

RealTime Transcriptions

TRANSCRIPTION OF THE

COMMISSION OF INQUIRY

MARIKANA

BEFORE TRIBUNAL

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

HELD ON

DAY 191

25 FEBRUARY 2014

PAGES 23165 TO 23338



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1 [PROCEEDINGS ON 25 FEBRUARY 2014]
 2 [09:22] CHAIRPERSON: The Commission resumes. Mr
 3 Semenya, I understand you want to make an application but I
 4 don't know if you want to make it now or at teatime because
 5 I understand that the practical implications of what you
 6 want to deal with can only be dealt with after tea, but if
 7 you want to make an application now you may, alternatively
 8 you can make it at the time that you consider more
 9 appropriate. I'm in your hands.
 10 MR SEMENYA SC: May we make that
 11 application just shortly before tea, Chair? May we make
 12 that application just shortly before tea?
 13 CHAIRPERSON: Yes, that seems to be the
 14 sensible way to proceed. Major-General, you're still under
 15 oath.
 16 GENERAL NAIDOO: Still under oath, Chair.
 17 CHAIRPERSON: Mr Chaskalson?
 18 GENERAL NAIDOO: s.u.o.
 19 CROSS-EXAMINATION BY MR CHASKALSON SC (CONTD.):
 20 Thank you, Chairperson. Major-General, when we closed
 21 yesterday we were talking about your purpose of taking your
 22 personnel into koppie 3 and I would like to take you to a
 23 passage in your statement at the foot of page 9, paragraph
 24 65, where you describe your purpose in your statement and
 25 if we could just call the statement up at page 9, right at

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1 the foot of page 9 you say – no, sorry, if we can go down
 2 to, sorry, it must be page 10, the foot of page 10, yes.
 3 "Heavy gunfire erupted from what was now known as koppie 3
 4 to my left a few hundred metres away. I ordered the fire
 5 and medical personnel and detectives to hold back behind
 6 the electricity substation and that the K9 and public order
 7 police personnel to move forward in a line to ensure that
 8 the area was secure for the deployment of emergency
 9 services personnel."
 10 CHAIRPERSON: Mr Chaskalson, I'm reminded
 11 by Adv Hemraj that the words, when he gave evidence-in-
 12 chief the words "and detectives" were deleted. I haven't
 13 got that on my copy, I'm afraid, but -
 14 MR CHASKALSON SC: Yes, I recall that –
 15 CHAIRPERSON: It was put on record.
 16 MR CHASKALSON SC: I do recall that but –
 17 CHAIRPERSON: It doesn't affect the point
 18 you're making.
 19 MR CHASKALSON SC: Yes.
 20 CHAIRPERSON: But it just gives, for
 21 clarity's sake and you refer to his statement, of course
 22 he's made two statements, you're referring to JJJ108.
 23 MR CHASKALSON SC: That's correct,
 24 Chairperson. Mr Tokota has deleted the words "and
 25 detectives" from that paragraph so –

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1 MR CHASKALSON SC: Yes, the detectives
 2 had been, if I recall correctly, had been left at forward
 3 holding area 1. It's not material for the point I'm
 4 interested in. "We moved forward in line with K9 members
 5 on foot as well as motor vehicles. Due to the fact that
 6 gunfire was still erupting in the koppie 3 area which we
 7 had to pass to go to koppie 1, I diverted four vehicles of
 8 the K9 unit in that direction. My purpose for going to
 9 koppie 3 was to ascertain what was happening there and to
 10 support police who appeared to be under some form of attack
 11 there. I was concerned that we will not be able to bring
 12 in the emergency services personnel as long as shooting was
 13 taking place and the area had to be secured urgently. I
 14 was also concerned for the safety of police personnel who
 15 might be under attack in that area." Now, Major-General,
 16 this passage in your statement suggests that there were two
 17 purposes, two different purposes of your decision to take
 18 personnel into the koppie, the first was to get information
 19 or one was to get information, the other was to support the
 20 police operation. Would you accept that?
 21 GENERAL NAIDOO: Chair, I accept that.
 22 That's what I testified yesterday before we closed.
 23 MR CHASKALSON SC: Were there any other
 24 purposes?
 25 GENERAL NAIDOO: Chair, no, there was no

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1 other purpose.
 2 MR CHASKALSON SC: Now, when you
 3 discussed your role in the events of the 16th at Roots with
 4 a view to preparing the SAPS presentation, did you make
 5 clear to Colonel Visser and Colonel Scott what your
 6 purposes were in bringing the K9 unit into koppie 3?
 7 GENERAL NAIDOO: Chair, as far as I could
 8 recall, my narrative which I explained to them was in terms
 9 of the statement which I did compile at that time whilst I
 10 was at Roots as well.
 11 MR CHASKALSON SC: You see if we go to
 12 slide – well, first of all there's no mention of these
 13 purposes anywhere in exhibit L, either getting information
 14 or joining or supporting the police operation with a view
 15 to opening up the way for the medics, that just isn't
 16 reflected in exhibit L. Is there any reason for that?
 17 GENERAL NAIDOO: Chair, I'm unable to
 18 indicate any specific reason, no.
 19 MR CHASKALSON SC: Did you see a draft of
 20 exhibit L before it was released?
 21 GENERAL NAIDOO: Chair, yes. The
 22 compilation of the presentation took place at Roots and we
 23 were given a preview to indicate whether there were any
 24 errors in the presentation, all the participants at the
 25 operation.

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1 MR CHASKALSON SC: Did you not think that
 2 it was important that your purpose for entering koppie 3
 3 was correctly reflected in exhibit L?
 4 GENERAL NAIDOO: Chair, I saw the
 5 presentation as a high level overview. I did not
 6 necessarily see this as an omission as I had already
 7 indicated this in my statement.
 8 MR CHASKALSON SC: Well, let's see what
 9 exhibit L says about your decision to come into koppie 3.
 10 If we go to slide 230, slide 230 of exhibit L and there
 11 just under the numeral 230 or the numbers 230 it says,
 12 "Blue depicts the FHA1 members, K9 dog handlers moving
 13 forward to assist at koppie 3. Their role was to use the
 14 dogs to search for firearms hidden in the rocks/brush and
 15 to assist the NIU sweep line, if required, with their
 16 dogs." Was that not your purpose in bringing the K9 unit
 17 to koppie 3?
 18 GENERAL NAIDOO: Chair, as I indicated,
 19 there was a twofold purpose. One was to ascertain what was
 20 occurring there because there was shooting and it obviously
 21 impeded the safe passage of the emergency services
 22 personnel and the second one was responding to the
 23 shooting, concern for the welfare of the members and to see
 24 if they needed assistance. So I would say that slide 230
 25 only depicts one of the reasons.

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1 MR CHASKALSON SC: Well, Major-General, I
 2 have difficulty with that answer because are you suggesting
 3 that what you thought the dogs were going to be used for
 4 was, or what the K9 unit was going to be used for was
 5 searching for firearms hidden in the rocks and assisting
 6 the NIU sweep line, if required, with dogs.
 7 GENERAL NAIDOO: That is what occurred
 8 subsequent to us arriving at koppie 3, yes.
 9 MR CHASKALSON SC: I'm not talking about
 10 what did happen, I'm talking about what your purpose in
 11 bringing the K9 unit to koppie 3 was.
 12 GENERAL NAIDOO: Chair, as I indicated,
 13 the intention of taking the four K9 vehicles forward with
 14 me was to go and ascertain what is happening at the area
 15 where the shooting was taking place and secondly, to
 16 ascertain whether those members required assistance, to
 17 support those members if necessary.
 18 MR CHASKALSON SC: But what sort of
 19 assistance did you have in mind for your K9 unit? Well,
 20 let's take what 230 says. "Searching for firearms hidden
 21 in the rocks/brush." If you use dogs to search for
 22 firearms hidden in rocks or brush, presumably that's
 23 something that happens after an operation has been secured.
 24 GENERAL NAIDOO: Chair, no, it could
 25 occur during an operation as well, as I indicated yesterday

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1 the K9 is also a tactical unit. In terms of their training
 2 they can track and arrest suspects in bushes, that is part
 3 of their capacity.
 4 MR CHASKALSON SC: So you were thinking
 5 of releasing dogs to go after people in the koppie at
 6 koppie 3?
 7 GENERAL NAIDOO: Chair, I have already
 8 indicated I had no idea what was happening at koppie 3 and
 9 we were still trying to ascertain what's happening. The
 10 only capacity I had with me at that stage was the K9 dog
 11 handlers who I used to go forward in a sweeping line.
 12 MR CHASKALSON SC: Was one of the
 13 functions that you thought the dogs might perform, a
 14 function of going after protesters at koppie 3?
 15 GENERAL NAIDOO: Chair, in terms of the
 16 briefing that we had been given there was an indication
 17 that once the koppies had been swept, the K9 would also
 18 sweep to locate firearms, suspects and/or injured people
 19 which may lay in bushes and among rocks. That is part of
 20 the evidence I have led here and that is part of the
 21 utilisation I envisaged.
 22 MR CHASKALSON SC: But that was once the
 23 koppies had been swept.
 24 GENERAL NAIDOO: That is correct.
 25 MR CHASKALSON SC: So the function that

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1 the K9 would perform in that context would be a function
 2 that would be performed after the situation was secure, it
 3 wouldn't be a function that was performed while there was
 4 still gunfire taking place.
 5 GENERAL NAIDOO: Chair, it would depend
 6 on the appreciation of the situation, that will be done on
 7 site. These are instances where, if a suspect is lodged in
 8 a particularly difficult area, that we would use a K9 dog
 9 handler to go into such an area, depending on the
 10 assessment of the situation, to go and retrieve a suspect
 11 whether he is armed or not.
 12 MR CHASKALSON SC: Major-General, let's
 13 get back to your ostensible purpose of coming to koppie 3.
 14 CHAIRPERSON: Mr Chaskalson, before you
 15 ask about that can I ask about something? You were at
 16 Roots?
 17 GENERAL NAIDOO: That is correct, Chair.
 18 CHAIRPERSON: Did you make any inputs?
 19 GENERAL NAIDOO: Yes, Chair.
 20 CHAIRPERSON: And did you see the final
 21 version?
 22 GENERAL NAIDOO: It was presented to us,
 23 Chair.
 24 CHAIRPERSON: You were happy with it?
 25 GENERAL NAIDOO: Well, as I indicated,

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1 Chair, it was a large overview of what happened –
 2 CHAIRPERSON: I mean if there was
 3 something inaccurate in it that you knew was inaccurate you
 4 would have drawn that to the attention of –
 5 GENERAL NAIDOO: If it was inaccurate,
 6 yes, Chair.
 7 CHAIRPERSON: Alright. Now I see that
 8 you appear to have made your first statement only in
 9 November, some months after the Roots conference and in
 10 fact after this Commission started, is that right?
 11 GENERAL NAIDOO: That is not correct,
 12 Chair. I drafted and completed my statement at Roots. I
 13 also asked for assistance in terms of indicating whether
 14 there's any area that I have not covered that should be
 15 covered. I only deposed my statement at the date that's
 16 indicated there but my statement was made, unsigned, handed
 17 in at the Roots conference, Chair.
 18 CHAIRPERSON: Yes, I'm referring to
 19 exhibit DD.
 20 GENERAL NAIDOO: That is correct, Chair,
 21 the first statement.
 22 CHAIRPERSON: And did you, on the day, on
 23 the 16th did you make entries in your diary?
 24 GENERAL NAIDOO: Not on the day but when
 25 I did get back to the office, I was at that stage not in a

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1 position but yes, I went and made sure because I had used
 2 my firearm and it was necessary for me to make that entry.
 3 CHAIRPERSON: I see, thank you.
 4 MR CHASKALSON SC: Now, Major-General, to
 5 go back to my earlier question about why you were taking
 6 the dog squad in. Your only – you had two purposes, one
 7 was to get information, the other was to assist in securing
 8 the situation so that the route could be opened up for the
 9 medical personnel. Do you accept that?
 10 GENERAL NAIDOO: Chair, no, I think
 11 that's a bit incorrect. I said one was to assess the
 12 situation as it was impeding the secure route of the
 13 medical personnel. The second one was to ensure whether
 14 there was any assistance required by those people, members
 15 that were involved in the shooting, which is a standard
 16 police practice when a shooting occurs that we need to
 17 respond and assist members.
 18 MR CHASKALSON SC: Well, then I've
 19 misunderstood your earlier evidence. So you're now saying
 20 there were two separate concerns that were animating you.
 21 The one was to assess the situation with a view to deciding
 22 whether it was safe to take the medics through. The other,
 23 independent of that, was to go and support the police
 24 operation.
 25 GENERAL NAIDOO: Chair, I don't think it

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1 was a new assertion. I did indicate it was a concern for
 2 the safety of the members that were at that particular
 3 place. So yes, the first one was to assess the situation
 4 with regard to the route and the second one was to support.
 5 I think the term I used, if I'm not wrong, was concern for
 6 the safety of the members that were at that shooting
 7 incident.
 8 MR CHASKALSON SC: Well, let's look at
 9 the support function. Is this a function that would have
 10 been wholly independent of the need to get medics to scene
 11 1.
 12 GENERAL NAIDOO: I don't understand the
 13 question, Chair.
 14 MR CHASKALSON SC: Well, assume that it
 15 was, there was no threat to the medics in getting to scene
 16 1 but there was a need for support of the police operation
 17 at scene 2, were you planning to stay with your K9 members
 18 at the koppie for as long as was necessary to support the
 19 police operation and wait until then to get the medics to
 20 scene 1?
 21 GENERAL NAIDOO: Chair, if we're talking
 22 hypothetically then obviously based on an assessment which
 23 would tell me that there was no threat to the convoy
 24 escorting the medics, then based on the numbers that are
 25 available and the fact that there were two commanders in

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1 that particular operation, one of the groups would have
 2 ensured the route, the safe escort of the medical through
 3 to the scene where the medics were required and the other
 4 would obviously respond to the assistance and support of
 5 the members that were involved in the shooting.
 6 MR CHASKALSON SC: And which group would
 7 you put yourself in?
 8 GENERAL NAIDOO: As I indicated
 9 previously, primarily I was responsible for the safekeeping
 10 of the medics. I had undertaken to ensure their safety. I
 11 would have went there. The other issue was a very
 12 operational issue so the commander of the K9, being the
 13 operational commander of those members would have been the
 14 appropriate person to despatch to that incident.
 15 MR CHASKALSON SC: So in terms of those
 16 two purposes, the assessment and the support, if one had to
 17 allocate appropriate responsibilities for command, it would
 18 have been Colonel Mopedi who would have done the support
 19 and you would have done the assessment.
 20 GENERAL NAIDOO: Could you repeat that
 21 question, Chair?
 22 GENERAL NAIDOO: So in terms of those two
 23 purposes, assessment of the situation, support for the
 24 police operation, if one has to allocate appropriate
 25 responsibilities to commanders, the appropriate commander

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1 to be in charge of support is Colonel Mopedi, the
 2 appropriate commander to be in charge of assessment is
 3 yourself.
 4 GENERAL NAIDOO: When you say assessment
 5 do you mean assessment whether it was safe for the medics
 6 to go through?
 7 MR CHASKALSON SC: That's correct.
 8 GENERAL NAIDOO: That would be correct,
 9 it would be my responsibility and the tactical deployment
 10 of the K9 to support the NIU in penetrating that particular
 11 bush would have been Colonel Mopedi.
 12 MR CHASKALSON SC: Was there any need for
 13 your to get involved in tactical activity at scene 3 in
 14 terms of the appropriate division of responsibilities?
 15 GENERAL NAIDOO: Chair, until I got to
 16 the scene where the NIU were, not necessarily, there were
 17 experienced commanders. However, once we got there and the
 18 assessment was made, that changed because as I indicated in
 19 my statement, it was clear that people had been shot there
 20 and which changed the picture considerably.
 21 MR CHASKALSON SC: Why did that change
 22 the picture considerably?
 23 GENERAL NAIDOO: Chair, well, one of the
 24 primary focus areas of mine was to ensure that the medics
 25 get to who needs them and it was clearly, clear before me,

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1 there were people that were shot and we needed to get
 2 medics to them. I could not leave something that I see
 3 before me and go on to something that I have not yet seen.
 4 I would have to attend to what is before me first.
 5 MR CHASKALSON SC: But Major-General, you
 6 knew that there was a volley of R5 fire which by that stage
 7 was a long time in the past and you'd been asked to bring
 8 medics to the area where that volley of R5 fire had been,
 9 possibly 30 minutes before that. Did you not think that as
 10 soon as it was safe for the medics to get to the people who
 11 had been injured first, they should get there.
 12 GENERAL NAIDOO: Chair, that would also –
 13 and the practicality of the situation I would have, if I
 14 had done that, today I would have been asked did you not
 15 see it necessary to attend to something before you and then
 16 go on to something else. I take into account the factor
 17 that was raised yesterday of the time. I could have, had
 18 the situation stabilised, used a medic there and let the
 19 other two or et cetera to go on to the other –
 20 [09:42] CHAIRPERSON: How many medics did you
 21 have?
 22 GENERAL NAIDOO: Three.
 23 CHAIRPERSON: And paramedics?
 24 GENERAL NAIDOO: Sorry, Chair?
 25 CHAIRPERSON: Paramedics, did you have

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1 paramedics as well?
 2 GENERAL NAIDOO: Well, I suppose medic –
 3 CHAIRPERSON: There were three doctors,
 4 as I understand.
 5 GENERAL NAIDOO: Not doctors, I think
 6 they were paramedics.
 7 CHAIRPERSON: So there were three
 8 paramedics?
 9 GENERAL NAIDOO: That's correct.
 10 CHAIRPERSON: I see.
 11 GENERAL NAIDOO: So yes, obviously then a
 12 decision could have been taken to use one - as I said, I
 13 don't have that knowledge to determine which one – to
 14 attend to what's before us and we could have sent on the
 15 other two. That would have been a practical arrangement
 16 had this scene been stabilised and secured.
 17 MR CHASKALSON SC: Major-General, are you
 18 suggesting that the paramedics who had been under your
 19 control at forward holding area 1 and then at the power
 20 station first came into koppie 2?
 21 GENERAL NAIDOO: Chair –
 22 MR CHASKALSON SC: Sorry, koppie 3 scene
 23 2.
 24 GENERAL NAIDOO: Yes, Chair. They
 25 attended to that first.

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1 MR CHASKALSON SC: And were they the
 2 first paramedics to go to koppie 3?
 3 GENERAL NAIDOO: That is correct, Chair.
 4 MR CHASKALSON SC: You see, Major-
 5 General, the video evidence suggests that the first
 6 paramedics to go to koppie 3 in fact were dropped there by
 7 helicopter from the JOC. Do you want to see that? Are you
 8 aware of that?
 9 GENERAL NAIDOO: Chair, I don't think
 10 that is correct because the K9, as soon as the area was
 11 secure I did indicate on the radio and the K9s did bring in
 12 the paramedics to scene 2. As to who arrived first, as far
 13 as my knowledge is concerned it would have been the
 14 paramedics at the power station because they were,
 15 according to the distances yesterday discussed, just a
 16 little over 200 metres away from the scene.
 17 MR CHASKALSON SC: They were actually
 18 about 350 metres away from the scene, Major-General, but
 19 the first evidence of medics at scene 2 is medics being –
 20 or the first electronic evidence of medics at scene 2 is
 21 medics being dropped in a helicopter that had gone back to
 22 fetch them from the JOC. Do you want to see that footage?
 23 GENERAL NAIDOO: Chair, as I indicated,
 24 as far as my knowledge is concerned from where I was
 25 standing the medics, the first medics that I saw entered

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1 from the rear of koppie 3, escorted by the K9 dog handlers.
 2 Those are the people that I saw first. I did not see the
 3 medics, the helicopter landing first.
 4 MR CHASKALSON SC: Can you indicate to us
 5 where these medics came in on – maybe if we can have MMM1
 6 up?
 7 GENERAL NAIDOO: Chair, I think MMM2
 8 would be a more appropriate –
 9 MR CHASKALSON SC: If they – MMM2 doesn't
 10 show the south-west side of the koppie and I'm not sure if
 11 they came in from that side or this side.
 12 GENERAL NAIDOO: Chair, if I may
 13 indicate, the medics came in and parked behind the vehicles
 14 that are indicated in H5 and G5. The ambulances were
 15 staggered and parked there and the K9 members escorted them
 16 in directly, the area where the Casspir is parked
 17 currently. They entered through there.
 18 MR CHASKALSON SC: I see. The medics who
 19 were dropped by helicopter entered from the other side, so
 20 you may not have seen them.
 21 GENERAL NAIDOO: That is correct.
 22 COMMISSIONER HEMRAJ: Were you aware that
 23 there were medical personnel that had been brought to the
 24 scene by helicopter?
 25 GENERAL NAIDOO: Chair, I saw the

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1 helicopter landing at some stage but that's why I contend
 2 that the medics that were with the K9 were the first on the
 3 scene because they came through the bush first.
 4 Immediately after I indicated that the K9s should enter and
 5 bring in the medics.
 6 MR CHASKALSON SC: And who from the K9
 7 brought in the medics? Was it people who had been involved
 8 in the tactical operation with you or people who had stayed
 9 behind at the power station?
 10 GENERAL NAIDOO: Chair, it's the people
 11 that were escorting that were at the power station. I can
 12 obtain the names of - one of the escorts I think was
 13 Warrant Officer Breedt, it was indicated, he was escorting
 14 one group of medics. I can get the other names as well.
 15 MR CHASKALSON SC: Warrant Officer
 16 Breedt, Major-General Naidoo, was involved in the tactical
 17 operation. Did you send him back to fetch the medics?
 18 GENERAL NAIDOO: No, Chair. The other K9
 19 handlers that were with the medics brought them across to
 20 scene 2.
 21 MR CHASKALSON SC: So it wasn't Warrant
 22 Officer Breedt who brought them across?
 23 GENERAL NAIDOO: From the power station
 24 to scene 2, I don't have that information on hand but I can
 25 ascertain that, Chair.

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1 MR CHASKALSON SC: We'd be grateful if
 2 you would.
 3 GENERAL NAIDOO: Okay, Chair.
 4 MR CHASKALSON SC: I'm going to tackle
 5 your, the logic of your two stated purposes in due course
 6 but beforehand I just want to return to an issue raised by
 7 the Chairperson with you yesterday which is when you were
 8 at the power station and you say you heard this heavy
 9 gunfire erupting, at that stage your overriding concern was
 10 still getting the medics to scene 1 as soon as possible,
 11 was it not?
 12 GENERAL NAIDOO: That was one of my
 13 concerns, yes.
 14 MR CHASKALSON SC: Well, was it not your
 15 primary concern?
 16 GENERAL NAIDOO: Well, it was affecting
 17 my primary objective, yes.
 18 MR CHASKALSON SC: So the decision making
 19 process should have been geared towards that objective.
 20 GENERAL NAIDOO: That is correct.
 21 MR CHASKALSON SC: Now you thought that
 22 the heavy gunfire may have interfered with the route that
 23 the driver had chosen.
 24 GENERAL NAIDOO: In terms of the
 25 proximity, yes.

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1 MR CHASKALSON SC: Can we have MMM1
 2 again? You said yesterday that the gunfire you thought was
 3 coming from B3?
 4 GENERAL NAIDOO: That's correct, Chair.
 5 MR CHASKALSON SC: Koppie 1 and scene 1
 6 are a considerable distance – well, scene 1 is a
 7 considerable distance to the east. It's in D3. Was there
 8 any gunfire coming from that direction?
 9 GENERAL NAIDOO: Chair, I would put the
 10 incident at about C3 where I would've estimated the
 11 incident to have occurred and in terms of the proximity, it
 12 came in the general direction of B3, that's correct, and so
 13 my assessment was that we would be traversing between where
 14 the gunfire was occurring and koppie 1.
 15 MR CHASKALSON SC: Did you ask your
 16 driver where the road was going to take you?
 17 GENERAL NAIDOO: Chair, yes. He
 18 indicated right, he said no, this road goes right and it
 19 turns at a particular point to the left. So that also,
 20 yes, affected my assessment.
 21 MR CHASKALSON SC: So you thought the
 22 driver was going to take you to the north of koppie 1,
 23 between koppie 1 and koppie 2?
 24 GENERAL NAIDOO: My assumption was, yes,
 25 we would pass between the two koppies.

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1 MR CHASKALSON SC: No, I mean between
 2 koppie 1 and koppie 2. Did you understand me correctly,
 3 Major-General? Did you think that the driver was going to
 4 take you to the north, on a road that would take you to the
 5 north of koppie 1 between koppie 1 and koppie 2?
 6 GENERAL NAIDOO: I would say no, well, I
 7 thought we would be traversing an area somewhere between
 8 the two koppies and koppie 3. So not specifically koppie 1
 9 but those, both koppies.
 10 MR CHASKALSON SC: So you thought that to
 11 the west of koppies 1 and 2, between koppies 1 and 2 on the
 12 one hand and koppie 3 on the other?
 13 GENERAL NAIDOO: That is correct, Chair.
 14 MR CHASKALSON SC: You see yesterday when
 15 I spoke to you about the route that you anticipated taking,
 16 your evidence was that you were going to follow the road
 17 which I marked out for you on the map which actually goes
 18 to the south of koppie 1.
 19 GENERAL NAIDOO: Chair, I think at that
 20 stage we were looking at hypothesis, what would I have
 21 done. I think I quite clearly indicated I did not
 22 anticipate coming against the barbed wire. My
 23 understanding, I indicated yesterday, was that we will be
 24 travelling past the area where the shooting would take
 25 place.

