

# 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 195

04 MARCH 2014

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1 [PROCEEDINGS ON 4 MARCH 2014]  
 2 [09:39] CHAIRPERSON: The Commission resumes.  
 3 Major-General, you're still under oath.  
 4 GENERAL NAIDOO: Still under oath, Chair.  
 5 GENERAL NAIDOO: s.u.o.  
 6 CROSS-EXAMINATION BY MR CHASKALSON SC (CONTD.):  
 7 Major-General, on Friday you undertook to come back to us  
 8 with the date on which you saw the NMF minutes for 15  
 9 August for the first time.  
 10 GENERAL NAIDOO: Yes, Chair. Chair, yes.  
 11 CHAIRPERSON: [Microphone off,  
 12 inaudible.] Sorry, sorry to interrupt. A bit of  
 13 housekeeping that we should have done before we started  
 14 with the witness. I was handed in chambers this morning an  
 15 affidavit made by Lieutenant Tshepo Levy Kgwadibana who is  
 16 stationed at the Rustenburg POP under the command of  
 17 Lieutenant-Colonel Merafi and he deals with the request for  
 18 extra rounds to be taken to, out of the firearms store and  
 19 taken to Marikana and he annexes what purports to be an  
 20 extract from the register, I think, which I understand the  
 21 original will be produced in due course but this was  
 22 referred to on Friday so I would imagine it would be  
 23 appropriate to hand it in as an exhibit now. I don't know  
 24 whether you will refer to it in the cross-examination of  
 25 this witness, but still.

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1 MR CHASKALSON SC: Chairperson, it hasn't  
 2 been made available to me yet, I don't know –  
 3 CHAIRPERSON: Oh, I'm sorry. Yes, I'm  
 4 sorry. I was misinformed that it had been handed – have  
 5 the other parties got it? Well, we'd better leave it for  
 6 the time being until the other parties have it as well but  
 7 may I enquire whether everybody has received a copy of the  
 8 supplementary statement of Brigadier Pretorius? So perhaps  
 9 that should go in as an exhibit, Mr Chaskalson.  
 10 MR CHASKALSON SC: Yes, that is a  
 11 document to which I'll be referring today, Chairperson.  
 12 CHAIRPERSON: MMM22, I think, is that  
 13 right?  
 14 MR CHASKALSON SC: That's my latest MMM.  
 15 CHAIRPERSON: MMM22, so I'll record that  
 16 then as exhibit MMM22 supplementary statement of Brigadier  
 17 S Pretorius. Has the witness seen it? You say you're  
 18 going to be referring to it. Have you seen it, sorry,  
 19 Major-General?  
 20 GENERAL NAIDOO: I have, Chair.  
 21 CHAIRPERSON: I did remind you, you are  
 22 still under oath. Have you seen it? You have seen it.  
 23 GENERAL NAIDOO: I've seen it.  
 24 CHAIRPERSON: Yes, then please proceed,  
 25 Mr Chaskalson.

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1 COMMISSIONER HEMRAJ: Mr Chaskalson,  
 2 before you start there are two issues that I need some  
 3 assistance with, if you could. If one looks at MMM1,  
 4 where's the JOC in relation to that?  
 5 MR CHASKALSON SC: Commissioner, bear  
 6 with me for one minute while I find my MMM1. Commissioner,  
 7 the JOC is not on MMM1. It is – I don't want to hazard a  
 8 distance but if one were to go down a long way underneath  
 9 the photograph to come out at forward holding area 1, one  
 10 would find the JOC and left, as one looks at the  
 11 photograph, says Mr Pretorius. Possibly what we can do is  
 12 we can find a slide which will have the position of the JOC  
 13 marked on it. It will be on some of the JJJs. If you bear  
 14 with me for a minute I'll find which JJJ it is.  
 15 CHAIRPERSON: Is there not perhaps a  
 16 slide in exhibit L which is sufficiently extensive to  
 17 indicate it?  
 18 COMMISSIONER HEMRAJ: And to get from  
 19 there to the, to scene 1, would one go along your blue  
 20 arrow route?  
 21 MR CHASKALSON SC: Yes, one would come  
 22 out – there are various routes one would take. I would  
 23 imagine that the most direct route would take one out of  
 24 the blue arrow route, would take one up to forward holding  
 25 area 1 along the road that I'm marking now on, between I

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1 and J 8 and 7 and then follow the blue route.  
 2 CHAIRPERSON: Is it – sorry.  
 3 COMMISSIONER HEMRAJ: I beg your pardon.  
 4 And the distance to scene 1 and the time to get there?  
 5 MR CHASKALSON SC: Well, let me quickly  
 6 get that on Google Earth.  
 7 COMMISSIONER HEMRAJ: The reason I ask it  
 8 arises from Brigadier Pretorius's statement about the  
 9 medical assistance coming from just outside the JOC and I  
 10 was interested in the time that it took that to get to  
 11 scene 1.  
 12 CHAIRPERSON: I know it's not very  
 13 detailed because it includes quite a lot but slide 14, 1-4  
 14 in exhibit L might help us.  
 15 COMMISSIONER HEMRAJ: But you don't have  
 16 to address them now, we could do them at some later stage,  
 17 Mr Chaskalson.  
 18 MR CHASKALSON SC: Thanks, Commissioner.  
 19 I can do better than slide 14 –  
 20 CHAIRPERSON: Well, that's the best I  
 21 could do with the time I had available.  
 22 MR CHASKALSON SC: Let me –  
 23 CHAIRPERSON: But surely it must be on  
 24 that picture. You see Mine HQ, is Mine HQ perhaps where it  
 25 is? Perhaps the Major-General can tell us.

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1 MR CHASKALSON SC: It's not Mine HQ. It  
 2 would be in the region of, somewhere in the region that I'm  
 3 marking now, sort of below, between the koppies and  
 4 Wonderkop stadium and below – actually I don't even want  
 5 to, I don't even want to suggest that. I've been told by  
 6 Mr Pretorius it's where I'm marking now, which is –  
 7 CHAIRPERSON: For the benefit of those  
 8 who have to read the record in years to come, can you  
 9 perhaps put that into words?  
 10 MR CHASKALSON SC: If one sees the  
 11 lettering "Google Earth" at the bottom right-hand corner of  
 12 the screen and goes to the left of it, there appears to be  
 13 a slimes dam and above and to the left of the slimes dam  
 14 there are some buildings which is where the JOC is located.  
 15 CHAIRPERSON: [Microphone off, inaudible]  
 16 - is a Google Earth picture so you can tell us by some  
 17 swift finger work what the distance is.  
 18 MR CHASKALSON SC: Chairperson, if I  
 19 could do that after tea time because I –  
 20 CHAIRPERSON: Anyway let's carry on with  
 21 the evidence meanwhile.  
 22 COMMISSIONER HEMRAJ: And if you would  
 23 look at it with paragraph 4.1.13 of Brigadier Pretorius's  
 24 statement please, I would appreciate it.  
 25 MR CHASKALSON SC: Sorry, Major-General.

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1 A while ago I'd asked you if you'd established when you  
 2 first saw the NMF minutes for the 15th of August.  
 3 GENERAL NAIDOO: Yes, Chairperson, on the  
 4 20th of September a draft copy of the minutes was  
 5 circulated.  
 6 MR CHASKALSON SC: Thank you and I  
 7 presume you've now had an opportunity to consider Brigadier  
 8 Pretorius's statement as well.  
 9 GENERAL NAIDOO: I did receive it on  
 10 Friday, yes.  
 11 MR CHASKALSON SC: On that basis I'd like  
 12 to go back to the cross-examination in relation to Roots  
 13 which was to be suspended pending your opportunity to see  
 14 Brigadier Pretorius's statement and you will recall that on  
 15 Friday you indicated that the brief to Colonel Visser and  
 16 indeed to everybody at Roots was to make available to this  
 17 Commission all relevant information, whether good or bad,  
 18 for SAPS's purposes.  
 19 GENERAL NAIDOO: That's correct, Chair.  
 20 MR CHASKALSON SC: Now in the light of  
 21 that brief there are certain elements of exhibit L that  
 22 strike me as surprising. The first element is, I can't  
 23 find a single piece of either self-criticism or information  
 24 that would serve as a basis for self-criticism by SAPS.  
 25 Can you explain why that's the case?

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1 GENERAL NAIDOO: Chair, as I indicated on  
 2 Friday, my understanding of the process we followed there  
 3 was to narrate the incident as we received it from the  
 4 various members that were involved and I think I also did  
 5 indicate, yes, we did not do some sort of SWOT analysis in  
 6 terms of what we could have and what we should have done.  
 7 We did indicate also that there was a parallel process, a  
 8 policy review team that was busy with that. So my  
 9 understanding was that Colonel Visser compiled and  
 10 consolidated what he received.  
 11 MR CHASKALSON SC: There's nothing in  
 12 exhibit L about the failures of radio communication, is  
 13 there, an explanation for that?  
 14 GENERAL NAIDOO: No, I can't think why  
 15 the people involved from Brigadier Calitz down to the radio  
 16 technical people were there so – as to why they didn't put  
 17 it in their submission I'm not sure.  
 18 MR CHASKALSON SC: But it's not just  
 19 them, Major-General, you were apparently aware of the  
 20 failure of radio communication too and you saw exhibit L  
 21 through various drafts but you appear not to have regarded  
 22 it as an omission in exhibit L.  
 23 GENERAL NAIDOO: Chair, that's true that  
 24 I was aware of the radio problem and as to its omission, as  
 25 I indicated, I focused on the areas that directly affected

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1 me, I think as did most members that were providing  
 2 information.  
 3 MR CHASKALSON SC: But the failure of  
 4 radio communication did directly affect you, according to  
 5 your evidence.  
 6 GENERAL NAIDOO: Well, it did affect us  
 7 in terms of having a single channel, yes.  
 8 MR CHASKALSON SC: Well, not just in  
 9 terms of having a single channel, in terms of apparently  
 10 not being able to transmit when you wanted to transmit.  
 11 GENERAL NAIDOO: That is also true.  
 12 MR CHASKALSON SC: And you didn't think  
 13 that that was worth mentioning in exhibit L.  
 14 GENERAL NAIDOO: Chair, as I indicated,  
 15 we did not conduct a critical analysis or a SWOT analysis.  
 16 I think I've testified to that effect s well.  
 17 MR CHASKALSON SC: So what about the fact  
 18 that the operational commander claims, as SAPS wants this  
 19 Commission to believe, that he was not aware of the deaths  
 20 at koppie 1 or koppie 2 until more than –  
 21 CHAIRPERSON: I think you mean –  
 22 [microphone off, inaudible].  
 23 MR CHASKALSON SC: Scene 1 or scene 2,  
 24 until more than 15 minutes after the scene 1 shootings.  
 25 What about that? Don't you think that's an important fact?

