'm 12 talking about that specific type of nature. 13 MR MPOFU: Yes – 14 CHAIRPERSON: Mr Mpofo, I see from the 15 topic that I've given you permission to ask about you 16 wanted to deal with the question of sub-quality 17 intelligence reports and it appears that the witness agrees 18 with you on that. 19 MR MPOFU: He has. 20 CHAIRPERSON: Would you like to put the 21 question specifically to him before we take the tea 22 adjournment? 23 MR MPOFU: Yes. It's going to be a long 24 one. What I'm going to argue – 25 CHAIRPERSON: Mr Mpofo, it doesn't have</p>
<p style="text-align: right;">Page 24806</p> <p>1 before us. It reports what Lieutenant Colonel Isaacs said 2 at the 6 o'clock meeting – 3 GENERAL NAIDOO: Colonel Isaacs, Chair. 4 CHAIRPERSON: "There are currently about 5 3 000 mineworkers who are gathered on the koppie." He 6 actually didn't say that. He actually said 300, I think, 7 but that's not relevant. "Many of these mineworkers are in 8 possession of dangerous weapons, spears, assegais, and 9 pangas. According to information received the group will 10 decline," not there's a group who won't, there's 11 dissention, "the group will decline to surrender these 12 dangerous weapons to the police. Information also 13 indicates that the mineworkers," not some of them, but "the 14 mineworkers will not leave the koppie and are prepared to 15 fight if their demands are not met, which includes 16 resisting the police." So that was a categoric statement - 17 GENERAL NAIDOO: Yes, Chair. 18 CHAIRPERSON: - which was made, which I 19 don't know what further details you required, but that was 20 surely as clear as you could expect the information 21 gatherers to give you. Isn't that correct? 22 GENERAL NAIDOO: No Chair, in terms of 23 planning our policing activities, when I say "specific 24 information," that the role players would be profiled. We 25 would know who are the strong players within the group, who</p>	<p style="text-align: right;">Page 24808</p> <p>1 to be a long one. 2 MR MPOFU: Well – 3 CHAIRPERSON: What you want to ask him 4 about is the role played - I'm not giving anything away 5 because you've already made it clear – the role played by 6 sub-quality intelligence reports, it appears from what 7 you've told us, Major General, that you are of the opinion 8 that the intelligence reports you received were "sub- 9 quality." Is that correct? 10 GENERAL NAIDOO: They were too broad and 11 not too specific, yes. 12 MR MPOFU: And in that case – 13 CHAIRPERSON: Would you regard them 14 therefore as being not of the requisite quality that you 15 needed? 16 GENERAL NAIDOO: Chair, remember there 17 was a lot of talk of proactive action and actions that the 18 police could have taken to prevent a confrontation, and 19 that would be based on the specific intelligence that I'm 20 referring you to. So had we had that maybe before we got 21 to this, certain actions could have been taken to identify 22 people that would have resisted and we could have arrested 23 them. We could have done various things, but in the 24 absence of that obviously we had what we had. 25 CHAIRPERSON: You see, what Mr Mpofo</p>