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1 MR CHASKALSON SC: Major-General, we had
 2 a very lengthy exchange about this, the record will speak
 3 for itself but the route that you first identified as the
 4 route that you had intended to take was quite clearly the
 5 route to the south of koppie 1, which would have taken you
 6 into the barbed wire fence. That's why we had the whole
 7 debate about the barbed wire fence.
 8 CHAIRPERSON: I asked you about that
 9 yesterday. You said – when I asked you about that
 10 yesterday, I asked you why you hadn't followed the route to
 11 the south of koppie 1, you said the problem you had, as you
 12 explained it to me, was that because the gap there is
 13 fairly narrow you wouldn't have been able to have protected
 14 the vehicles in which the paramedics were being conveyed by
 15 a protective screen, as it were, of police vehicles and you
 16 were afraid of stray bullets and so forth and that's why
 17 you didn't go there, because I particularly asked you did
 18 you have to go past 1, past 3, and why didn't you go this
 19 way and you explained that there was a danger of stray
 20 bullets even along that route. That was your evidence
 21 yesterday.
 22 GENERAL NAIDOO: Chair, yes. What I
 23 indicated yesterday is, it was around the issue was I not
 24 afraid that stray bullets would affect the ambulances as to
 25 where they were being held at the power station. There

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1 were two issues which I indicated. First I indicated yes,
 2 we could have attempted to protect the convoy by having
 3 police vehicles lined up to the left of the convoy with the
 4 ambulances in the centre. I doubted whether we'd be able
 5 to put vehicles on either side, based on the road. I
 6 specifically indicated I had not gone down that road so
 7 when it was put to me that it went behind the koppie, et
 8 cetera, I clearly indicated I had not been down that road
 9 at that stage so I could not assess whether it was going
 10 behind the koppie or my understanding was that we will be
 11 going, if we were going to scene 1, in a direction between
 12 there which was a close proximity to where the shooting had
 13 occurred.
 14 MR SEMENYA SC: Chair, for the record,
 15 that is also our understanding of the evidence. This line
 16 of questioning moved from an accepted fact of evidence that
 17 the witness's car did not move from koppie 3 at all
 18 throughout the duration of the operation. It was only then
 19 said what route would you have used to go to where the
 20 scene was, that all of these answers came. They came from
 21 a hypothetical premise.
 22 CHAIRPERSON: The record will speak for
 23 itself.
 24 MR CHASKALSON SC: Well, let's move on
 25 from this point. You still wanted to get the medical

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1 personnel to scene 1 as quickly as possible.
 2 GENERAL NAIDOO: That was the primary
 3 objective, yes.
 4 MR CHASKALSON SC: And when you moved
 5 forward you instructed the medical vehicles to move back to
 6 behind the substation.
 7 GENERAL NAIDOO: To hold back, that is
 8 correct, Chair.
 9 MR CHASKALSON SC: Now, even you with
 10 your limited knowledge of the geography of the area must
 11 have realised at that stage that instead of just waiting
 12 behind the substation it would have been possible for them
 13 to turn around, drive back along the route you'd come along
 14 the gravel road and get back to scene 1 by taking the route
 15 that's marked in blue on MMM5. Let's go to MMM5. Do you
 16 accept that?
 17 GENERAL NAIDOO: Chair, not necessarily.
 18 As I indicated, I was in a point where I was in sight of
 19 koppie 1 so yes, I did have a limited knowledge of the
 20 geographic of the area but the fact that I was in sight of
 21 koppie 1, maybe a few hundred metres away, it would have
 22 not made sense to turn around and go back along a road
 23 which we could not travel at high speed anyway because of
 24 the type of road, et cetera, to go all the way around to,
 25 past forward holding area 1, past the Nkaneng settlement to

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1 get to scene 1, when we were just a few hundred metres away
 2 from where I foresaw scene 1 would be. So no, I don't
 3 agree with that because of the proximity, the distance that
 4 I – I could see where koppie 1 was, I was there.
 5 MR CHASKALSON SC: We've measured the
 6 distance from the – let me get this exactly. We've
 7 measured the distance from where that little curved road
 8 hits the base of the substation. That's A7, at A7. You
 9 understand what I'm describing? Unfortunately I don't have
 10 a pointer today. Is there anyone in the auditorium who has
 11 a pointer so that we can make this clearer? We're on MMM5.
 12 The point at which the road, the road that leaves the main
 13 gravel road at A7 goes up to the substation at – sorry, at
 14 A8, goes up to the substation at A7, that point. You know
 15 the point I'm now describing where that curved road hits
 16 the substation?
 17 GENERAL NAIDOO: I see that, Chair.
 18 MR CHASKALSON SC: We've measured the
 19 distance from there to scene 1 along the blue route. It is
 20 approximately three kilometres, give or take 10 metres
 21 either way. For a convoy travelling at 30 kilometres an
 22 hour that's six minutes. Are you seriously suggesting that
 23 you thought that your approach of taking the K9 into koppie
 24 3, assisting to secure the situation there and then coming
 25 back, would have got the medics to scene 1 in a shorter

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1 period of time, less than six minutes?
 2 GENERAL NAIDOO: Chair, I made my
 3 assessment when I was at A5, which was where the main body
 4 of vehicles were and as the evidence was led yesterday and
 5 today, the distance between A5 and the place where I had to
 6 go and make my assessment at koppie 3 was 350 metres. And
 7 I also indicated I was just behind koppie 1 where my
 8 understanding was that scene 1 was just on the other side
 9 of koppie 1.
 10 CHAIRPERSON: What was your assessment?
 11 GENERAL NAIDOO: I beg your pardon,
 12 Chair?
 13 CHAIRPERSON: You said you made your
 14 assessment when you were at A5. What was your assessment?
 15 GENERAL NAIDOO: That we were in the
 16 close proximity of where I knew koppie 1 was or where we –
 17 CHAIRPERSON: I understand that.
 18 GENERAL NAIDOO: Yes and that bar the
 19 fact that there was shooting take place, as hypothetically
 20 has been put, if there had not been that heavy shooting
 21 taking place there would have not been the need to do what
 22 we did and move towards koppie 3.
 23 CHAIRPERSON: Yes, yes, I understand.
 24 You went to koppie 3 to assist in bringing the shooting to
 25 an end. Would that be fair?

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1 GENERAL NAIDOO: Chair, as I already
 2 testified, I went there firstly to assess what the reason
 3 for the shooting was and also to ensure that those members
 4 that were possibly engaged in the shooting receive the
 5 necessary support, if they require it.
 6 CHAIRPERSON: But also I take it you went
 7 to see to it that the shooting would come to an end, in
 8 other words to assist in bringing the shooting to an end.
 9 GENERAL NAIDOO: Well, that's –
 10 CHAIRPERSON: So that you could take the
 11 paramedics through, isn't that so?
 12 GENERAL NAIDOO: That is correct, Chair.
 13 CHAIRPERSON: Right. And you couldn't
 14 take the paramedics through, on what you've told us, until
 15 the shooting stopped, right? Is that right?
 16 GENERAL NAIDOO: Chair, that's correct.
 17 CHAIRPERSON: Right. Now you say you had
 18 to guess how long it would take before the shooting
 19 stopped, isn't that so?
 20 GENERAL NAIDOO: Chair, after covering
 21 the – ja, the distance of 350 metres as given here, I would
 22 be able to assess, yes, whether that shooting could be
 23 stopped or suppressed.
 24 CHAIRPERSON: Yes, but no, it's a
 25 question of how long it would take for the shooting to

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1 stop. You had to guess that, surely. There was no
 2 scientific way you had of determining with any degree of
 3 precision how long it would take before the shooting would
 4 stop and before it would be safe for the paramedics to come
 5 through the gap between koppie 3 on the one hand and
 6 koppies 1 and 2 on the other, isn't that correct?
 7 GENERAL NAIDOO: That is correct, Chair.
 8 CHAIRPERSON: Alright. That could have
 9 taken some time.
 10 GENERAL NAIDOO: Yes, it could have.
 11 CHAIRPERSON: In fact, it did.
 12 GENERAL NAIDOO: Subsequently, yes.
 13 CHAIRPERSON: How long did it take?
 14 GENERAL NAIDOO: More than 20 minutes,
 15 sir.
 16 CHAIRPERSON: And during those, that more
 17 than 20 minutes, it might even have been longer, as it
 18 happened.
 19 [10:02] [Inaudible, microphone off] it took 20 minutes,
 20 it might even have taken longer. You couldn't be sure of
 21 that and during that period of time the wounded people were
 22 lying at scene 1 without receiving medical attention. And
 23 the paramedics you were supposed to be taking there to give
 24 them medical attention were busy waiting behind the power
 25 station. Is that correct?

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1 GENERAL NAIDOO: That is correct, Chair.
 2 MR CHASKALSON SC: Can I raise another
 3 issue in this regard and for this purpose I'd like to refer
 4 to a document which will be a new exhibit, it's the
 5 statement of Sergeant Molangoanyane.
 6 CHAIRPERSON: Is this the statement we
 7 were given yesterday which is – it looks like 000508, I
 8 think, it's headed Additional Statement. Is that the
 9 statement you're referring to?
 10 MR CHASKALSON SC: It is the statement,
 11 Chairperson.
 12 CHAIRPERSON: In fact there appear to be
 13 two. The other one is, it looks like 000510.
 14 MR CHASKALSON SC: It could be, it is, I
 15 think the additional statement that I am -
 16 CHAIRPERSON: We were given two
 17 additional statements by Sergeant T D Molangoanyane,
 18 neither is dated. Are these the documents I'm referring
 19 to? Manuscript statements, I think we were given them
 20 yesterday.
 21 MR CHASKALSON SC: That would be correct,
 22 Chairperson. There's apparently a difficulty with the
 23 video, the video people don't have a copy of this
 24 statement. We're just going to attend that.
 25 CHAIRPERSON: Sorry, the first one must

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1 be 000508 because it's actually two pages 508 and 509 and
 2 then the other one, the second one is 000510, that's a
 3 further additional statement apparently.
 4 MR CHASKALSON SC: Chairperson, if you
 5 can just bear with us for a minute, we're going to get a
 6 copy to the video operators. If we can go down, a couple
 7 of paragraphs down from what's on screen, paragraph
 8 starting "We drove." "We drove from forward holding area
 9 to the southern side of the hill. General Naidoo gave
 10 instruction again to get off the vehicles with dogs on
 11 leads. K9 members with the explosive dogs made extended
 12 line approaching the hill. I drove with our K9 bakkie
 13 behind members with dogs for cover purposes if anything can
 14 happen. As we got close, plus, minus 60 to 70 metres from
 15 the hill I heard a shot." Now we'll come back to this
 16 statement later insofar as it's relevant to the question
 17 when the shooting broke out and whether you were responding
 18 to shooting when you moved the dogs forward. Or in fact
 19 did move the dogs forward before there was shooting.
 20 CHAIRPERSON: I'm sorry, Mr Chaskalson, I
 21 failed in my duties. We have to, from a housekeeping point
 22 of view, this document isn't before us is it? So it will
 23 be exhibit MMM6 is it?
 24 MR CHASKALSON SC: 6 is my number too,
 25 Chairperson.

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1 CHAIRPERSON: So it's a statement, I'll
 2 call it 000508 to indicate which it is, Statement 000508
 3 by, I think he's a sergeant isn't he?
 4 MR CHASKALSON SC: Sergeant
 5 Molangoanyane.
 6 CHAIRPERSON: It's M-O-L-A-N-G-O-A-N-Y-A-
 7 N-E. It's exhibit MMM6.
 8 MR CHASKALSON SC: And while we are at –
 9 before I ask the question if we can also look at an extract
 10 from Constable Mutsi's statement which will be MMM7,
 11 Chairperson, paragraph 6.
 12 CHAIRPERSON: [Inaudible, microphone
 13 off].
 14 MR CHASKALSON SC: Indeed, Chairperson,
 15 we're just waiting for it to –
 16 CHAIRPERSON: I'm just reading the
 17 paragraph to make sure we've got the right document. The
 18 MMM7 Statement by, it looks like Constable.
 19 MR CHASKALSON SC: He is Constable Mutsi
 20 CHAIRPERSON: Constable, is it Muti or
 21 Mutsi?
 22 MR CHASKALSON SC: Mutsi. M-U-T-S-I.
 23 CHAIRPERSON: M-U-T-S-I. Thank you.
 24 MR CHASKALSON SC: If we can go down to
 25 paragraph 6 or maybe start at paragraph 5 for context.

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1 Sorry if we can just go up to paragraph 5. "We were
 2 briefed that our purposes K9 is to sweep, to search for
 3 firearms as it was indicated to us that the miners are also
 4 having firearms and also the search for any dangerous
 5 weapons that we can find. General Naidoo gave us the
 6 instruction that we must follow his leads and on our
 7 arrival at the power station we moved out of the vehicle
 8 and approached the southern side. And I was on foot as I
 9 had left the vehicle that I was driving near the power
 10 station." Now, Major-General, when you went in to assess
 11 the situation at the koppie had you instructed members of
 12 the K9 unit to advance on the koppie on foot?
 13 GENERAL NAIDOO: Chair, those five
 14 vehicles that we see in line, the crews were walking
 15 alongside the vehicles. I was also not in the vehicle, I
 16 was walking alongside my vehicle as we approached the
 17 koppie, that is correct.
 18 MR CHASKALSON SC: You don't mention this
 19 in your statement. If we go to your statement you mention
 20 ordering K9 members out of their vehicles at the power
 21 station. But what you say in relation to going into koppie
 22 3 area was "I diverted all vehicles of the K9 unit
 23 personnel in that direction." That's paragraph 66, you
 24 mention nothing about K9 personnel on foot.
 25 GENERAL NAIDOO: Chair, when I indicated

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1 vehicles it included the personnel with those vehicles. As
 2 we were entering an area that was grassy, I indicated in my
 3 evidence, between ankle and knee height is the reason why I
 4 asked them to alight and walk alongside their vehicles.
 5 MR CHASKALSON SC: Can you just explain
 6 that? It's not clear to me. Why would you want them out
 7 of the vehicles if it's grassy terrain?
 8 GENERAL NAIDOO: Chair, obviously because
 9 the visibility where they were driving was poor and just as
 10 you would have it, we had found three strikers lying in
 11 that grass who we subsequently arrested. It was because of
 12 the way we were deployed. The basic line that was going
 13 through the koppie, had we been driving possibly we would
 14 have missed them. Even possibly drove over them because
 15 they were lying in the grass.
 16 MR CHASKALSON SC: So you wanted members
 17 on foot, in a basic line to see that you didn't miss
 18 anything in the grass as you were driving up.
 19 GENERAL NAIDOO: Basically yes. They
 20 were performing a sweep as we got to where we were going,
 21 yes.
 22 MR CHASKALSON SC: So the speed at which
 23 your group would have advanced on koppie 3 over the 350
 24 metres would have been the speed of a walking manner.
 25 GENERAL NAIDOO: Plus, minus yes.

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1 MR CHASKALSON SC: How long did you think
 2 it was going to take you to walk up to koppie 3?
 3 GENERAL NAIDOO: Chair, five minutes or
 4 less.
 5 MR CHASKALSON SC: So by the time you got
 6 your assessment or by the time you were in a position to
 7 make your assessment at koppie 3 five minutes would have
 8 passed and did it not occur to you that in those five
 9 minutes you could have got the medical vehicles along the
 10 road to scene 1?
 11 GENERAL NAIDOO: Chair, I had to make a
 12 decision based on the scenario in front of me and yes
 13 whilst time was of the essence, I could not just drive into
 14 an area which was obviously grassy, bushy without knowing
 15 what we were driving into or across.
 16 MR CHASKALSON SC: Are you talking about
 17 the driving that would have be done by the medical vehicles
 18 or by the K9 bakkies in your line?
 19 GENERAL NAIDOO: Chair, I'm referring now
 20 to the four K9 bakkies and the bakkie that I was driving
 21 in.
 22 MR CHASKALSON SC: I see, that doesn't
 23 really address the question of why you chose a method that
 24 would only put you in a position to make an assessment at
 25 roughly the same time as medical vehicles could have

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1 reached the scene if they had turned around and driven
 2 along the road.
 3 GENERAL NAIDOO: Chair, based on my
 4 experience in driving to where we were now, I did not
 5 think, as indicated by the evidence leader that it would be
 6 more appropriate to turn around and drive back around the
 7 whole route. As I indicated, I was sight of koppie 1 and
 8 for all intense and purposes almost at my destination.
 9 CHAIRPERSON: Ja, but you also indicated
 10 that you had assessed the situation, you had to assist in
 11 securing it so that the shooting should stop, you conceded
 12 that you didn't know how long that would take. You had to
 13 make an assessment, but that was only a guess because it
 14 could have taken 20 minutes or even longer. You've
 15 conceded all those already. It's not just the five minutes
 16 it took you to get to the vicinity of koppie 3, you've got
 17 to add all the other time or possible time in as well. All
 18 that time was going by, injured people were lying at scene
 19 without any medical treatment. Isn't that right?
 20 GENERAL NAIDOO: That is true, Chair, but
 21 as I indicated that was a decision made on the assessment
 22 that was before me. In hindsight several things come up
 23 which could have been better considered, but I'm indicating
 24 in terms of how I assessed the situation before me.
 25 CHAIRPERSON: You see I don't know that

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1 counsel is suggesting to you that that wasn't your
 2 assessment. I think the thrust of the cross-examination is
 3 directed to the other area that you've already alluded to.
 4 MR CHASKALSON SC: Now I have another
 5 concern about this decision that you took. At the time
 6 that you decided to advance on the koppie in this fashion
 7 you thought that there was a possibility that there was a
 8 striker on a rock in the koppie with an automatic weapon
 9 firing at the police, a possibility.
 10 GENERAL NAIDOO: Yes there was strikers
 11 in the bush or elsewhere. As I indicated, it's only when I
 12 got closer that I noticed the strikers on the rock. But
 13 yes, there were possibilities that the strikers were
 14 entrenched in that particular place, that's correct.
 15 MR CHASKALSON SC: No, no, Major-General,
 16 we need to be far more precise than this. Are you saying
 17 that you didn't think at the time that you chose to move
 18 forward, that strikers were shooting at – that there was a
 19 possibility that a striker in the koppie was shooting at
 20 the police with an automatic weapon?
 21 GENERAL NAIDOO: Chair, I've already
 22 testified that my assumption was that the police and the
 23 strikers were engaging in exchange of fire, yes.
 24 MR CHASKALSON SC: I need to – this
 25 automatic weapon is a very emotive issue that's being

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1 introduced at this stage in proceedings, so I need clarity
 2 on this, Major-General. Did you think that a striker was
 3 shooting at the police with an automatic weapon? Yes or
 4 no.

5 GENERAL NAIDOO: Chair, I've already
 6 testified that I heard automatic fire, I did not
 7 specifically identify which side could have been using the
 8 automatic weapon, but it had been part of our information
 9 that an automatic firearm was stolen and in possession of
 10 strikers. So the reason for the assessment was to
 11 establish, you know –

12 CHAIRPERSON: I think counsel is trying
 13 to find from you what the assessment was. It was either
 14 that there was a striker who was firing, this is what you
 15 thought at the time, who was firing with an automatic
 16 weapon because you knew that the strikers or one of the
 17 strikers was in possession of an automatic weapon taken on
 18 the 13th. So your assessment was, one possible assessment
 19 was that there was someone firing with an automatic weapon
 20 from the strikers side. The other one, the other
 21 possibility is because you heard automatic fire your
 22 assessment was it may be that that automatic fire is coming
 23 from a striker using the weapon taken on the 13th or it may
 24 be police fire. So the assessment was either it was, at
 25 the time in your mind, it was a striker firing an automatic

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1 weapon or it may be a striker firing with an automatic
 2 weapon, it may be members of the police service firing with
 3 automatic weapons. Now which of the two was it?

4 GENERAL NAIDOO: Chair, based on the fact
 5 that I could not at that stage see any strikers, I could
 6 see the police line, I would think the second proposition
 7 that you made was more likely. The possibility did occur
 8 to us that there was strikers or a striker shooting at the
 9 police. They could have been in possession of an automatic
 10 firearm and also the fact that the police could have been
 11 returning fire, using automatic firearms because they were
 12 in possession of that for sure.

13 MR CHASKALSON SC: So you thought
 14 whatever other possibilities there were, there was a
 15 possibility that a striker was firing at the police with an
 16 automatic weapon.

17 GENERAL NAIDOO: There is that
 18 possibility, Chair.

19 MR CHASKALSON SC: No, no I'm not asking
 20 whether there is or there wasn't, I'm asking about your
 21 subjective state of mind. At the time did you subjectively
 22 think that there was a possibility that the automatic fire
 23 that you thought you'd heard had come from a striker with
 24 an automatic weapon?

25 GENERAL NAIDOO: That is correct, Chair.

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1 CHAIRPERSON: To be fair to you, I think
 2 he probably means, well he was talking about the
 3 possibilities. But the possibility was, I take it, that
 4 some of the automatic fire you heard, because you knew
 5 there were police in the area, is that right?

6 GENERAL NAIDOO: That is correct, Chair.

7 CHAIRPERSON: And did you know or suspect
 8 that some of them were using their automatic weapons?

9 GENERAL NAIDOO: Chair, based on the
 10 number of shots an the volume of gunfire which I refer to
 11 as heavy, yes the assumption was that the police was
 12 returning fire for whatever reason. I did not rule out
 13 that possibility.

14 MR CHASKALSON SC: Now did it not occur
 15 to you, Major-General that you were recklessly endangering
 16 the lives of your men by ordering them to come in, on foot,
 17 in a wide line, across a wide open plain with no cover and
 18 no armoured vehicles, when there was a striker, a
 19 possibility of a striker firing at police with automatic
 20 weapons.

21 [10:21] GENERAL NAIDOO: Chair, I would not
 22 consider this reckless, as I indicated previously the K9
 23 unit is also a unit that's been trained to tactically
 24 approach such situations and extract suspects, hence I
 25 indicated we did not drive up to this particular scene and

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1 then get off the vehicle, etcetera. So they proceeded with
 2 tactical approach so that should it be necessary and it
 3 became necessary three times to arrest people, had we been
 4 sitting inside the vehicle, it would have been much
 5 difficult to get off the vehicle with the equipment that
 6 they have on, and for the rest. So yes, approaching the
 7 area where there was gunfire it is something that we as the
 8 police are conditioned and trained to do. Even the
 9 ordinary police official that you see walking beat, when
 10 there is an incident or gunfire police officials can't take
 11 another road and wait until the gunfire has finished and
 12 then go back. That's not what is expected of us from the
 13 community we serve, and based on that premise I am
 14 indicating, we approached the gunfire, not recklessly. I
 15 was confident in terms of the training and skills of the K9
 16 people which I am familiar with, and we do employ them on a
 17 daily basis. I myself was in that group. I would have not
 18 needlessly endangered my life if I thought it was that
 19 dangerous that where I was being reckless, obviously I
 20 would have been reconsidered. So yes, we went forward with
 21 the knowledge that there is shooting, and there was a
 22 possibility of people who might shoot at us, but we went
 23 there at police officials to execute our responsibility.

24 MR CHASKALSON: Sorry, Major General, you
 25 speak of a training of the K9 unit, are you suggesting that

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1 there is a any training that the K9 unit could be given
 2 that would allow them to avoid an R5 bullet shot from say a
 3 distance of 200 metres at a line of – I don't know, how
 4 many people were there walking? You tell me.
 5 GENERAL NAIDOO: Five vehicles,
 6 approximately five or six people, yes.
 7 MR CHASKALSON: No, but how many people,
 8 I am asking.
 9 CHAIRPERSON: Five or six people per
 10 vehicle? Five vehicles, how many persons per vehicle?
 11 GENERAL NAIDOO: There's normally two
 12 people per vehicle.
 13 CHAIRPERSON: Roughly, so -
 14 GENERAL NAIDOO: So the crew was walking
 15 alongside the vehicle.
 16 MR CHASKALSON: Ja, so how many people
 17 then were in this line that you've described to us?
 18 GENERAL NAIDOO: Including –
 19 MR CHASKALSON: - towards the koppie, in
 20 the line of fire of a potential striker on the koppie that
 21 had an automatic rifle, how many people in this line that
 22 were advancing on the koppie?
 23 GENERAL NAIDOO: Ten people, thank you.
 24 MR CHASKALSON: Ten people, okay. You
 25 have a line of people coming forward in the line at right

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1 angles to the potential shooter with an automatic weapon,
 2 if that shooter chose to shoot at the line is there
 3 anything that anyone in that line could have done to avoid
 4 being hit?
 5 GENERAL NAIDOO: Chair, I am not sure but
 6 as I indicated that in terms of training and tactical
 7 movement that is the approach we took to approach the
 8 koppie. We were using a vehicle as a cover and we could
 9 not prevent somebody that was in the koppie from shooting
 10 at us whether with an automatic rifle or with a pistol. We
 11 had to approach it and execute our responsibility.
 12 MR CHASKALSON: You say you were using
 13 the vehicles for cover, these weren't armoured vehicles?
 14 GENERAL NAIDOO: No, Chair. The K9s
 15 don't use armoured vehicles. It's a matter of course that
 16 these are the vehicles they use every day when encountering
 17 similar, if not the same circumstances where they are
 18 entering fields where suspects armoured with rifles and
 19 pistols could ambush them and shoot and there have been
 20 instances where they did.
 21 MR CHASKALSON: But if we - so that's not
 22 going to give you cover from a R5 weapon, is it? A non-
 23 armoured vehicle.
 24 GENERAL NAIDOO: Chair, in terms of our
 25 tactical training, we are trained to use certain parts of

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1 the vehicle as effective cover, such as the wheel base,
 2 make use to our advantage the fact of the engine block
 3 which can stop. As I indicated, these are vehicles we use
 4 in our daily deployment of the K9 unit and various other
 5 policing. They are not armoured vehicles and we are
 6 encountering exactly the same circumstances where suspects
 7 armed with R5s and even heavier calibre weapons face off
 8 with the K9 unit during the performance of serious crime.
 9 So we have to rely on the resources available and our
 10 training in order to address whatever situation's
 11 confronting us. We don't in an ongoing tactical situation
 12 pull back and say, let us wait until the possibility of an
 13 armoured vehicle arrives. That's a reality.
 14 MR CHASKALSON: You see Major General, if
 15 that was your, if this had been your function in terms of
 16 the plan I could understand that answer. It would be a
 17 strange answer, because it would be a strange plan that
 18 would expose members of the K9 unit to the risk of
 19 automatic gunfire without any scope of protection but if
 20 that was your function in terms of the plan, I – however
 21 strange the plan I can understand how you would follow it
 22 but this wasn't your function in terms of the plan.
 23 GENERAL NAIDOO: Chair, I don't think in
 24 any way I indicated that this was my function. I indicated
 25 the purpose for approaching the koppie and the purpose for