<p style="text-align: right;">Page 23742</p> <p>1 GENERAL NAIDOO: Chair, my understanding  2 was the narrative went in terms of as the incidents  3 happened and I think from the narrative it has become  4 apparent that the operational commander did not have some  5 of the information but as to why it was not specifically  6 highlighted, there is no specific reason that I can think  7 of.  8 MR CHASKALSON SC: Because we're told who  9 the operational commander is, what his functions are and  10 we're not told that he didn't perform these functions and  11 the reason he didn't perform these functions was he didn't  12 know about any shootings for 15 minutes after scene 1.  13 Don't you think that would've been, or those would've been  14 important facts to bring to the attention of the  15 Commission?  16 GENERAL NAIDOO: Chair, I think had we  17 done that SWOT analysis that I alluded to, definitely some  18 of these facts would have been identified and placed as  19 issues, identified weaknesses of the operation but there  20 was no SWOT analysis, as I indicated, it was a narrative as  21 indicated by the various members.  22 MR CHASKALSON SC: But it's not an issue  23 about a SWOT analysis and self-criticism, it's an issue  24 about relevant facts which have to be brought to the  25 attention of the Commission. Shouldn't the Commission have</p>	<p style="text-align: right;">Page 23744</p> <p>1 GENERAL NAIDOO: Exactly.  2 CHAIRPERSON: So did you know that we  3 discovered almost incidentally in the course of these  4 proceedings that that exercise had taken place, in the hard  5 drive we got from the police and the other information,  6 pursuant to their promise to co-operate fully with us, we  7 were not told about that exercise at all. Do you know  8 that?  9 GENERAL NAIDOO: Chair, no, I'm not  10 aware. As I indicated on Friday, we had not even seen  11 their report until the exercise of the Commission.  12 CHAIRPERSON: Well, we hadn't seen it  13 either. Sorry, Mr Chaskalson.  14 MR CHASKALSON SC: But Major-General, we  15 may be talking past one another. I'm not at this stage  16 concerned with SWOT analysis, self-criticism. I'm just  17 concerned with simple facts about the operation which this  18 Commission would have liked to have known. Let's take  19 another one, that the JOC says it wasn't aware of the  20 shootings until approximately, the shootings at scene 1  21 until approximately half an hour after they had taken place  22 and wasn't aware of scene 2 until after it had taken place.  23 Why weren't those facts disclosed to the Commission at the  24 outset?  25 GENERAL NAIDOO: Chair, as far as I know,</p>
<p style="text-align: right;">Page 23743</p> <p>1 known that the operational commander was unaware of the  2 shootings at scene 1, was unaware of the shootings at scene  3 2 and did nothing to co-ordinate the operation at scene 2  4 in the light of any of the shootings that had happened?  5 Wasn't that important for the Commission to know?  6 GENERAL NAIDOO: Chair, I think it was  7 conceded on Friday when you requested that we should have,  8 it would probably have made the work of the Commission  9 easier had such an analysis been done. I think we have  10 conceded that on Friday, that maybe it should have been  11 done but what I'm indicating is that on the basis of the  12 narrative which was provided, yes, that analysis wasn't  13 provided.  14 CHAIRPERSON: And the exercise that was  15 performed by the work session, whatever one wants to call  16 it, in which Brigadier Mkhwanazi took part which you  17 addressed, that undertook a form of SWOT analysis, did it?  18 GENERAL NAIDOO: That's the way we  19 understood it. They were analysing it in terms of our  20 existing policies and procedures.  21 CHAIRPERSON: It included things like  22 minimum force and so forth.  23 GENERAL NAIDOO: That's right.  24 CHAIRPERSON: The situational  25 appropriateness and all that sort of thing.</p>	<p style="text-align: right;">Page 23745</p> <p>1 in terms of the narrative as it went, it became – these  2 facts have become apparent. Maybe it was not worded as a  3 failure, et cetera, but I think during the course of this  4 presentation it has become apparent.  5 CHAIRPERSON: Were these facts apparent  6 to you at Roots?  7 GENERAL NAIDOO: Chair –  8 CHAIRPERSON: Or were they also not  9 disclosed to Roots?  10 GENERAL NAIDOO: Chair, as I indicated,  11 each group had to go and come and indicate to the compilers  12 as to what occurred in their particular area of the  13 operation and that was what was transcribed. Whether it  14 was specifically omitted or included to the compilers I am  15 unable to say but when it was presented, people were given  16 an opportunity to say is this what happened, have we missed  17 anything, and that's how the presentation was finalised.  18 CHAIRPERSON: Yes, no, I'm afraid you  19 haven't answered my question. It may be my fault, I may  20 have phrased it vaguely.  21 GENERAL NAIDOO: Okay.  22 CHAIRPERSON: Or unclearly. The  23 participants at Roots, you were one of them.  24 GENERAL NAIDOO: Yes, Chair.  25 CHAIRPERSON: Did you know at Roots the</p>

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1 facts that Mr Chaskalson has put to you?  
 2 GENERAL NAIDOO: Chair, not specifically.  
 3 As I indicated, I was not sitting in the group of the  
 4 operational commander. I sat with the group of K9 and I  
 5 was not present when the, that group of the operational  
 6 commander, narrated their part of it to the compilers. So  
 7 that's why I'm indicating as to what exactly was narrated  
 8 to the compilers I can't testify to. I can testify that  
 9 the presentation, the draft of the presentation as it was  
 10 being compiled was run before everybody to say did we omit  
 11 or have we compiled what you said to us exactly. So –  
 12 CHAIRPERSON: Did you know, as you sat  
 13 there at Roots, the facts that Mr Chaskalson has put to  
 14 you? Did you, in the period after the events of the 16th,  
 15 were you told by your colleagues who were in the JOC – you  
 16 were of course a member of the JOCCOM as well but you  
 17 weren't in the JOC at the time – did your colleagues on the  
 18 JOCCOM tell you in the period immediately after the events  
 19 of the 16th, the facts which Mr Chaskalson has now put to  
 20 you?  
 21 GENERAL NAIDOO: Not specifically, as  
 22 there may have been an indication that they were trying to  
 23 get hold of me, et cetera, and they could not locate me and  
 24 could not establish what was happening but not in the clear  
 25 picture, clearer picture that we have now, not so much so.

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1 CHAIRPERSON: Are you saying no member of  
 2 the JOCCOM said to you, by the way you know, we didn't know  
 3 what happened until about half an hour after the events at  
 4 scene 1 and we didn't know about the events at 2 until it  
 5 was all over. Did no one say that to you -  
 6 [09:58] GENERAL NAIDOO: Not in that –  
 7 CHAIRPERSON: - in the course of the  
 8 conversation at all?  
 9 GENERAL NAIDOO: Not in that specific  
 10 terms. Yes, there was indications that they were trying to  
 11 get hold of me and they could not and I explained that I  
 12 also could not get hold of people, but not indicating to me  
 13 that we were not aware of the events for half an hour,  
 14 etcetera. That did not come out clearly as that, Chair.  
 15 MR CHASKALSON SC: So by the time that  
 16 the presentation was finished at Roots and the first full  
 17 draft of the presentation was produced at Roots, you still  
 18 didn't know clearly that the JOCCOM was unaware of the  
 19 scene 1 shootings for half an hour and was unaware of the  
 20 scene 2 until after it was over?  
 21 GENERAL NAIDOO: Not on that specific  
 22 timelines, no, Chair.  
 23 MR CHASKALSON SC: And when did you find  
 24 out?  
 25 GENERAL NAIDOO: Chair, as we went

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1 through and we were getting the different requests and  
 2 queries I realised that there was time gaps here.  
 3 MR CHASKALSON SC: But when? I mean the  
 4 Roots breakaway finished in the first week of September.  
 5 How much later did it take you before you realised that the  
 6 JOCCOM had been unaware of scene 1 for half an hour and  
 7 unaware of scene 2 until it was over?  
 8 GENERAL NAIDOO: Chair, I can't  
 9 specifically say a time, but as I said, as time proceeded I  
 10 realised that there were gaps. I'm not sure whether it was  
 11 through the testimony or through the process of the various  
 12 documents, but as I indicated, over time I did realise  
 13 there was this gap.  
 14 MR CHASKALSON SC: Well, are we talking  
 15 in the course of September? Are we talking in the course  
 16 of October? Are we talking in 2013? It's a matter of some  
 17 significance to me because I'm still quite concerned why,  
 18 about how the presentation that was shown to this  
 19 Commission came to present such an incomplete version of  
 20 the facts.  
 21 GENERAL NAIDOO: Chair, I can't testify  
 22 as to the specific time. As I indicated over time I  
 23 gradually did realise that there is some gaps in terms of  
 24 time, but if I would be telling you it was in September or  
 25 in October then I would not be truthful because I could not

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1 remember a specific time. When we left Roots on the draft  
 2 presentation as far as I was concerned was a narrative in  
 3 terms of how people experienced it and as time went on I  
 4 know that they were refining it as more information became  
 5 available, but I can't tell you specifically when I  
 6 realised look, there is these gaps. That would be  
 7 impossible for me to say, given the time that elapsed now.  
 8 MR CHASKALSON SC: Well, the presentation  
 9 was shown to this Commission on 8th of November. By 8  
 10 November 2012 were you still not in a position where you,  
 11 Major General Naidoo, knew that the JOCCOM had been unaware  
 12 of the shootings at scene 1 and that Brigadier Calitz had  
 13 been unaware of any deaths until 15 minutes after they  
 14 happened?  
 15 GENERAL NAIDOO: Chair, I would hesitate  
 16 to indicate whether it was before the Commission started or  
 17 after, but as I said there was such a volume of information  
 18 and during that process of the information coming obviously  
 19 we did realise. Whether it was during the testimony of  
 20 some of the people or it was through documentation, I would  
 21 not be able to specifically pinpoint and say at this  
 22 particular time I realised the following, because there  
 23 were various processes running. So I would not want to say  
 24 this is the time that I realised that there was a gap, no.  
 25 MR CHASKALSON SC: Were you aware of the

<p style="text-align: right;">Page 23750</p> <p>1 form of the presentation at the time that it was about to 2 be presented to the Commission? 3       GENERAL NAIDOO:       Chair, after Roots the 4 two people that were involved with the presentation, they 5 continuously worked on it as information became available, 6 so the form that was lastly presented, I can't remember if 7 there was a specific session where it was presented to us 8 before that. I can't indicate because there were various 9 times that they had been working and updating as 10 information became available, so which form was presented, 11 which is now annexure L, in terms of, in relation to that, 12 I'm not sure. 13       MR CHASKALSON SC:       Were you part of the 14 committee to whom updated drafts of exhibit L were shown 15 from time to time? 16       GENERAL NAIDOO:       Chair, whenever a 17 meeting was convened in terms of any of the information 18 regarding the Commission, yes, I attended most of this 19 meetings – not all, but most of them. 20       MR CHASKALSON SC:       Because Colonel Scott 21 describes a process of sending revised drafts to an 22 oversight – or not an oversight committee, to a committee 23 to see how the draft was progressing. Do you recall that 24 process? 25       GENERAL NAIDOO:       Chair, as far as I could</p>	<p style="text-align: right;">Page 23752</p> <p>1 indicated my understanding was that the presentation was a 2 narrative of the information as received from the various 3 members. As far as I could understand there was no 4 analysis and highlighting of weak points and highlighting 5 of strong points. That did not occur, so when I viewed the 6 presentation I viewed it from that they basically captured 7 what was narrated. That's about it. So it was not a fine 8 – because already the volume of the document was becoming 9 so much they told us, you know, there would be specific 10 issues that may not appear in the presentation which will 11 be in the narrative or in the statements of the various 12 people. So I saw it - and I testified to this - I saw 13 annexure L as being a higher level presentation of all the 14 issues that the police communicated and experienced on the 15 day. 16       MR CHASKALSON SC:       You see, Major 17 General, I have difficulties with that answer because there 18 is a slide in exhibit L which deals with getting medical 19 personnel to the scene, but tells a half truth. It says – 20 it's slide 188, it's not in the hardcopy because it's part 21 of that sequence of video and spliced-in slide – it says 22 "Dedicated medical personnel were on scene 2 from as early 23 as 16:29, dealing with the wounded, while SAPS medical 24 personnel attended to the wounded at scene 2 at 16:20." It 25 says nothing about scene 1. Were you aware of this?</p>
<p style="text-align: right;">Page 23751</p> <p>1 recall the drafts of the presentation were not circulated. 2 They were presented to us at various times, not distributed 3 as such. 4       MR CHASKALSON SC:       Sorry, Major General, 5 you are correct. That was – I summarised Colonel Scott's 6 evidence incorrectly, but were you part of the committee to 7 whom the developing drafts were presented? 8       GENERAL NAIDOO:       I did attend some of 9 those meetings, yes. That is why I indicate I would not be 10 able to say which was the final draft that was presented 11 because as far as I understand it was always work-in- 12 progress. As information, new information became available 13 it was added. 14       MR CHASKALSON SC:       Would you be able to 15 establish from your diary the last such presentation at 16 which you were present? 17       GENERAL NAIDOO:       I can check, Chair. 18       MR CHASKALSON SC:       If you could come back 19 to us that would be of assistance to this Commission. But 20 other issues that strike me as odd omissions from exhibit 21 L, what about an issue which must have been present in your 22 mind, the issue of the delay of an hour in getting medical 23 treatment to the victims at scene 1? Why did you think it 24 was not necessary to mention that in exhibit L? 25       GENERAL NAIDOO:       Chair, once again as I</p>	<p style="text-align: right;">Page 23753</p> <p>1       GENERAL NAIDOO:       Chair, that would 2 probably come from the narrative of the personnel that were 3 at scene 2. 4       MR CHASKALSON SC:       But my question is why 5 say, "Dedicated medical personnel were on scene 2 from as 6 early as 16:29," without pointing out that they only 7 reached scene 1 at 16:53, which was a full hour after the 8 shootings? 9       GENERAL NAIDOO:       Chair, as I indicated, I 10 did not contribute to the issues of scene 1, so it will be 11 difficult for me to indicate as to why specifically it was 12 not mentioned in the input of the people from scene 1. 13       MR CHASKALSON SC:       But didn't you think 14 that this was potentially misleading by omission? It 15 suggests that SAPS acted promptly in getting medical 16 personnel to the victims, whereas in actual fact they did 17 not. 18       GENERAL NAIDOO:       Chair, I think the 19 indication is quite clear, it talks about scene 2, not 20 scene 1. So I don't think it's misleading in that respect. 21       CHAIRPERSON:       Well, it doesn't talk about 22 scene 1 at all. 23       GENERAL NAIDOO:       That's right, Chair. 24       CHAIRPERSON:       It doesn't therefore by 25 omission create an impression that there's nothing</p>

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1 noteworthy in relation to the arrival of medical assistance  
2 at scene 1?