<p style="text-align: right;">Page 24809</p> <p>1 alleges or contends for is that the intelligence reports 2 you got were, what he uses, this is his word, "sub- 3 quality." Would you agree with that? 4 GENERAL NAIDOO: Chair, I would agree on 5 quality, but he's not intimating just quality; he's rather 6 saying it was false, and I can't say whether it was true or 7 false. 8 MR MPOFU: Chairperson, as I predicted, 9 this would be a long one. But maybe if after tea – 10 CHAIRPERSON: - after tea. 11 MR MPOFU: Yes. 12 CHAIRPERSON: Thank you for that, Mr 13 Mpofu. We'll now take the tea adjournment. 14 [COMMISSION ADJOURNS COMMISSION RESUMES] 15 [11:42] CHAIRPERSON: The Commission resumes. We 16 have to adjourn at quarter past 12 this afternoon for 17 reasons that may become clear later. You're still under 18 oath, Major General. 19 GANASEN NAIDOO: Still under oath, Chair. 20 CHAIRPERSON: Mr Mpofu. 21 CROSS-EXAMINATION BY MR MPOFU (CONTD.): 22 Thank you very much, Chairperson. General, now I'm just 23 going to ask you one or two questions before rounding off 24 this point. I think I've already told you where I'm going 25 with it. I just want to show you that the – I think you</p>	<p style="text-align: right;">Page 24811</p> <p>1 the unsubstantiated – 2 MR MPOFU: Yes. 3 GENERAL NAIDOO: - whatever intelligence 4 received we did not experience, yes. 5 MR MPOFU: Yes, okay. 6 CHAIRPERSON: Mr Mpofu, it's not clear 7 that the intelligence was necessarily wrong. I mean it 8 didn't happen, what was predicted would happen based on the 9 information. Now it either didn't happen because it wasn't 10 going to happen, or it didn't happen because something 11 intervened to prevent it from happening. 12 GENERAL NAIDOO: That's correct. 13 CHAIRPERSON: So you can't necessarily 14 say that the intelligence was wrong, but what you can say 15 was it turned out in the result as far as it was the 16 prediction not to be correct. Is that correct? Am I 17 putting it correct? 18 GENERAL NAIDOO: Chair, in my expression 19 that the intelligence was not substantiated by what we 20 experienced, I'm not saying necessarily it was wrong. 21 MR MPOFU: Unfortunately we'll have to 22 walk backwards, ja. One of the examples to illustrate this 23 that I give you was for example the so-called intelligence 24 that, which accorded with the Lonmin view which suggested 25 that this was some, a war between AMCU and NUM. Remember</p>
<p style="text-align: right;">Page 24810</p> <p>1 said you were not sure if the intelligence was being 2 presented to counterpose the possibility of voluntarily 3 disarmament, as it were by the strikers. 4 GENERAL NAIDOO: Chair, no Chair, I spoke 5 about the quality of the information and I also indicated 6 that yes, a lot of the intelligence that we received was 7 not really verified in terms of what we experienced, yes. 8 MR MPOFU: Yes, and you and I had already 9 agreed that some of it was more than that, it was just 10 inaccurate. 11 GENERAL NAIDOO: Possibly. 12 MR MPOFU: Yes. I even gave you 13 examples, which admittedly don't concern you, about 14 Brigadier Calitz having conceded that the intelligence had 15 been inaccurate. Remember that evidence? 16 GENERAL NAIDOO: Chair, specifically? 17 MR MPOFU: No, do you remember, when I 18 was trying to illustrate to you how inaccurate at times the 19 intelligence was I even gave you an example of what 20 Brigadier Calitz had said to the Commission about what was 21 supposed to happen on the 18th, which did not eventuate. 22 GENERAL NAIDOO: I think I referred to 23 that – 24 MR MPOFU: You remember that? 25 GENERAL NAIDOO: I referred to some of</p>	<p style="text-align: right;">Page 24812</p> <p>1 that example? 2 GENERAL NAIDOO: Yes, Chair, ja. 3 MR MPOFU: Okay, anyway, look the point 4 is simply this; if you go to LLL6, Engelbrecht's affidavit, 5 in the middle of that, page 5, the middle of page 5, 6 somewhere in the middle there Brigadier Engelbrecht says, 7 "I stated that although rumours were doing the rounds that 8 the protesters would hand over their weapons, in my view 9 this would never happen." So I'm just using that sentence 10 to show you that the – 11 CHAIRPERSON: No, hang on. [Microphone 12 off, inaudible]. My problem is I can't see it on the 13 screen. 14 MR MPOFU: Yes, it's page 5. 15 CHAIRPERSON: It's not your fault. 16 MR MPOFU: It's page 5. 17 CHAIRPERSON: It's not your fault. So 18 inasmuch as we're being shown page 3 that's the explanation 19 why I can't see it. 20 MR MPOFU: Yes, that's it. Page 5, right 21 in the middle. 22 CHAIRPERSON: This is exhibit LLL6, 23 Brigadier Engelbrecht's statement – 24 MR MPOFU: LLL6, that's correct, Chair. 25 CHAIRPERSON: And we are supposed to be</p>