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1 approaching the koppie is to assess from the National
 2 Intervention Unit what is the situation in terms of the
 3 shooting I have heard there and secondly to ensure that
 4 they have sufficient support in terms of what they were
 5 doing in terms of that, and I might mention the National
 6 Intervention Unit did not even have vehicles. They were on
 7 foot approaching the very same scene that we are discussing
 8 here.
 9 CHAIRPERSON: Mr Chaskalson, when it's
 10 convenient for us to take a comfort break would you let me
 11 know. I am not stopping you now, but when an appropriate
 12 stage is reached please tell me.
 13 MR CHASKALSON: Chairperson, now is as
 14 good a time as any.
 15 CHAIRPERSON: We will take a comfort
 16 break of ten minutes.
 17 [COMMISSION ADJOURNS COMMISSION RESUMES]
 18 [10:56] CHAIRPERSON: The Commission resumes.
 19 Major-General, you're still under oath. Mr Chaskalson.
 20 GENERAL NAIDOO: Still under oath, Chair.
 21 CHAIRPERSON: I think we will take the
 22 tea adjournment at about half past 11 and I've indicated to
 23 Mr Semenya – or round about then, depending on how things
 24 work out – and I suggested to Mr Semenya that he might
 25 consider bringing his application at a suitable stage round

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1 about 20 past 11 but at a point when it's appropriate for
 2 Mr Chaskalson's cross-examination to be interrupted. Was
 3 that recorded, what I said?
 4 CROSS-EXAMINATION BY MR CHASKALSON SC (CONTD.):
 5 Thank you, Chairperson. Major-General, you were talking
 6 about your need to get information to assess the situation
 7 when we broke and yesterday you said that you had
 8 difficulty, that why you had to go in personally and
 9 couldn't simply ask on the radio was that you had radio
 10 difficulties through the operation and because of your
 11 position relative to power lines your radio communications
 12 were compromised. Do you recall that?
 13 GENERAL NAIDOO: I recall that, Chair.
 14 MR CHASKALSON SC: This isn't something
 15 that you'd mentioned in your statement. Is there a reason
 16 for that?
 17 GENERAL NAIDOO: No Chair, there's no
 18 specific reason.
 19 MR CHASKALSON SC: You see, far from
 20 saying that your radio communications were compromised in
 21 your statement, you say that you were able to follow the
 22 entire conversation between Brigadier Calitz and
 23 Lieutenant-Colonel Vermaak and those exchanges from your
 24 position right next to the power station.
 25 GENERAL NAIDOO: Chair, that is correct,

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1 we could follow the conversation. Transmitting was a
 2 problem.
 3 MR CHASKALSON SC: Did you attempt to
 4 transmit at any time?
 5 GENERAL NAIDOO: Chair, yes. There were
 6 times we tried to break into the conversation but I think
 7 our radios were not strong enough to cut out other
 8 conversations.
 9 MR CHASKALSON SC: Sorry, to cut out
 10 other conversations, did you say?
 11 GENERAL NAIDOO: Chair, yes. Normally
 12 when there's radio transmissions taking place then if a
 13 person presses the transmit button you immediately cut
 14 other conversations out if you – it occurs if you have the,
 15 especially if you have the stronger signal radio. So we,
 16 at some stage I think it was mentioned that there were,
 17 there was somebody who was also sitting on a button and it
 18 was as a result impeding radio traffic because they were
 19 sitting on the transmit button and it effectively cut other
 20 people out.
 21 MR CHASKALSON SC: Major-General, are you
 22 suggesting that different radios had different capacity to
 23 cut out other parties in this operation?
 24 GENERAL NAIDOO: That is correct, Chair.
 25 MR CHASKALSON SC: I must tell you,

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1 Major-General, that you're the first person to have come up
 2 with this proposition and everybody else has talked about
 3 an ordinary digital relay, analogue relay transmission
 4 system which means that when one person is speaking, nobody
 5 else can speak, irrespective of how strong their radio is.
 6 GENERAL NAIDOO: Chair, I'm not a
 7 technology expert to give that kind of evidence but what I
 8 can say from my experience with radios, for example a base
 9 set radio has the ability to jam the transmission of a
 10 lesser strength such as the handset radio. We have
 11 experienced that during normal communications during
 12 operations at the time when I was deployed in the
 13 operational environment permanently, we utilised analogue
 14 radios such as the ones that are still in use in the north-
 15 west and it is a fact that the base set ability to transmit
 16 is stronger than a handset, that we experienced
 17 practically.
 18 MR SEMENYA SC: That, Chair, was the
 19 evidence of Brigadier Calitz as well.
 20 MR CHASKALSON SC: No, but the evidence
 21 that we had from everyone in the JOC where one might
 22 imagine that the strongest radio of all was because that's
 23 where the relay transmitter was, was that they had
 24 difficulties getting onto the network because there was
 25 constant communication between Lieutenant-Colonel Vermaak

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1 and Brigadier Calitz. Implicit in that evidence is the
 2 suggestion that they can't break into the network and in
 3 fact Colonel Scott and I think Major-General Annandale,
 4 Major-General Annandale gave similar evidence, Colonel
 5 Scott in particular acknowledged that one of the
 6 difficulties of the communication system was that you
 7 couldn't break in.
 8 GENERAL NAIDOO: Chair, I think first we
 9 need to clarify. The relay station was not at the JOC.
 10 The relay station is normally placed at a high site because
 11 communication is done through relay stations. The JOC had
 12 a base station or base station radio which they were using
 13 which I have referred to in my evidence. And as I said,
 14 without giving the technical aspects of it, my experience
 15 has shown us that a base station radio – and I don't know
 16 if the location of that radio has an impact, or the mast or
 17 the aerial, but the base station radio has the ability of
 18 cutting out handset radios and I think, based on experience
 19 as well, I've noticed that the helicopters seem to have
 20 better quality transmission and whether it's in relation to
 21 where they are and line of sight to the repeater stations,
 22 I am not sure but these are the two experiences we've had,
 23 that both the helicopters as well as the base station
 24 radios were able to transmit better than the handset radios
 25 which I had in my possession.

<p style="text-align: right;">Page 23213</p> <p>1 MR CHASKALSON SC: Are you then saying 2 that if anyone on the JOC at any stage wanted to get into 3 the conversation with their base set, they could have done 4 so, they could have broken in on their base set? 5 GENERAL NAIDOO: Chair, that is not at 6 all what I'm suggesting. What I'm indicating, as I 7 indicated, I don't have the technical know-how or the 8 capability of it. What I'm saying is that a base station 9 radio could cut off handset radios especially in the 10 transmission and I think a technical expert can give the 11 specs in terms of that. 12 MR CHASKALSON SC: Well, we may need a 13 technical person to come and testify here because I've 14 always understood the SAPS version to mean that there was 15 an analogue relay transmission system in play which meant 16 that when any one person was transmitting, the channel was 17 occupied and nobody else could transmit at the same time. 18 You're saying that's not the case? 19 GENERAL NAIDOO: Chair, I am not 20 contradicting that evidence. We were now talking about the 21 use of the different type of radios for communication and 22 how we experience it at an operational level and what I 23 indicated, that the base station radio had the ability of 24 overriding or blocking out a handset radio. That is 25 something that we have experienced.</p>	<p style="text-align: right;">Page 23215</p> <p>1 Vermaak indicated that people were down, one would have 2 preferred to have more information but the traffic was 3 continuous or constant and there was no way for us from 4 where we were to break into that conversation. I think 5 I've already indicated in my evidence-in-chief that there 6 was a continuous stream of conversation between Brigadier 7 Calitz as well as Lieutenant-Colonel Vermaak. They 8 dominated the airwaves at that stage for a large part of 9 the operation. 10 COMMISSIONER HEMRAJ: Is it that you did 11 not want to interrupt their communication? 12 GENERAL NAIDOO: Could not as well 13 because, as I indicated, we would have wanted to have more 14 specific information but we were not in a position. Nobody 15 – when I say nobody, I'd say people with handsets could not 16 get into that conversation to indicate look, what about 17 this and what about that. That was not possible. 18 MR CHASKALSON SC: Are you saying there 19 were no breaks in that conversation for someone to get in 20 around the time that you reached the substation? 21 GENERAL NAIDOO: Chair, as I'm 22 indicating, during that process of the movement, had there 23 been a break in the conversation I would have reported my 24 movement by radio. That would've been an important thing 25 to do but there had been no break and I could not.</p>
<p style="text-align: right;">Page 23214</p> <p>1 MR CHASKALSON SC: So are you saying that 2 if you were transmitting on your radio and someone in the 3 JOC or Brigadier Calitz or possibly Lieutenant-Colonel 4 Vermaak who had, as I – or I don't know what radio he had, 5 I assume he had a handset radio in the helicopter, it may 6 be a different radio – but any one of those three, if they 7 wanted to cut you off they could just start transmitting 8 over you? 9 GENERAL NAIDOO: Chair, yes. As far as 10 my knowledge goes in terms of the intervention we made, 11 Brigadier Calitz was using a base station radio which has 12 been specially installed in his Nyala because of the 13 communication difficulties we were experiencing in the 14 previous days and Colonel Calitz – I'm sorry, Lieutenant- 15 Colonel Vermaak specifically is not using a handset radio, 16 he is using a radio that is built into the helicopter. So 17 on my lay assumption it has the same qualities of a base 18 station radio. I can't swear to it other than saying that 19 it is not a handset radio. 20 MR CHASKALSON SC: When did you try to 21 transmit on the 16th? 22 GENERAL NAIDOO: Chair, we were trying to 23 – from the time that we heard the shooting we were trying 24 to get information to establish what's happening, as I 25 indicated. Even during the conversation when Colonel</p>	<p style="text-align: right;">Page 23216</p> <p>1 MR CHASKALSON SC: Well, we'll come back 2 to that after we've spoken to the technical advisers on 3 this but let's talk about your other communications system 4 which was your cell phone. 5 GENERAL NAIDOO: Chair. 6 MR CHASKALSON SC: You wanted information 7 about what was going on at scene 2 and koppie 3. You were 8 prepared to delay getting medical treatment to people 9 possibly injured by gunshot wounds for the purpose of 10 getting information about scene 3, why didn't you try to 11 make a cell phone to the JOC, to Brigadier Calitz, to 12 Major-General Mpenbe the overall commander? 13 GENERAL NAIDOO: Chair, I think it is a 14 matter of record yesterday, when the incident occurred I 15 did try to get hold of Brigadier Calitz to try and 16 establish what had happened. The phone went into 17 voicemail. I think at that stage had I known or had the 18 telephone numbers of somebody who was in the forward area, 19 it would've been more commensurate with what I had to do. 20 So I did use the cell phone communication when the movement 21 started, to try and ascertain what was happening at the 22 scene 1. 23 CHAIRPERSON: Where were you when you 24 endeavoured to speak to Brigadier Calitz? Were you still 25 at forward holding area 1?</p>

<p style="text-align: right;">Page 23217</p> <p>1 GENERAL NAIDOO: Immediate response. 2 CHAIRPERSON: Immediate response. 3 GENERAL NAIDOO: Yes, Chair. 4 CHAIRPERSON: You didn't use your cell 5 phone after that? 6 GENERAL NAIDOO: Not that I could recall, 7 no. 8 CHAIRPERSON: The people in the JOC were 9 supposed to be co-ordinating things to some extent, were 10 they not? 11 GENERAL NAIDOO: Chair, yes, but as also 12 indicated in my statement and the stream of communication 13 and conversation about what was happening, what's happening 14 at the operational area, even the JOC could not – and 15 normally the situation would have been the JOC would have 16 broken into the conversation and try to say okay, now what 17 is happening, can you tell me what's happening there, so 18 that the whole operation could get a picture and it was 19 clear even the JOC could not break into that conversation. 20 What I'm indicating now, Chair, is how in a normal 21 situation during day-to-day policing, if an incident occurs 22 the control site would not be the operational commander on 23 the scene, it would be the radio control or what we now 24 refer to as the JOC. They take charge of the scene so that 25 everybody gets the information and people then deploy</p>	<p style="text-align: right;">Page 23219</p> <p>1 time – 2 CHAIRPERSON: Sorry? 3 GENERAL NAIDOO: At that point in time, 4 no, I did not endeavour to call the JOC. 5 CHAIRPERSON: You say at that point in 6 time, no. At what point in time did you do it? 7 GENERAL NAIDOO: It was at some stage 8 when I got to koppie 3 after the sweep of the koppie that I 9 actually phoned the JOC to notify them where I was. 10 CHAIRPERSON: But we can get the time of 11 that from the exhibit that's already before us. Wasn't it 12 important for Brigadier Calitz to be informed somehow, he 13 was co-ordinating matters, that you'd arrived, that you'd 14 arrived on the scene with some – I hesitate to use the word 15 "troops" because that implies something that I don't mean. 16 GENERAL NAIDOO: Yes. 17 CHAIRPERSON: But with – 18 GENERAL NAIDOO: Resources. 19 CHAIRPERSON: Sorry? 20 GENERAL NAIDOO: Resources. 21 CHAIRPERSON: Resources, human resources. 22 Wasn't it important for him to know that you were there 23 with human resources, that you were taking part in the 24 hostilities, if one can call it that? You'd come under 25 fire and you were firing back and you were doing various</p>
<p style="text-align: right;">Page 23218</p> <p>1 accordingly. In the current situation it was clear that 2 the JOC themselves could not get into the conversation to 3 take charge. We have seen that in the radio conversation 4 as well. I think had they had an opportunity they would 5 have broken in and said kindly indicate what's happening 6 there, where are the medics, are you still – are you on 7 your way? Those kinds of things did not occur. 8 CHAIRPERSON: Are you saying that based 9 on what you heard on the radio? 10 GENERAL NAIDOO: I'm saying that based on 11 what – that's the only information that I had coming in. 12 CHAIRPERSON: You don't know, you said 13 there were telephone numbers you didn't have, you don't 14 know to what extent those in the JOC were able to 15 communicate by cell phone with some of the people in the 16 field, is that right? 17 GENERAL NAIDOO: At that stage, no, 18 Chair. 19 CHAIRPERSON: You don't know that? 20 GENERAL NAIDOO: I have no idea. 21 CHAIRPERSON: Did you endeavour to 22 telephone the JOC in the hope that some of the JOC would be 23 able to get through and communicate with some of the 24 commanders in the field? 25 GENERAL NAIDOO: Chair, at that point in</p>	<p style="text-align: right;">Page 23220</p> <p>1 things. Wasn't it important for him to know that? 2 GENERAL NAIDOO: Chair, yes. As I 3 indicated, that when we commenced our movement or when we 4 started up I endeavoured to do that. His phone went to 5 voicemail. My assumption then obviously, the problem which 6 we had frequently during operations, the cell phone 7 batteries go flat because of continuous use, et cetera. So 8 what you say is true. It was important for him to know and 9 I did. 10 CHAIRPERSON: If you'd got hold of the 11 JOC with your cell phone, they might have been able to 12 communicate, not necessarily to Brigadier Calitz if his 13 phone's batteries were dead or whatever, but other people 14 who were with him like Lieutenant-Colonel McIntosh or 15 somebody of that sort. I think Colonel Pitsi arrived later 16 on the scene and he spoke to him but it might have been 17 possible if you'd made the effort, if you'd contacted JOC 18 to say can you somehow get a message to Brigadier Calitz to 19 tell him I'm here, I'm on the – you were on the east side, 20 were you, south-east side, approaching from the south-east 21 side, yes, south and then east of the koppie and I'm taking 22 part in the operation and I've got other people with me and 23 I'm using my firearm and they're using their firearms and 24 so that he could then somehow, if possible, have got 25 through to you and co-ordinated the thing because he tells</p>

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1 us he didn't know you were there. He didn't know what you
 2 and the people with you were doing, so he was totally
 3 unable to co-ordinate what – that's his evidence. You
 4 agree with me that that's an unsatisfactory state of
 5 affairs?
 6 GENERAL NAIDOO: Chair, as I indicated,
 7 yes, it was desirable that he be informed. At that stage I
 8 did try to contact him directly to inform him of our
 9 movements based on the information that people had been
 10 injured. Other than that, moving forward I tried to use
 11 the radio communication and yes, it would have been
 12 preferable that we made some other attempts, yes.
 13 CHAIRPERSON: I'd be grateful if you'd
 14 just answer my question directly. I asked you, do you
 15 agree with me that it is an unsatisfactory state of affairs
 16 that Brigadier Calitz who was supposed to be in charge, co-
 17 ordinating what was happening at koppie 3, was unaware of
 18 the fact that you were there at the south-eastern corner
 19 and eventually the eastern side of koppie 3? That's
 20 unsatisfactory.
 21 GENERAL NAIDOO: Definitely, Chair.
 22 CHAIRPERSON: Right, and you also agree
 23 that it would've been possible for you to have communicated
 24 by your cell phone with the JOC, that's correct?
 25 GENERAL NAIDOO: It could have been

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1 possible.
 2 CHAIRPERSON: And if you had done that,
 3 they might have been able to find a way to speak, not
 4 necessarily to Brigadier Calitz if he's telephone wasn't
 5 working or whatever, with other people who were with him to
 6 get to them the important message that you and the people
 7 with you were on the other side of the koppie taking part
 8 in the operation. Do you agree with that?
 9 GENERAL NAIDOO: It could be possible.
 10 CHAIRPERSON: Right, thank you.
 11 MR CHASKALSON SC: Major-General,
 12 according to your cell phone records and it's MMM4 if I
 13 recall correctly, 4 or 3 – it's 4, 4, MMM4 – the first call
 14 between you and the JOC after the shootings is at 16:17:22
 15 where you took a call from Brigadier Pretorius which lasted
 16 for 32 seconds. Can we call up 16:17:22, a 32 second call
 17 which comes from Brigadier Pretorius. Is that the call
 18 that you were referring to where you reported to the JOC
 19 after the sweep?
 20 [11:16] GENERAL NAIDOO: Chair, as far as my
 21 recollection goes, the contact with the JOC was a call that
 22 I made to them. I can't remember receiving a call from the
 23 JOC themselves. I actually called the JOC to inform them
 24 where I was and –
 25 CHAIRPERSON: That must be the one at

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1 16:44.
 2 GENERAL NAIDOO: That –
 3 CHAIRPERSON: That's the next call.
 4 GENERAL NAIDOO: That's correct.
 5 CHAIRPERSON: Which is an outgoing call
 6 as opposed to an incoming call, to Brigadier Pretorius
 7 who's in the JOC.
 8 GENERAL NAIDOO: That's correct.
 9 CHAIRPERSON: That was only at 16:44.
 10 GENERAL NAIDOO: That's correct.
 11 CHAIRPERSON: A lot of things had
 12 happened by then.
 13 GENERAL NAIDOO: Yes.
 14 CHAIRPERSON: The shooting was over by
 15 then, wasn't it?
 16 GENERAL NAIDOO: That's right, Chair.
 17 CHAIRPERSON: How long – when did the
 18 shooting finish in the vicinity of koppie 3?
 19 GENERAL NAIDOO: I think shortly before
 20 this telephone call, as soon as the shooting had finished I
 21 contacted – I issued the instruction for the medics to be
 22 brought in and then also called the JOC immediately so that
 23 I could give them an indication.
 24 CHAIRPERSON: What happened in the call
 25 then at 16:17, the incoming call from Brigadier Pretorius

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1 to you?
 2 GENERAL NAIDOO: Chair, I did not speak
 3 to Brigadier Pretorius before the time that I called her.
 4 So no, I won't be able to – because had I spoken to her at
 5 that particular time then I would have also relayed to her
 6 where I was.
 7 CHAIRPERSON: From what you say it sounds
 8 as if you made no attempt to communicate to the JOC until
 9 16:44, is that right?
 10 GENERAL NAIDOO: That is correct, Chair.
 11 CHAIRPERSON: Ja.
 12 MR CHASKALSON SC: Major-General,
 13 16:17:22 I would put to you is at a time when probably most
 14 of the shooting had ended at scene 2. The last shooting at
 15 scene 2 was the shooting of victim C and if I can just get
 16 an exact time, that's 16:19:47. That's two and a half
 17 minutes after that and that was a very discreet incident
 18 where someone ran out of the koppie and allegedly attempted
 19 to attack a policeman. So 16:17:22 may well have been a
 20 point at which you perceived the shooting to be over.
 21 GENERAL NAIDOO: Chair, as I indicated,
 22 as far as the time is concerned I would have to go by the
 23 time reflected on the cell phone. I did not make note of
 24 the time. However, as far as my recollection goes it was I
 25 who called Brigadier Pretorius first. I do not recall her

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1 calling me and that is what I've testified, Chair.

2 CHAIRPERSON: You see then we've got the

3 interesting situation that if Mr Chaskalson is correct,

4 that the last shot was fired in the vicinity of scene 2 at

5 16:19, you waited from 16:19, on your own evidence, till

6 16:44 before you contacted the JOC. That seems to follow

7 from what we've been told. Now, I take it you may not

8 agree with Mr Chaskalson's assertion that the last shot was

9 fired at 16:19, that would introduce a whole separate issue

10 which I don't propose going into but if Mr Chaskalson is

11 right, then how do you explain waiting till 16:44 before

12 you contacted the JOC? What were you doing in the

13 meantime?

14 GENERAL NAIDOO: Chair, as I indicated,

15 immediately when the shooting stopped I asked the K9 to

16 come in to assist with the sweeping, securing of the scene.

17 The NIU were already in the koppie and then also the medics

18 came with the K9, so I ensured that they got in and the

19 moment they were in and started with their work, I called

20 the JOC.

21 CHAIRPERSON: You see the other problem

22 is, surely it was important for the people in the JOC to

23 know what was happening. Now we've heard evidence from

24 people in the JOC, General Annandale and others, who claim

25 that they only knew what was happening at scene 2 a

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1 substantial period of time after things had stopped

2 happening there. I think that's correct. Now, wouldn't it

3 have been important for you, as a Major-General with people

4 under your command, to have contacted the JOC from time to

5 time to give them a report on what was happening because

6 how were they to know what was happening if you didn't tell

7 them?

8 GENERAL NAIDOO: Chair, what you say is

9 true in terms of communication with the JOC but at that

10 particular time, the time from when I arrived at the area

11 where the NIU were till they secured the area, I can't

12 really tell you I took so many minutes. At that stage, you

13 know, time was not – I think that I was mindful of more in

14 terms of our movement and the moment we came across the

15 other side, I'm now relating it in terms of the activity

16 and not in terms of time, the moment we came across and I

17 got the K9 in, declared the area secure, I immediately

18 phoned the JOC. I admit I did not phone them before we

19 started the sweep and we did not phone them during the

20 course of the sweep, which was difficult in terms of the

21 position that I was in.

22 CHAIRPERSON: When you left the medics at

23 the power station and went with the K9 people –

24 GENERAL NAIDOO: Yes, sir.

25 CHAIRPERSON: - towards the koppie.

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1 GENERAL NAIDOO: Yes.

2 CHAIRPERSON: It wouldn't have been a

3 difficult thing for you, surely, to have contacted the JOC

4 at that stage and said look, I just want to tell you I'm

5 supposed to be taking the medics to scene 1, I can't

6 because there's this problem but I'm advancing with the K9

7 people to koppie 3 at the moment – you wouldn't know it was

8 called that but anyway – and I'm assessing the situation

9 but I want you to know I'm here, I want you to know I can't

10 take the medics immediately to what we now know as scene 1

11 for this reason, but it's important for you to know I'm

12 here and what I'm going to do. Surely it's important in an

13 operation of this kind that the JOC should be kept abreast

14 of what's happening and people of your seniority

15 particularly should be doing that.

16 GENERAL NAIDOO: Chair, you are right in

17 terms of the flow of communication that should be to the

18 JOC. As I indicated the factors, one of the factors I

19 clearly indicated was the issue of the radio which I was

20 unable to transmit. Yes, you indicated the issue of the

21 cell phone, you must remember at that particular point in

22 time we were also being shot at. I had in one hand my

23 radio, the other hand –

24 CHAIRPERSON: Were you being shot at –

25 I'm sorry to interrupt you – were you being shot at when

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1 you walked away from the power station where you left the

2 medics behind? When did you start being shot at?

3 GENERAL NAIDOO: Chair, as we approached

4 koppie 3.

5 CHAIRPERSON: Exactly. When you were at

6 the power station walking towards koppie 3 you weren't

7 being shot at.

8 GENERAL NAIDOO: Chair, that –

9 CHAIRPERSON: You've got no excuse for

10 not having phoned the JOC at that stage, have you?

11 GENERAL NAIDOO: Chair, I have admitted

12 that I did not phone the JOC –

13 CHAIRPERSON: The question was, you've

14 got no excuse for not having the phoned the JOC at that

15 stage, have you?

16 MR SEMENYA SC: Chair, with respect, the

17 Chair's questions are all correct but the witness must be

18 feeling pressured by not getting an opportunity and the

19 Chair interrupting his answer.

20 CHAIRPERSON: I'm sorry for having

21 interrupted you but you know what my question is, would you

22 please answer it?

23 GENERAL NAIDOO: Chair, you're asking

24 whether I should have and I didn't take the opportunity.