3 GENERAL NAIDOO: Chair, I get the point  
4 that you're making, but as I indicated, as to the input  
5 from scene 1, I'm unable to comment on that.

6 MR CHASKALSON SC: Let's look at other  
7 issues that didn't make their way into exhibit L. What  
8 about the crossfire at scene 2? Why is there no mention of  
9 SAPS crossfire that Lieutenant Colonel Gaffley says forced  
10 him to take his men out of the operation?

11 GENERAL NAIDOO: Chair, I think there was  
12 a clear indication about the position of the units  
13 indicated in annexure L and whether Colonel Gaffley  
14 indicated, articulated that this should be on the  
15 presentation, I am unable to indicate. As I have testified  
16 the role-players had a picture of the koppie; there was an  
17 indication of the approach from the different directions  
18 and the position of the different units, so there was in no  
19 way an attempt to conceal the fact that units were  
20 stationed all around the koppie.

21 MR CHASKALSON SC: Yes, but the position  
22 of the units was known. The fact that they were shooting  
23 simultaneously in each other's direction was not known.  
24 Why was that the case?

25 GENERAL NAIDOO: Chair, I can't

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1 specifically comment on, in terms of why it was not  
2 included specifically in the report, but what I am saying  
3 is in terms of the slide, the pictures that were put in it  
4 is specifically indicated, the location of the various  
5 units.

6 MR CHASKALSON SC: Yes, the location  
7 wouldn't have been a problem if they weren't shooting  
8 simultaneously and according to Lieutenant Colonel Gaffley  
9 they were.

10 GENERAL NAIDOO: I'm not sure whether  
11 Lieutenant Colonel Gaffley raised this issue. I would have  
12 remembered if he specifically raised this issue when the  
13 presentation was made because that was the purpose of  
14 having these runs of the slideshow as it was being  
15 developed to indicate was there something specifically  
16 omitted that you wanted in.

17 MR CHASKALSON SC: You assumed command at  
18 scene 2. Did you never ask Lieutenant Colonel Gaffley why  
19 his men had retreated into their vehicle?

20 GENERAL NAIDOO: Chair, as I indicated,  
21 the, at that particular time the main area of dispute that  
22 we had to resolve between the K9 and the Special Task Force  
23 was whether they had fired or not fired. That issue of  
24 them retreating into the Casspir, I was not aware of, I had  
25 not sight of his statement and it was not specifically

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1 raised during the discussion. What was, and what I did  
2 indicate during my testimony, my perception was that they  
3 were in the Nyala and thus safe from shooting that occurred  
4 round them.

5 CHAIRPERSON: Have you seen slide 239 –  
6 you talk about annexure; it's actually exhibit. Have you  
7 seen slide 239 of exhibit L?

8 GENERAL NAIDOO: Chair, yes.

9 CHAIRPERSON: [Microphone off, inaudible]

10 GENERAL NAIDOO: Okay.

11 CHAIRPERSON: I'll read it. "Shots were  
12 fired from an undetermined direction and Lieutenant Colonel  
13 Gaffley determined that the sweep and clear at that time  
14 would be dangerous for the STF members as gunfire was heard  
15 all around the perimeters of the koppie." And then the  
16 fifth bullet, "When the firing ceased the STF members  
17 proceeded to sweep and clear the koppie with the rest of  
18 the police members present assisting to arrest several  
19 protesters." Now that would have been the appropriate  
20 place to have mentioned that there was crossfire from  
21 different sides of the koppie from members of the police  
22 service, but it doesn't say that. The phrase "shots were  
23 fired from an undetermined direction" leaves quite a lot  
24 unsaid, doesn't it?

25 GENERAL NAIDOO: Chair, as I indicated,

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1 and when these things were presented Colonel Gaffley would  
2 have indicated, should have indicated that it was not  
3 articulating what he experienced specifically because I  
4 think he would be the appropriate person to say look, there  
5 was crossfire. Instead he indicates that it was from an  
6 undetermined direction.

7 MR CHASKALSON SC: And you weren't aware  
8 of the crossfire at scene 2?

9 GENERAL NAIDOO: Chair, at that stage,  
10 no.

11 MR CHASKALSON SC: At that stage being  
12 the end of – well gosh, November, first week of November  
13 2012, you weren't aware of a crossfire at scene 2 two  
14 months, well two and a half months after the event?

15 GENERAL NAIDOO: Chair, I had, I did not  
16 have sight on the statements of the various members that  
17 had fired and at that stage even during the group  
18 discussion the word "crossfire" was never used.

19 MR CHASKALSON SC: Let's move to a  
20 different topic; the meeting of the National Management  
21 Forum the night before the 16th and the proposal of the  
22 Commissioner, the Provincial Commissioner, that was  
23 endorsed by the operational members of the National  
24 Management Forum. Why was that not told, disclosed to the  
25 Commission or indicated in exhibit L?

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1 GENERAL NAIDOO: Chair, as far as we knew  
 2 and was communicated to us that the Provincial Commissioner  
 3 had decided to proceed with phase 3, stage 3, with the  
 4 dispersal and in terms of the protocol requirements she may  
 5 and she was the overall, or the highest command in the  
 6 province, she had the legislative authority to decide those  
 7 things, etcetera. So with the fact that the National  
 8 Management Forum endorsed her decision, I don't think that  
 9 would be, that is a major fact because what it would appear  
 10 is that she sought assistance in terms of any additional  
 11 resources that she will require, but it does not say that  
 12 they, that she did not take the decision, the management  
 13 forum –  
 14 CHAIRPERSON: It says they endorsed her  
 15 proposal. What does that mean?  
 16 GENERAL NAIDOO: Chair –  
 17 CHAIRPERSON: Endorsed her proposal.  
 18 What is a proposal?  
 19 GENERAL NAIDOO: Chair, in terms of  
 20 policing –  
 21 CHAIRPERSON: The wording if you've read  
 22 in the minutes too –  
 23 MR SEMENYA SC: Chair, I can appreciate  
 24 where this line of questioning is going, but we're asking a  
 25 witness that was not in that meeting questions that were

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1 put to General Mbombo and were answered, and these  
 2 questions ought to also have been put to Lieutenant Colonel  
 3 Scott who was a compiler of exhibit L, but asking this  
 4 witness who did not compile the document, I don't see how  
 5 this is taking us anywhere.  
 6 CHAIRPERSON: But he was a participant in  
 7 Roots. He was a member of the committee to which  
 8 successive presentations of the presentation were shown,  
 9 and he presumably approved what he saw. He didn't say no,  
 10 no, this is misleading, this must be changed. But anyway,  
 11 the fact that the questions weren't asked of Colonel Scott  
 12 at a time when I think these facts weren't known isn't a  
 13 reason why they can't be asked now.  
 14 CHAIRPERSON: No, Chairperson, there's a  
 15 different. The questions would have been asked to Colonel  
 16 Scott, but Colonel Scott maintained that he was ignorant or  
 17 unaware of the National Management Forum meeting and only  
 18 found out about it after the presentation when that  
 19 document surfaced in the Commission itself. This witness  
 20 says he received the minutes of the 15th on the 20th of  
 21 September. That's six weeks before the presentation was  
 22 shown to the Commission. So as we certainly submit, the  
 23 decision taken at or after the National Management Forum  
 24 meeting on the 15th was a fact that this Commission should  
 25 have known about. This witness is one of the people who

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1 might have brought it to the attention of the Commission  
 2 through the presentation which was passing through drafts  
 3 which he saw and which didn't mention it.  
 4 MR SEMENYA SC: My last reply, Chair, is  
 5 perhaps this is valid criticism but the witness is telling  
 6 us as far as he's concerned exhibit L was a high-level  
 7 presentation. It did not seek to commit all the facts  
 8 relevant to the Commission. It may be an answer we don't  
 9 like, but that's the answer.  
 10 CHAIRPERSON: I understand that, but I  
 11 don't think it's a reason for disallowing the question.  
 12 [10:18] So you may proceed, Mr Chaskalson. In fact it  
 13 was my question to which objection has been taken and my  
 14 question deliberately used the wording of the minute which  
 15 you saw, which obviously was part of your knowledge, that  
 16 the minute said - there's a debate as to whether it was  
 17 accurate or not but that's – the minute said that the  
 18 Provincial Commissioner made a proposal and the proposal  
 19 was endorsed by those people who were still there, the  
 20 remaining members of the National Management Forum who then  
 21 agreed, insofar as it might be necessary, to make the  
 22 sources at their disposal available to the Provincial  
 23 Commissioner. Now you knew that when you saw the minute,  
 24 you knew that's what the minute said, didn't you?  
 25 GENERAL NAIDOO: Chair, yes, correct.

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1 CHAIRPERSON: And did you not consider it  
 2 a matter of sufficient importance to justify inclusion in a  
 3 high level presentation of the facts which was designed to  
 4 assist the Commission?  
 5 GENERAL NAIDOO: Chair, that's why I  
 6 indicate the decision was the Provincial Commissioner's.  
 7 Yes, she needed to ensure that we get the resources to  
 8 implement her decision but she did not need to go to the  
 9 National Management Forum to decide to do anything  
 10 operationally. She's charged, operationally, to deal with  
 11 issues in the province. The time that she approaches her  
 12 colleagues in other provinces or at national level is  
 13 merely to indicate the situation that we have in the  
 14 province as far as resources are concerned does not allow  
 15 me to execute my responsibilities and I would need your  
 16 assistance with resources. I'm merely putting it from a  
 17 functional perspective. The Provincial Commissioner  
 18 decides on almost everything in the province. She does not  
 19 need to – she informs the National Commissioner that we are  
 20 doing this and we are going to do this.  
 21 CHAIRPERSON: Yes, you see she didn't  
 22 explain the failure to mention, her failure to mention this  
 23 at Roots on the basis that you've suggested. She appears,  
 24 as far as I can remember, to have accepted it was  
 25 something, it was appropriate that it should have been



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1 mentioned because her answer was, the reason it wasn't  
 2 mentioned was she forgot. Now I take it you were conscious  
 3 of it, you didn't forget it –  
 4 GENERAL NAIDOO: No.  
 5 CHAIRPERSON: You thought it wasn't  
 6 relevant, is that right?  
 7 GENERAL NAIDOO: Chair –  
 8 CHAIRPERSON: Am I summarising your  
 9 evidence correctly or –  
 10 GENERAL NAIDOO: I did not think it was  
 11 relevant because it was clearly indicated that the  
 12 Provincial Commissioner had decided and the fact that we  
 13 were utilising units and resources from outside the  
 14 province would have meant that consultation with the  
 15 affected people must have occurred. We could not utilise  
 16 people from outside – so yes, I was aware of the fact but I  
 17 did not see it as being an important issue.  
 18 MR CHASKALSON SC: Well, Major-General,  
 19 what the presentation conveys is the Provincial  
 20 Commissioner decided at 1:30.  
 21 GENERAL NAIDOO: Yes, Chair.  
 22 MR CHASKALSON SC: What we're now told is  
 23 that the Provincial Commissioner had decided at least the  
 24 day before, that this had been endorsed by the National  
 25 Management Forum operational members. Surely issues of