<p style="text-align: right;">Page 24813</p> <p>1 looking at page 5, but for some reason that is not clear 2 we're looking at page 3. So we can't find what we're 3 looking for.</p> <p>4 MR MPOFU: Yes, okay, I think the 5 operators are curing the problem.</p> <p>6 CHAIRPERSON: Whether that information 7 turns out to be correct we will see in a moment.</p> <p>8 MR MPOFU: Yes. It's paragraph 5. No, 9 no, no, it's paragraph 7 on page 5. Ja, the next page. 10 Right.</p> <p>11 CHAIRPERSON: Ja, this is the, what we 12 now have at the top of the page – no, as I stated further, 13 that's not correct. It's further down. It's further down. 14 It's one –</p> <p>15 MR MPOFU: No, it's further up.</p> <p>16 CHAIRPERSON: No, no, no, it's further 17 down.</p> <p>18 MR MPOFU: There it is now. "I stated 19 that" -</p> <p>20 CHAIRPERSON: It looks about line 9. Let 21 me just count –</p> <p>22 MR MPOFU: About line 9, yes.</p> <p>23 CHAIRPERSON: No, no, no, no, from the 24 top. From the top.</p> <p>25 MR MPOFU: 10.</p>	<p style="text-align: right;">Page 24815</p> <p>1 when the Lonmin witnesses come, but he then went to the 2 koppie and the weapons weren't laid down. So insofar as 3 that litmus test of which was correct, the prediction of Mr 4 Mathunjwa, which admittedly he will say that was 5 complicated by what happened with Lonmin –</p> <p>6 MR MPOFU: Of course.</p> <p>7 CHAIRPERSON: - but between the 8 prediction of Mr Mathunjwa on the one hand and what 9 actually happened on the other, who was right?</p> <p>10 GENERAL NAIDOO: And the crime 11 intelligence information, yes.</p> <p>12 MR MPOFU: No, I'm sorry, but you 13 yourself have said in your statement that Mr Mathunjwa, at 14 the best Mr Mathunjwa's promise, if we can even call it 15 that, was based on certain preliminary conditions being 16 fulfilled, correct?</p> <p>17 GENERAL NAIDOO: Chair, he did indicate 18 there's a few things that he would have to deal with –</p> <p>19 MR MPOFU: Yes.</p> <p>20 GENERAL NAIDOO: - and he will return in 21 the morning to the koppie, yes. At that stage I did not 22 know what the things were, yes.</p> <p>23 MR MPOFU: What they were. Ja, no, 24 that's fair enough, but you can't then say if those 25 preliminary things, whatever you call them, as Mr Mathunjwa</p>
<p style="text-align: right;">Page 24814</p> <p>1 CHAIRPERSON: It's actually 10, yes. "I 2 stated that" – let me make an attempt to get it clear, 3 right this time. "I stated that although rumours were 4 doing the rounds that the protesters would hand over their 5 weapons, in my view this would never happen. After I gave 6 my input the meeting continued."</p> <p>7 MR MPOFU: Yes. Thank you, Chairperson. 8 So, and the simple point I'm making there, General, is that 9 the "intelligence" was being used in direct contrast, or as 10 a counterpose to the rumours, as it is put there, that 11 there would be voluntary disarmament by the strikers. Do 12 you accept that?</p> <p>13 GENERAL NAIDOO: Chair, I think the 14 voluntary disarmament by the strikers was not a rumour, 15 it's was something that we got from our engagement with the 16 union leaders and –</p> <p>17 MR MPOFU: Sure.</p> <p>18 GENERAL NAIDOO: - and yes, the 19 intelligence presupposes otherwise, that's true.</p> <p>20 MR MPOFU: Sure, thank you.</p> <p>21 CHAIRPERSON: Well, the question that 22 then arises is who was right? When Mr Mathunjwa, it wasn't 23 just from the union leaders, this is what Mr Mathunjwa said 24 would happen. I know things happened in his discussions 25 with Lonmin which will be dealt with I take it more fully</p>	<p style="text-align: right;">Page 24816</p> <p>1 has testified did not happen, then clearly the consequence 2 of those things happening was not going to happen. So you 3 can't – and I shouldn't be debating this with you.</p> <p>4 GENERAL NAIDOO: Exactly.</p> <p>5 MR MPOFU: But the point is – but I am. 6 The point is –</p> <p>7 CHAIRPERSON: [Microphone off, inaudible] 8 why are you?</p> <p>9 MR MPOFU: Yes, I am, thank you. The 10 point I'm making, General, is that from your own statement, 11 and I'll only confine it to your own statement, it was 12 clear that Mr Mathunjwa's success was conditional upon the 13 happening of other things, correct?</p> <p>14 GENERAL NAIDOO: Chair, as I said, my 15 understanding of, there's a few things that he will take 16 care of, but not as far as I was aware at that stage that 17 it was conditional. He just said, "There's a few things 18 I'll take care of." I was not, you know, party to the 19 details of what he would take – so my perception was not 20 that it was conditional, it was just something that he was 21 sorting out for the process. But if that is the case, that 22 is the case. I can't say what Mr Mathunjwa was thinking.</p> <p>23 MR MPOFU: Chairperson, just bear with 24 me. Ja, if you go to your statement DD, page 3 of DD, 25 that's the one without paragraph numbers, very bottom of</p>