25 I'm indicating that yes, I did not take the opportunity to

<p style="text-align: right;">Page 23229</p> <p>1 call at that stage.</p> <p>2 CHAIRPERSON: Thank you. Mr Chaskalson,</p> <p>3 I did indicate to Mr Semenya that I propose that he should</p> <p>4 make the application he wants to make round about now. Is</p> <p>5 it convenient for you if he does?</p> <p>6 MR CHASKALSON SC: I think yes, I can</p> <p>7 pick up whenever we pick up after his application.</p> <p>8 CHAIRPERSON: Alright. Mr Semenya?</p> <p>9 MR SEMENYA SC: Yes Chair, thank you</p> <p>10 Chair. Chair, arising out of the cross-examination</p> <p>11 yesterday I think the witness then alluded to a possibility</p> <p>12 of going to look at the AvL which is a technology that can</p> <p>13 indicate the movement of the car in which he was yesterday.</p> <p>14 We are seeking an opportunity, with the permission of the</p> <p>15 Chair, that we go and look at that material and possibly</p> <p>16 have an opportunity to consult with the witness in lieu of</p> <p>17 leading, only in that limited section, the evidence of the</p> <p>18 witness about the movement of the car.</p> <p>19 CHAIRPERSON: Is there anything else you</p> <p>20 wish to say at this stage?</p> <p>21 MR SEMENYA SC: That is the application.</p> <p>22 CHAIRPERSON: What is your attitude to</p> <p>23 the application, Mr Chaskalson?</p> <p>24 MR CHASKALSON SC: Mr Chairperson, if the</p> <p>25 AvL records are going to throw light on this matter, we</p>	<p style="text-align: right;">Page 23231</p> <p>1 MR SEMENYA SC: Time permitting –</p> <p>2 CHAIRPERSON: Time permitting.</p> <p>3 MR SEMENYA SC: Time permitting, ja.</p> <p>4 CHAIRPERSON: I presume that whatever new</p> <p>5 evidence you lead would presumably not be very long and I</p> <p>6 take it, it should be possible to have that in writing in a</p> <p>7 relatively short period of time.</p> <p>8 MR SEMENYA SC: Chair -</p> <p>9 CHAIRPERSON: Not necessarily typed. I</p> <p>10 don't know how these things work, if someone can give it in</p> <p>11 typed form or whether it has to be done in manuscript but</p> <p>12 I'm sure the versatile Mr Pretorius can even produce</p> <p>13 something in legible manuscript form if he had to.</p> <p>14 MR SEMENYA SC: There is another</p> <p>15 possibility that I intend to propose to Mr Chaskalson and</p> <p>16 that if we both witness this we may have an agreed note</p> <p>17 about what that evidence reveals.</p> <p>18 CHAIRPERSON: How do you react to that</p> <p>19 proposal?</p> <p>20 MR CHASKALSON SC: Mr Chairperson, I'm</p> <p>21 not sure we're going to be in a position to agree to that</p> <p>22 today because we would want to investigate this evidence,</p> <p>23 whatever it is.</p> <p>24 CHAIRPERSON: It sounds as if that offer</p> <p>25 you make has been turned down, Mr Semenya, but anyway so</p>
<p style="text-align: right;">Page 23230</p> <p>1 must have them in and I would rather, in fairness to the</p> <p>2 witness and to the SAPS team, that the SAPS are able to</p> <p>3 lead the witness on the AvL record. It would also be more</p> <p>4 convenient for the Commission because we'll then get the</p> <p>5 information in a focused form rather in the manner in which</p> <p>6 it might come out in cross-examination.</p> <p>7 CHAIRPERSON: It's not usual, of course,</p> <p>8 for a witness to be consulted with by the side that leads</p> <p>9 him while he's giving evidence, but I take it there can be</p> <p>10 no objection to the consultation on the limited basis</p> <p>11 dealing with this new material.</p> <p>12 MR CHASKALSON SC: None from our side.</p> <p>13 CHAIRPERSON: Any of the other parties</p> <p>14 wish to comment at all on the application?</p> <p>15 MR CHASKALSON SC: Chairperson, can I</p> <p>16 merely ask this, just in keeping with our procedure thus</p> <p>17 far, that when the witness has consulted and when SAPS are</p> <p>18 in a position to lead him, we get given a short</p> <p>19 supplementary statement with whatever annexures are</p> <p>20 relevant so that we are in the same position that we</p> <p>21 would've been in had this taken place before the witness</p> <p>22 commenced evidence.</p> <p>23 CHAIRPERSON: I don't know how long</p> <p>24 that'll take. Mr Semenya, how do you react to that</p> <p>25 request?</p>	<p style="text-align: right;">Page 23232</p> <p>1 we'll proceed the other way proposed. We will now take the</p> <p>2 tea adjournment. You will have the opportunity to consult</p> <p>3 and to see the material and prepare a short little note as</p> <p>4 to the evidence you would lead, extra evidence you would</p> <p>5 lead in chief, as it were, and then we will proceed.</p> <p>6 [COMMISSION ADJOURNS COMMISSION RESUMES]</p> <p>7 [11:54] MR CHASKALSON: Thank you, Chairperson.</p> <p>8 I just want to, before I get to the main stream of the</p> <p>9 cross-examination, I just want to pick up on a couple of</p> <p>10 the answers that you gave to the Chairperson, Major</p> <p>11 General. The first was when you were being asked about why</p> <p>12 you hadn't contacted Brigadier Calitz, you indicated that</p> <p>13 you had attempted to call Brigadier Calitz to inform you</p> <p>14 about your movement and that you were trying to get medical</p> <p>15 personnel to the injured people. You recall that? I am</p> <p>16 paraphrasing your answer, so I am not –</p> <p>17 GENERAL NAIDOO: Chair –</p> <p>18 MR CHASKALSON: And you were referring in</p> <p>19 that regard, I understand it to that 12 second call that</p> <p>20 went to voice mail at 15:33.</p> <p>21 GENERAL NAIDOO: Chair, I think what I</p> <p>22 indicated, your question, Chair, was did I make any attempt</p> <p>23 to contact, why didn't I make any attempt to inform</p> <p>24 Brigadier Calitz, and my answer was that I did make an</p> <p>25 attempt and his phone went into voice mail.</p>

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1 MR CHASKALSON: But Major General Naidoo,
 2 the attempt that you made to contact Brigadier Calitz
 3 wasn't an attempt to tell him that you were joining in, in
 4 the operation and that the medical personnel were no longer
 5 proceeding to scene 1, it was an attempt to call him before
 6 you'd taken those decisions.
 7 CHAIRPERSON: I think that was his
 8 evidence, because his point was that he tried before, he
 9 couldn't get through. So if I am understanding him
 10 correctly, he thought it was pointless trying again,
 11 because –
 12 GENERAL NAIDOO: Actually –
 13 CHAIRPERSON: Sorry?
 14 GENERAL NAIDOO: I indicated –
 15 CHAIRPERSON: He thought there may be a
 16 problem with the battery of his phone or something of that
 17 sort. So his evidence was, as I understood him, he
 18 conceded that the attempt was earlier, but because it was
 19 an unsuccessful attempt, as I understood him, he thought
 20 any subsequent attempt would also be unsuccessful. Is that
 21 a fair summary of what you were saying?
 22 GENERAL NAIDOO: Chair, that is correct.
 23 MR CHASKALSON: You dealt at length with
 24 the Chairperson on why you, on the question why you hadn't
 25 called the JOC. What about the overall commander, Major

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1 Mpmembe, why didn't you call him?
 2 GENERAL NAIDOO: Chair, as I indicated,
 3 there was a number of activities taking place that time.
 4 Yes, I did think of calling Brigadier Calitz, and I
 5 attempted before we commenced our movement, or as we
 6 commenced our movement, I failed. I have conceded that
 7 yes, I could have contacted the JOC. What I have indicated
 8 in my testimony yesterday, that I had tried to contact
 9 General Mpmembe twice earlier, much before the operation
 10 started, and his, both attempts were unsuccessful. I have
 11 testified to that. But I think to answer these question, I
 12 did not try to contact General Mpmembe or the JOC until the
 13 time I did contact the JOC.
 14 MR CHASKALSON: Now, the purpose of your
 15 expedition into scene 2 was at this level was to make an
 16 assessment to get information what's going on, so that you
 17 could be guided accordingly in relation to your primary
 18 function of getting the medics to scene 1. From your
 19 position you could see the STF Casspir.
 20 GENERAL NAIDOO: That is correct, Chair.
 21 MR CHASKALSON: Do you know who was in
 22 command of the STF Casspir?
 23 GENERAL NAIDOO: That is correct, Chair.
 24 MR CHASKALSON: Who was that?
 25 GENERAL NAIDOO: Lieutenant-Colonel

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1 Gaffley.
 2 MR CHASKALSON: Did it not occur to you
 3 to call Lieutenant-Colonel Gaffley who was right at the
 4 scene in your sight, to get a report from him rather than
 5 walking up in a line and potentially exposing your dog
 6 squad members to the risk of fire from the koppie?
 7 GENERAL NAIDOO: Chair, as I testified
 8 already, the shooting was not coming at that stage, the
 9 gunfire where I perceived which got me there, was not
 10 coming from any location where Colonel Gaffley was, the
 11 gunfire was at that stage, I quite clearly indicated coming
 12 from the direction where the NIU was deployed. So that is
 13 the reason I went there.
 14 MR CHASKALSON: You don't think
 15 Lieutenant-Colonel Gaffley who was at the scene of koppie
 16 3, would have had a better sense than you of where the
 17 gunfire was coming and whether it was necessary for you to
 18 come in?
 19 GENERAL NAIDOO: Chair, I don't know as
 20 to what Lieutenant-Colonel Gaffley saw, or had a sense of,
 21 I based my decision on what I saw and experienced and my
 22 actions were directed by that.
 23 MR CHASKALSON: Had you spoken to
 24 Lieutenant-Colonel Gaffley on the cell phone earlier in the
 25 day? Did you have access to his cell number?

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1 GENERAL NAIDOO: Chair, I did have access
 2 to his cell number, I did obtain it and I did call him at
 3 some stage during the day, yes.
 4 MR CHASKALSON: So if you wanted to call
 5 Lieutenant-Colonel Gaffley, you had the means to do so.
 6 GENERAL NAIDOO: I could have called him,
 7 if I needed to, yes.
 8 MR CHASKALSON: Major-General, I am
 9 trying to understand why you thought it would be useful to
 10 anyone to come in with the dog squad to koppie 3. You knew
 11 that the tactical forces were there. You could see them.
 12 GENERAL NAIDOO: Yes.
 13 MR CHASKALSON: They were the
 14 professionals, correct?
 15 GENERAL NAIDOO: They were a part of the
 16 bigger policing family. I would not want to say one unit
 17 is more professional than the other, each one has their
 18 specific focus and responsibilities.
 19 MR CHASKALSON: Well, the specific focus
 20 and responsibility of the tactical units is dealing with
 21 high risk tactical situations, is it not?
 22 GENERAL NAIDOO: That is the
 23 responsibility of the Special Task Force.
 24 MR CHASKALSON: The NIU?
 25 GENERAL NAIDOO: Yes, medium to high,

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1 yes.

2 MR CHASKALSON: And you knew that both

3 the NIU and the Special Task Force were there?

4 GENERAL NAIDOO: I had testified to that

5 effect, yes.

6 MR CHASKALSON: Now the tactical plan

7 that had been developed didn't give you the function of

8 offering unsolicited tactical assistance to the STF, did

9 it?

10 GENERAL NAIDOO: The tactical plan that

11 we had made provision for the K9 units to support the other

12 tactical units in clearing of rocks in dense area.

13 MR CHASKALSON: On an unsolicited basis?

14 GENERAL NAIDOO: I, at this stage, I did

15 not indicate that it was solicited. I indicated that we

16 were responding to a particular incident and to make an

17 assessment of the situation.

18 MR CHASKALSON: My question was, did the

19 plan give the K9 unit the function of providing assistance

20 on an unsolicited basis?

21 GENERAL NAIDOO: The plan indicated that

22 they will provide assistance on command.

23 MR CHASKALSON: And who did you think the

24 command would come from?

25 GENERAL NAIDOO: From the, either the

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1 operational commander, or the person needing the

2 assistance.

3 MR CHASKALSON: Or the person needing the

4 assistance, that "needing the assistance," I didn't hear,

5 "needing" or "leading?"

6 GENERAL NAIDOO: Requiring the

7 assistance.

8 MR CHASKALSON: So there was no command

9 from either the operational commander or a person requiring

10 assistance?

11 GENERAL NAIDOO: Chair, I think it was

12 already lead here, the operational commander had no idea

13 that what was developing at that stage and yes, he did not

14 request such assistance.

15 MR CHASKALSON: So he didn't request

16 assistance, nor did anybody seem to require assistance,

17 because nobody else had made a request, had they?

18 GENERAL NAIDOO: Chair, I think evidence

19 was led here that we did not go to koppie 3 on a request

20 for assistance. We were responding to what we have

21 encountered.

22 MR CHASKALSON: So you were acting

23 outside the terms of your planned function.

24 GENERAL NAIDOO: I don't understand that,

25 Chair.

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1 MR CHASKALSON: Well, in terms of the

2 tactical plan, what you did, was not something that was

3 provided for in the tactical plan.

4 GENERAL NAIDOO: Chair, I disagree

5 because in the tactical plan, there was provision that the

6 K9 will support the interventions of the other tactical

7 units, but the scenario that we encountered was not one

8 that we envisaged in our planning. There was no mention of

9 koppie 3 or such a scenario what we did encounter. So it

10 did not make provision for such a thing.

11 MR CHASKALSON: The plan didn't give to

12 the K9 unit, still less to you, the function of intervening

13 on an unsolicited basis, did it?

14 GENERAL NAIDOO: Chair, as I indicated,

15 my intervening there was on a basis of the original mission

16 that I had to accomplish, is to get the medics through, and

17 yes the other issue, the concern which we have in terms of

18 the safety, wellbeing of the members that could be engaged.

19 It's something that is a standard policing factor that

20 affects any unit in incidents such as the one we

21 experienced.

22 MR CHASKALSON: Well, can I take you to

23 Colonel Scott's evidence, on page 14666, in fact let's go

24 back up to 14665. There I asked Colonel Scott, "Major

25 General Naidoo's tasking, can you describe what Major

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1 General Naidoo's tasking was in relation to page 3?" The

2 answer by the man who designed the plan, at least the

3 tactical stage of the plan in phase 3, "Again, to the best

4 of my recollection, he was to what was the forward holding

5 area 1 grouping, which was made up of numerous units within

6 SAPS as well as units of the Emergency Medical Services,

7 closer to initially where the immediate reaction 1 was so

8 that he would be – so that should there be a requirement

9 for medical attention. For that matter, it's just out of

10 planning. I commonly do it anyway to our fire brigades as

11 part of that," etcetera, "so that he would be closer. He

12 was essentially to be, if I can explain it in these terms,"

13 I think it was, "it's like a boom gate, as commanders on

14 the front would call for medical attention, so if he would

15 release the medical personnel who would go to meet at a

16 specific place. If there was obviously danger towards them

17 and the groupings that were dealing with the injured

18 couldn't come to get the medical personnel because we had

19 to consider their safety, he would send an escort with

20 them, and they would go to meet at a specific point where

21 they'd be received and taken to." This is again from the

22 planning perspective that I have. "And then obviously he

23 was holding on to the crime scene analysis and those type

24 of after the fact phase 4, stage 4 as it became, to release

25 them at an opportune time."

1 So I then say, "So it wasn't his function to get
 2 involved in the encirclement and dispersion action, it was
 3 his function to protect shall we call it, support services
 4 or ancillary services that may have to perform functions in
 5 the course of the operation." "Colonel Scott, that is the
 6 briefing given to him, and again, I just want to emphasise
 7 that I know these officers went beyond their briefings, but
 8 at their discretion they would obviously have to give the
 9 reasoning why they did that because I don't want to put it
 10 onto record or place it now Colonel Scott has said you
 11 shouldn't have. I wasn't there to experience what they
 12 experienced, or saw or made their decision based on." So
 13 he is saying, you went beyond your briefing, this was a
 14 decision you took in your discretion, it's for you to
 15 explain. Do you accept that?

16 GENERAL NAIDOO: Chair, yes, I would have
 17 to explain my discretion.

18 MR CHASKALSON: Well, let's go back to
 19 the logic of the decision you took. We talked about seeing
 20 the tactical units present on the scene in front of you.

21 GENERAL NAIDOO: That is correct.

22 MR CHASKALSON: And in particular, seeing
 23 the STF Casspir between you and the NIU which is where you
 24 thought the shooting was coming from.

25 GENERAL NAIDOO: Chair, they were not

1 between, they were to my left at a position I already
 2 indicated but yes, I did go to the right of the STF
 3 Casspir.

4 MR CHASKALSON: Now the STF are the most
 5 elite tactical force in the SAPS. Do you accept that?

6 GENERAL NAIDOO: Chair, we would not want
 7 to create a situation of elite and more elite, they have
 8 more advanced training than most members of the SAPS, but
 9 they are part of an SAPS structure. So I would, I would
 10 very - I would not want to use the word "elite" in the
 11 sense, because it's unhealthy in terms of, we have people
 12 with different responsibilities in the organisation with
 13 different expertise and the Special Task Force is one of
 14 those areas who have specific expertise.

15 MR CHASKALSON: Major-General, do you
 16 know how many people apply for an STF position relative to
 17 - from within the SAPS relative to those who are given that
 18 position?

19 GENERAL NAIDOO: I don't have the
 20 statistics with me, but I can imagine quite a bit.

21 MR CHASKALSON: They were given to us at
 22 one stage, I don't have them to hand, but they were quite
 23 astonishing to me. It was, I can't remember it was a
 24 thousand applicants for each position, but it something in
 25 that order. We can, we can get, we will get the number,

1 and we will come back to you. What was conveyed to us in
 2 that briefing, was that the STF are the elite of all the
 3 tactical forces. Do you take issue with that?

4 CHAIRPERSON: I don't like the word
 5 "elite," because it indicates a position of privilege and
 6 so on, which, and he feels that's undesirable, inter alia I
 7 suppose because it may go to the heads of the members of
 8 the STF. But I am sure we can find a phrase which doesn't
 9 raise those problems, with which he will agree, something
 10 like "most highly trained, most specialised in that
 11 particular area." But perhaps he can perhaps suggest an
 12 appropriate word. You understand the point, Mr
 13 Chaskalson's making. I understand your resistance to use a
 14 word like "elite" which doesn't quite fit in the ethos of
 15 the SAPS, it's not something you would encourage anyway.
 16 But can you perhaps think of another word, which conveys
 17 the point you think he's trying to make and doesn't raise
 18 those problems?

19 GENERAL NAIDOO: Chair, I think two
 20 points to deal with there. Yes, as a general and a senior
 21 manager in the South African Police Service, we would not
 22 want to create that scenario that you just sketched now.
 23 They are a highly trained unit, we hold them in very high
 24 regard in the South African Police Service. That is the
 25 one point that I would want to indicate, that they are

1 highly trained. With regard to the statistics that the
 2 evidence leader is introducing, there are other units with
 3 similar and same statistics - similar if not same
 4 statistics, where people wanting to enter into and which is
 5 why I would not want to create a climate where we say, this
 6 unit is better than that unit. I said quite clearly, each
 7 unit has their specific purpose in the South African Police
 8 Service and that is how we utilise them, and we hold the
 9 Special Task Force in very high regard and a lot of our
 10 junior members aspire to join the Special Task Force, just
 11 as much as they aspire to join other units with similar
 12 statistics.

13 MR CHASKALSON: Do you think as many
 14 units - as many junior members aspire to join the dog squad
 15 as they aspire to join the STF?

16 GENERAL NAIDOO: Chair, as I indicated, I
 17 don't have the statistics with me, but if the evidence
 18 leader is looking for a particular example, we have within
 19 the VIP protection environment a unit called the counter
 20 assault team, which does similar if not the same training
 21 of the Special Task Force and I can tell you the statistics
 22 I have been personally involved with the establishment and
 23 roll out of that particular unit and the statistics can be
 24 comparable. If that is required by the Commission, we can
 25 table it.

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1 MR CHASKALSON: As that unit deployed at
2 Marikana?

3 GENERAL NAIDOO: No, Chair.

4 MR CHASKALSON: Now, you thought that
5 there was a tactical situation unfolding at koppie 3, you
6 thought there was a possibility of strikers shooting at the
7 police. Correct?

8 GENERAL NAIDOO: That is correct, Chair.

9 MR CHASKALSON: Now, in that sort of
10 tactical situation the STF would be far better equipped to
11 deal with the situation than the dog squad. Will you
12 accept that?

13 GENERAL NAIDOO: Chair, I would like to
14 place on record, in terms of our plan, they did not
15 distinguish but say the STF only would deal with this, and
16 the NIU only would deal with that, and the TRT only will
17 deal with that. The plan quite clearly indicated that the
18 tactical unit being the STF, the NIU and the TRT would be
19 deployed to deal with pockets of resistance where miners
20 would probably entrench themselves in a particular place.
21 [12:14] At this stage it was not an intention to utilise
22 the canine directly. I indicated quite clearly I used the
23 canine vehicles as a method to get to where the NIU was, to
24 assess the situation. So in assessing the situation
25 obviously a decision would be made as to how the particular

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1 thing would be handled, which will allow me to carry on
2 with my primary function and the other tactical units to
3 carry on with their job.

4 CHAIRPERSON: Am I correct in thinking
5 the canine people took their dogs with them? I remember
6 Warrant Officer Breedt says in his statement he had a dog
7 in one hand, when he was moving the weapons out of the way
8 for the medics –

9 GENERAL NAIDOO: That is correct, Chair.

10 CHAIRPERSON: He was hampered, amongst
11 other things, because he had his dog lead in one hand.

12 GENERAL NAIDOO: That's correct.

13 CHAIRPERSON: So the canine people went,
14 canine members went with their dogs.

15 GENERAL NAIDOO: That is correct, Chair.

16 CHAIRPERSON: And presumably the main
17 function of the canine unit is to bring the, what one might
18 call the specialised skills of the dogs to bear on the
19 problem in the sense that they're sniffer dogs and they're
20 able to – they're trained, I take it, to identify where
21 hidden weapons and that sort of thing are. And of course a
22 dog can also act as a defensive weapon to some extent.

23 GENERAL NAIDOO: Yes.

24 CHAIRPERSON: But can you explain to us
25 what role the canine members were expected to perform,

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1 firstly what they were to do, secondly what their dogs were
2 to do, so then we can understand what it is that you had in
3 mind in bringing them with you when you took them to koppie
4 3.

5 GENERAL NAIDOO: Chair, as I indicated, I
6 had at that stage not made an assessment of what was the
7 reason for the shooting. The reason I took the four canine
8 units and I moved forward, with me, is primarily we were
9 going as a sweeping line, obviously clearing the area up to
10 where I would go and link up with the NIU. So they were
11 still performing their duties as a protection force. When
12 they came to a particular distance I asked them to hold
13 that line whilst I approached the NIU and that's what they
14 did. They held that line, the vehicles were there when we
15 stopped and it only moved after the entire incident at
16 scene 2 finalised. So they were at that stage when we were
17 going forward, whilst I indicated that we would establish
18 and see if they required assistance, I had at that stage no
19 idea what the nature of that assistance would be and quite
20 rightly as you indicate, they have the capability of
21 sniffing weapons, they have the capability of sniffing
22 human beings who may be concealed in particular areas.
23 They also are trained as patrol dogs, which means that they
24 have the capacity of going into a bush and tackling a
25 suspect, an armed or otherwise suspect. That is part of

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1 their training and part of their utilisation possibilities.

2 MR CHASKALSON SC: Had Colonel Scott
3 allocated them -

4 CHAIRPERSON: Sorry, sorry. The canine
5 unit members, they of course carried firearms?

6 GENERAL NAIDOO: That's correct, Chair.

7 CHAIRPERSON: And they seem to have used
8 them quite a lot at koppie 3.

9 GENERAL NAIDOO: That's correct, Chair.

10 CHAIRPERSON: More so than some of the
11 other units.

12 GENERAL NAIDOO: That's correct.

13 CHAIRPERSON: Substantially more than STF
14 who I don't think fired a shot.

15 GENERAL NAIDOO: Chair, the STF was in a
16 different situation as compared to the other units deployed
17 there in the sense that they were sitting in an armoured
18 vehicle and that would obviously give them a completely
19 different view of how to respond, et cetera.

20 CHAIRPERSON: So that comparison is not
21 an appropriate one in the circumstances but the canine
22 members did fire quite a lot of shots according to the
23 statistics we've been given.

24 GENERAL NAIDOO: K9 and the NIU I think
25 were the most shots, yes.

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1 CHAIRPERSON: Yes.

2 MR CHASKALSON SC: Well, did it not cross

3 your mind that if you and the dog squad came in on foot in

4 a line without cover, you would prevent an obvious target

5 for any striker who was shooting at the police? Did that

6 not cross your mind?

7 GENERAL NAIDOO: Chair, I think before

8 the break we had dealt with this and I had already

9 indicated to that, yes, the possibility did exist and that

10 is why we utilised the tactical training that we had in how

11 we approached the particular scene and we came to a

12 particular distance and we took up a particular position so

13 that members were under cover, using their vehicles as they

14 do on a daily basis when they are deployed in various crime

15 scenes.

16 MR CHASKALSON SC: Well, Major-General,

17 it seems to me that if you were going to come up in a line

18 like that where there was no hard cover offered by the

19 terrain – you accept that there was no hard cover offered

20 by the terrain where you were coming up, you couldn't

21 shelter behind - your line that came up didn't have sort of

22 large numbers of rocks behind which it could shelter.

23 GENERAL NAIDOO: There were no rocks,

24 Chair.

25 MR CHASKALSON SC: So the terrain offered

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1 you no protection.

2 GENERAL NAIDOO: That is correct, Chair.

3 MR CHASKALSON SC: If a striker started

4 shooting at you, it seems to me you would have had two

5 options. You would either have to withdraw - maybe three

6 options – you either have to withdraw, first option. You

7 accept that was an option. Major-General, do you accept

8 that was an option, withdrawing?

9 GENERAL NAIDOO: Possible, yes.

10 MR CHASKALSON SC: Or you would have to

11 get into a fire fight with the strikers who were shooting

12 at you?

13 GENERAL NAIDOO: That's possible.

14 MR CHASKALSON SC: Or you could try to

15 take cover behind soft vehicles with the risks that that

16 entails.

17 GENERAL NAIDOO: That is also possible.

18 MR CHASKALSON SC: Can you think of any

19 other options that you would have taken, that you could

20 have taken?

21 GENERAL NAIDOO: At this point in time,

22 no, Chair.

23 MR CHASKALSON SC: So those were the

24 three.

25 GENERAL NAIDOO: That is correct, Chair.

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1 MR CHASKALSON SC: Why did you not

2 contemplate withdrawal?

3 GENERAL NAIDOO: Chair, as I indicated,

4 there were two factors. I needed to establish the reason

5 for the shooting, the convoy that I was trying to get

6 through was being held up. And the second one I indicated

7 that this is a standard operational issue with police

8 officials in terms of an incident like this when

9 responding. I want to say possibly even internationally,

10 that when police officials are engaged in this, that all

11 police officials converge to see if they could render

12 assistance, et cetera. I have indicated that as well.

13 MR CHASKALSON SC: Major-General, are you

14 suggesting that it's an international standard that when

15 there's a tactical plan governing an operation of several

16 hundred police officers, that a unit that has certain

17 responsibilities that don't involve getting involved, that

18 don't involve taking part in the direct tactical action,

19 will generally converge on that tactical action when it

20 happens?

21 GENERAL NAIDOO: Chair, what I'm saying

22 is that in an incident such as this where police officers

23 are involved in shooting, where in terms of the planning

24 there was going to be no shooting, the tactical training

25 and the conditioning of police officers is to respond to

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1 such things, yes.

2 MR CHASKALSON SC: Major-General, are you

3 suggesting the plan didn't contemplate that there might be

4 shooting at the police?