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1 timing are important. Was the decision to move in taken at  
 2 1:30 in the light of what had happened in the morning or  
 3 was it taken the day before?  
 4 GENERAL NAIDOO: Chair, that's not  
 5 exactly how I perceive it. I perceive it that this  
 6 situation had been ongoing for a number of days and we had  
 7 already communicated to the Provincial Commissioner that  
 8 there was this proposal from AMCU where they suggested that  
 9 at 9 o'clock the next day that this thing could end. We  
 10 would be very happy because the members, the strikers would  
 11 leave their weapons down and withdraw. So we were still  
 12 functioning on that basis on the ground. My understanding  
 13 was that the Provincial Commissioner indicated that should  
 14 these efforts fail, that she would have the resources at  
 15 her disposal to do what she has decided to do but in terms  
 16 of communicating to us that look, I've now decided that you  
 17 should disperse them, that occurs as is indicated at 1:30.  
 18 There was always the discussion of how we would disperse  
 19 them if we get to stage 3 and what resources – I've  
 20 testified to that fact. From Tuesday onwards we were  
 21 always looking at various options on how to defuse the  
 22 situation but for us the negotiation one was the one that  
 23 we committed to and we stuck to and we were confident, I  
 24 indicated that as well, that I think we were bearing fruit.  
 25 Even at 9 o'clock if it was indicated to us, look, there's

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1 a slight delay and this thing is still going to happen  
 2 later in the day, et cetera, it's something that we want to  
 3 hear because for us as the police that would have been our  
 4 number 1 prize, that we were able to defuse a situation,  
 5 irrespective of the circumstances, so that we can maintain  
 6 stability and security.  
 7 MR CHASKALSON SC: We know that an  
 8 earlier draft of exhibit L included a video clip of the  
 9 Provincial Commissioner's press conference at 9:30 where  
 10 she said, "This will end today." That was subsequently  
 11 removed. Were you aware of that earlier draft and its  
 12 subsequent alteration?  
 13 GENERAL NAIDOO: Chair, yes, I remember  
 14 seeing the video whilst we were at Roots because that was  
 15 the first time I actually saw the press conference but as I  
 16 indicated, as to which was the final draft that was  
 17 presented, I am not very sure but at some stage I know we  
 18 did view that video as well. As to why it was not shown, I  
 19 think the compilers can tell us why it was not, was taken  
 20 out, but I can't remember a specific discussion around  
 21 putting it in or taking it out. I just remember that it  
 22 was shown to us and most of us had seen it for the first  
 23 time as well.  
 24 MR CHASKALSON SC: Now, if I understand  
 25 your evidence correctly, you hadn't been told by the

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1 Commissioner of what happened at the National Management  
 2 Forum or after the National Management Forum on the  
 3 Wednesday night, on the – when it happened. On the night  
 4 of the 15th you were unaware of that.  
 5 GENERAL NAIDOO: I was not aware that  
 6 there was any decision taken to go to stage 3, no. I was  
 7 still working on the premise that the following morning we  
 8 were going to defuse the situation and the strikers would  
 9 disperse, yes.  
 10 MR CHASKALSON SC: And then the next  
 11 morning you were also unaware of what the Provincial  
 12 Commissioner had said at the press conference.  
 13 GENERAL NAIDOO: No. Yes, I was not  
 14 aware. As I indicated, I had tasked my communication  
 15 people to assist them with setting up of the press  
 16 conference. My understanding was that the press conference  
 17 was merely to communicate where we were and what was  
 18 happening because people had died and there was generally a  
 19 feeling of insecurity in the area, but I had no idea what  
 20 her press statement was going to be about.  
 21 MR CHASKALSON SC: And the first that you  
 22 learnt of a decision by the Provincial Commissioner to move  
 23 to phase 3 or to move to the tactical phase was when you  
 24 were summoned to the briefing at 2:30 at forward holding  
 25 area 1.

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1 GENERAL NAIDOO: That is correct, Chair.  
 2 MR CHASKALSON SC: After Marikana or  
 3 after the 16th, when did you first learn about what the  
 4 Provincial Commissioner had said at the press conference?  
 5 GENERAL NAIDOO: Chair, I indicated the  
 6 first time that I saw the Provincial Commissioner's  
 7 interview was at Roots. I can't tell you specifically  
 8 which day but it was among the videos that were shown to us  
 9 and it's the first time I saw the contents and realised  
 10 what she had said.  
 11 MR CHASKALSON SC: Did it not strike you  
 12 as quite a – well, an extraordinary fact, that you learn  
 13 now two weeks after the event or two to three weeks after  
 14 the event that at 9:30 in the morning she'd already said  
 15 it's going to end today?  
 16 GENERAL NAIDOO: Chair, I did not  
 17 perceive the "end today" to be necessarily negative because  
 18 we all were under the impression that this matter would be  
 19 resolved on that day because, as I indicated, we also  
 20 testified we had that hope and the people that made the  
 21 submission clearly, you know, generated that hope in us  
 22 that they would be able to pull it off. So when I  
 23 despatched myself to forward holding area 1, I left with  
 24 that hope that this is what's going to happen.  
 25 MR CHASKALSON SC: But that's not what

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1 the Provincial Commissioner was telling the world at 9:30  
 2 in the morning. She was saying essentially we hope that we  
 3 can resolve this consensually but if we can't, we will  
 4 resolve it tactically, to paraphrase what she was saying,  
 5 and we will resolve it tactically today. Is that not the  
 6 impression that you got when you first saw her video?  
 7 GENERAL NAIDOO: Chair, I think when I  
 8 saw her video, what she indicated, that it was going to end  
 9 on that day and my reference to that was, or my  
 10 understanding of that was the fact that they were about to  
 11 lay - and the assertion that yes, we are prepared to deal  
 12 with the matter tactically is, I suppose, in the bigger  
 13 scenario an indication of the determination of the police.  
 14 We want to, we've committed ourselves to negotiations but  
 15 if the negotiations fail, as the people entrusted with  
 16 ensuring safety and security there, we would have to do  
 17 what we would have to do.  
 18 MR CHASKALSON SC: You see, Major-  
 19 General, if the version about your own knowledge that  
 20 you're telling us is true, I would've thought that you  
 21 would have been quite surprised to see what the  
 22 Commissioner had said at 9:30 on the morning. What's your  
 23 response to that?  
 24 GENERAL NAIDOO: Chair, surprised how, I  
 25 don't know. I mean I saw the video. Yes, in relation to

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1 what my own knowledge was, it was not what I perceived but  
 2 as I said I was not privy to the press conference and to  
 3 the discussions in formulating the press statement, so I  
 4 mean I had to accept what I saw.  
 5 MR CHASKALSON SC: And I'd have also  
 6 thought that you'd have realised that this was quite an  
 7 important fact, that the Provincial Commissioner was  
 8 telling the world at 9:30 that this matter is going to end  
 9 today. I won't tell you how we're going to end it but we  
 10 will end it today. Didn't you think that now that you had  
 11 been brought into the knowledge loop, it was a fact that  
 12 the Commission might want to know as well?  
 13 GENERAL NAIDOO: Chair, once again I say  
 14 we all had that hope that it was going to end that day. We  
 15 were of the opinion that the party that made the indication  
 16 to us that it was going to happen were going to score from  
 17 this. Obviously historically there was this competition  
 18 between the various unions and the party that made this  
 19 obviously wanted to be seen as somebody who is able to  
 20 resolve and have the power to influence the workers to the  
 21 improvement of the situation and based on that assumption,  
 22 yes, we thought that the thing will end that day.  
 23 CHAIRPERSON: What about the intelligence  
 24 that had been received at the 6 o'clock JOCCOM meeting –  
 25 GENERAL NAIDOO: Chair, yes –

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1 CHAIRPERSON: - didn't that qualify the  
 2 optimism to some extent at least?  
 3 GENERAL NAIDOO: Chair, the intelligence  
 4 indicated there were parties or some within that were  
 5 resisting and obviously there will always be, in a  
 6 situation like that, dissenting views. As I said, the  
 7 optimism of the proposal when it was made and the fact  
 8 that, you know, the discussion proceeded not just at the  
 9 laying down of arms but moved beyond that, made us very  
 10 hopeful that this would happen.  
 11 MR CHASKALSON SC: But did you not think  
 12 that there was a problem in editing the draft of the  
 13 presentation which originally showed the Provincial  
 14 Commissioner's speech, so that the final draft that was  
 15 presented to the Commission wouldn't show the Provincial  
 16 Commissioner's speech and wouldn't show – not her speech,  
 17 her press conference – and wouldn't show her saying, "We  
 18 will end this today."  
 19 GENERAL NAIDOO: Chair, as I said, during  
 20 – excuse me – during the course of the presentation, during  
 21 the development we were shown, so I was not specifically in  
 22 the Commission at the time when the annexure L was  
 23 presented in its totality, so I cannot specifically  
 24 remember whether it was included or excluded but as I  
 25 indicated, it was part of the videos that we had there, it

<p style="text-align: right;">Page 23770</p> <p>1 was part of the videos we viewed as the, going to be made 2 available to the Commission. 3 MR CHASKALSON SC: Well, I can tell you 4 that – two things, the first is that it was removed from 5 the copy of the presentation that was made available to the 6 Commission and secondly, that the specific video clip that 7 had been in there, the Australian Broadcasting Corporation 8 clip, wasn't one of the clips that made its way onto the 9 SAPS hard drive that was given to the evidence leaders and 10 to the Commission. Have you got any comment on that? 11 GENERAL NAIDOO: Chair, a comment 12 specifically to the hard drive? 13 MR CHASKALSON SC: It would have to be to 14 the hard drive because you've already given your answer to 15 its not being shown to the Commission. 16 GENERAL NAIDOO: Chair, during the 17 process when we started at Roots, I already testified I 18 realised that there was a huge volume of information and I 19 then obtained and handed to Brigadier Pretorius a hard 20 drive and instructed her that we should consolidate 21 everything that's available but at that stage I think the 22 person that had information and photographs, et cetera, was 23 Colonel Scott but I instructed her that, well, I realised 24 that we needed to have some sort of central point and have 25 some control in terms of knowing what we have and based on</p>	<p style="text-align: right;">Page 23772</p> <p>1 quantities of material on Lieutenant-Colonel Scott's hard 2 drive that never made it to our hard drive and the 3 corrupted material - we have directories of what was on our 4 hard drive. The corrupted material doesn't account for the 5 disappearance of, for instance, this video. We can have 6 this dispute out in open Commission at a later stage if the 7 Chairperson regards it as significant. It may be 8 significant because there may be certain SAPS members who 9 have to explain why what we got excluded large quantities 10 of relevant material and relevant material that was in the 11 possession of SAPS and was on their hard drive. So there 12 may be people who have to come and answer but it shouldn't 13 for a minute be suggested that it's common cause that the 14 hard drive that was given to us was the same hard drive 15 that was in Colonel Scott's possession. 16 CHAIRPERSON: I'm not sure that that's 17 what Mr Semenya is suggesting actually, to be fair to him, 18 but the question of course is, that obviously arises now is 19 to what extent this witness can help us on these matters. 20 You are cross-examining him, I take it, on the basis that 21 he may well be someone – 22 MR CHASKALSON SC: Yes. 23 CHAIRPERSON: - who might be responsible 24 for a possible attempt to mislead the Commission, that's 25 why you're proceeding with the question. I assume that's</p>
<p style="text-align: right;">Page 23771</p> <p>1 that I gave her, I obtained a hard drive from our IT 2 section and I instructed her to gather as much as possible 3 everything that is available and put it on the hard drive 4 on the understanding that we will get this request for all 5 the information and at some stage I was contacted by the 6 previous evidence leader who called me first and then sent 7 me an e-mail requesting it. I confirmed with our legal 8 team that I had received this request and then instructed 9 them to hand the hard drive over to our legal team, copy 10 the hard drive over to the legal team. So there was at no 11 time an indication that, you know, give them this and give 12 them that. The idea was to give everything we have because 13 we also did not know the form and direction this whole 14 process would go and we felt the sooner everything was made 15 available, that the process could start unfolding and 16 moving forward. 17 MR SEMENYA SC: Chair, for the record, we 18 would recall this is still an open question about to what 19 extent the hard drive given to the claimant was corrupted 20 but we have no, there's no dispute that the copy that the 21 copy that Lieutenant-Colonel Scott had was a copy of the 22 hard drive which was given to the evidence leaders. At 23 least there's no debate about that matter. 24 MR CHASKALSON SC: Sorry, Chairperson, 25 there is a huge dispute about that fact. There's vast</p>	<p style="text-align: right;">Page 23773</p> <p>1 why, I am – 2 MR CHASKALSON SC: Indeed. He is saying 3 that he gave instructions that everything should be handed 4 over to the Commission. Who then should we hold 5 responsible if materials that should've been given to the 6 Commission, were not given to the Commission, Major- 7 General? Whose responsibility would that have been? 8 GENERAL NAIDOO: Chair, I think it's 9 clear, to determine that we should just follow the chain in 10 terms of how the information was transferred because my 11 understanding was that the hard drive that I provided to, 12 what was now becoming the nodal point for the SAPS, was the 13 understanding that anything and everything that we had 14 should be copied thereupon and be preserved. As I 15 indicated, that one of the main reasons for going to Roots 16 is to consolidate all this information, we did not know the 17 extent of which and we only realised when we got there. So 18 in think in order to deal with the particular question 19 there is a chain, I mean the information didn't get to the 20 Commission, you know, out of nowhere, there is a chain and 21 we should investigate that process, the chain, and we will 22 be able to determine liability. 23 MR CHASKALSON SC: Well, can you tell us 24 how you understand that, General. 25 [10:38] GENERAL NAIDOO: Chair, I can tell you</p>