<p style="text-align: right;">Page 24817</p> <p>1 that page, you say there, "The AMCU delegation indicated 2 their address went very well and that they will deal with a 3 few issues which were raised and thereafter will return to 4 the koppie the next morning at 9 to provide feedback to the 5 strikers. They indicated that thereafter the strikers will 6 lay down their weapons and leave koppie 1 and disperse 7 peacefully." 8 GENERAL NAIDOO: That's correct, Chair. 9 MR MPOFU: So on your own words that, the 10 last part of "peaceful dispersal" would have happened after 11 two things. One is dealing with a few issues, and the 12 second one is giving feedback to the strikers, correct? 13 GENERAL NAIDOO: That's correct, Chair. 14 MR MPOFU: Yes. So it should then be 15 clear that without the happening of those two things the 16 third one, which is the voluntary disarmament, was not 17 going to happen, correct? 18 GENERAL NAIDOO: Chair, that's where the, 19 I was reluctant to agree to the word "conditional." As I 20 said, I did not know what the issues were, so hence my 21 reluctance to accept the word "conditional." 22 MR MPOFU: Yes. 23 GENERAL NAIDOO: But I mean we are not 24 disagreeing on what is there. 25 MR MPOFU: Yes. Yes. No, no, I think we</p>	<p style="text-align: right;">Page 24819</p> <p>1 GENERAL NAIDOO: Exactly. 2 MR MPOFU: Ja, but that's not the point. 3 The point is that those issues on your version had to 4 happen before the – well, not only did the issues have to 5 happen, but a second thing, which is the report-back to the 6 workers had to also happen and then the voluntary 7 disarmament would occur, correct? 8 GENERAL NAIDOO: I have agreed to that, 9 Chair. 10 MR MPOFU: Thank you. Okay, the last 11 point on this quality of intelligence is it would seem that 12 so low was the quality of the intelligence that sometimes 13 it was even self-contradictory. You remember that the 14 Chairperson read to you a passage which suggested that the 15 strikers would not voluntarily disarm or hand over their 16 weapons and that they were prepared to fight the police in 17 respect thereof. 18 GENERAL NAIDOO: I remember. 19 MR MPOFU: Yes, now if you go again to 20 LLL6, Brigadier Engelbrecht, that's page 5, the middle of 21 page 5, just the sentence before the one that we read now, 22 there it says, "I said that information" – I'm sorry. Are 23 we there? 24 GENERAL NAIDOO: Yes. 25 MR MPOFU: Okay, the sentence just</p>
<p style="text-align: right;">Page 24818</p> <p>1 are agreeing, you're right. We are agreeing that it was 2 conditional upon the happening of those things, but you 3 don't know what those conditions were. Whether it was 4 conditional upon somebody paying another one R100 or 5 whatever, all we know is that there were two things that 6 had to happen before the voluntary disarmament. One was 7 certain things in a box, we don't know what they are. 8 Secondly was a report-back to the strikers, correct? 9 GENERAL NAIDOO: Chair, the reason why I 10 use the word "issues" rather than say the few conditions is 11 because I had no idea it was a condition, but ja, if that's 12 how it's perceived, fine. 13 MR MPOFU: Sorry, I don't understand that 14 answer. 15 GENERAL NAIDOO: I say that the reason I 16 use the word that he will deal with a few issues rather 17 than saying he would address the conditions is because I 18 did not perceive it as being conditions. I perceived it 19 there were some matters that he wanted to address. I did 20 not know what they were. I've testified to that fact as 21 well, hence I did not use the word "conditions." I, my 22 statement is based on how I perceived the situation. 23 CHAIRPERSON: "Issues" is a vaguer word 24 which could cover conditions, it could also cover other 25 things.</p>	<p style="text-align: right;">Page 24820</p> <p>1 preceding the one that I went through with you a few 2 minutes ago says, "I said that the information that we 3 received from the koppie was that the protesters would 4 never surrender their weapons, the reason for this being 5 that they needed the weapons for purposes of protecting 6 themselves from NUM members." You see that? 7 GENERAL NAIDOO: I see that, Chair. 8 MR MPOFU: Would you agree that there 9 would be a difference between refusing to disarm and that 10 refusal being directed at the police, or being a threat to 11 the police as against a refusal to disarm for reasons which 12 were directed to somebody else? 13 GENERAL NAIDOO: Ja, it's qualified 14 there, yes. 15 MR MPOFU: Yes. Anyway, as I say these 16 are matters for argument. You and I have agreed that some 17 of the intelligence was of sub-quality. The real big point 18 is this; if some of the crucial intelligence such as the 19 one that prompted, that clearly prompted the move to stage 20 3 was of the category that is of sub-quality intelligence, 21 or rather of sub-quality, then once again there's a 22 possibility that the decision to go to stage 3 was premised 23 on false premises, correct? 24 GENERAL NAIDOO: Chair, I think there's a 25 difference between the quality and the detail that we would</p>