5 GENERAL NAIDOO: As I indicated, we did

6 not contemplate this kind of, the type of shooting we

7 envisaged, we envisaged a dispersal action. Yes, we

8 envisaged minor pockets of resistance but what we had

9 experienced thus far was definitely not envisaged.

10 MR CHASKALSON SC: I want you to answer

11 my question. Did the plan envisage the possibility that

12 the police might be shot at?

13 GENERAL NAIDOO: Chair, yes, it was

14 envisaged because we had tactical units present and

15 deployment of tactical units is normally in response to

16 that kind of threat.

17 MR CHASKALSON SC: Yes and the tactical

18 units are there so that they can deal with the threat, not

19 the dog squad.

20 GENERAL NAIDOO: Chair, I see the

21 exclusion of the dog squad as a tactical unit, I think it's

22 a gap. They have specific training especially in rural

23 applications, which I have already alluded to, and I think

24 there was a detailed presentation to the Commission on the

25 training of the various units, including the canine unit.

1 So in my thinking I do not disregard the canine unit as a
 2 tactical unit. They have their specific application and
 3 they have their levels of training.
 4 MR CHASKALSON SC: Well, this particular
 5 plan didn't allocate to them any function in dealing with
 6 shooters at the police, do you accept that?
 7 GENERAL NAIDOO: I would not agree with
 8 that because the expectation was they will sweep dense bush
 9 in between rocks and the possibility of them encountering
 10 strikers entrenched in that kind of scenario would require
 11 them to take tactical action, together with the dogs, to
 12 removing such suspects.
 13 MR CHASKALSON SC: We've been there
 14 before, Major-General. I think the plan probably speaks
 15 for itself in this regard but let's look at what actually
 16 happened to the tactical unit that was supposed to deal
 17 with the shooting when you arrived unsolicited. Can we
 18 look at FFF10 which is Colonel Gaffley's statement and if
 19 we can go down to paragraph 11 or maybe 10, for context.
 20 "The Casspir and the water cannon arrived at koppie 3 at
 21 the same time and at this stage the water cannon was still
 22 spraying at the crowd. At this stage I ordered the members
 23 of the Casspir to stay inside the vehicle as I could see
 24 that the forces on the ground were still far behind us and
 25 that it would be looking for trouble to send nine members

1 into the koppie after the protesters." That's nine STF
 2 members. "We waited inside the Casspir for a little while,
 3 then I saw the canine unit approaching from behind us. I
 4 ordered my members to get out of the vehicle but not to
 5 approach as yet, just to line up next to the Casspir. I
 6 also got out of the vehicle and starting talking to the
 7 crowd, ordering them to lay down their weapons but this had
 8 no effect. I could, however, not identify any person
 9 within the crowd that was visible to me with any firearm in
 10 his hand. At this stage I heard gunshots coming from the
 11 direction of the bushes in front of us but could not see
 12 any person shooting. Then the canine members also started
 13 firing from behind us into the koppie. I also heard shots
 14 from our left and right." Can we go up a little? "At this
 15 stage the Scorpion has joined us and the members had formed
 16 a line in front of the Casspir ready to approach the koppie
 17 on foot." Now the Scorpion is also an STF vehicle so you
 18 had the whole STF detachment in a line, ready to approach
 19 the koppie on foot. "I ordered the members to fall back
 20 and take position behind the vehicles as it was clear that
 21 the police are firing from different directions and members
 22 could be caught in the cross-fire. I could see some of the
 23 protesters were hit and members were still firing. This is
 24 when I started screaming the command, 'Cease fire' at the
 25 members shooting from behind us." I'll leave it there,

1 Major-General, but if we look at what Colonel Gaffley
 2 describes, we see what the result of your unsolicited
 3 arrival with the dog squad was. It was that the real
 4 professionals who had got out of their vehicles and lined
 5 up in front, found themselves in a situation where they
 6 were at risk of being shot or caught in a cross-fire and
 7 possibly shot by their own colleagues and had to take cover
 8 in an armoured vehicle to protect themselves, inter alia,
 9 from your dog squad. What do you say to that?
 10 GENERAL NAIDOO: Chair, two things. It
 11 is clear that the canine members did shoot. I have already
 12 indicated that the special task force members were in an
 13 armoured vehicle when we arrived there and the third thing
 14 was as to why the special task force did not shoot, I'm not
 15 in a position to indicate because they were, I mean they
 16 were in an armoured vehicle and maybe their assessment was
 17 different from the people who were shot at.
 18 MR CHASKALSON SC: Let's just look at
 19 paragraph 13 again. "At this stage the Scorpion has joined
 20 us" - so the whole tactical contingent of the STF is
 21 present - "members had formed a line in front of the
 22 Casspir". The tactical, the most expert tactical unit is
 23 in a position ready to approach the koppie, ready to deal
 24 with the tactical situation that is confronting the SAPS,
 25 but the commander Colonel Gaffley "ordered the members to

1 fall back and take position behind the armoured vehicles as
 2 it was clear that the police are firing from different
 3 directions and members could be caught in the cross-fire."
 4 So the most expert tactical unit, the one that you would
 5 really want to do the job, is effectively taken out of the
 6 operation inter alia because of the unsolicited arrival and
 7 participation of your dog squad.
 8 GENERAL NAIDOO: Chair, I think paragraph
 9 12 of Colonel Gaffley's statement quite clearly indicates
 10 that the gunshots that precipitated this shooting came from
 11 the bushes in front, although they could not have a clear
 12 vision of who was - he indicated there was a crowd and then
 13 he indicated that gunshots came from the bushes where this
 14 crowd was. So I think that decision to shoot or not to
 15 shoot by the affected members would be based on what they
 16 experienced. As to whether the task force would have shot
 17 or not shot had they entered that, is something that I
 18 can't speculate because I wasn't at that particular point
 19 there to make that kind of assessment.
 20 MR CHASKALSON SC: Major-General, two
 21 points. The first is, that's not what Colonel Gaffley
 22 says. He says that he heard gunshots coming from the
 23 direction of the bushes in front of us, not from the bushes
 24 but from the direction of the bushes in front of us. It's
 25 quite possible that that gunfire was coming from the TRT on

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1 the western side of the koppie which was in the direction
 2 of the bushes in front of him. Do you accept that?
 3 GENERAL NAIDOO: Chair, I don't think
 4 I'll be able to accept that without looking at the location
 5 of where the special task force vehicles were located.
 6 They were in the middle of the area on the southern side.
 7 The TRT at that stage, which joined the canine, were on the
 8 left, they came in from the west which was far, in terms of
 9 distance-wise, from the position where, the direction – if
 10 the bushes that are being referred to is the direction or
 11 the bushes in front of Colonel Gaffley, then it's far
 12 removed from the position of the TRT, Chair.
 13 MR CHASKALSON SC: Maybe we should show
 14 you an aerial photograph, if we can go to KKK16.5139. I'm
 15 going to mark the position of the STF Casspir and Scorpion
 16 next to each other. This is the – it's very difficult to
 17 describe this on this diagram but there are camouflaged
 18 armoured vehicles roughly 40% of the way up on the
 19 photograph and possibly 20% of the way from the right-hand
 20 edge of the photograph. They are diagonally ahead of the
 21 three white vehicles that we see on the right-hand side of
 22 the photograph. I now ask that we zoom the area that I'm
 23 marking with the marker now, which is the area on the
 24 middle of the photograph on the left hand side and if we
 25 can zoom again, maybe zoom out a little bit so that we can

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1 get a bit of perspective. I'm marking the position of some
 2 of the TRT members, TRT members that are shooting or taking
 3 cover from this position, TRT members taking cover there,
 4 TRT members behind the Nyala. If we –
 5 CHAIRPERSON: We'll have to put that on
 6 record in words, I'm afraid.
 7 MR CHASKALSON SC: Yes.
 8 CHAIRPERSON: But it's easier for you
 9 than for me –
 10 MR CHASKALSON SC: If we zoom back out.
 11 I hear from behind me from Mr Pretorius that it may be POP
 12 members behind the Nyala, I'm happy to concede that it may
 13 be POP members. Sorry Chair, Chair if you bear with me for
 14 –
 15 CHAIRPERSON: You described something,
 16 you said here and there and this and that and so on, but
 17 that's got to be transmitted or translated into words which
 18 people who read this record in years to come will be able
 19 to follow.
 20 MR CHASKALSON SC: The members that I am
 21 describing, the area in which I'm describing TRT members
 22 taking cover is the area behind the rocks on the edge of
 23 the dry dam that one sees on the left-hand side of the
 24 photograph.
 25 [12:34] Behind the rocks inside the dry dam that one sees

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1 on the left hand side of the photograph, I just want to
 2 zoom in myself, on my own picture with greater resolution
 3 to see if I can identify other positions. For descriptive
 4 purposes the area I've been describing is the area between
 5 the water canon on the far left-hand side of the picture
 6 and the Nyala up to its right. There are also members
 7 taking cover behind the rocks, behind the two in front of
 8 the Nyala that's diagonally ahead of the water canon. Now
 9 if we take a line from the TRT vehicles through the bushes
 10 in front we take the line that essentially cuts the area
 11 covered by those SAPS members. And if those SAPS members
 12 were shooting into the koppie it is quite possible that the
 13 shooting that the members on the other side of the koppie
 14 in the STF vehicles were witnessing was cross-fire coming
 15 from their colleagues directly on the other side of the
 16 koppie. Would you accept that?
 17 GENERAL NAIDOO: Chair, I was not
 18 deployed with the TRT and on their actions I cannot
 19 indicate, but I want to propose maybe a better picture
 20 which depicts the deployment and on L, slide 249 which
 21 clearly depicts these things.
 22 MR CHASKALSON SC: Thank you, Major-
 23 General -
 24 CHAIRPERSON: This is the same picture
 25 virtually, isn't it?

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1 MR CHASKALSON SC: I think it may well be
 2 the same, Chairperson.
 3 CHAIRPERSON: Yes it is the same picture,
 4 but some kind, thoughtful person has marked the various
 5 units for us. So yes, I think if I may say so I think the
 6 Major-General is right. It would be sensible for us to use
 7 this slide for the purposes of indicating the positions of
 8 various people as you are doing in your questioning. And
 9 that would make it easier for those people in years to come
 10 and read the record to follow what's going on.
 11 MR CHASKALSON SC: Well if we then use
 12 this slide, Major-General and we look at the SAPS personnel
 13 marked by the box on the left-hand side or the arrows
 14 coming out of the box on the left-hand side of the screen
 15 saying forward holding area 2 TRT, POP, K9 and the box
 16 saying forward holding area 2 TRT, POP, K9 towards the
 17 bottom left-hand corner of the screen. And we look at the
 18 STF vehicle, or the two STF vehicles with the green arrow
 19 and we draw a line through the koppie or through the bushes
 20 in front of that STF vehicle, we get a line to the other
 21 side of the koppie and the forwarding holding area 2 TRT,
 22 POP and K9. Do you accept that?
 23 GENERAL NAIDOO: Chair, no. What you do
 24 not take into consideration in this picture is among those
 25 trees is a wall of solid rock which the public order police

<p style="text-align: right;">Page 23261</p> <p>1 unit wasn't able to dislodge people that were there using 2 the water canons, etcetera. So you know graphically it may 3 seem yes it's easy to say if you shoot from there it will 4 come out this side. So I think that's a factor we need to 5 take into account. It was almost a sheer wall of rock. In 6 that particular area, which I'm not sure how I'm going to 7 indicate it to you, is the area where we found the bulk of 8 the 200 and some odd people which is incredible given when 9 you look at it from here. It looks like a very small area 10 and they were entrenched between large rocks. So the 11 assumption that the fire from forward holding area TRT, 12 POP, K9 would have been causing the STF to believe they 13 were under fire. It could have been affected by that and 14 that has to be factored in because – and the second one is 15 the statement of Colonel Gaffley says that the fire was 16 coming from the bushes in front of him. If we look at the 17 vehicle and the bush in front of him, you know, in terms of 18 the solid wall of rock that I spoke about I think I would 19 not agree with that possibility of it coming from that 20 location that was indicated now.</p> <p>21 CHAIRPERSON: Can you tell us, indicate 22 to us on the photograph where the solid wall of rock is? 23 GENERAL NAIDOO: Chair, if I could first 24 try and find an example of the rock I think it may be more 25 helpful. Chair on the slide I don't see pictures of the</p>	<p style="text-align: right;">Page 23263</p> <p>1 blocks that you referred to. We hopefully can see it a bit 2 more clearly.</p> <p>3 GENERAL NAIDOO: Chair, yes I do see that 4 there.</p> <p>5 CHAIRPERSON: That's what you're talking 6 about.</p> <p>7 GENERAL NAIDOO: That is correct, Chair. 8 CHAIRPERSON: Thank you.</p> <p>9 MR CHASKALSON SC: Major-General, I'm 10 afraid I can't agree with you. Maybe if we can look at 11 JJJ6 1234. It's possible a better picture for this 12 purpose. JJJ6 1234. I'm not sure that you have that 13 because I'm not sure I asked you to look at JJJ6s. I just 14 looked at it now in response to your answer, but you'll 15 have ample time to see it on the screen if you want. JJJ6 16 1234. Now I'm marking the position of the armoured 17 vehicle, the STF armoured vehicle which is the camouflaged 18 vehicle below the second and third white vehicles on the – 19 or directly below the second white vehicle coming from the 20 left-hand side, the second white bakkie. Now if one takes 21 a line from the SAPS vehicles that we see taking cover 22 under the dry dam on the bottom right-hand corner of the 23 screen or the SAPS members taking shelter behind the rocks 24 that we see there, obviously at this stage they are also 25 behind the armoured vehicles. If one draws a line from the</p>
<p style="text-align: right;">Page 23262</p> <p>1 rocks to give an indication to you just on what I've 2 indicated. But for purposes of the picture the bush 3 beginning where the three POP vehicles are indicated there, 4 where the arrow – the arrow indicates two POPs, allocation 5 1 and far away from scene 2 and then one there. Just in 6 front of that those vehicles stopped there for a particular 7 purpose. It was the dense bush and the rock, they could 8 not go further than that. And that area there was where 9 more than 200 people had concealed themselves and were not 10 visible to us on the ground until we got to that particular 11 place.</p> <p>12 CHAIRPERSON: Major-General, if you look 13 at MMM2, it looks to me and perhaps we could have some 14 zooming in done, as if the area to which you are referring 15 is B3 and a little bit of B4 I suppose and perhaps the 16 right-hand side of A3. That's the impression from what 17 you're telling us. Am I understanding you correctly? 18 GENERAL NAIDOO: Chair, yes A3, B3 and a 19 little bit of C as well. I don't know if the Chair would 20 remember when we did the inspection in loco there were 21 indications of where several people were lying in between 22 the rocks. So when I refer to that wall of rocks that need 23 to be factored in with regard to what was put to me, I'm 24 referring to that particular area.</p> <p>25 CHAIRPERSON: Let me zoom in on the</p>	<p style="text-align: right;">Page 23264</p> <p>1 SAPS vehicles, sorry SAPS members behind the dry dam 2 through to the STF vehicle one doesn't get hit by any 3 rocks. In fact I've been assisted by the video operator. 4 Do you accept that?</p> <p>5 GENERAL NAIDOO: Chair, not necessarily. 6 As the picture clearly indicates, the position of the 7 members quite clearly shows us the direction that they 8 perceive the threat and that's coming from the rocks in 9 front of the Nyalas, not to the left. So the position of 10 the members, the members would not position themselves 11 where they're flank on the left would be exposed. They 12 normally position themselves facing a threat. And that's 13 why I would not agree with that proposition that is being 14 put.</p> <p>15 COMMISSIONER HEMRAJ: I expect that the 16 direction of the shots would be towards where the strikers 17 would be at that particular time.</p> <p>18 GENERAL NAIDOO: That's the indication 19 they would face the threat and they would shoot in the 20 direction of the threat. And as I've indicated and it's 21 clearly indicated here in the picture, they were entrenched 22 among those rocks and the water canon wasn't able to 23 dislodge them.</p> <p>24 MR CHASKALSON SC: Can I ask for the 25 photo to be zoomed in at the point that I am marking now</p>

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1 which is the point just above the top of the water canon
 2 spray? Do you see the strikers underneath the line that I
 3 am marking?
 4 GENERAL NAIDOO: Chair, I see a striker.
 5 MR CHASKALSON SC: There are several
 6 strikers there.
 7 GENERAL NAIDOO: Chair, I don't know.
 8 Maybe it's my vision, but I can clearly see one person.
 9 CHAIRPERSON: Well there's one in a blue
 10 and one in a green shirt, I think. We don't seem to have
 11 any people with red shirts –
 12 GENERAL NAIDOO: I don't see the second
 13 one, but I can see the one person, yes.
 14 CHAIRPERSON: The man in the blue shirt,
 15 do you see him?
 16 GENERAL NAIDOO: I see the man in the
 17 blue shirt.
 18 CHAIRPERSON: And unless I'm seeing
 19 things, behind his left shoulder appears to be someone in a
 20 green shirt or a green blanket or green jacket or
 21 something. Can you see that, it does look like –
 22 GENERAL NAIDOO: There is some
 23 irregularity in the - but I can't say it's a person.
 24 MR CHASKALSON SC: Sorry, Major-General,
 25 if you look to the screen to your left it's a better

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1 screen. If you just look to your left.
 2 CHAIRPERSON: I'm just looking at the
 3 screen in front of us which is clearer than the one behind
 4 us. So if you look at the one now on your left.
 5 GENERAL NAIDOO: Okay, yes.
 6 CHAIRPERSON: Can you see the person with
 7 the green –
 8 GENERAL NAIDOO: I do see an outline,
 9 yes.
 10 CHAIRPERSON: And there's some suggestion
 11 there may even be a third person there. I'm not quite sure
 12 where he is. And of course the other probability is, I
 13 take it the water canon is being directed at the place
 14 where the water canon operators saw some kind of activity
 15 by the strikers. So that's another factor we can bear in
 16 mind in trying to work out where the strikers were. Isn't
 17 that so?
 18 GENERAL NAIDOO: Chair, yes and an
 19 important factor is it could also give an indication as far
 20 as the shots that were encountered by the Special Task
 21 Force because if it was in the bushes in front of the Task
 22 Force I think those strikers are ideally located for that
 23 purposes.
 24 MR CHASKALSON SC: Chairperson, there is
 25 in fact a third person who is underneath a blanket and that

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1 person is in fact we believe one of the people who was
 2 killed by the police on that day.
 3 CHAIRPERSON: Do you see him on the
 4 screen?
 5 MR CHASKALSON SC: The orange – if one
 6 goes to –
 7 CHAIRPERSON: Sorry to interrupt you.
 8 There's a man with a blue, right, I take it they were men.
 9 Then behind him is a man in a green jacket, it looks like a
 10 jacket of some sort. And then behind him there is a shape
 11 of some kind, sort of orangey, light brown shape, I think.
 12 Is that the person you're referring to?
 13 MR CHASKALSON SC: That is correct, Mr
 14 Chairperson. That is Mr Mnyande we believe, who is one of
 15 the people who was killed that day. And if we go forward
 16 to 1236 you'll see that it is definitely an additional
 17 person. A bit further to the left.
 18 CHAIRPERSON: If you look at the screen
 19 that I'm looking at, the one immediately in front of us,
 20 you've got the person in the blue shirt or jacket, then
 21 you've got to the left of him a person in a green jacket or
 22 a green blanket or something and then to the left of him
 23 there's whose upper part of his body seems to be covered by
 24 a blue garment of some kind. The lower part is yellow. Is
 25 that the person you're referring to?

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1 MR CHASKALSON SC: No, Chairperson, it's
 2 the person in the cream and brown, with the cream and brown
 3 blanket wrapped around his upper body.
 4 CHAIRPERSON: He appears to be lying on
 5 the ground.
 6 MR CHASKALSON SC: He is in fact kneeling
 7 upright.
 8 CHAIRPERSON: I see, okay and he is then
 9 further to the left then.
 10 MR CHASKALSON SC: Indeed and if we got
 11 to the right we see a much larger group of people as well.
 12 Stay with the same photograph but zoom in, in this area.
 13 CHAIRPERSON: Oh yes in fact the person I
 14 thought was one person in blue appears to be a number of
 15 persons in blue. So there's a group of people there, I
 16 don't know how many, but not just two or three. A bit more
 17 than that I think. Is that right, Major-General?
 18 GENERAL NAIDOO: Chair, yes definitely
 19 more than two. I can say to the number. Ja, no
 20 definitely, Chair.
 21 MR CHASKALSON SC: But Major-General
 22 would you accept that the cross-fire precipitated inter
 23 alia by your intervention with the dog squad is what
 24 Colonel Gaffley says took his troops out of the operation
 25 or his personnel out of the operation.

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1 GENERAL NAIDOO: Chair, two things. One,
 2 when we had this discussion it was around the deployment of
 3 forward holding area 2 and the pictures and the graphics
 4 where related to the location of forward holding area 2.
 5 They were not deployed by me. Secondly, in terms of which
 6 led to the issue of cross-fire which also indicates as
 7 Colonel Gaffley in his statement said, shots were coming
 8 from the bushes in front of him. We have seen photographs
 9 that there were people indeed in the bushes just in front
 10 of the Casspir. Secondly, yes I think it's a matter of
 11 record that members of the K9 unit did respond to shooting
 12 which was made in their direction. I think there were
 13 statements to the effect where members saw who was shooting
 14 at them as well and they shot at specific individuals. And
 15 yes that shooting could have got the Task Force to get back
 16 into the armoured vehicles for fear of getting caught in
 17 the cross-fire due to the location of the K9 unit behind
 18 the Special Task Force.

19 MR CHASKALSON SC: Major-General, the
 20 deployment of the K9 personnel to the koppie, was your
 21 deployment. It wasn't a deployment in terms of the plan,
 22 it was a decision that you took.

23 GENERAL NAIDOO: I've already testified
 24 to that effect, Chair.

25 CHAIRPERSON: I'm sorry, Mr Chaskalson,

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1 the point that I don't understand from the answer he gave
 2 earlier.
 3 [12:53] It appeared from that slide that we looked at
 4 with the difference colour arrows that of course, 241 –
 5 sorry, I beg your pardon, 249 – that there were two groups
 6 and we know this of course from other evidence, that there
 7 were two groups of K9 people.

8 GENERAL NAIDOO: That's correct, Chair.

9 CHAIRPERSON: Some under your command
 10 whom you brought there, as you've told us –

11 GENERAL NAIDOO: The four vehicles –

12 CHAIRPERSON: Others from forward holding
 13 area 1 and others -

14 MR CHASKALSON SC: Two.

15 CHAIRPERSON: No, the ones you brought
 16 were from forward holding area 1.

17 GENERAL NAIDOO: Correct, Chair.

18 CHAIRPERSON: Right. Others were brought
 19 there by Captain Kidd, I think, from forward holding area
 20 2, is that correct?

21 GENERAL NAIDOO: That is correct, Chair.

22 CHAIRPERSON: Right. Now according to
 23 slide 249 of exhibit K, if the arrows are correct, the red
 24 arrow from forward holding area 2 which starts somewhere
 25 near the left hand side, the bottom left hand corner of the

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1 slide – oh, it's not red. It's red in exhibit K. It's a
 2 sort of –

3 GENERAL NAIDOO: Pink.

4 CHAIRPERSON: Pinky colour, ja, on the
 5 slide which is on the screen, it extends from near the
 6 bottom left hand corner of the slide right across to near,
 7 to a vehicle near the right hand corner which is a vehicle
 8 that was one of your vehicles, as far as one can see, and
 9 there are blue arrows extending from a blue block in the
 10 right hand corner, bottom right hand corner, so it would
 11 appear as if some of the K9 people from Captain Kidd joined
 12 up with some of your K9 people if these arrows are correct.

13 GENERAL NAIDOO: Chair –

14 CHAIRPERSON: Do I understand correctly?

15 GENERAL NAIDOO: That is correct, because
 16 there was a presumption that the members from forward
 17 holding area 2 did not know that the members from forward
 18 holding area 1 were there and I think this slide clearly
 19 indicates that some of them even shared cover in terms of
 20 when they arrived at the scene.

21 CHAIRPERSON: That's if slide is correct,
 22 but so the difficulty I've got is when Colonel Gaffley
 23 talks about K9 people – it's an inelegant expression but
 24 you know what I mean – is he talking about your K9 people
 25 or Kidd's K9 people or both?

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1 GENERAL NAIDOO: Chair, I'm not sure but
 2 I suppose we all went with the assumption with the four
 3 vehicles that were directly behind him and not necessarily
 4 the others, so I think yes, we went with that assumption
 5 and it could have been somebody else but we're not sure.

6 CHAIRPERSON: No, but of course the point
 7 you make I think probably puts us on the right track.
 8 Gaffley talks about fire coming from behind him, so your
 9 lot were – I don't use that word disrespectfully but you
 10 know, the members under your command, they were behind
 11 Colonel Gaffley.

12 GENERAL NAIDOO: That's correct, Chair.

13 CHAIRPERSON: Captain Kidd's people
 14 weren't exactly behind Colonel Gaffley, they were on the
 15 side and I think Gaffley talks in his statement – let's
 16 have a look at this statement. He talks about, yes, here
 17 we are. Look at para 12 of Gaffley's statement which is
 18 exhibit FFF10, he says "At this stage I heard gunshots
 19 coming from the direction of the bushes in front of us."
 20 That presumably is the strikers, if they're coming from the
 21 bushes in front of him. I say presumably because I'm not
 22 sure but that, it's what I think at the moment. "But could
 23 not" – I take it he means "I could not see any person
 24 shooting. Then the K9 members also started firing from
 25 behind us into the koppie." That sounds like your members.

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1 GENERAL NAIDOO: Forward holding –

2 CHAIRPERSON: Then he goes on, "I also

3 heard shots from my left and right" and if this slide 249

4 is correct then those shots that he heard coming from his

5 left may well have come from Captain Kidd's K9 members.

6 Would that be correct? Am I right or have I got it wrong?

7 GENERAL NAIDOO: Chair, yes, firing

8 coming from the left here would have been possibly the

9 people that you indicated from forward holding area 2. The

10 K9 were definitely, from forward holding area 1 were

11 definitely behind the special task force –

12 CHAIRPERSON: That sounds like your

13 members.

14 GENERAL NAIDOO: The personnel that I

15 deployed.

16 CHAIRPERSON: Right. Yes, I'm sorry to

17 interrupt, Mr Chaskalson, that was the point I wanted to

18 clarify. Can we take the adjournment now or is there some

19 point that you want to make first before we do that?