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1 on, specifically on the initial request, after I had  
 2 received the email from Mr Madlanga I then instructed  
 3 Brigadier Pretorius to make this information available.  
 4 The person that was managing the hard drive at that stage  
 5 was Colonel Visser and I know Colonel Visser met with a  
 6 representative from the legal team on a Sunday and he  
 7 indicated that he had given them all the information. He,  
 8 I know that specifically because he did inform me that it  
 9 has been complied with and that's the last I heard of it  
 10 until the dispute came in the Commission that something was  
 11 not discovered.

12 MR CHASKALSON SC: So your knowledge of  
 13 the chain is essentially limited to Colonel Visser.  
 14 Colonel Visser carried the master hard drive, as it were?  
 15 GENERAL NAIDOO: Yes, he had it in his  
 16 possession and he copied it for the legal person that was  
 17 going to present the, or to hand over the information.  
 18 MR CHASKALSON SC: And was that an  
 19 internal SAPS legal person or a member of the SAPS team of  
 20 attorneys and counsel?  
 21 GENERAL NAIDOO: It was not an internal  
 22 SAPS person, Chair. So I take it, it was an attorney.  
 23 MR CHASKALSON SC: So if there was  
 24 something that didn't make it onto the copy that was given  
 25 to the external legal representative of – the copy of the

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1 hard drive that was given to the external legal  
 2 representative, that would be Colonel Visser's problem?  
 3 GENERAL NAIDOO: Chair, I think we need  
 4 to analyse that part and see what did he have on the hard  
 5 drive because he specifically indicated to us he's copied  
 6 the entire hard drive onto the one that was brought. So  
 7 yes, in terms of that I think we will start the chain from  
 8 there and follow it through eventually how it arrived at  
 9 the Commission.  
 10 MR CHASKALSON SC: Well, in due course  
 11 we'll have this conversation with Colonel Visser.  
 12 CHAIRPERSON: Are you now moving on to a  
 13 new point?  
 14 MR CHASKALSON SC: No, no, I have one  
 15 last issue to raise in relation to exhibit L. I'm not  
 16 dealing with missing videos or –  
 17 CHAIRPERSON: No, no, I was proposing to  
 18 take tea round about now, but if this is a point that can  
 19 be dealt with fairly briefly before tea, we can do it,  
 20 otherwise we'll do it after tea. I'm in your hands.  
 21 MR CHASKALSON SC: It's a relatively  
 22 short point, Chairperson.  
 23 CHAIRPERSON: Let's deal with it before  
 24 tea then.  
 25 MR CHASKALSON SC: It relates to the

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1 misrepresentation in exhibit L that the tactical plan that  
 2 was implemented with disastrous consequences on the  
 3 Thursday had been on the table since the Tuesday, actually  
 4 been discussed in the JOC on the Tuesday. I don't know if  
 5 it goes so far as to say discussed in the JOC on the  
 6 Tuesday, but had been the plan since Tuesday. That's what  
 7 exhibit L conveys. Now that's a misrepresentation. Is  
 8 there any reason why you didn't take steps to correct this  
 9 misrepresentation?  
 10 GENERAL NAIDOO: Chair, I'm not sure  
 11 which tactical plan.  
 12 CHAIRPERSON: Slide 78.  
 13 GENERAL NAIDOO: 78.  
 14 MR SEMENYA SC: Well Chair, I think the  
 15 witness must be told that was the evidence of General  
 16 Annandale. It may very well be that Lieutenant Colonel  
 17 Scott said something different.  
 18 CHAIRPERSON: No, no, that's why I  
 19 referred him to slide 78 which relates to the 14th, the  
 20 Tuesday, and suggests that the plan, sets out what the plan  
 21 was according to exhibit L on the 14th. That's the passage  
 22 that's relevant. I know there's a conflict between General  
 23 Annandale and Colonel Scott. Presumably that's something  
 24 Mr Chaskalson may or may not deal with, with the witness.  
 25 GENERAL NAIDOO: Chair, I think when we

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1 talk about a tactical plan, my understanding was elements  
 2 of the Special Task Force, TRT, as well as the National  
 3 Intervention Unit were brought in. I think I testified to  
 4 the effect that there was consideration given because at  
 5 that stage firearms were taken, people were murdered, so  
 6 the lead in terms of the investigation of those cases would  
 7 direct these tactical units, and I think I testified to the  
 8 effect when asked why the Special Task Force, these  
 9 tactical units were going to be used to go and, in support  
 10 of the investigation and conduct certain operations once  
 11 the investigations indicated to us where weapons were,  
 12 where the suspects were, etcetera. So if reference is made  
 13 to that tactical plan, I'm not sure.  
 14 MR CHASKALSON SC: No, Major General, I'm  
 15 talking about the distinction between a plan to encircle  
 16 the koppie with barbed wire, which Colonel Scott explained  
 17 to us was the plan on the Tuesday and which all of the  
 18 objective evidence confirms was the plan on the Tuesday;  
 19 electronic files are made on the Tuesday, they're carried  
 20 over to the Wednesday, as opposed to a plan to conduct the  
 21 dispersal and disarmament operation that was attempted on  
 22 the 16th. The evidence in relation to that plan from  
 23 Colonel Scott was that it was only raised in the JOC for  
 24 the first time, at a JOC meeting for the first time on the  
 25 morning of the 16th.

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1 GENERAL NAIDOO: Chair no, I think during  
 2 all our discussions there was never at any time a  
 3 discussion only of Public Order Police. There was always a  
 4 discussion of how all the units deployed would be utilised,  
 5 if we're talking about a tactical plan. I know when we  
 6 spoke specifically about encircling the koppie with the  
 7 protesters on it, etcetera, the question arose that how  
 8 will they be disarmed and you know, what would this process  
 9 be, and there was there already discussions about  
 10 utilisation of the tactical units to assist with the  
 11 disarming of the people as if the koppie was encircled with  
 12 everybody inside, etcetera. So if it's that part of the  
 13 tactical plan we're talking about, yes, I know there was  
 14 discussions on that.

15 CHAIRPERSON: The essential different  
 16 between the two plans, as I understand the evidence, was  
 17 that the first plan which Mr Chaskalson referred to, which  
 18 Colonel Scott spoke about as being the plan on the Tuesday  
 19 and carried over to the Wednesday, was encirclement was  
 20 first, encirclement around the koppie.

21 GENERAL NAIDOO: That's right.

22 CHAIRPERSON: The second plan which was  
 23 devised and settled as it were later, and as Mr Chaskalson  
 24 says was first formally before the JOCCOM on the Thursday,  
 25 involved dispersal first, then encirclement and

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1 disarmament.

2 GENERAL NAIDOO: Right.

3 CHAIRPERSON: And in fact the Provincial  
 4 Commissioner when she spoke described that plan as the DDA  
 5 plan, disperse, disarm, arrest. Now that's what you're  
 6 being asked about, the distinction between those two plans.

7 MR CHASKALSON SC: And maybe to  
 8 illustrate the point, if we can go to slide 81 which has a  
 9 graphic representation of the second plan, this plan – and  
 10 if we see the little calendar above the plan, it says  
 11 Tuesday the 14th – the evidence of Colonel Scott was that  
 12 this plan was mentioned at a JOCCOM meeting for the first  
 13 time on the morning of Thursday the 16th. Here it's being  
 14 suggested as a plan that was on the table on Tuesday the  
 15 14th.

16 GENERAL NAIDOO: Chair, as I've already  
 17 indicated, from Tuesday until Thursday there was  
 18 discussions on various ways of doing these things. One of  
 19 them was, as I indicated, this encircling of the koppie,  
 20 channelling the people to one particular exit and disarming  
 21 them as they came through, asking them to lay down their  
 22 weapons, etcetera. There was discussion around various  
 23 methods of dispersal and what the implications would be and  
 24 where would the crowds disperse to, etcetera. So when I'm  
 25 seeing the slides and say whether this was the one only on

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1 the table on Thursday, I would say that there were  
 2 discussions on various things. I can't say specifically  
 3 that this slide was only shown on Thursday because most of  
 4 the discussions was around a map and, you know, they played  
 5 around in terms of if we moved it here what would happen  
 6 and if we did that. So in all the discussions there was  
 7 never an exclusion of the TRT and the NIU in terms of  
 8 supporting the Public Order Police, so I suppose they were  
 9 always included in the tactical part.

10 CHAIRPERSON: When slide 78 was put to  
 11 Colonel Scott and this point was raised, he conceded that  
 12 slide 78 was inaccurate; it didn't happen on Tuesday, it  
 13 happened later, and when he was asked why that happened,  
 14 why it was done, why this inaccurate information was put  
 15 into the presentation he said it was done without malice,  
 16 to assist the Commission to follow the development of the  
 17 plan. That was his evidence. Were you aware of the fact  
 18 that when you were a party to approving slide 78 and the  
 19 incorporation of slide 81 under the date, the 14th of  
 20 August, were you aware that that information was inaccurate  
 21 but was put in without malice simply to enable the  
 22 Commission to follow the development of the plan?

23 GENERAL NAIDOO: Chair, what I can  
 24 testify is that if I had been shown slides that were shown  
 25 on the 14th, 15th, and 16th, I would not be, specifically say

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1 this one was shown to us, because these things were put up  
 2 there. In fact at some stage more than one slide was put  
 3 up there. So I will not be in a position to say this slide  
 4 was specifically used on the 14th and the other slide was  
 5 specifically used on the 15th. I would not be in a position  
 6 to indicate that.

7 CHAIRPERSON: The narrative in slide 78?  
 8 GENERAL NAIDOO: 78. Chair, that  
 9 discussion in terms of the dispersal into smaller groups  
 10 was one of the issues that was discussed. I can't say  
 11 specifically which day, but always the discussion was did  
 12 we have sufficient resources for whatever we had to do,  
 13 hence the issue around the encircling the koppie. One of  
 14 the issues was we did not have sufficient resources for  
 15 that. I had testified that whatever suggestion was put on  
 16 the people gave their input in saying you know if you have  
 17 to do this you require that, and if you have to do that you  
 18 require this, and this is where the development of the plan  
 19 took place. So in terms of the dispersal into smaller  
 20 groups it was one of the discussions that took place, and  
 21 not on Thursday, I mean even before that, as one of the  
 22 options that if we disperse them how would we arrest them,  
 23 where we would, where would we arrest them, what would be  
 24 the reaction of the crowd, should they destroy property.  
 25 These are all considerations that were always part of that

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1 brainstorming exercise that took place either in the  
 2 morning or the evening, whenever the discussions around  
 3 this took place.