<p style="text-align: right;">Page 24821</p> <p>1 want and false. So I would not –</p> <p>2 MR MPOFU: Okay.</p> <p>3 GENERAL NAIDOO: - necessarily agree that</p> <p>4 the quality would infer false.</p> <p>5 MR MPOFU: No, not necessarily.</p> <p>6 GENERAL NAIDOO: Yes.</p> <p>7 MR MPOFU: But if this one fell under the</p> <p>8 category of false intelligence then insofar – let me just</p> <p>9 ask you one – sorry, sorry, General. If you go to L175,</p> <p>10 because that's really the premise of this line of</p> <p>11 questioning, L175, the first bullet and then there are</p> <p>12 dashes there. The last dash of the first bullet, you see</p> <p>13 that?</p> <p>14 GENERAL NAIDOO: I see that.</p> <p>15 MR MPOFU: Ja, it would seem that from a</p> <p>16 theoretical point, or let me say the philosophy of the plan</p> <p>17 was premised on that sentence. That sentence is one of</p> <p>18 those "if and then" kind of sentences.</p> <p>19 [12:02] Which say, "If the protesters refused to put</p> <p>20 their weapons down and leave the koppies, stage 3 of the</p> <p>21 operation would be implemented as a last resort." Would</p> <p>22 you agree that that was one of the basic premises of the</p> <p>23 plan?</p> <p>24 GENERAL NAIDOO: Chair, yes, one of the</p> <p>25 basic premises of the plan was to resolve the matter</p>	<p style="text-align: right;">Page 24823</p> <p>1 would do. That formed the basis of any planning. So if</p> <p>2 the protesters refused to put down their weapons, what</p> <p>3 would we do, is one of the questions that will arise out of</p> <p>4 a planning situation as well.</p> <p>5 MR MPOFU: Alright.</p> <p>6 CHAIRPERSON: The problem with this, Mr</p> <p>7 Mpofo, is that just referring to the last bullet, the</p> <p>8 approach as outlined by Major-General Annandale had four</p> <p>9 aspects to it and according to what is said here, and this</p> <p>10 is in accordance with the evidence, the plan was for</p> <p>11 Brigadier Calitz to give a warning, in fact to give a</p> <p>12 warning twice to the strikers telling them they must leave</p> <p>13 their dangerous weapons and, as they voluntarily dispersed,</p> <p>14 and only if after the warning had been given twice they</p> <p>15 didn't do so, was the dispersal operation to commence. And</p> <p>16 the evidence seems to indicate, the evidence does indicate</p> <p>17 that what happened was, the killings at scene 1 took place</p> <p>18 before Major Calitz had the opportunity to put that to the</p> <p>19 strikers because they advanced on the – on the, well, they</p> <p>20 advanced towards the police. There's some debate as to at</p> <p>21 what stage that commenced but while the wire was being</p> <p>22 uncoiled or alternatively once the wire had finished being</p> <p>23 uncoiled they advanced and there is, as you know, an</p> <p>24 argument as to whether they were going, carrying their arms</p> <p>25 to Nkaneng or whether they were going to attack the police</p>