20 MR CHASKALSON SC: No, Chairperson, now

21 is a convenient time.

22 CHAIRPERSON: We'll take the lunch

23 adjournment. We must try to be back at quarter to two.

24 Somehow I never seem to succeed in achieving that but let's

25 all make an effort so for once we do get back after only a

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1 45 minute lunch adjournment.

2 [COMMISSION ADJOURNS COMMISSION RESUMES]

3 [13:53] CHAIRPERSON: The Commission resumes.

4 Major-General, you're still under oath.

5 GENERAL NAIDOO: Still under oath.

6 CHAIRPERSON: Mr Chaskalson.

7 CROSS-EXAMINATION BY MR CHASKALSON SC (CONTD.):

8 Thank you, Chairperson. Major-General, we were dealing

9 with Lieutenant-Colonel Gaffley's statement when we broke

10 and I want, before I leave this statement, to emphasise

11 what it is exactly that Lieutenant-Colonel Gaffley says in

12 paragraphs 12 and 13. Firstly in paragraph 12, he doesn't

13 say he heard gunshots coming from the bushes, he says he

14 heard gunshots coming from the direction of the bushes. Do

15 you accept that gunshots fired from the other side of the

16 koppie would come from the direction of the bushes?

17 GENERAL NAIDOO: Chair, I'm just trying

18 to orientate myself. Chair, could I have the question

19 again, please?

20 MR CHASKALSON SC: Lieutenant-Colonel

21 Gaffley in paragraph 12 does not say that he heard gunshots

22 coming from the bushes, he says that he heard gunshots

23 coming from the direction of the bushes. Do you accept

24 that gunshots fired from the other side of the koppie on a

25 line through the bushes would come from the direction of

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1 the bushes?

2 GENERAL NAIDOO: Chair, not

3 unconditionally as there's no indication in the statement

4 of Colonel Gaffley in terms of the volume, giving an

5 indication to distance. He just indicates he heard

6 gunshots coming from the bushes in front of him.

7 CHAIRPERSON: No, he says from the

8 direction of the bushes. So isn't the point that there are

9 two possibilities, the one possibility, it was actually a

10 striker in the bushes or perhaps behind the bushes.

11 GENERAL NAIDOO: That's correct.

12 CHAIRPERSON: The other possibility is,

13 it was a member of the police service who was in line with

14 the bushes but behind, on the other side of the koppie. So

15 either way the Colonel would hear gunshots, they would be

16 from the direction of the bushes but he wouldn't know

17 whether it was a striker who was firing or a member of the

18 police service. He does say, as we see, "I could not see

19 any person shooting," so it's just the noise – because he

20 talks about, or he heard – it's the noise of gunshots

21 coming from a particular direction. It could be either a

22 striker or a policeman, is that fair?

23 GENERAL NAIDOO: Chair, fair. Obviously

24 to concede whether it could have been coming from the K9

25 would be dependent, it would have been –

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1 CHAIRPERSON: No – no, sorry, as I read

2 it he's not talking, in the first sentence in 12, coming

3 from K9, he talks about the K9 people in the second

4 sentence. He's just talking, as I understand it, about

5 gunshots which could've been police gunshots or striker

6 gunshots, isn't that correct as far as the first sentence

7 is concerned?

8 GENERAL NAIDOO: Chair, yes. He does not

9 indicate who possibly fired so it could have been somebody

10 in the bush in front of him, in the direction of the

11 bushes. As to whether it could be further is not clear but

12 he says in the direction of the bushes in front of him.

13 COMMISSIONER HEMRAJ: Would one be able

14 to distinguish between the sound of fire coming from the

15 bush, which is closer, as opposed to from the K9 on the

16 extreme left hand side? Or any place on –

17 GENERAL NAIDOO: TRT, Chair?

18 COMMISSIONER HEMRAJ: Yes.

19 GENERAL NAIDOO: Chair, this was what I

20 was trying to lead to, is that there's no indication if it

21 was a – or I use the assumption that it was a close, closer

22 gunshot because he specifically indicates the bush in front

23 of him rather than further off because the term, you know,

24 a distant gunshot is I think an indication that it was

25 further away from the location of that. So when I read the

1 sentence I would take it that it's coming from the bushes
 2 directly in front of him.
 3 MR CHASKALSON SC: Well, we'll take that
 4 up further with Lieutenant-Colonel Gaffley but paragraph
 5 13, "At this stage the Scorpion has joined us and members
 6 have formed a line in front of the Casspir ready to
 7 approach the koppie on foot. I ordered the members to fall
 8 back and take position behind the vehicles as it was clear
 9 that the police are firing from different direction and
 10 members could be caught in cross-fire." Now, are you in a
 11 position to deny that as a result of the police, not the
 12 strikers, just the police firing from different directions,
 13 there was a cross-fire which posed a risk to Colonel
 14 Gaffley and his men?
 15 GENERAL NAIDOO: Chair, since I was not
 16 in that position to make that assessment, we are depending
 17 on the assessment that – or the, ja, the assessment that
 18 Colonel Gaffley had. I mean I would have to assume that
 19 his assessment was correct. I was not in a position to
 20 make that kind of assessment.
 21 CHAIRPERSON: It does appear from the
 22 second sentence of para 13 that the reason for his order to
 23 the members to fall back was because of police firing from
 24 different directions because that's what he says in so many
 25 words. He doesn't say I ordered them to fire back because

1 from that firearm.
 2 GENERAL NAIDOO: Chair, I will indicate
 3 that the magazine was still full. I don't think that's an
 4 indication whether the firearm was shot or not.
 5 MR CHASKALSON SC: Well, let's probe
 6 that. Are you suggesting that there may have been another
 7 secret magazine somewhere?
 8 GENERAL NAIDOO: Chair, it's not a secret
 9 magazine, it is accepted fact that firearms generally – I'm
 10 talking about now the firearms under question – generally
 11 come with two magazines, number 1. Number 2, a firearm
 12 could be reloaded manually as well without the benefit of
 13 an additional magazine. So I think I would not be able to
 14 concede that the firearm was not used in the shooting. I
 15 would be able to indicate that it still had all the rounds
 16 available as indicated now in exhibit L.
 17 COMMISSIONER HEMRAJ: Even with the full
 18 magazine it could have had one round in the chamber. It
 19 could have been carried with one live round in the chamber.
 20 GENERAL NAIDOO: It could, yes. If it's
 21 a 15 round magazine it can carry 16 rounds.
 22 CHAIRPERSON: If that's correct it means
 23 that the one in the middle, the Norinco pistol in the
 24 middle could only have been used, absent some kind of other
 25 magazine that we don't know anything about, could only be

1 the strikers were firing or the strikers and others were
 2 firing. He directly says, specially says that his order
 3 was given because it was clear that the police were firing
 4 from different directions. That's what he says, isn't it,
 5 so we can't escape from that. As you say, it's his
 6 assessment, not yours.
 7 GENERAL NAIDOO: Yes.
 8 CHAIRPERSON: But insofar as we're trying
 9 to determine what he's saying, that must be so.
 10 GENERAL NAIDOO: As I indicated, Chair,
 11 that was his assessment. I can't dispute his assessment
 12 because I was not there.
 13 MR CHASKALSON SC: Now Major-General,
 14 you've spoken of gunshots which you say came at you from
 15 the strikers. Can I ask you to turn to slide 264? Can we
 16 have 264 of exhibit L up? These are the three firearms
 17 found on or near strikers at scene 2 on the 16th. The first
 18 firearm on the left has a magazine with a capacity of eight
 19 rounds and has only two rounds in that magazine. Would you
 20 agree that that leaves a capacity for six shots to have
 21 been shot from that magazine?
 22 GENERAL NAIDOO: Based on that
 23 information, yes.
 24 MR CHASKALSON SC: The next firearm has a
 25 magazine of 15 rounds which is still full, no shots fired

1 used to fire one shot.
 2 GENERAL NAIDOO: If we're working on the
 3 presumption it had one round in the magazine.
 4 CHAIRPERSON: Well, how many rounds could
 5 it have had in the magazine?
 6 GENERAL NAIDOO: Sorry, in the breech
 7 block and 15 rounds in the magazine, yes.
 8 CHAIRPERSON: Ja, well, we know the 15
 9 rounds in the magazine were still there.
 10 GENERAL NAIDOO: Yes, Chair.
 11 CHAIRPERSON: So how many – so what's the
 12 maximum number of rounds that could have been fired from
 13 that pistol on that day?
 14 GENERAL NAIDOO: Chair, no. What I have
 15 indicated is that I acknowledge that there are 15 rounds
 16 and a firearm that has been recovered. That is no
 17 indication whether the firearm was fired or not because it
 18 could have been reloaded and there's also, it's a matter of
 19 fact that these firearms are sold with a spare magazine
 20 which I would concede we have not recovered it. So what
 21 I'm saying is that yes, a firearm with 15 rounds has been
 22 recovered. That's no indication of whether it's been fired
 23 or not.
 24 MR CHASKALSON SC: You've conceded that
 25 you didn't recover the magazine.

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1 GENERAL NAIDOO: That is correct, Chair.

2 MR CHASKALSON SC: Now presumably

3 everybody who was arrested inside the koppie was searched?

4 GENERAL NAIDOO: That is correct, Chair.

5 MR CHASKALSON SC: So if it was on the

6 person of any one of the people who remained inside the

7 koppie, it would have been found in that search.

8 GENERAL NAIDOO: Possibly, Chair.

9 MR CHASKALSON SC: Did your dog squad

10 ever do the job that they were originally designed to do or

11 intended to do, namely sniff out the rocks and crannies to

12 find out if there were any hidden firearms?

13 GENERAL NAIDOO: They did, Chair.

14 MR CHASKALSON SC: And they didn't find

15 another magazine?

16 GENERAL NAIDOO: Chair, a magazine is not

17 a firearm. A magazine is a receptacle. A firearm is – or

18 the K9, I'm not a K9 expert either, I would like to place

19 on record, but it's normally an explosives dog which

20 identifies where an explosion which occurs when a firearm

21 is fired, is located. So I am not sure but I think it's

22 unlikely an empty magazine would be detected by a K9.

23 CHAIRPERSON: That's not a matter on

24 which either you or I are in a position to express an

25 opinion on, is that so?

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1 GENERAL NAIDOO: That is correct, Chair.

2 MR CHASKALSON SC: There is a third

3 firearm which has a magazine which has a capacity for seven

4 rounds and has six rounds and one empty cartridge in that

5 magazine. So unless the striker managed to catch his own

6 cartridge after shooting it and then replace it in the

7 magazine, it would seem that the only shot, if any, that

8 could have been fired from that firearm would have been

9 one that was in the breech already. Would you accept that?

10 GENERAL NAIDOO: Chair, I think with

11 reference to what was being presumed it would only refer to

12 that particular magazine and a possible explanation for why

13 the one empty cartridge was found in the firearm is when it

14 was utilised it probably jammed with the cartridge in

15 there. That does not give us an indication as to its prior

16 use and the number of possible shots that were fired

17 utilising any other ammunition, Chair.

18 MR CHASKALSON SC: Have SAPS been able to

19 link a single cartridge found at the scene to any of these

20 three guns or any other gun in the possession of a

21 mineworker, believed to have been in the possession of the

22 mineworker?

23 GENERAL NAIDOO: Chair, I am not sure, I

24 am not aware. I have not followed the investigation into

25 that particular –

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1 MR CHASKALSON SC: Well, I may be able to

2 assist you because we've been provided with all of the

3 ballistics reports that have been done by SAPS in the

4 context of this case. None of them link cartridges to any

5 of these three guns.

6 GENERAL NAIDOO: Chair, I think that's

7 not necessarily an indication that the firearms were not

8 used because it was also accepted that not all empty cases

9 were recovered from the scene. I think that is something

10 that we are familiar with and we are aware of.

11 MR CHASKALSON SC: It is quite a

12 coincidence, though, that if there were empty, hidden empty

13 cases, those hidden cases would have been the only cases

14 linked to these guns, would you not say?

15 GENERAL NAIDOO: Chair, I am not sure. I

16 don't think I'm in a position to say whether these were the

17 only firearms not linked to empty cases. I mean that we'd

18 have to see who else used their firearms and where the

19 cases were linked to their firearms.

20 MR CHASKALSON SC: You say that the

21 firearms that we're looking at on slide 264 were found in

22 or near the possession of three strikers, three different

23 strikers.

24 GENERAL NAIDOO: That is correct, there

25 were specific members who found them with or located them

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1 with the firearms and performed the arrests.

2 MR CHASKALSON SC: Do you know whether

3 gunshot residue tests were taken of those strikers?

4 GENERAL NAIDOO: Chair, as far as I could

5 recall whilst I was still at the scene the members were

6 holding and they did request four gunshot residue tests to

7 be done. I, at some stage, had departed before some of

8 these things were done, to another incident. So I can

9 testify that there was a request and for the gunshot

10 residue to be done at the scene where the arrests were

11 executed.

12 MR CHASKALSON SC: Do you know if that

13 gunshot residue test found gunshot residue on any of those

14 three miners?

15 GENERAL NAIDOO: Chair, as I indicated,

16 I'm not up to date with the investigations so I'm not

17 aware.

18 MR CHASKALSON SC: I'm sure SAPS would

19 have told us if it did.

20 CHAIRPERSON: In your statement,

21 paragraph 75, you mention that two individuals were

22 arrested in the area by other members as you say, as you

23 call them, with firearms in their possession.

24 GENERAL NAIDOO: That's correct, Chair.

25 CHAIRPERSON: One of whom admitted to

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1 firing on the police as they advanced.
 2 GENERAL NAIDOO: That is correct, Chair.
 3 CHAIRPERSON: So if that admission is
 4 correct, then it shouldn't be difficult to ascertain – in
 5 fact I don't know if you can tell us but presumably it can
 6 be found out – who the person was who admitted firing. The
 7 other one who is referred to in the sentence was in
 8 possession of the firearm. So this paragraph reads – “two
 9 individuals were arrested in that area by other members
 10 with firearms in their possession.” Now we've been given
 11 the statement of Sgt Molangoanyane which is MMM6, and he
 12 describes in the last sentence of the statement, finding a
 13 dead man on the ground nearby him lying a pistol, that's
 14 the way it is put in the statement. Now I'm not sure if
 15 the evidence has been led or it's something that I've read
 16 in the papers we've got but one of these firearms was found
 17 on the ground covered by leaves. Adv Hemraj reminds me the
 18 way it works is, these three firearms, one was found on the
 19 ground covered by leaves near someone who was dead. That's
 20 obviously the one that Sgt Molangoanyane is referring to in
 21 MMM6. The other two firearms were the ones that you refer
 22 to in paragraph 75 of your statement. Now, can you tell us
 23 who the other members to whom you refer in the last
 24 sentence of paragraph 75 were and is it possible either for
 25 you to tell us or somebody else to tell us who the two

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1 individuals were to whom you refer in that sentence who
 2 were in possession of firearms, because they must be the
 3 people who were in possession of the other two of the
 4 firearms referred to in slide 264. Is that, do you follow
 5 me? Am I right?
 6 GENERAL NAIDOO: Chair, I follow you.
 7 Maybe we need to correct some of these issues. As I
 8 indicated, I was also at the scene and that's why I
 9 included in my statement my knowledge of what I saw.
 10 Firstly, on the person that admitted to firing at the
 11 police, we can make that information available because
 12 there is a case docket in regard to that and I think that
 13 would be helpful for the purpose of this. The second
 14 person recovered, I'm not too clear on the particulars but
 15 I'm sure we can obtain that –
 16 CHAIRPERSON: As far as I could see there
 17 are two dockets in relation to – we can refer to it
 18 actually in exhibit L without the names being given but
 19 there are two dockets for people charged with possessing
 20 firearms.
 21 GENERAL NAIDOO: That's correct, Chair.
 22 There are three, Chair.
 23 CHAIRPERSON: It's slide 265.
 24 GENERAL NAIDOO: That's correct.
 25 CHAIRPERSON: There's a Marikana

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1 CAS135/08/2012 possession of unlicensed firearm.
 2 GENERAL NAIDOO: That's correct.
 3 CHAIRPERSON: One arrest. Then the next
 4 one, Marikana CAS136/08/2012.
 5 GENERAL NAIDOO: That's correct, Chair.
 6 CHAIRPERSON: Possession of an unlicensed
 7 firearm. That sounds like the two people who are referred
 8 to in the last sentence of paragraph 75.
 9 GENERAL NAIDOO: Chair -
 10 [14:12] CHAIRPERSON: Then of course there's
 11 another firearm but that according to the sergeant to whom
 12 I referred, Molangoanyane, that's person's dead and the
 13 firearm was found near him on the ground.
 14 GENERAL NAIDOO: Chair, can I correct
 15 that aspect of it? Firstly, the third firearm on slide 265
 16 it dealt with the Marikana CAS 139 of 8-2012 which
 17 indicates there was one arrest and a second suspect
 18 deceased.
 19 CHAIRPERSON: I see okay. So, that's the
 20 third firearm.
 21 GENERAL NAIDOO: That's the third
 22 firearm.
 23 CHAIRPERSON: So that accounts for the
 24 three firearms we're talking about. Is that right?
 25 GENERAL NAIDOO: Yes and then, Chair,

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1 just to clarify the issue of the person deceased if you can
 2 go to slide 254 of exhibit L.
 3 CHAIRPERSON: Yes.
 4 GENERAL NAIDOO: You'd find that there's
 5 two people lying there. One of them cuffed and the other
 6 one appears to be deceased. The firearm was found
 7 underneath the person that was cuffed. That's where the
 8 issue of it being among the leaves. When the members
 9 turned him around to ascertain his condition this person
 10 had been shot on his leg and he was subsequently arrested
 11 for that because the firearm was lying under him.
 12 CHAIRPERSON: Ja, yes I understand, but
 13 those are the three firearms. The ones Mr Chaskalson
 14 referred to on the slide with the photographs all Norinco
 15 pistols and then they are linked to these dockets to which
 16 you've referred.
 17 GENERAL NAIDOO: That is correct, Chair.
 18 CHAIRPERSON: And two of them are the
 19 people referred to in the last sentence of your para 75 of
 20 your second statement. Is that right?
 21 GENERAL NAIDOO: The first two that I
 22 encountered yes, Chair.
 23 CHAIRPERSON: They were licensed but I
 24 take it the licensees weren't the people in whose
 25 possession they were found. Is that correct?

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1 GENERAL NAIDOO: I'm unable to –
 2 probably, but I –
 3 CHAIRPERSON: But you wouldn't have had a
 4 docket for people possessing a firearm without a license
 5 because in fact they were licensed and they were the
 6 licensees would you?
 7 GENERAL NAIDOO: Yes, they were legal –
 8 CHAIRPERSON: I mean you could
 9 theoretically have a docket, but it would be stupid and
 10 wouldn't last very long would it?
 11 GENERAL NAIDOO: Chair, as far as my
 12 recollection at that stage goes, they were legal firearms,
 13 but yes they were charged with unlawful possession. So the
 14 assumption is the wrong person had them.
 15 CHAIRPERSON: All right, Mr Chaskalson,
 16 Mr Gotz, have you got a problem, do you want to say
 17 something? You're gesticulating wildly down there on your
 18 bench. Have you got a problem?
 19 MR GOTZ: Chair, no we'll take this up at
 20 the appropriate time. I'm just indicating certain things
 21 to my junior.
 22 CHAIRPERSON: All right, we'll wait with
 23 bated breath. Mr Chaskalson, please proceed with your
 24 cross-examination.
 25 MR CHASKALSON SC: While we're staying at

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1 slide 254 and the gun under leaves, can I ask us to look at
 2 JJJ27 point 9424? I think we've got the thumbnails here,
 3 we need the original photograph 9424.
 4 CHAIRPERSON: The thumbnail with 9424 on
 5 it, yes. This is the Warrant Officer Barnard photograph.
 6 MR CHASKALSON SC: That's correct, we
 7 need to see the photograph. This is a photograph taken by
 8 Warrant Officer Barnard who seems to have been thinking
 9 that he was photographing the large knife in the
 10 foreground, but I think if you look in the background
 11 you'll see the gun under the leaves, the holster at any
 12 rate. We seem to have lost the picture. I may have to
 13 qualify that, it may just be a holster.
 14 CHAIRPERSON: Do you remember anything
 15 about this, Major-General, did you see this particular
 16 firearm on the ground at the time it was recovered? Was it
 17 recovered near you?
 18 GENERAL NAIDOO: Chair, no. As I
 19 indicated, I did see or I arrived here after the recovery
 20 and the member who did the recovery was guarding the
 21 prisoner and waiting for the forensic people because he
 22 wanted to do a gunshot residue. And the medics were also
 23 on scene, but from the explanation that he was giving the
 24 members who obviously were interested about the firearm, he
 25 did indicate that the person was lying on top of the

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1 firearm. So it's not inconceivable that it was, you know,
 2 pushed into the leaves, etcetera in an attempt to conceal
 3 it from discovery by the police.
 4 MR CHASKALSON SC: I'll come back to this
 5 issue if we can establish whether it is the firearm in
 6 question. We'll compare it to the photographs of the
 7 pointing out of the firearm and -
 8 CHAIRPERSON: Can you remember who the
 9 member was who gave the explanation to you? If you can't
 10 remember perhaps you can find out.
 11 GENERAL NAIDOO: Chair, yes I think it
 12 would be fairly easy to find out. He would have been
 13 acting officer as well and if my memory serves me right it
 14 could have been a warrant officer. But I think we can
 15 establish that.
 16 CHAIRPERSON: I'm not sure if he's on the
 17 list of witnesses, but we can a statement from him or
 18 perhaps he's made a statement already. It may not
 19 necessary for him to give oral evidence.
 20 GENERAL NAIDOO: I'm sure he would have
 21 made a statement already because of the arrest as well,
 22 Chair.
 23 CHAIRPERSON: It could actually be in the
 24 docket.
 25 GENERAL NAIDOO: Yes, all right, Chair.

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1 MR CHASKALSON SC: Just before we leave
 2 this point, can we go to the very next photograph, 9425
 3 because my note says that the gun is there as well. No,
 4 it's going to be too laborious, I'm going to have to copy
 5 it. So we can come back to this if it's worth pursuing.
 6 Major-General, there's one last point I want to raise with
 7 you before we move onto a slightly different topic and for
 8 that can we go to slide 249?
 9 CHAIRPERSON: Before you go to 249 I'd
 10 like to ask a question.
 11 GENERAL NAIDOO: Chair.
 12 CHAIRPERSON: It seems that no automatic
 13 rifle was found in the possession of the strikers, any of
 14 the strikers.
 15 GENERAL NAIDOO: Yes, Chair.
 16 CHAIRPERSON: So therefore any automatic
 17 – I know you didn't know at the time, or you thought one of
 18 the strikers was in possession of an automatic rifle, but
 19 it appears with hindsight that any automatic fire you heard
 20 at scene 2 was police fire.
 21 GENERAL NAIDOO: Chair, not necessarily.
 22 I think in my statement I do indicate at some stage on the
 23 top of the rocks we did sight, it was only in my
 24 statements, it was other members' statements, we did sight
 25 a striker running along the rock holding what we assumed to

1 be or what I thought to be a long barrelled firearm. I
2 know one of the members identified it and said it was an
3 R5. I could not specifically say it was an R5. I did look
4 it as a long barrelled firearm and I indicated such in my
5 statement. That was a sighting, but we did not recover at
6 the scene, that is correct, Chair.

7 MR CHASKALSON SC: Major-General, that
8 brings me to the purpose for which I was calling up slide
9 249. You testified, in your statement you mentioned at a
10 certain point that when the forward holding area 2 line,
11 filtering line was coming up unarmed strikers were allowed
12 to pass through that line.

13 GENERAL NAIDOO: Chair, I think I would
14 rather say the dispersing strikers were allowed to pass
15 through the line, yes.

16 MR CHASKALSON SC: Dispersing strikers.
17 Presumably if they were carrying weapons on them visibly
18 they would have been stopped and arrested.

19 GENERAL NAIDOO: Or asked to drop the
20 weapons and disperse, yes.

21 MR CHASKALSON SC: But there came a point
22 at which SAPS had effectively laid siege to the koppie, the
23 point that we see in slide 249.

24 GENERAL NAIDOO: That is correct, Chair.

25 MR CHASKALSON SC: Now from this point on

1 searched. Do you accept that?

2 GENERAL NAIDOO: Chair, two things, yes.

3 In terms of when I saw the miner as I was moving from my
4 vehicle which is the K9 vehicle that's indicated on the
5 photograph on the extreme right, I was moving towards what
6 – the NIU position, not as indicated on the map. They were
7 still not yet at the rocks, not into the koppie and the
8 location or the place that I could place the person that I
9 observed was if you follow the NIU arrow from the bottom,
10 the second red arrow, he was from that direction running
11 with what now is the POP still obviously going down the
12 rock the other side. I had a brief view of him before he
13 went out of my sight. That's with regard to when I saw
14 him. Sorry can we have the other part of the question?

15 MR CHASKALSON SC: That mine worker
16 himself, unless the commanders on the western side were
17 letting people out of the koppie that miner would have been
18 searched. So he wouldn't have got away with the R5 on him.
19 Do you accept that?

20 GENERAL NAIDOO: Chair, I think we need
21 to keep in mind and I indicated in my statement, I think,
22 that this person had a blanket over him and an R5 rifle is
23 not a large, so large one that it cannot be concealed. As
24 to whether everybody that was dispersing was being searched
25 when it looked obviously that they did not have anything in

1 did any occupants of the koppie, were any occupants of the
2 koppie allowed to leave the koppie or were they all
3 arrested?

4 GENERAL NAIDOO: Chair, I can only talk
5 about the area where I was immediately as I did not have
6 sight of the other areas. In the area where I was no,
7 nobody was permitted to disperse.

8 MR CHASKALSON SC: We can take this
9 further with the other commanders, but my understanding is
10 that at this point which is the point at which the fire
11 fight was going on inside the koppie, no one who was inside
12 the koppie left the koppie without being arrested or
13 killed. Do you have any indication to the contrary?

14 GENERAL NAIDOO: Chair, as I indicated, I
15 could only indicate in terms of my line of sight and
16 vision. Nobody from our side, yes. I'll think we'll have
17 to confirm with other people in terms of whether anybody
18 was allowed to disperse or not.