4 COMMISSIONER HEMRAJ: Can I just enquire,  
 5 General, were there inform discussions in the sense that,  
 6 around this issue that weren't part of the meetings held in  
 7 the JOC? Were there discussions held outside those  
 8 meetings about this plan?

9 GENERAL NAIDOO: Chair, I'm sure that  
 10 there might have been, but I was not at the JOC, I was at  
 11 forward holding area 1, but in terms of that I said even  
 12 during the meetings there were a lot of discussions around,  
 13 you know, what we could do and couldn't do, but at no stage  
 14 did we have a – we always had what was referred to as a  
 15 hybrid plan incorporating elements of other tactical units  
 16 with Public Order Police. There was, you know, no purely  
 17 Public Order Police plan because it was accepted - and I  
 18 testified to this – that the situation we had was beyond  
 19 normal crowd management and we needed the support of the  
 20 other units.

21 MR CHASKALSON SC: You see, Major  
 22 General, you say that there were these discussions around  
 23 dispersing and disarming, the sort of a tactical plan that  
 24 one sees depicted in slide 81. You say that there were  
 25 these discussions at JOC meetings before the Thursday

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1 morning.

2 GENERAL NAIDOO: That's correct, Chair.

3 MR CHASKALSON SC: We have notes that  
 4 were taken at those JOC meetings and notes that were taken  
 5 on the Thursday morning. None of them reflect any of those  
 6 discussions. They all still reflect the original plan to  
 7 encircle the koppie.

8 GENERAL NAIDOO: Chair, I think if you  
 9 discuss with people that were, all the people that were  
 10 seated there at that meeting, at some stage somebody or  
 11 other made inputs there. As I said, there were a lot of  
 12 people with experience in crowd management especially and a  
 13 lot of the people made inputs in terms of whatever was  
 14 being suggested and that is a discussion that I alluded to.

15 MR CHASKALSON SC: But those inputs  
 16 didn't make their way into the notes of the note-taker on  
 17 either day.

18 GENERAL NAIDOO: Well, that would seem  
 19 so. But I know I was there and I did hear the inputs from  
 20 various people.

21 MR CHASKALSON SC: And you're clear in  
 22 your own mind that these happened either on the Tuesday or  
 23 the Wednesday and not on the Thursday?

24 GENERAL NAIDOO: Yes, especially towards  
 25 the evening. Most of the time we - we used to finish at

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1 about 8 o'clock, but you'll see most of the days we left  
 2 much later because of these discussions. It didn't, after  
 3 the meeting ended there were still discussions as to  
 4 acquiring sufficient resources, etcetera.

5 COMMISSIONER HEMRAJ: I'm not clear about  
 6 that. When you say discussions in the evenings, are you  
 7 talking outside a formal meeting of the JOC structure, or –

8 GENERAL NAIDOO: Chair, yes, there were  
 9 people that had to travel, so normally we would have the  
 10 formal meeting and they would disperse because members had  
 11 to travel, you know, back to Gauteng, etcetera, and the few  
 12 who would remain, because we had to articulate if there was  
 13 a decision on something, for example the issue around the  
 14 barbed wire, we had to now look at where are we going to  
 15 get barbed wire when the plan was mooted of circling the  
 16 koppie. First we had to know how much of barbed wire we  
 17 required and then try to see. There was even a request  
 18 made to Lonmin to see could you assist us, you know, with  
 19 some barbed wire, but what they brought we couldn't  
 20 actually use. So that didn't occur during the course of  
 21 the meeting because out of the meeting obviously we had to  
 22 then go and look at issues that were raised and how are we  
 23 going to obtain the resources required.

24 MR CHASKALSON SC: Why do you say the  
 25 barbed wire that Lonmin brought you couldn't use?

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1 GENERAL NAIDOO: Chair, I think you've  
 2 had sight of our barbed wire trailer. Our problem was how  
 3 would we deploy that wire, you know, based on it was just  
 4 rolls that were brought to us, didn't have the fixtures,  
 5 etcetera. So we also tried to figure out how we would be  
 6 able to utilise such a wire that's not put onto a  
 7 particular piece of equipment which can effectively deploy  
 8 it because the key to this thing was to be able to deploy  
 9 the wire in a quick –

10 MR CHASKALSON SC: You see, we've seen  
 11 the order that Lonmin put through for that barbed wire and  
 12 it included a trailer.

13 GENERAL NAIDOO: Chair yes, but it was  
 14 not – the Lonmin people deployed barbed wire because I know  
 15 at forward holding area 1 there's a certain area that they  
 16 deployed it. They physically came and rolled out the wire  
 17 and had to attach it to poles, etcetera, unlike the ones  
 18 that we had. They were on rolls and ones you deploy the  
 19 tailpiece you can just drive off and the barbed wire  
 20 deployed. It was not the same with regard to the wires  
 21 they brought. I did see it, it was parked, it was  
 22 delivered at the yard at Lonmin at the JOC.

23 CHAIRPERSON: Mr Chaskalson, I'm sorry, I  
 24 did indicate we were going to take tea at about quarter to  
 25 and this point, I think to be fair to you, you thought

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1 would take less time than it has. Is it convenient to take  
 2 the adjournment now? I'm in your hands.  
 3 MR CHASKALSON SC: We can take the  
 4 adjournment. I can't say I'm going to finish it with one  
 5 more question, so let's take the adjournment.  
 6 CHAIRPERSON: Alright, well let's take  
 7 the tea adjournment now.  
 8 [COMMISSION ADJOURNS COMMISSION RESUMES]  
 9 [11:27] CHAIRPERSON: The Commission resumes.  
 10 Major-General, you're still under oath. Mr Chaskalson?  
 11 GENERAL NAIDOO: Still under oath, thank  
 12 you.  
 13 GENERAL NAIDOO: s.u.o.  
 14 CROSS-EXAMINATION BY MR CHASKALSON SC (CONTD.):  
 15 Major-General, I don't want us to get bogged down in barbed  
 16 wire but I do need us to know what role exactly did you  
 17 play in relation to the barbed wire, if any?  
 18 GENERAL NAIDOO: Chair, no specific role.  
 19 I indicated that these are some of the issues that were  
 20 carried in discussion.  
 21 MR CHASKALSON SC: So you didn't order  
 22 any extra barbed wire from the mine, you yourself?  
 23 GENERAL NAIDOO: No, Chair.  
 24 MR CHASKALSON SC: And you didn't inspect  
 25 the barbed wire that was delivered by the mine?

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1 GENERAL NAIDOO: No, I just indicated  
 2 that I noticed it in the yard.  
 3 MR CHASKALSON SC: Can we look at  
 4 JJJ4487? Sorry, no, no, not JJJ4487, JJJ82, JJJ82. I'm  
 5 sorry, it's the wrong one. Bear with me for a moment.  
 6 JJJ86. Now you'll see in this, this is a photograph of the  
 7 yard at the JOC on the morning of the 16th. You'll see in  
 8 the large elliptical shape there is a, there are the six  
 9 barbed wire trailers, barbed wire trailers and Nyalas.  
 10 GENERAL NAIDOO: Correct.  
 11 MR CHASKALSON SC: There is more  
 12 additional barbed wire on the yard at the JOC in the  
 13 circle, you see that?  
 14 GENERAL NAIDOO: That's correct, Chair.  
 15 MR CHASKALSON SC: Is that the barbed  
 16 wire that you saw?  
 17 GENERAL NAIDOO: That's the barbed wire  
 18 I've seen.  
 19 MR CHASKALSON SC: Now if we zoom in on  
 20 that barbed wire you'll see it comes with a trailer. Can  
 21 we – or a dispenser. Can we zoom in? Possibly go to the  
 22 next, the next two slides which are already zoomed in. Do  
 23 you see the dispenser there?  
 24 GENERAL NAIDOO: That's correct, Chair.  
 25 MR CHASKALSON SC: And is that a

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1 different dispenser to the one that SAPS were using?  
 2 GENERAL NAIDOO: Chair, the barbed wire  
 3 on the barbed wire trailer that SAPS use is connected and  
 4 constructed in such a way that when you roll it out, they  
 5 stand. What I observed there, these were just rolls of  
 6 barbed wire and I even noticed, as I indicated, at forward  
 7 holding area 1 that some of the barbed wire was used by  
 8 Lonmin to barricade a particular part of the – they had to  
 9 physically come and install the barbed wire. It's not  
 10 something that you just drop out and roll out and it will  
 11 stand. So it was not the same barbed wire as the three  
 12 roll one that we see on the trailer, it is a single bundle.  
 13 MR CHASKALSON SC: Well, if we can look,  
 14 if we can zoom in on the second pile of barbed wire that we  
 15 see in the square, can we zoom in there? Are you saying  
 16 that those little barbed wire triangles of nine rolls each  
 17 are of a different nature from the sort that SAPS uses?  
 18 GENERAL NAIDOO: That was my observation.  
 19 As I indicated, I did not inspect them, I did notice them  
 20 and they are – they're not in the same construction as the  
 21 trailer, so my understanding was that they would be, have  
 22 to be manually laid out.  
 23 CHAIRPERSON: Your understanding, did  
 24 anybody tell you that?  
 25 GENERAL NAIDOO: Chair, no. I indicated

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1 I did not inspect it, I did notice it and I think the most  
 2 appropriate people are the people that use, can come and  
 3 give to the utilisation. I was asked –  
 4 CHAIRPERSON: No, I understand. So that  
 5 was your understanding, no-one told you that.  
 6 GENERAL NAIDOO: No.  
 7 CHAIRPERSON: It was almost a guess on  
 8 your part. It may have been a correct guess but it was a  
 9 guess on your part, would that be fair?  
 10 GENERAL NAIDOO: Chair, as you will see  
 11 on the picture, some of the stacks, there were loose rolls  
 12 as well. So based on what I observed, you know, it was not  
 13 the same as what we had, ready to deploy wire but I'm  
 14 subject to correction but based on what I observed is what  
 15 I have stated here.  
 16 MR CHASKALSON SC: You see, Major-  
 17 General, what the Lonmin order, which is JJJ97, shows is  
 18 that Lonmin placed an order for two separate categories of  
 19 barbed wire, one batch that was capable of being dispensed  
 20 from a trailer and one batch which was what you describe,  
 21 loose barbed wire that you have to roll out yourself.  
 22 CHAIRPERSON: To be fair, I don't think  
 23 the witness has seen the exhibit to which you've now  
 24 referred, exhibit JJJ97. Here we go, that's it.  
 25 MR CHASKALSON SC: The invoice is at the

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1 back of this letter and although the invoice isn't easily  
 2 legible on this copy on the screen, what you'll see is that  
 3 there are two separate categories of barbed wire, one is  
 4 the dispensable category that comes with the trailer, the  
 5 other is just rolls.  
 6 CHAIRPERSON: Major-General, had you seen  
 7 this invoice before?  
 8 GENERAL NAIDOO: No, Chair.  
 9 CHAIRPERSON: So you can't really, can  
 10 you – I mustn't say what you can't do, I ask you are you  
 11 able to comment on it or is it something you prefer to  
 12 leave to someone else?  
 13 GENERAL NAIDOO: No, Chair, I still work  
 14 from the premise that based on these various discussions,  
 15 that one of the points that we had was that we would not be  
 16 able to have sufficient wire to do that particular  
 17 operation and there were others factors such as time, et  
 18 cetera. So that, different categories, I was not aware. I  
 19 indicated my opinion was based on what I just observed.  
 20 MR CHASKALSON SC: Maybe then we should  
 21 move on from barbed wire. I saw in Brigadier Pretorius's  
 22 statement MMM22 that at paragraph 6.3 she discusses how the  
 23 minutes of the 16 August 6AM JOCCOM meeting were prepared  
 24 at Roots and if we can call up paragraph 6.3, "At Roots I  
 25 was instructed by Major-General Annandale to ensure that