<p style="text-align: right;">Page 24822</p> <p>1 without police action, to negotiate and try and talk them</p> <p>2 down.</p> <p>3 MR MPOFU: Yes, but if it was determined</p> <p>4 that the protesters will refuse and so on and so on, then</p> <p>5 stage 3 would be triggered, correct?</p> <p>6 GENERAL NAIDOO: That's correct, Chair.</p> <p>7 MR MPOFU: Ja. So that's really what I'm</p> <p>8 interrogating with you. In other words, what I'm saying is</p> <p>9 that if then, that sentence is an "if then" sentence, if</p> <p>10 the "if" part was falsely determined to exist, in other</p> <p>11 words the so-called intelligence suggests that the trigger</p> <p>12 part of that sentence is there, that the protesters refused</p> <p>13 to put down their weapons, then stage 3 would be triggered.</p> <p>14 Understand?</p> <p>15 GENERAL NAIDOO: I understand what you</p> <p>16 say.</p> <p>17 MR MPOFU: Yes and what I'm saying to</p> <p>18 you, and I promise you this is the last proposition I'm</p> <p>19 putting on this topic, what I'm saying to you is given the</p> <p>20 historical quality problems with the intelligence, there is</p> <p>21 at least a possibility that the "if" part of that sentence</p> <p>22 was incorrectly perceived to be there when it was not.</p> <p>23 GENERAL NAIDOO: Chair, most of our</p> <p>24 discussions and most of the issues around the planning was</p> <p>25 if this happened what would we do or if we do that, what we</p>	<p style="text-align: right;">Page 24824</p> <p>1 and that's one of the big issues that we have to decide at</p> <p>2 the end of the matter, but it's not entirely fair – and I'm</p> <p>3 not suggesting you're being deliberately unfair but it's</p> <p>4 not entirely fair or helpful just to put the last bullet to</p> <p>5 the witness. One has to see the whole thing in context.</p> <p>6 MR MPOFU: Yes. Chairperson, I accept</p> <p>7 that. I was just dealing with this particular trigger. Of</p> <p>8 course there were many other alleged triggers. Adriano</p> <p>9 said, there's all that. I'm not, I can't deal with all</p> <p>10 those things. I'm simply dealing with that particular</p> <p>11 trigger which was based on the intelligence but I accept</p> <p>12 what you're saying, Chairperson, and in argument later what</p> <p>13 I will say to what the Chairperson is putting to me is</p> <p>14 simply that had the false intelligence, on my version, not</p> <p>15 been there, there wouldn't have been the rolling out of the</p> <p>16 barbed wire and the warnings and all that in the first</p> <p>17 place. In other words, stage 2 would not have been</p> <p>18 triggered but I accept what the Chairperson is saying.</p> <p>19 Okay, that's – okay, I'm breaking my promise once again.</p> <p>20 There's just one –</p> <p>21 CHAIRPERSON: I promised that we'll stop</p> <p>22 at quarter past 12 and I'll keep that promise.</p> <p>23 MR MPOFU: That promise I will keep,</p> <p>24 Chairperson. Now really just to round a point that we have</p> <p>25 already made but I want to take you to FFF5, Brigadier,</p>