19 MR CHASKALSON SC: We'll follow it up
20 with the other commanders, but it seems to me that from
21 this point if there was an R5 rifle in the possession of
22 the miners then it would have to have been from this point
23 because where you place the miner shooting is after the
24 shooting has already broken out. The miner wouldn't have
25 got away with an R5 rifle on him, he would have been

1 their arms, I'm not sure, but one would have expected that
2 if a person showed that he had something on his person or
3 on his hands he would have been stopped and searched or
4 engaged. I can't rule out the fact that he had this
5 blanket over him and what was seen by other people I can't
6 really testify to.

7 MR CHASKALSON SC: Sorry, Major-General,
8 is it possible that anyone who was searched upon being
9 arrested would have got away with an R5 rifle?

10 GENERAL NAIDOO: Not on being arrested,
11 no.

12 MR CHASKALSON SC: Well that's my point.
13 From the point at which you saw the man or you allegedly
14 saw the man with the R5 rifle the koppie was under siege,
15 no one got out unless they were killed or arrested.

16 GENERAL NAIDOO: Chair, I don't agree
17 with that assertion because as I indicated in my statement
18 as well, the group from the forward holding area 2 were
19 still approaching the koppie. They were not yet in the
20 position because I saw their basic line approaching the
21 koppie. The NIU, as I indicated, were not already – they
22 were not in the position where they closed off on their
23 side of the koppie because I also indicated I had a view of
24 them and the basic line was visible to. As to the public
25 order police, I have no idea. They were in my line of

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1 vision, but on the side of the K9 yes then nobody came
 2 through.
 3 MR CHASKALSON SC: So you're suggesting
 4 that the TRT line came up after, sorry the forward holding
 5 area 2 line came up after your K9 line?
 6 GENERAL NAIDOO: Chair, yes. I think my
 7 assumption based on where I'd seen them when we started the
 8 movement, they would have arrived at their position that is
 9 indicated there after the K9 from forward holding area 1
 10 arrived.
 11 MR CHASKALSON SC: Major-General, I have
 12 to put – well I have to you that you're just wrong in that
 13 respect. If we can go to JJJ10 4546 and if we can zoom in.
 14 Well first of all do you accept that at this stage your K9
 15 group has not reached the koppie:
 16 GENERAL NAIDOO: They're not visible in
 17 the picture, yes.
 18 MR CHASKALSON SC: If we can then zoom in
 19 on the area that I'm marking now which is in the dry dam on
 20 the top left-hand corner. Well towards the top left-hand
 21 corner of the photograph.
 22 [14:32] What we see there, is Captain Kidd's forward
 23 holding area 2 group approaching the dry dam. If we go to
 24 the next photograph, we will see that they've moved into
 25 the dam. 4547, JJJ10 4547, and if we can then zoom in on

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1 the dam, which is in the top centre of the photograph and
 2 you'll see that the SAPS members have fanned out along the
 3 side of the dam to the right of the picture and some are
 4 going into the dam as well. If we zoom back, we'll see
 5 that your men are not even visible in the photograph yet.
 6 So do you accept that the forward holding area 2 team
 7 reached the koppie before you did?
 8 GENERAL NAIDOO: Based on the photo
 9 before me, yes.
 10 MR CHASKALSON: Now, I've dealt with the
 11 possibility of the R5 being kept on the person of the man
 12 who was shooting, I think we can eliminate that
 13 possibility. The other possibility is that he hid it at
 14 the koppie. What searches were done at the koppie using
 15 your sniffer dogs to find weapons?
 16 GENERAL NAIDOO: Chair, as I've
 17 indicated, there was both a visual search as well as the K9
 18 were employed to try and locate firearms, people hiding
 19 other weapons as well.
 20 MR CHASKALSON: And no R5 was found?
 21 GENERAL NAIDOO: No, Chair.
 22 MR CHASKALSON: And an R5 that had been
 23 fired, would be an R5 that a sniffer dog would have been
 24 capable of sniffing out?
 25 GENERAL NAIDOO: Yes, Chair.

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1 MR CHASKALSON: So what is your theory as
 2 to what happened to this R5?
 3 GENERAL NAIDOO: Chair, that's a question
 4 that we would have wanted to answer and we desperately want
 5 to answer because it would have been a positive link to a
 6 crime which we were there. But it's not implausible that
 7 it was concealed somewhere or some way, somewhere which we
 8 did not locate and we have had scenarios previously
 9 similarly where you know, we've conducted searches and we
 10 could not find a particularly firearm and much later when
 11 we recover it we find you know it was in a place where
 12 never really thought. So, I am just theorising, as I said
 13 we would want the answer as the police leading the
 14 investigation to the test as much as this Commission.
 15 MR CHASKALSON: How long was the scene
 16 sealed off for as a crime scene?
 17 GENERAL NAIDOO: Chair, approximately a
 18 week.
 19 MR CHASKALSON: And during that period,
 20 detectives and SAPS personnel were scouring that scene for
 21 all evidence that they could find.
 22 GENERAL NAIDOO: That is correct, Chair.
 23 MR CHASKALSON: But they didn't find a
 24 R5?
 25 GENERAL NAIDOO: No, Chair.

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1 MR CHASKALSON: Now, Major General, when
 2 you brought the dog squad into the koppie, or towards the
 3 koppie, did you have any plan as to how you were going to
 4 deploy them at the koppie?
 5 GENERAL NAIDOO: Chair, as I indicated in
 6 my statement, I asked them to hold the basic line. The
 7 original intention was not, when we arrive at the koppie to
 8 immediately deploy them in there. I did indicate, I was
 9 trying to assess what the situation was so that it could
 10 give me an indication of what, how I would handle my
 11 primary objective, and obviously the secondary issue that
 12 had arisen there.
 13 MR CHASKALSON: Now, apart from asking
 14 them to hold the basic line, did you give them any briefing
 15 before they set off?
 16 GENERAL NAIDOO: At which point, is it
 17 being referred to?
 18 MR CHASKALSON: Sorry, when you set off
 19 from the power station, when you started advancing - before
 20 you started advancing to the koppie from the power station.
 21 GENERAL NAIDOO: Chair, I indicated to
 22 them to hold a basic line and to sweep as we moved forward
 23 which we could call, we found three strikers hidden in
 24 there. Briefing as in sitting down and giving them notes?
 25 No. I indicated in terms of my intention and there's

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1 operating procedure in terms of how to sweep [inaudible].
 2 MR CHASKALSON: Well, you say you
 3 indicated in terms of your intention, did you communicate
 4 to them that you know, your primary objective was getting
 5 the medics to scene 1, and they were coming in with you to
 6 try and stabilise the situation at the koppie so that you
 7 could open a route for the medics.
 8 GENERAL NAIDOO: Chair, no, when I
 9 indicate briefing, I indicate our intention, I indicated
 10 that we are going to go towards the sound of the shooting
 11 in a basic line, that was the vehicles that went with me.
 12 I don't think I gave them that detailed briefing that's
 13 been referred to now.
 14 MR CHASKALSON: Would you have expected
 15 the dog squad to know that this was going to be as quick an
 16 operation as possible because the primary objective
 17 remained getting the medics to scene 1?
 18 GENERAL NAIDOO: Chair, actually their
 19 deployment, as I indicated was on instruction and the SOPs
 20 in terms of executing other tasks, would kick in, so when I
 21 indicated we are going forward in a basic line, sweeping,
 22 that was the task that they were executing at that stage.
 23 I indicated that we need to get to where the shooting was.
 24 So we moved forward in that basic line to execute that
 25 specific task.

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1 MR CHASKALSON: But Major General, the
 2 dog squad was going to be used in the first instance to
 3 escort medics to scene 1, is that not correct?
 4 GENERAL NAIDOO: That is correct, Chair.
 5 MR CHASKALSON: And you needed them to
 6 escort medics to scene 1, the people you've taken in would
 7 have to come out afterwards to escort medics to scene 1.
 8 GENERAL NAIDOO: That is correct, Chair.
 9 MR CHASKALSON: So was it not important
 10 to communicate to them that your primary objective is still
 11 to get to scene 1, so they must always be on hand, to
 12 withdraw quickly, so that they can get back to their
 13 primary objective?
 14 GENERAL NAIDOO: Chair, maybe we should
 15 take it one step back, because maybe I was now referring
 16 only to the four vehicles of the K9 that joined me. When I
 17 say "one step back," when we rounded the power station, I
 18 indicated to the bulk to hold because they were protecting
 19 the ambulances that we brought and this briefing and the
 20 sweeping line I indicated referred to the people that went
 21 forward with me, so I think just to differentiate and
 22 obviously I told them to hold with the ambulances because
 23 they were engaged in protecting the ambulances.
 24 MR CHASKALSON: So how many personnel had
 25 you taken to begin with from the dog squad?

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1 GENERAL NAIDOO: Chair, as I indicated,
 2 it was four vehicles from the dog squad, and it's two
 3 people per vehicle including myself and my driver, it was
 4 ten of us that moved forward.
 5 MR CHASKALSON: Sorry Major General, we
 6 are at cross purposes, oh, you've answered my second
 7 question which you had already – with what was going to be
 8 my second question, which I realise would have been
 9 gratuitous because you've answered it already. Ten of you
 10 moved forward -
 11 GENERAL NAIDOO: That is correct.
 12 MR CHASKALSON: - how many members of the
 13 dog squad were left behind?
 14 GENERAL NAIDOO: Chair, if I can do the
 15 maths quickly, Chair, according to my notes there would
 16 have been more than 15 members. I am just trying to do
 17 rough maps, but there would have been more than 15, 20
 18 members, Chair.
 19 MR CHASKALSON: Of the dog squad?
 20 GENERAL NAIDOO: That is correct, Chair.
 21 The bulk of the K9 unit.
 22 MR CHASKALSON: And were those members
 23 sufficient to do the escort of the medics without you?
 24 GENERAL NAIDOO: Had it been necessary,
 25 yes.

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1 MR CHASKALSON: So then there wouldn't
 2 have been a need to withdraw the ones who had come in?
 3 GENERAL NAIDOO: No, Chair.
 4 MR CHASKALSON: As you moved forward in
 5 your basic line and then fire broke out, or gunfire broke
 6 out and people had to start seeking cover, at that point,
 7 or from that point, did you attempt again at any stage to
 8 co-ordinate the movements of the dog squad members you've
 9 brought in?
 10 GENERAL NAIDOO: Chair, which members
 11 specifically?
 12 MR CHASKALSON: The members you'd brought
 13 in to the koppie, the ten members you'd brought in to the
 14 koppie, or the nine plus you.
 15 GENERAL NAIDOO: Chair, yes, I indicated
 16 to them to hold the line, and that's when we took cover
 17 behind our vehicles.
 18 MR CHASKALSON: Now, if we go to MMM2,
 19 can we call up MMM2? Are you able to identify which
 20 members of your dog squad team were positioned where in
 21 this photograph?
 22 GENERAL NAIDOO: Chair, not by name, I
 23 can indicate the vehicle next to me immediately, and I
 24 think there's possibly one, the one next to me was Sergeant
 25 Brazier and Sergeant Harmse.

<p style="text-align: right;">Page 23305</p> <p>1 MR CHASKALSON: And that vehicle to the 2 left of Sergeant Brazier and Sergeant Harmse? 3 GENERAL NAIDOO: Chair, I can't at this 4 stage recall specifically. One of the vehicles was Myburgh 5 as well. 6 MR CHASKALSON: I think you will find 7 that Sergeant Myburgh's vehicle is this one that I am 8 pointing at, at E6. He was to the far left according to 9 the instructions that we've been given. 10 GENERAL NAIDOO: Chair, I would not 11 dispute that but as I indicated, the vehicle immediately 12 next to me was Sergeant Brazier and Sergeant Harmse. 13 MR CHASKALSON: And in your vehicle was 14 yourself, and is it Lieutenant-Colonel Tongwane? 15 GENERAL NAIDOO: That is correct, Chair. 16 MR CHASKALSON: The driver. 17 GENERAL NAIDOO: That is correct. 18 MR CHASKALSON: Was Constable 19 Molangoanyane one of your team? Sorry, Sergeant 20 Molangoanyane. 21 GENERAL NAIDOO: Chair, I am not familiar 22 with the names of all the personnel so I would not be able 23 to say for sure if he was or he was not. 24 MR CHASKALSON: Servant Vana? Is that a 25 name that rings a bell?</p>	<p style="text-align: right;">Page 23307</p> <p>1 Chaskalson? 2 MR CHASKALSON: It should have been. 3 There is also a typed version but the handwritten will be 4 good enough. 5 CHAIRPERSON: I don't seem to have it, we 6 were given some statements yesterday that I've gone 7 through. I don't see that one, there are others we have. 8 MR CHASKALSON: Chairperson, I must 9 apologise for that, we will arrange for copies to be – 10 CHAIRPERSON: If this is going to be 11 handed in, I've got to make it an exhibit even if I can't 12 mark my own copy. 13 MR CHASKALSON: It will be MMM8 14 Chairperson. 15 CHAIRPERSON: Yes, thank you. MMM8 will 16 be the statement of Constable Motseme. 17 MR CHASKALSON: If we start at paragraph 18 2, "on Thursday 16 August at about three, I was deployed at 19 Marikana and posted under Commander General Naidoo." 20 CHAIRPERSON: Sorry, before you carry on, 21 have you seen this statement, General Naidoo? 22 GENERAL NAIDOO: I have the statement in 23 front of me 24 CHAIRPERSON: You have? So you are ahead 25 of me on that, good luck to you. Let's carry on.</p>
<p style="text-align: right;">Page 23306</p> <p>1 GENERAL NAIDOO: Vana? No, not for the 2 North West. 3 MR CHASKALSON: Can you just bear with me 4 for one minute? I just want to look at Constable Vana's 5 statement. Yes, it's not clear from Constable Vana's 6 statement whether he was part of your group or not. So I 7 won't take further. Constable Mutsi? 8 GENERAL NAIDOO: Chair, as I already 9 indicated, with the exception of the commanders and members 10 that were immediately alongside me, whose names I got to 11 know, I was not familiar with the members by names, maybe 12 by appearance I would have known. 13 MR CHASKALSON: The statements of 14 Sergeant Molangoanyane and Constable Mutsi both speak of 15 being under your command, so they must have been part of 16 your group. Can we go back to those statements? 17 GENERAL NAIDOO: Chair, yes, I am not 18 disputing that, as I indicated there were some 32 K9 19 handlers. I did not know all 32 by name as I had met them 20 at this operation and most of them, I had never seen 21 before. 22 MR CHASKALSON: Well, maybe if we can 23 start with Constable Motseme who will be a new statement, 24 can we call up the statement of Constable Motseme? 25 CHAIRPERSON: Was that given to us Mr</p>	<p style="text-align: right;">Page 23308</p> <p>1 MR CHASKALSON: So paragraph 2 indicates 2 that he was under your command. Paragraph 3, "At about 3 that time, we moved towards the hill and as we were close 4 members of the NIU and Task Force were approaching from 5 different direction and we moved together and as we were 6 close to the hill some people was shooting at us from that 7 hill. We took cover from the van that was coming behind us 8 and some were still behind the trees and they were still 9 shooting at us and that was when the police started to 10 shoot from a command that was given. And they stopped and 11 we went to the hill." Did you give that command? 12 GENERAL NAIDOO: Chair, no. And I have 13 not indicated as such in my statement as well. As my 14 recollection, I did not hear any command given to any 15 person to return fire or shoot. 16 COMMISSIONER HEMRAJ: Would this not be 17 interpreted as Gaffley's command to cease fire, Mr 18 Chaskalson, I am just looking at the way that the 19 alteration has been made. 20 MR CHASKALSON: We can take it up with 21 Constable Motseme but that's not a command to shoot, that's 22 a command, I mean a command to cease fire is a command to 23 stop shooting. He is saying, that's when the police 24 started to shoot from a command that was given. "And they 25 stopped," namely "the miners stopped and we went to the</p>

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1 hill." Anyway I just wanted to clarify with this witness
 2 whether he gave any command. He said, no.
 3 [14:52] If we can then go to MMM6 which is Sergeant
 4 Molangoanyane and if we can read this together with
 5 Constable Mutsi, which will be MMM7 and then I'll ask you
 6 some questions. If we go down two paragraphs of this
 7 additional statement of Sergeant Molangoanyane, "We drove
 8 from forward holding area to the southern side of the hill.
 9 General Naidoo gave instruction again to get off the
 10 vehicles with dogs on leash, K9 members with their
 11 explosive dogs, made extended line approaching the hill. I
 12 move out with our K9 bakkie behind members with dogs for
 13 cover purpose if anything can happen. As we got close,
 14 plus-minus 60 to 70 metres from a hill, I heard a shot.
 15 Immediately I got out of the bakkie. I lie to the ground.
 16 The second shot was fired. That's where I picked the
 17 direction where the shots were from, it was from a green
 18 bush right in front of me between rocks or caves. It was
 19 pistol, sounded low calibre. I crawled forward and alerted
 20 my colleagues on my right that the green bush, that's where
 21 the shots were fired from. I took out my pistol shooting
 22 in that bush eight shots. I realised I cannot reach the
 23 suspect. I decided to crawl back to the bakkie where I
 24 found TRT and K9 members took cover with the bakkie. I
 25 showed TRT member that green bush. He fired two shots with

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1 his R5 rifle. I then saw a movement. I was not sure
 2 whether the person was falling or running away because they
 3 were in the shade. I ran into that direction" – and then
 4 he talks about other encounters, but if we can then go to
 5 Constable Mutsi before I ask my questions. Let's start
 6 with Constable Molangoanyane. Did you witness Sergeant
 7 Molangoanyane's shooting and his instruction to the TRT?
 8 GENERAL NAIDOO: Chair, no. If he was
 9 linked with the TRT he would have been the extreme left
 10 hand side vehicle as the annexure L indicated, TRT members
 11 and the K9 came together at that point.
 12 MR CHASKALSON SC: So you didn't see
 13 that?
 14 GENERAL NAIDOO: No, Chair.
 15 MR CHASKALSON SC: Having read his
 16 statement do you think that's an acceptable approach to
 17 using a firearm in an operation?
 18 GENERAL NAIDOO: Chair, specifically
 19 which part? Is it Mlangeni?
 20 MR CHASKALSON SC: Molangoanyane.
 21 GENERAL NAIDOO: Molangoanyane. Yes,
 22 Chair, I've got it. Chair, he doesn't specifically
 23 indicate whether he has sighted an individual so I think
 24 that would be problematic but he has identified where he's
 25 taking fire from.

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1 MR CHASKALSON SC: So he shot six shots –
 2 GENERAL NAIDOO: Eight.
 3 MR CHASKALSON SC: Eight shots from 60 to
 4 70 metres or possibly a little less because he says he
 5 crawled forward, with a pistol in the direction of a bush
 6 where he thought shots were coming at him, from which he
 7 thought shots were coming at him. Is that an acceptable
 8 use of a firearm by a SAPS member?
 9 GENERAL NAIDOO: Chair, as I indicated,
 10 it was problematic where he does not expect, does not
 11 explain a specific target and he fired generally, so that
 12 would be problematic.
 13 MR CHASKALSON SC: Do you intend to do
 14 anything about it?
 15 GENERAL NAIDOO: Chair, as the SAPS?
 16 MR CHASKALSON SC: As the SAPS or in your
 17 case, as Major-General Naidoo, deputy Provincial
 18 Commissioner of the North-West.
 19 GENERAL NAIDOO: Chair, yes, if – at the
 20 appropriate time, yes, I would do something about that.
 21 MR CHASKALSON SC: And what would be an
 22 appropriate thing to do about it?
 23 GENERAL NAIDOO: Obviously, Chair, the
 24 criminal aspect of it is under investigation and not by the
 25 SAPS, from IPID. We normally have a co-operative agreement

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1 with them in terms of matters that they are investigating.
 2 The twofold approaches are as follows, one, in agreement
 3 with IPID we await their recommendations because IPID makes
 4 specific recommendations to us with regard to matters that
 5 they are investigating criminally, also in terms of how we
 6 should deal with things departmentally. Or alternatively
 7 we could institute an internal departmental inquiry into
 8 the matter and based on their report that will be tabled in
 9 respect of the particular incident, we can determine the
 10 appropriate way forward.
 11 MR CHASKALSON SC: Maybe we could move to
 12 Constable Mutsi, MMM7. Start paragraph 6, "General Naidoo
 13 gave us the instruction that we must follow his lead and on
 14 our arrival at the power station we moved out of the
 15 vehicle and approached the mountain from the southern side
 16 and I was on foot as I had left the vehicle that I was
 17 driving near the station (power station). During the
 18 approach I saw the miners coming out of the mountain
 19 towards our direction. They were ordered to stop and drop
 20 their weapons. At that stage police officials were trying
 21 to take cover and the miners turned and went, ran back to
 22 the mountain and there were bushes so they'd hidden
 23 themselves with the bushes. And at that stage they then
 24 fired shots from the bush where they entered and shot was
 25 fired towards our direction and I couldn't take cover as it

1 was just an open space. Then I shot rounds to the
 2 direction where the shots were coming from with an R5 rifle
 3 on kneeling position. I then saw TRT members on my left
 4 hand side shooting to the bush, trying to retreat as they
 5 indicated that there are people shooting at them from the
 6 busy. I then decide to shoot to give cover to TRT members
 7 because it was difficult for them to shoot going backwards
 8 and I shot till they took cover with a police bakkie. I am
 9 not sure as to how many people did I shoot because at some
 10 stage I was joined by Sergeant Myburgh and Warrant Officer
 11 Baloyi and at total I shot 18 rounds with an R5 rifle."
 12 Did that strike you as a responsible use of an R5 rifle in
 13 an operation?

14 GENERAL NAIDOO: Chair, 18 rounds is a
 15 lot of rounds to shoot in any particular situation, whilst
 16 I can't really say what the assessment of the individual
 17 was who made the assessment to fire but once again I would
 18 indicate that one of the requirements is also have a
 19 specific target in terms of engaging. Yes, in terms of
 20 tactical training members are given training in terms of
 21 providing covering fire to assist members who may be
 22 trapped but in this case, as I said, these circumstances
 23 and the situation that led to him determining that 18
 24 rounds would be sufficient, I am not in a position without
 25 knowing what his assessment was.

1 firearms.
 2 MR CHASKALSON SC: But they didn't have a
 3 brief to assess the explanations that the statements
 4 provide?

5 GENERAL NAIDOO: Chair, I know some of
 6 the members of our team were from our legal services
 7 because we asked them to assess the statements so that we
 8 were in a position to know what is the bulk or what is the
 9 gist of what is contained there. So I could not say
 10 whether there – I cannot at this stage clearly indicate
 11 whether they did include that in their assessment but I'm
 12 sure I can establish that as well.

13 MR CHASKALSON SC: But when a SAPS member
 14 fires a firearm in an operation, is it not incumbent on his
 15 or her commander to make some sort of investigation into
 16 the circumstances in which that happened and to assess
 17 whether that shooting was justified?

18 GENERAL NAIDOO: Chair, yes, that is in
 19 the instance of a single shooting incident or an incident
 20 other than the one that we have before us now. In the one
 21 that we have before us now, obviously on the scale and the
 22 processes there, there is a specific implication. As I
 23 already indicated, there's an investigation that's being
 24 conducted by IPID which has an impact in terms of what we
 25 are doing but that does not take away eventually the

1 MR CHASKALSON SC: Do you know if there's
 2 been any attempt by the SAPS to go through the statements
 3 made by people who shot on the day, to assess whether the
 4 statements on their own terms provide an explanation that
 5 is adequate for the shooting?

6 GENERAL NAIDOO: Chair, yes. We had a
 7 team going through all the statements made, which is how we
 8 compiled what has been given to the Commission now known as
 9 the shooting list. It helped us to cross-index with the
 10 other information that was becoming available, so the
 11 statements were perused by a team, by the SAPS.

12 MR CHASKALSON SC: Who were members of
 13 that team?

14 GENERAL NAIDOO: Chair, I can tell you
 15 that Brigadier Pretorius, the commander of our nodal point
 16 for this Commission, led the team. I can obtain the
 17 specific names of who the members were that assisted her
 18 but there were others members that did assist her, yes.

19 MR CHASKALSON SC: And what was the brief
 20 of that team?

21 GENERAL NAIDOO: Chair, they went through
 22 the statements to glean sufficient information to compile
 23 what we now refer to as the shooting list which was cross-
 24 indexed with what was reported so that we would have a
 25 sense of whether we have managed to capture all the uses of

1 responsibility from us, SAPS and the line management side
 2 to eventually investigate and ensure the appropriate is
 3 taken in terms of any use of firearm which may contravene
 4 our policies as well.

5 MR CHASKALSON SC: Well, Major-General,
 6 I've just read to you from statements from two members who
 7 were under your command and who were brought into the
 8 situation where they shot by you. Was it not incumbent on
 9 you to assess whether they could satisfactorily explain
 10 their shooting?

11 GENERAL NAIDOO: Chair, as I indicated,
 12 that would normally be the procedure. In a normal event
 13 the person who is in charge of an operation would have to
 14 declare and report all the use of firearms, firstly and
 15 most importantly to IPID before anything else happens.
 16 They would normally take charge of that particular scene
 17 and leave the investigation. And secondly, internally
 18 there would be a process in terms of our regulations to
 19 look at such use of firearms. As I said, normally. In the
 20 current scenario before us we have the Commission and we
 21 have concurrent, concurrent investigations that are taking
 22 place and issues such as the use of firearms has a direct
 23 bearing in terms of the work being done both by IPID who
 24 was investigating and they have, I know, at this stage my
 25 impression is that they also are awaiting the work of this

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1 Commission to finish to finalise their work and similarly I
 2 think the SAPS would not want to influence or in any way
 3 interfere with possible testimony that the individual
 4 members would give to this Commission or to IPID in their
 5 investigation. So it does not take the responsibility away
 6 from me or the SAPS, but I think in this particular
 7 circumstance it's about the timing so that processes can
 8 run.

9 CHAIRPERSON: Tell me, did you see
 10 Constable Mutsi's statement, exhibit MMM7, before you
 11 attention was drawn to it by the evidence leaders?

12 GENERAL NAIDOO: Chair, no. As I
 13 indicated, that all statements were managed through our
 14 nodal point and there was a team that processed, so
 15 specifically the statement of a member was, or any member,
 16 was not brought to my attention but obviously one has seen
 17 the shooting list and seen the amount of ammunition
 18 expended by individual members.