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1 all the minutes of meetings held on 15 August and 16 August  
 2 were typed. I typed the minutes of the meeting of 15  
 3 August at 6:00 from notes I had available. I was not  
 4 present at the meeting of 16 August at 6:00 and worked from  
 5 notes taken by Colonel Moolman. I typed the minutes of the  
 6 16th first. It was perused by Major-Generals Mpembe,  
 7 Annandale and Naidoo. Several corrections were made.  
 8 Major-General Annandale instructed me to distribute the  
 9 draft minutes of 16 August 2012 at 6:00 to officers present  
 10 at that meeting, inter alia, Brigadier Van Zyl, Brigadier  
 11 Callitz, Colonel Makhubela, Colonel Scott, Colonel Isaacs  
 12 and Lieutenant-Colonel Vermaak. I did that and some of the  
 13 officers also made amendments which I incorporated into the  
 14 document. The amended document was again provided to  
 15 Major-General Mpembe, Major-General Annandale and Major-  
 16 General Naidoo who again made some amendments, after which  
 17 I typed the final document. I unfortunately did not keep  
 18 all the draft documents and have no recollection all the  
 19 changes made to the draft." Do you confirm that you were  
 20 part of the process as described by Brigadier Pretorius,  
 21 the process that produced the minutes of the 6AM JOCCOM at  
 22 Roots?  
 23 GENERAL NAIDOO: Chair, what I can  
 24 indicate is, yes, there were a couple of minutes that she  
 25 did ask us to check. As is a matter of record, I did not

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1 attend the entire briefing, I did arrive late so I can't  
 2 specifically remember any major input that I would have  
 3 made into the minutes but I know that she did circulate the  
 4 minutes for us while we were at Roots, yes.  
 5 MR CHASKALSON SC: So you can't recall  
 6 any changes that you yourself would have made to Brigadier  
 7 Pretorius's draft?  
 8 GENERAL NAIDOO: Not specifically, Chair,  
 9 no.  
 10 MR CHASKALSON SC: And did you keep that  
 11 original draft?  
 12 GENERAL NAIDOO: No, Chair. I did not  
 13 have copies of that draft minute, no.  
 14 MR CHASKALSON SC: Was it circulated to  
 15 you in hard copy form, not electronic form?  
 16 GENERAL NAIDOO: That was hard copy. We  
 17 were at Roots, Chair, and we were working with hard copies,  
 18 yes.  
 19 MR CHASKALSON SC: Do you recall any  
 20 changes made by anybody else?  
 21 GENERAL NAIDOO: I think there was. I  
 22 know people handed back their copies to her so yes, there  
 23 probably was.  
 24 MR CHASKALSON SC: Do you recall whether  
 25 there was any mention in the original draft of the 16th

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1 being D-day?  
 2 GENERAL NAIDOO: Chair, no, I would not  
 3 specifically remember but something like that would stand  
 4 out, I mean, but –  
 5 CHAIRPERSON: You said something would  
 6 what?  
 7 GENERAL NAIDOO: I would not specifically  
 8 remember whether there was such a thing but something like  
 9 that would stand out, I mean I would have remembered, yes.  
 10 MR CHASKALSON SC: So you think the  
 11 original draft didn't make any mention of the 16th being D-  
 12 day?  
 13 GENERAL NAIDOO: I'm saying I did not  
 14 notice that, no.  
 15 MR CHASKALSON SC: But you would have  
 16 noticed it if it had been there?  
 17 GENERAL NAIDOO: Yes, Chair, I would have  
 18 wanted to know what that meant.  
 19 MR CHASKALSON SC: And at the time you  
 20 had no knowledge that, at 6AM on the 16th you yourself had  
 21 no knowledge that the 16th was to be D-day?  
 22 GENERAL NAIDOO: That's correct, Chair.  
 23 MR CHASKALSON SC: Brigadier Pretorius  
 24 also in paragraph 7.2 and 7.3 deals with the creation of a  
 25 SAPS hard drive. We've touched on this already but she



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1 indicates that you were the person who came up with the  
 2 idea of a master hard drive.  
 3 GENERAL NAIDOO: Chair, I think I have  
 4 testified to that fact, that I realised that we did not –  
 5 the intention of Roots was to collate, consolidate and  
 6 preserve all the information but the amount of electronic  
 7 data made me realise that I would make, to make  
 8 arrangements for this information to be stored on a  
 9 particular system and I then contacted our technology  
 10 management services and obtained their hard drive, which I  
 11 gave to them and instructed them. I have testified to  
 12 that.  
 13 MR CHASKALSON SC: You say the amount of  
 14 electronic data, I presume you were then aware of the  
 15 numbers of videos and photographs that were available, in  
 16 broad terms.  
 17 GENERAL NAIDOO: Yes, what we realised  
 18 was that people were bringing in videos, cell phone  
 19 footage, photographs on cell phones, all this media, we  
 20 were trying to obtain all the media coverage. At that time  
 21 we also established that there was no police operator that  
 22 took footage of certain incidents. So yes, there was a lot  
 23 of electronic information that was coming in and we had to  
 24 put it on a system where we could access it and make them  
 25 available when requested.

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1 MR CHASKALSON SC: Two things, Major-  
 2 General. The first is, am I understanding the sequence  
 3 correctly? It was at Roots that you realised that there  
 4 was going to be a vast bulk of electronic material or had  
 5 you already realised before Roots that there were a great  
 6 deal of photographs and videos that could throw light on  
 7 the event?  
 8 GENERAL NAIDOO: Chair – sorry, Chair, in  
 9 terms of volume I'd realised at Roots, I knew that there  
 10 were people, I saw once or twice people bringing some  
 11 photographs to Colonel Scott while we were still at the JOC  
 12 but you know in terms of volume I did not appreciate that,  
 13 but when we got to Roots I realised that because we were  
 14 going through an exercise of consolidation, my  
 15 understanding was the consolidation would be written  
 16 statements, et cetera, but the amount of electronic  
 17 documents obviously led me to obtain the hard drive and  
 18 instruct them to keep a separate hard drive because Colonel  
 19 Scott was actually not from the North-West Province and one  
 20 of our concerns was, once people had all left, we would be  
 21 left with all the requests and we'd have to provide the  
 22 answers. So that is why I got the hard drive.  
 23 MR CHASKALSON SC: And at some level you  
 24 must have anticipated that you would be getting electronic  
 25 materials because your call-up for Roots actually

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1 specifically asked people, I think, to bring their  
 2 photographs.  
 3 GENERAL NAIDOO: That's correct.  
 4 MR CHASKALSON SC: And other evidentiary  
 5 material.  
 6 GENERAL NAIDOO: That's correct, Chair.  
 7 MR CHASKALSON SC: Alright, I want to  
 8 move now back to scene 3 and –  
 9 scene 2 and koppie 3.  
 10 CHAIRPERSON: Scene 2, koppie 3.  
 11 MR CHASKALSON SC: And to start at the  
 12 point when you met up with the NIU. You indicate in your  
 13 statement that when you met up with the NIU they informed  
 14 you that they had already shot at strikers and I understood  
 15 your evidence to mean that they were referring in this  
 16 regard to the bodies that you could see and that ultimately  
 17 turned out to be victims A and B and some wounded people,  
 18 is that correct?  
 19 GENERAL NAIDOO: That's correct, Chair.  
 20 MR CHASKALSON SC: Now, what did they say  
 21 about the shooting at these people?  
 22 GENERAL NAIDOO: Basically they indicated  
 23 that when they arrived, as they arrived they were charged  
 24 and they had to defend themselves. I'm summarising now, I  
 25 can't remember specific words here.

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1 MR CHASKALSON SC: But if we look at –  
 2 were they, as they arrived where?  
 3 GENERAL NAIDOO: Chair, I assumed at that  
 4 stage as to where I found them.  
 5 MR CHASKALSON SC: And if we go back to  
 6 MMM3 or is it MMM2? MMM2 and if I recall your evidence  
 7 correctly, you found them roughly in column I, rows 2 to 3.  
 8 GENERAL NAIDOO: Ja, approximately,  
 9 Chair.  
 10 MR CHASKALSON SC: And where did you  
 11 understand this encounter between the NIU and the strikers  
 12 to have taken place?  
 13 GENERAL NAIDOO: Chair, they did not  
 14 indicate to me a specific place where it took – but I had,  
 15 as I testified, had seen bodies in front of me so my  
 16 assumption is that they either shot from where they were or  
 17 some place before that.  
 18 CHAIRPERSON: Where were the bodies?  
 19 GENERAL NAIDOO: Chair, the bodies that I  
 20 could observe was in F3 at the base of the hill there.  
 21 There were, as I indicated, almost five people lying there.  
 22 MR CHASKALSON SC: So you thought that  
 23 the NIU had shot from the position where they were in  
 24 column I at strikers in F3?  
 25 GENERAL NAIDOO: That was my perception,

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1 yes.

2 MR CHASKALSON SC: But of course F3 is at

3 the base of the rock.

4 GENERAL NAIDOO: That's correct, Chair.

5 MR CHASKALSON SC: It's quite a difficult

6 – how would someone charge, be in a charge at the base of

7 the rock? You'd have to come running down the rock.

8 GENERAL NAIDOO: Chair, it's impossible

9 to come running down that, it's a sheer cliff. As I

10 indicated, that's the location I found them. There was no

11 indication as to where they were. I assumed from where

12 they were in the region of I, that the shooting had

13 occurred in that vicinity, yes.

14 MR CHASKALSON SC: And did they say they

15 had been charged by the miners?

16 GENERAL NAIDOO: That's correct, Chair.

17 MR CHASKALSON SC: So you'll agree that

18 the position where the bodies were found is not a position

19 from which one can imagine a charge taking place?

20 MR SEMENYA SC: Well, Chair -

21 MR CHASKALSON SC: It could be taking

22 place from that position but couldn't be taking place, one

23 couldn't be in a position, in a charge at that position.

24 CHAIRPERSON: Before you answer the

25 question Mr Semenya has an objection.

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1 MR SEMENYA SC: These questions call for

2 conjecture, Chair. The witness did not observe these

3 things.

4 MR CHASKALSON SC: He did observe the

5 position and he did observe the terrain around the position

6 and he's testified that there's essentially a vertical

7 cliff.

8 MR SEMENYA SC: But you are asking him

9 about charging, whether the strikers are charging. Is it a

10 position where they could be charging?

11 MR CHASKALSON SC: I'm not asking him

12 whether they were charging, I'm asking him whether it was

13 possible from that, at that position to be in a charge,

14 from his observation of the terrain.

15 CHAIRPERSON: Yes, I think the question

16 is admissible. It's based upon whether he was able to

17 accept what he was told in the light of what he saw as to

18 the terrain where this story that they told him, where the

19 events that they had told him about had allegedly taken

20 place. I don't think we need spend much time on it but I

21 think the question should be allowed.

22 GENERAL NAIDOO: Sorry, Chair, can I have

23 this question again?

24 MR CHASKALSON SC: The position where the

25 bodies were found at the foot of the rock, is it possible

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1 to be in mid-charge at that position?

2 [11:47] GENERAL NAIDOO: Chair, I don't know

3 whether they could be in mid-charge but in relation to

4 where the actual shots were fired from it's not impossible

5 that they were, but as I said, I am only commenting about

6 where I found the NIU. I –

7 CHAIRPERSON: You can only be asked

8 really whether what you saw as to where they were –

9 GENERAL NAIDOO: It's not impossible –

10 CHAIRPERSON: - where the bodies were,

11 whether that really was consistent with the story that they

12 told you as to what they had done and why.

13 GENERAL NAIDOO: Chair, there were fives

14 bodies lying there, three of which we discovered were

15 actually not shot, and they were lying with their weapons,

16 so my, the explanation that they had been charged was not

17 farfetched.

18 MR CHASKALSON SC: But if there had been

19 charge, the charge would have had to have taken place from

20 somewhere other than where you found the bodies, or not

21 from somewhere but would have to have been at somewhere

22 other than where you found the bodies. Possibly the people

23 could have retreated to that position, but you can't be in

24 a charge at that position. It's at the base of the cliff.

25 GENERAL NAIDOO: Chair, that's why I'm

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1 indicating, I can indicate where people were and where the

2 bodies were. As to how the charge occurred I can't

3 testify. I didn't see that. It was asked whether it was

4 possible that they were charging. I indicated well they

5 had their weapons lying with them, so it's not impossible.