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1 very quickly and I'm just doing this to round off the point
 2 to show you, I'm rounding off the point to show you the
 3 significance of how this, of the intelligence in triggering
 4 the operation. On page 2, I think they are unnumbered
 5 those pages, page – the following page after the cover
 6 page. This was the statement of General Phiyega and I
 7 suspect the same – I don't have FFF4 with me but I suspect
 8 the same appears in the briefing to the President but even
 9 if it's one of them, that's sufficient. Yes, it is. So on
 10 page 2 of both FFF4 and FFF5 so let's just for the sake of
 11 progress go to FFF5. It says, both the briefing to the
 12 President and what the General said to the public, said
 13 this. It explains the background and so on and then she
 14 says, "By midday yesterday we had received information from
 15 various sources that the protesters would not end the
 16 strike peacefully and they would not leave their gathering
 17 point or disarm." And then she says, "The options were
 18 weighed and the decision was taken," blah-blah-blah, as the
 19 Chairperson has said, to deploy barbed wire and so on. So
 20 all I'm saying is that do you see that even with the big
 21 wigs, no less than the President and the National
 22 Commissioner, it would seem that part of the justification
 23 for going into what ultimately resulted in the killings was
 24 pivoted on this so-called intelligence.

25 CHAIRPERSON: Well, the trouble is of

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1 Monday. Now the position is this, we're having the – it
 2 will be relevant for you, Major-General – we're having an
 3 application on Monday for the Commission to receive the
 4 evidence of the witness described as Mr X in camera with
 5 certain other restrictions and so forth which is, that
 6 application is being brought by the SAPS, it's being
 7 opposed by a number of parties before us. I'm not quite
 8 sure how long the application will take. It may take the
 9 morning, it may take the whole day. I don't anticipate
 10 being in a position to give the ruling immediately. I
 11 think I'll have to think about it and give the ruling
 12 thereafter although I'll obviously endeavour to do it as
 13 quickly as I can after due consideration of the points on
 14 both sides. So what will happen is if the argument
 15 finishes by lunch time on Monday you will be able to resume
 16 your evidence in the afternoon. If it takes the whole day
 17 – I don't anticipate it should take longer than a day –
 18 you'll give evidence again on Tuesday. So I'm afraid
 19 there's a bit of uncertainty but there's nothing I can do
 20 about that but if you'll be on standby to come and give
 21 your evidence.

22 GENERAL NAIDOO: Chair –

23 CHAIRPERSON: I don't anticipate that
 24 there's any necessity for you to be here before lunch on
 25 Monday and you may have to spend the afternoon here,

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1 course that things have moved on since that statement was
 2 made because it now appears the decision wasn't taken at
 3 the time the options were weighed after midday on the 16th
 4 but had been taken the night before but anyway that's –

5 MR MPOFU: No –

6 CHAIRPERSON: You don't have to worry
 7 about that at the moment.

8 MR MPOFU: Thank you. That's why I said
 9 on the police version, yes. No, that's correct,
 10 Chairperson. You see what I'm trying to say, General?