19 CHAIRPERSON: The thing that concerns me,
 20 if one looks at the shooting list it appears, as far as I
 21 understand, that members of the STF didn't fire shots at
 22 all but we find this Constable Mutsi in paragraph 11
 23 alleging that members of the special task force were
 24 shooting next to their vehicles. They were shooting from
 25 the south-western side with rifles. Now as far as we've

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1 been told – now either if that's true we've been
 2 misinformed because we've been told the STF didn't fire or
 3 if you look at the relevant slide in exhibit L, the
 4 munitions expended at scene 2, there's no mention of the
 5 STF at all.

6 GENERAL NAIDOO: That's correct, Chair.

7 CHAIRPERSON: Colonel Gaffley doesn't
 8 mention any of his people firing at all. He says he gave a
 9 cease fire order to the people behind who were the K9
 10 people.

11 GENERAL NAIDOO: Correct, Chair.

12 CHAIRPERSON: Yet Constable Mutsi says in
 13 paragraph 11 of what I've just read you. Now it's quite a
 14 serious discrepancy. That's not been looked at, at all by
 15 the SAPS.

16 GENERAL NAIDOO: Chair, yes, as far as I
 17 could remember that particular issue was at some stage
 18 facilitated by somebody, people that are making the
 19 allegations versus people that were on the scene and at the
 20 end I mean the special task force maintain that look,
 21 here's our firearms and no, we did not find it at that
 22 stage appropriate to shoot. As I indicated at some stage
 23 during my testimony, they were sitting in an armoured
 24 vehicle so that's not necessarily an unreasonable assertion
 25 but the statement that's being made is concerning.

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1 CHAIRPERSON: Yes. You see I take it, I
 2 mean if a member of the special task force fired one shot
 3 he would be one round short.

4 GENERAL NAIDOO: That's correct, Chair.

5 CHAIRPERSON: So they couldn't get away
 6 with firing and not admitting that they'd fired.

7 GENERAL NAIDOO: That's correct, Chair.

8 CHAIRPERSON: So obviously the
 9 information to which I've referred is in L, so the police
 10 are satisfied or were satisfied at Roots that the denial by
 11 the special task force that they fired any shots at scene
 12 2, is correct and it might, it's capable of being checked
 13 easily by saying well, where are your bullets? And if they
 14 had them all then clearly they didn't fire any, so – but
 15 here you've got someone from, he's a K9 man, is he, Mutsi?

16 GENERAL NAIDOO: That's correct, Chair.

17 CHAIRPERSON: He was one of the people
 18 under your command on that day.

19 GENERAL NAIDOO: That's correct, Chair.

20 CHAIRPERSON: And he makes this
 21 allegation which appears to be false.

22 GENERAL NAIDOO: Chair –

23 CHAIRPERSON: Or certainly incorrect.
 24 Let's not use a word that raises temperatures unduly. He
 25 makes a statement which appears to be incorrect, is that

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1 correct? I'm right in saying that, am I?

2 GENERAL NAIDOO: Chair, as I indicated,
 3 we did not ignore the assertion he made and, as you
 4 indicated, at Roots the relevant people were put together
 5 and said but here's an allegation that a use of firearm by
 6 the task force is alleged and obviously we had the accusers
 7 and the alleged perpetrators together. That was part of
 8 the purpose of the Roots, to compile our presentation. So
 9 where this kind of evidence needed to be clarified, it was,
 10 and out of the whole thing, as you indicated, all firearms
 11 were accounted for, all ammunition was certified by Colonel
 12 Gaffley to be accounted for. So other than that, if there
 13 is a ballistic link of a shell or a bullet head that would
 14 obviously give us physical evidence and whilst the member
 15 indicated that the shooting came from the task force, it
 16 could have meant or he could have got that impression
 17 because the task force were out of the vehicle, maybe they
 18 had their firearms drawn but the shooting could have
 19 occurred by the K9 who was directly behind the task force,
 20 as Colonel Gaffley indicated, the shooting was from behind
 21 them into the bush. So there's a series of things but the
 22 SAPS did not ignore it. We brought the accuser and the
 23 perpetrators around and other than with the, with maybe
 24 other members that might provide us corroborating evidence
 25 or physical evidence, we can't go forward.

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1 CHAIRPERSON: Were you present at Roots
 2 when that happened?
 3 GENERAL NAIDOO: Chair, I was at Roots
 4 but I was not with that discussion. It was the K9
 5 commander and the special task force commander.
 6 CHAIRPERSON: Do you know if notes were
 7 kept of that discussion and the accusations and counter-
 8 accusations and denials and counter-denials?
 9 GENERAL NAIDOO: Chair, I would say the
 10 reason I became aware of it is because it was a discussion
 11 between them. I can't really say, you know, if somebody
 12 was taking – I know one or two people that were in that
 13 discussion was Colonel Scott and other than that, you know,
 14 in terms of whether they kept notes, no, I can't testify to
 15 that.
 16 CHAIRPERSON: Thank you. Mr Chaskalson,
 17 it looks as if it's about time to take tea but if you want
 18 to deal with something before that, I'm in your hands.
 19 MR CHASKALSON SC: Maybe just to finish
 20 off this particular topic flowing from what you have
 21 raised, Chairperson. A possible explanation for this
 22 discrepancy between Constable Mutsi and the TRT is that
 23 there people –
 24 CHAIRPERSON: Not the TRT, STF.
 25 [15:12] MR CHASKALSON SC: STF, is that there

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1 were non-STF members taking cover immediately behind the
 2 STF vehicle and possibly shooting from there, including dog
 3 squad members. So if we go to KKK16.5139 we'll see that
 4 quite clearly. And if we zoom in to the STF Casspir we'll
 5 see that there are two dog squad members behind the
 6 Scorpion that I'm circling now and there is another member
 7 visible behind the Casspir. The STF members are now,
 8 according to Lieutenant-Colonel Gaffley, back in their
 9 armoured vehicles. So the people taking cover behind these
 10 vehicles would not be STF members although to someone from
 11 a distance, seeing them next to STF vehicles and possibly
 12 firing from that position, one could be excused for
 13 thinking that they were.
 14 GENERAL NAIDOO: Chair –
 15 MR CHASKALSON SC: I don't know if you
 16 have any response to that.
 17 GENERAL NAIDOO: Chair, yes. I would not
 18 discount such a proposition. As I can see from here, I can
 19 even tell you who the dog handler was because that's the
 20 famous white dog of Warrant Officer Breedt that eventually
 21 even bit one of the special task force members so we can't
 22 discount such a proposition as well.
 23 MR SEMENYA SC: But also, Chair, the
 24 witness might be sighted. The STF firearms were taken
 25 for ballistic testing and they came negative.

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1 CHAIRPERSON: No, I – the purpose of my
 2 question was, well, my question was based on an assumption
 3 that the STF denial that they fired any shots was correct
 4 because it seemed to me that if they had fired shots there
 5 would have been a shortage of rounds to account for and
 6 clearly there wasn't such a shortage. So it seems that the
 7 STF's denial that they fired shots prima facie, obviously
 8 subject to evidence which may come, can be accepted but of
 9 course that means that the allegation against Moono is
 10 untrue but anyway, it may be that the explanation that Mr
 11 Chaskalson has given is the correct one. And fortunately
 12 one can identify dog handlers from the photographs because
 13 they had the dogs, including as you've heard, this famous
 14 white dog that succeeded in biting an STF man who, despite
 15 all the specialised training he got, wasn't able to avoid
 16 that. Can we take tea now?
 17 GENERAL NAIDOO: Thank you, Chair.
 18 [COMMISSION ADJOURNS COMMISSION RESUMES]
 19 [15:43] CHAIRPERSON: The Commission resumes.
 20 Major-General, you're still under oath. Mr Chaskalson?
 21 GENERAL NAIDOO: Still under oath, Chair.
 22 CROSS-EXAMINATION BY MR CHASKALSON SC (CONTD.):
 23 Can we look at FFF8 and if we go down to the bottom of this
 24 document, up to the next yellow line that becomes visible.
 25 Sorry, up, not down. Down a little bit so that we can see

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1 the bottom now, that's great. Major-General, this is a
 2 list of members who shot at scene 2 and if we see the name
 3 under the banner "K9" which is the last 12 names on the
 4 list, there are 11 people other than yourself listed there.
 5 We have statements from all of these other 11. Do you not
 6 think it would be incumbent on you to go through those
 7 statements, as you were the commander of these people, and
 8 assess whether the statements provided an adequate
 9 explanation for their shooting?
 10 GENERAL NAIDOO: Chair, I've already
 11 testified that yes, in a normal situation that would've
 12 been the situation, the normal course of events and that
 13 course of events is not yet ruled out, which includes
 14 obviously the fact that I did discharge my firearm and that
 15 would also have to be taken under review by the appropriate
 16 authorities.
 17 MR CHASKALSON SC: So are you suggesting
 18 that you wouldn't be an appropriate person to conduct that
 19 assessment, given the fact that you yourself were also a
 20 shooter?
 21 GENERAL NAIDOO: Chair, no, that is not
 22 what I indicated. I concurred that yes, that kind of
 23 assessment would need to be done but I also included the
 24 fact that I was on the list as a shooter and indicated that
 25 the same procedure would apply to myself as well as the

<p style="text-align: right;">Page 23325</p> <p>1 members indicated under K9.</p> <p>2 MR CHASKALSON SC: You see with</p> <p>3 hindsight, in the wake of your question, Major-General, it</p> <p>4 does strike me that you may not be the appropriate person</p> <p>5 to conduct this exercise and maybe I should stop this line</p> <p>6 of cross-examination because it does seem to me that you're</p> <p>7 not possibly in a position to exercise a dispassionate</p> <p>8 judgment in that regard because of the fact that you shot</p> <p>9 too, so let me stop it there. If we can move to JJJ29 253,</p> <p>10 Major-General, that's Brigadier Calitz in the centre of the</p> <p>11 shot. Is that you on the Brigadier's right hand side?</p> <p>12 GENERAL NAIDOO: With what's visible,</p> <p>13 yes, that is.</p> <p>14 MR CHASKALSON SC: I would imagine it's</p> <p>15 easy to identify yourself by the rank.</p> <p>16 GENERAL NAIDOO: And the South African</p> <p>17 flag on the sleeve.</p> <p>18 MR CHASKALSON SC: What is that on your</p> <p>19 tunic just above your pistol, those two things above your</p> <p>20 pistol?</p> <p>21 GENERAL NAIDOO: Chair, that's not my</p> <p>22 pistol, those are the – that's the pouch which contains the</p> <p>23 spare magazine for my pistol but the two items you refer to</p> <p>24 there were two stun grenades.</p> <p>25 MR CHASKALSON SC: That's what I thought.</p>	<p style="text-align: right;">Page 23327</p> <p>1 equipped and at that stage I thought it was appropriate</p> <p>2 that I had these available should – I was not sure where we</p> <p>3 were going, as I said I had to still make an assessment</p> <p>4 whether they had such equipment to –</p> <p>5 CHAIRPERSON: Sorry to interrupt. When</p> <p>6 did you actually take possession of them and where were you</p> <p>7 when you took possession of them?</p> <p>8 GENERAL NAIDOO: Chair, no, it was not</p> <p>9 even at the – Chair, it was when I was at forward holding</p> <p>10 area 1. So it was before the deployment. It was in my</p> <p>11 vehicle, lying there, you know, during the time that I was</p> <p>12 at forward holding area 1.</p> <p>13 MR CHASKALSON SC: To whom were these</p> <p>14 stun grenades formally issued on the day? Who had to</p> <p>15 account for them?</p> <p>16 GENERAL NAIDOO: Chair, I can check. At</p> <p>17 this stage I can't remember offhand.</p> <p>18 MR CHASKALSON SC: You say they were in</p> <p>19 your vehicle?</p> <p>20 GENERAL NAIDOO: I said I placed them in</p> <p>21 my vehicle, Chair.</p> <p>22 MR CHASKALSON SC: And did you</p> <p>23 essentially requisition them from someone who was left</p> <p>24 behind at forward holding area 1? Not forward holding area</p> <p>25 1, at the power station?</p>
<p style="text-align: right;">Page 23326</p> <p>1 Is it customary for a general to carry around stun</p> <p>2 grenades?</p> <p>3 GENERAL NAIDOO: No, Chair.</p> <p>4 MR CHASKALSON SC: Were you issued with</p> <p>5 them on that day?</p> <p>6 GENERAL NAIDOO: Chair, no. You will</p> <p>7 find that it was indicated on the K9 list that they had</p> <p>8 four stun grenades. These were two of them.</p> <p>9 MR CHASKALSON SC: Are they used or spent</p> <p>10 stun grenades?</p> <p>11 GENERAL NAIDOO: They were unused, Chair.</p> <p>12 MR CHASKALSON SC: Where did you get</p> <p>13 them?</p> <p>14 GENERAL NAIDOO: Chair, when we moved</p> <p>15 forward I did obtain those two stun grenades from – at this</p> <p>16 stage I can ascertain exactly who, but as I indicated I was</p> <p>17 with the K9 so –</p> <p>18 MR CHASKALSON SC: Now why would you want</p> <p>19 to take two stun grenades with you if your primary purpose</p> <p>20 of going into the koppie was just to assess what the</p> <p>21 situation was so that you could then withdraw and get the</p> <p>22 medics to scene 1?</p> <p>23 GENERAL NAIDOO: Chair, as normal</p> <p>24 procedure is, if we are getting to any particular situation</p> <p>25 we would ensure that we are appropriately armed and</p>	<p style="text-align: right;">Page 23328</p> <p>1 GENERAL NAIDOO: Chair, I can confirm</p> <p>2 where I had obtained them. As I said, my recollection</p> <p>3 specifically, I won't be able to say at the time but yes, I</p> <p>4 can ascertain because these are expensive items. They are</p> <p>5 accountable issues.</p> <p>6 MR CHASKALSON SC: How many of the other</p> <p>7 – well, not of the other, how many of the 10 K9 members</p> <p>8 under your command that went in the four vehicles had stun</p> <p>9 grenades?</p> <p>10 GENERAL NAIDOO: As far as I can recall,</p> <p>11 one.</p> <p>12 MR CHASKALSON SC: Now why would it have</p> <p>13 been appropriate for you as the general and commander to</p> <p>14 take two stun grenades when only one of the troops, as it</p> <p>15 were, had stun grenades?</p> <p>16 GENERAL NAIDOO: Chair, in terms of why,</p> <p>17 obviously if out of 32 members we had one member with stun</p> <p>18 grenades, proportionately it was not really an issue, not</p> <p>19 really sufficient but in terms of taking these stun</p> <p>20 grenades I think at some stage whilst we were at forward</p> <p>21 holding area 1 we had a protest action which took place in</p> <p>22 our midst and one of the main reasons for keeping the stun</p> <p>23 grenades in the vehicle – I refer to protest action by the</p> <p>24 community from the settlement, Nkaneng settlement, and as I</p> <p>25 indicated earlier in my testimony, we were coming down to a</p>

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1 bare minimum number of personnel. Should that protest
 2 action occur again, we had to deal with that protest action
 3 with what we had. Hence the K9 members and obviously when
 4 I say protest action, there was a group of mainly ladies
 5 who came in and protested a couple of times at the forward
 6 holding area. So I thought it appropriate that these, this
 7 particular equipment be available there, especially with
 8 the fact that most or nearly all of the units that would
 9 probably deal with that had already left and were deployed
 10 into the relevant postings. I did have, in addition to the
 11 K9 one section, seven members of the public order police as
 12 well.

13 CHAIRPERSON: Major-General, what time
 14 was this? What time did you take possession of these stun
 15 grenades at forward holding area 1?

16 GENERAL NAIDOO: Chair, no, it was not on
 17 that particular day.

18 CHAIRPERSON: What day was it?

19 GENERAL NAIDOO: I can check and I can
 20 confirm exactly when I got it. As I said, it could've been
 21 Tuesday or Wednesday. The protest action took place on
 22 Wednesday, I think.

23 MR CHASKALSON SC: Major-General –

24 CHAIRPERSON: Was it Wednesday the 15th
 25 then?

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1 GENERAL NAIDOO: As far as I could
 2 recall, I can confirm that, Chair.

3 MR CHASKALSON SC: Major-General, are you
 4 talking about a protest of women?

5 GENERAL NAIDOO: Chair?

6 MR CHASKALSON SC: And are you suggesting
 7 that, did this happen on one day or did it happen on
 8 consecutive days?

9 GENERAL NAIDOO: Chair, we had two issues
 10 and that was over the period from Tuesday until our
 11 deployment on Thursday. One was the volume of people that
 12 congregated through our area or congregated at and passed
 13 through our area, which led us to putting a roadblock at
 14 the crossroads leading to the point where members were on
 15 standby. And secondly, there were – the protest, as I
 16 indicated, that where – that occurred and they came into
 17 the area where, which we regard as forward holding area 1.
 18 So there were two issues and the thought that occurred to
 19 me is that, I think it was on Tuesday or Wednesday after
 20 we'd deployed all the public order police, that the people
 21 that are there would have to deal with that particular
 22 issue. Hence I ensured that these things were available in
 23 the vehicle that I was deployed in.

24 MR CHASKALSON SC: That may explain how
 25 they came into the vehicle but it doesn't really explain

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1 how they came onto your person as you went in to koppie 3.
 2 Can you try to explain that?

3 GENERAL NAIDOO: Yes, Chair. As I got
 4 out of the vehicle I clipped them onto my bulletproof vest.
 5 Obviously, as I said I was going to assess a situation
 6 which I had no idea, so the fact tactical they were lying
 7 on the seat there by me, they were available and I didn't
 8 leave it in the vehicle.

9 CHAIRPERSON: Again I'm not entirely
 10 clear. Where was your vehicle at that stage? We're now
 11 talking about the 16th, the Thursday?

12 GENERAL NAIDOO: In terms of the
 13 photograph?

14 CHAIRPERSON: Yes.

15 GENERAL NAIDOO: Yes, the 16th.

16 CHAIRPERSON: Alright and where – they
 17 had been in your vehicle?

18 GENERAL NAIDOO: Yes.

19 CHAIRPERSON: And as you were getting out
 20 the vehicle you took them and –

21 GENERAL NAIDOO: I clipped them on, yes.

22 CHAIRPERSON: Ja. Where was the vehicle
 23 at that stage?

24 GENERAL NAIDOO: It was halted in that
 25 picture where it was after I arrived at koppie 3 for the

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1 duration of the incident in scene –

2 CHAIRPERSON: So it was near koppie 3?

3 GENERAL NAIDOO: Yes, Chair.

4 CHAIRPERSON: So before you sallied
 5 forth, as it were, to make the assessment, investigate and
 6 lend support and so on insofar as was necessary, you
 7 decided to take the stun grenades with you?

8 GENERAL NAIDOO: Which was lying on the
 9 seat between myself and the driver.

10 CHAIRPERSON: And you obviously took them
 11 with you because you thought you might have to use them?

12 GENERAL NAIDOO: Or the members might
 13 require them, yes.

14 CHAIRPERSON: Yes – yes.

15 MR CHASKALSON SC: But if they were for
 16 the use of the members, would it not have made sense to
 17 give it to a member?

18 GENERAL NAIDOO: Chair –

19 MR CHASKALSON SC: To give them to a
 20 member.

21 GENERAL NAIDOO: Chair, at that stage
 22 when I went forward, two things. Firstly, it wows in my
 23 vehicle. My driver and crew, or my driver was a
 24 Lieutenant-Colonel who is an experienced crowd management
 25 person from the public order policing environment and

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1 secondly, the person, the one person that accompanied me
 2 from my vehicle to where the NIU was, Sergeant Harmse, yes,
 3 I could have handed it to him if he required it. As I
 4 said, I saw it necessary or I thought it necessary, these
 5 things [inaudible] take it with because the NIU who were in
 6 a particular position, may require it. So yes, that's how
 7 I had it clipped onto my bulletproof vest.

8 MR CHASKALSON SC: So you thought that
 9 you might provision the NIU with additional stun grenades
 10 this way.

11 GENERAL NAIDOO: Chair, as I said, I had
 12 no idea what the situation was but I had to ensure – well,
 13 I considered it necessary to take it. Should they require
 14 it, yes, I could give it to them.

15 MR CHASKALSON SC: Sorry, I just realised
 16 I've got a little confused here. You thought maybe you'd
 17 give them to the NIU to use. Were you thinking of using
 18 them yourself?

19 GENERAL NAIDOO: Chair, I did not at that
 20 time foresee who would possibly use it but working on the
 21 premise that there was shooting and the premise that we
 22 work for is try to use minimum force possible to address a
 23 particular situation, I thought it appropriate to take it
 24 with. I did not at that stage say that I would use it,
 25 whether the person that was with me, a dog handler, would

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1 use it or the NIU. I had not made that assessment of the
 2 situation that I was going to.

3 MR CHASKALSON SC: So you thought you
 4 might sort of turn yourself into a full sort of mobile
 5 quartermaster at scene 2.

6 GENERAL NAIDOO: If that's the illusion
 7 but yes, it was available and I ensured that it was going
 8 to be available should it be required.

9 CHAIRPERSON: What sort of situation did
 10 you envisage it would be necessary to use these stun
 11 grenades in?

12 GENERAL NAIDOO: Chair, if there were
 13 people, as I indicated there was shooting and if there were
 14 people entrenched between a rock and engaged in the
 15 shooting, it would have made it much easier for the
 16 tactical unit to use a stun grenade to disorientate the
 17 person and arrest, rather than sit there and have a
 18 shootout with somebody who is entrenched. As I indicated
 19 previously, the other option was to send in a dog. They
 20 have been trained to do that particular situation – but
 21 yes.

22 CHAIRPERSON: You exercised neither of
 23 those options.

24 GENERAL NAIDOO: At that stage when I
 25 went there, there was no – the situation there did not

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1 require either of those options, no.

2 CHAIRPERSON: We had a situation where a
 3 number of people were killed, where at least one person
 4 fired 18 rounds but you say there was no situation that
 5 called for the use of a stun grenade which would have been
 6 less than lethal force and might have resulted in an
 7 outcome which had less fatalities.

8 GENERAL NAIDOO: Chair, I concur with you
 9 on that. In that particular site, firstly where that
 10 particular shooting occurred I had already moved to the NIU
 11 so I was not with the members, firstly. Secondly, as far
 12 as I could recall it was reported to me that two of the
 13 stun grenades were utilised on the other side by a Warrant
 14 Officer Moorcroft, I think it was – I can confirm that name
 15 – and fortunately when, on the side that I came with the
 16 NIU when we began the sweep, we never had an incident until
 17 the person that shot at us. We executed arrests of the
 18 people that were armed without unnecessary force. So yes,
 19 had we got to a situation where we would have needed this,
 20 I would have ensured that they utilised that, the principle
 21 being as you said, minimum force, not necessarily
 22 exercising maximum force.

23 CHAIRPERSON: You did fire your pistol.

24 GENERAL NAIDOO: Chair, yes.

25 CHAIRPERSON: So you considered it

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1 preferable to fire your pistol, possibly with fatal
 2 consequences, rather than using one of the stun grenades,
 3 is that what you're saying?

4 GENERAL NAIDOO: Chair, I think it would
 5 have to be situation appropriate. When you're faced with a
 6 situation where somebody is in the process of firing a
 7 pistol or any other firearm at you, the time that it would
 8 take you to engage and utilise a stun grenade and which not
 9 necessarily will have the consequences of stopping the
 10 shooting, versus responding in terms of our training, I
 11 think it would be more appropriate in terms of using a
 12 firearm and that's what I did.

13 MR CHASKALSON SC: Before Marikana, when
 14 was the last time you threw a stun grenade in an operation
 15 as opposed to a training exercise?

16 GENERAL NAIDOO: Chair, it must be a very
 17 long time ago whilst I was still in KwaZulu-Natal, I can't
 18 give a specific date in terms of that.

19 MR CHASKALSON SC: Chairperson, I see
 20 that we've reached 4 o'clock.

21 CHAIRPERSON: Well, I had hoped we could
 22 carry on a bit longer but if it's an appropriate stage, I'm
 23 afraid I must adjourn until tomorrow morning. Is it an
 24 appropriate stage in your cross-examination?

25 MR CHASKALSON SC: It is. I'm not going

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1 to take this particular issue further.

2 CHAIRPERSON: And then tomorrow morning

3 presumably we'll start with the material that Mr Semenya

4 spoke about earlier and you'll then resume your cross-

5 examination after that, is that so?

6 MR CHASKALSON SC: Yes, Chairperson. In

7 fact we've reached a happy compromise or a happy agreement.

8 We will prepare a – or not we, SAPS will prepare a map, a

9 Google Earth printout which documents the agreed AvL

10 positions of Major-General Naidoo's vehicle at specific

11 times on the 16th. That document will go in as an agreed

12 document and then the cross-examination can continue.

13 CHAIRPERSON: There won't be any further

14 re – sorry, there won't be any further evidence-in-chief,

15 is that correct, Mr Semenya?

16 MR SEMENYA SC: That is correct, Chair.

17 If we're unable to print the document we'll ask the

18 evidence leaders to help us. There's a technology

19 challenge but we're going to go in the direction Mr

20 Chaskalson is saying.

21 [16:03] CHAIRPERSON: Alright, thank you.

22 COMMISSIONER HEMRAJ: And that will show

23 us the route taken by his vehicle clearly?

24 MR CHASKALSON SC: Yes, and the time

25 together with the route.

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1 CHAIRPERSON: Can you, I know it's always

2 difficult when I ask these questions for the person whom I

3 ask it, to give an accurate answer. Are you able to give

4 an indication as to how long your cross-examination is

5 likely to take? What's left of it? The reason I ask that

6 is I have received a number of applications from parties

7 who wish to cross-examine and if you are going to be cross-

8 examining all day tomorrow then I don't have to give a

9 decision until after that. But if it is likely to be that

10 I will have to give a decision by tomorrow morning, then I

11 would like to know that in advance.

12 MR CHASKALSON SC: Chairperson, I will

13 definitely take the whole of tomorrow. I would hope not to

14 take much more than the whole of tomorrow but I don't think

15 there is any prospect of my finishing before.

16 CHAIRPERSON: Because obviously the

17 matters that you cover will be important in regard to the

18 decisions I am called upon to make because I am not anxious

19 to allow repetition and parts of the field that have

20 already been ploughed to be re-ploughed. Experience shows

21 that re-examining the same point from a different angle

22 very seldom produces any dividends. But anyway that's a

23 matter we will look at on the morrow. We will adjourn now

24 until 9 o'clock tomorrow morning.

25 [COMMISSION ADJOURNED]

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