11 GENERAL NAIDOO: I take note, yes sir.

12 MR MPOFU: Thank you very much. Now I'm
 13 really moving on to something –

14 CHAIRPERSON: You've got four minutes
 15 anyway, so we have to adjourn at quarter past 12 so –

16 MR MPOFU: What time –

17 CHAIRPERSON: It's now, we're going by my
 18 watch which says 11 minutes past which was the SAfm time
 19 this morning. It's not ETV time but –

20 MR MPOFU: We don't need Mr Chaskalson
 21 for that one, Chair.

22 CHAIRPERSON: So if you can make a point
 23 in four minutes, do it. If you can't –

24 MR MPOFU: I can.

25 CHAIRPERSON: - we will adjourn till

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1 although I imagine by that time it will be clear what
 2 progress has been made in the argument.

3 GENERAL NAIDOO: Chair, yes.

4 CHAIRPERSON: So you'll either be giving
 5 evidence on Monday afternoon or Tuesday. Thereafter my
 6 understanding is when you've finished, Colonel Vermaak will
 7 be giving evidence and the need for my ruling obviously has
 8 to be by the time when Mr X is due to give evidence but it
 9 may be, depending on what the ruling is, if it's in favour
 10 of the police they may have to put things in place which
 11 they may have to arrange, it may take them some time to
 12 arrange. Anyway, the programme moving forward is, you'll
 13 give evidence, resume your evidence either Monday afternoon
 14 or Tuesday morning, the next witness will be Colonel
 15 Vermaak, I will give my ruling at some stage as soon as I
 16 can in relation to Mr X and I hope it's sufficient time for
 17 the police to put in motion what they have to, if the
 18 ruling is in their favour. Of course if it isn't then that
 19 point will fall away. So – yes, Mr Mpofo, do you want to
 20 say, do you want to have the last word as you often want to
 21 do?

22 MR MPOFU: No, no, Chairperson, I think
 23 the last word is the Commission will adjourn, which I have
 24 never said. Chairperson, no, what I wanted to suggest, if
 25 it's not an inconvenience to the General, because as the

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1 eternal optimist I don't think that the argument should go
2 much beyond 11. So if he could be on standby from that
3 time, but of course I've been wrong before. I just don't
4 want a situation where we might have a gap.

5 CHAIRPERSON: Let's find out what the
6 General's movements are. On Monday –

7 GENERAL NAIDOO: Chair?

8 CHAIRPERSON: Will you be in Centurion?
9 In other words, will you be able to come at the drop of the
10 proverbial hat or will you require longer notice than that
11 to be here?

12 GENERAL NAIDOO: Chair, no, the
13 arrangements that we have is, I will be here on Monday from
14 the morning. So irrespective of how long it takes, I will
15 be on the scene.

16 CHAIRPERSON: The perpetual optimist, if
17 he is correct, will not be unduly inconvenienced. You will
18 be here quite soon to continue with your evidence.

19 GENERAL NAIDOO: Chair, yes.

20 CHAIRPERSON: And if the pessimists, of
21 course, are right then you may have to hang around for a
22 while but I'm sure you will have work that you can do here
23 in the vicinity.

24 GENERAL NAIDOO: Chair, yes. The
25 optimist has indicated he is optimistic that he will finish

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1 on Monday with me as well, so we share –

2 CHAIRPERSON: You are privy to
3 information that I'm not privy to but his predictions are
4 sometimes correct.

5 GENERAL NAIDOO: Thank you, Chair.

6 CHAIRPERSON: Alright. On that
7 optimistic note we'll adjourn until Monday at 9 o'clock
8 when we will proceed with the in camera application. Is
9 that as you understand it, Mr Semenya?

10 MR SEMENYA SC: Yes, Chair.

11 CHAIRPERSON: Alright, we will now
12 adjourn.

13 [COMMISSION ADJOURNED]

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