6 Further than that I don't know. If we are able to

7 determine where the policemen were in proximity to them,

8 things like that. I can't speculate on that.

9 MR CHASKALSON SC: You see, Major

10 General, I accept this is not for you to speak to, it's for

11 the NIU to speak to, but you've told this Commission what

12 their version was and I have to put into the public domain

13 my concerns about it. We had a look –

14 CHAIRPERSON: I'm sorry, Mr Chaskalson,

15 do you have to at this stage – the witness has given us his

16 facts. The NIU people may come and give evidence and you

17 can then put concerns to them, but is there with respect

18 any point in putting the concerns to him, unless he's able

19 to add value to the exercise by commenting in a helpful

20 manner on what you're going to put?

21 MR CHASKALSON SC: Well, he can't, but

22 what he's done is he's put into the public domain a version

23 about how these people were killed, which is a version

24 which I find very difficult to reconcile with certain

25 objective facts.

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1 CHAIRPERSON: I can understand that, but  
 2 I mean the point is he's simply been telling us what he was  
 3 told. When the people who come who told him what he has  
 4 told us they told him, then any inconsistencies between  
 5 their version and what they told him can be highlighted.  
 6 Any inconsistencies between their version and the objective  
 7 facts can be put to them. I don't know that there's much  
 8 point in putting it to him because he can only really  
 9 conjecture and then I would have to uphold Mr Semanya's  
 10 objection.

11 MR CHASKALSON SC: Well, merely for the  
 12 purposes of what's in the public domain I have to then put  
 13 out there that we have grave misgivings about the version  
 14 that was told to him and –

15 CHAIRPERSON: I think you've said that –

16 MR CHASKALSON SC: - have certain  
 17 objective material which –

18 CHAIRPERSON: Yes, you've told us that –

19 MR CHASKALSON SC: - highly unlikely.

20 CHAIRPERSON: You've run up the warning  
 21 flag and the NIU people will have to deal with it if they  
 22 can when they come.

23 MR CHASKALSON SC: Major General, on  
 24 Friday you accepted that you took command of the scene at  
 25 koppie 3 when you arrived.

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1 GENERAL NAIDOO: I indicated that I, when  
 2 I arrived at the NIU yes, I did take charge then.

3 MR CHASKALSON SC: It went slightly  
 4 further than that because you also accepted that you took  
 5 responsibility not just for what the NIU did but for the  
 6 shooting of other units in respect of shooting that took  
 7 place after you had arrived at the scene and were in a  
 8 position to exercise command and control. You recall your  
 9 evidence in that regard?

10 GENERAL NAIDOO: Chair, what I recall is  
 11 I indicated that I specifically exercised command of the K9  
 12 and with the NIU. At that stage I had no control over the  
 13 TRT. I only established much later the position of the  
 14 TRT –

15 CHAIRPERSON: Yes, I think you're  
 16 agreeing with Mr Chaskalson's proposition. You assumed  
 17 control over those whom you could see -

18 GENERAL NAIDOO: That's correct.

19 CHAIRPERSON: - whose presence you were  
 20 aware of.

21 GENERAL NAIDOO: That's correct.

22 CHAIRPERSON: Obviously you couldn't  
 23 exercise control over people who happened to be perhaps on  
 24 the other side of the koppie and whom you couldn't see –

25 GENERAL NAIDOO: That's correct.

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1 CHAIRPERSON: - and you couldn't exercise  
 2 control over. That must follow, doesn't it?

3 GENERAL NAIDOO: That's the point.

4 MR CHASKALSON SC: But Major General, you  
 5 were aware of the presence of the TRT and the forces from  
 6 forward holding area 2 at the koppie because you testified  
 7 that you saw them at the koppie as you advanced.

8 GENERAL NAIDOO: Chair, I testified I saw  
 9 them advancing on the westerly direction. I was not aware  
 10 that they arrived at what we now know as scene 2 because I  
 11 also testified I could see that they were in a filtering  
 12 line that they were searching people and people were  
 13 dispersing through them. I did not testify and I was not  
 14 aware as to their position when some of these actions took  
 15 place afterwards.

16 MR CHASKALSON SC: So you're saying that  
 17 as you walked up with your K9 people and having seen a  
 18 filtering line advance on the koppie from the southwest,  
 19 you didn't notice that that filtering line had now taken  
 20 position at the koppie, had taken any position at the  
 21 koppie to the southwest of the koppie, or to the south and  
 22 west of the koppie?

23 GENERAL NAIDOO: Chair, I did not know  
 24 where did they eventually end up, no.

25 MR CHASKALSON SC: But you had seen them

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1 advancing on the koppie?

2 GENERAL NAIDOO: Chair, I saw them  
 3 approaching from a westerly direction, not in the direction  
 4 of koppie 2 specifically, and –

5 MR CHASKALSON SC: Koppie 3.

6 GENERAL NAIDOO: Sorry, koppie 3  
 7 specifically. As I said, my observation was that they were  
 8 busy filtering the strikers that were dispersing, so I had  
 9 further than that no understanding of where they were.

10 MR CHASKALSON SC: Major General, you  
 11 recall we showed you from a photograph that they actually  
 12 reached the koppie before you?

13 GENERAL NAIDOO: Chair, yes.

14 MR CHASKALSON SC: So you saw them  
 15 advancing in this direction.

16 GENERAL NAIDOO: That's correct.

17 MR CHASKALSON SC: They reached the  
 18 koppie before you, but by that stage you had stopped  
 19 noticing where they were.

20 GENERAL NAIDOO: Well, they were not in  
 21 my view. That is why I could not notice them.

22 MR CHASKALSON SC: Well, as you advanced  
 23 they would have been in your view, Major General.

24 GENERAL NAIDOO: Chair, as we got off the  
 25 road I indicated I noticed them. At some point obviously

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1 they were obstructed from my view and at that stage I had  
 2 no idea whether they were continuing to filter the  
 3 dispersing strikers or whether they had moved to any other  
 4 position. So at that stage I had no idea that they had  
 5 taken up position on the other side of the koppie.  
 6 MR CHASKALSON SC: Alright, well let's  
 7 confine ourselves then to K9 and NIU about whose existence  
 8 you were aware. Or wait a minute; you could see also that  
 9 there were POPS armoured vehicles at the koppie.  
 10 GENERAL NAIDOO: Chair, I testified that  
 11 I could see a Nyala and a water cannon, as well as the  
 12 Special Task Force Casspir that were, the water cannon was  
 13 spraying into the koppie, yes.  
 14 MR CHASKALSON SC: In fact –  
 15 CHAIRPERSON: I'm sorry, can you remind  
 16 me, these vehicles you're now talking about, were they  
 17 somewhere on the area covered by MMM2?  
 18 GENERAL NAIDOO: Chair yes, these  
 19 vehicles passed between – if you look at column, maybe 5,  
 20 or between 4 and 5 they started from about, when – from  
 21 about H, went to G on 4, F4, and they went around the  
 22 koppie that way. So they passed in front of us and went to  
 23 the left.  
 24 MR CHASKALSON SC: And presumably you  
 25 could see also a water cannon, or you could see water spray

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1 from a water cannon to the northwest of the koppie.  
 2 GENERAL NAIDOO: Chair, I could see the  
 3 water cannon spraying. I'm not sure, northwest, I could  
 4 see the water cannon on this side, yes. I can't remember  
 5 specifically seeing another water cannon at that stage, no.  
 6 MR CHASKALSON SC: The water cannon that  
 7 we see in this photograph, which I think is the vehicle in  
 8 B2, that water cannon did a great deal of spraying at the  
 9 koppie while you were present. Did you not notice spray  
 10 coming from that direction?  
 11 GENERAL NAIDOO: Chair, I can't  
 12 specifically indicate that I noticed it. As I said, I may  
 13 have put both the water cannons in the same picture frame  
 14 in my mind, but I do remember there was a water cannon, but  
 15 I can't say I knew there was a water cannon on the other  
 16 side specifically, no. I can't remember.  
 17 MR CHASKALSON SC: Well, you knew that  
 18 there was at least one water cannon, a POPS armoured  
 19 vehicle, an STF armoured vehicle, the NIU and the K9, and  
 20 you had assumed control in those circumstances. Can we  
 21 accept all of that as correct?  
 22 GENERAL NAIDOO: Yes, Chair.  
 23 MR CHASKALSON SC: One of the issues that  
 24 has always struck me as very puzzling is why there was no  
 25 attempt made at koppie 3 to try to flush the protesters out

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1 of the koppie with teargas. Do you have any explanation  
 2 for why you in that position of command didn't think of  
 3 using teargas?  
 4 GENERAL NAIDOO: Chair, I think I  
 5 testified in my evidence-in-chief at that stage we were  
 6 under the impression that we were dealing with small  
 7 pockets of a few people that had entrenched themselves  
 8 within koppie 2 and hence the decision to let the tactical  
 9 units do the sweep and if during their sweep they found it  
 10 necessary to use teargas or stun grenades they could. So  
 11 to flush them out with teargas we would have to know where  
 12 they were entrenched and get to that point, yes.  
 13 MR CHASKALSON SC: So you're saying you  
 14 thought that you were just dealing with a handful of  
 15 protesters, not a large group?  
 16 GENERAL NAIDOO: Not a crowd, Chair.  
 17 MR CHASKALSON SC: And who conveyed that  
 18 impression to you?  
 19 GENERAL NAIDOO: Chair, it was based on  
 20 my observation and on the fact that the members that I  
 21 approached did not indicate to me there was a large crowd.  
 22 They just said that there were a few strikers here and a  
 23 few strikers there, so there was never saying a huge crowd  
 24 of strikers. It always was there's a few strikers here and  
 25 there's a few strikers there.

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1 MR CHASKALSON SC: Now the members that  
 2 you approached, I presume you're talking about the NIU  
 3 members?  
 4 GENERAL NAIDOO: That's correct, Chair.  
 5 MR CHASKALSON SC: Colonel Modiba?  
 6 GENERAL NAIDOO: I can't specifically  
 7 remember him mentioning anything specific. As I indicated,  
 8 I arrived by his side and I discussed, I spoke to him and  
 9 his members. So who said a few strikers, I can't really  
 10 specifically indicate, but it was the members that I  
 11 arrived at who were trying to indicate to me what happened,  
 12 yes.  
 13 MR CHASKALSON SC: But presumably you  
 14 would have gone to the commander to get a report on what  
 15 had taken place.  
 16 GENERAL NAIDOO: That is correct, Chair.  
 17 MR CHASKALSON SC: And that would have  
 18 been Colonel Modiba or Colonel Nkebe.  
 19 GENERAL NAIDOO: It was Colonel Modiba  
 20 who I arrived at and he never indicated a crowd. He said  
 21 some strikers and as I said his member was also alongside  
 22 him talking, said, "Yes, there are a few strikers that  
 23 charged us here and we had to defend ourselves." That's  
 24 where the word "few" comes to mind, ja.  
 25 MR CHASKALSON SC: Do you remember who

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1 the member at his side was?

2 GENERAL NAIDOO: No, Chair, I can't

3 specifically remember.

4 MR CHASKALSON SC: Do you remember his

5 rank?

6 GENERAL NAIDOO: Chair, when they had

7 their gear on I could not specifically make out a rank.

8 They had battle jackets, etcetera, but he was not an

9 officer for sure.

10 MR CHASKALSON SC: You see, Major

11 General, when I look at the statements of the NIU members

12 they seem to be pretty clear that what they were dealing

13 with was a crowd of protesters who had been at scene 1 and

14 had retreated to scene 2, and I find it very strange that

15 they wouldn't have conveyed that to you. So let's look at

16 those statements. If we can start with Colonel Modiba,

17 202A, and we go down to paragraph 6, "Soon after the

18 shooting at scene 1 I directed my members to sweep koppie 1

19 for dangerous weapons that may be there and for armed

20 protesters that may still be in that koppie. There were 96

21 of my members including myself at the time. As the

22 protesters moved to koppie 3 I directed 19 of my members to

23 remain sweeping koppie 1 and took 77 of my members to sweep

24 koppie 2 and koppie 3 where the protesters had proceeded."

25 So Colonel Modiba seems to have realised that the

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1 protesters had moved to koppie 3, but he didn't convey that

2 to you.

3 GENERAL NAIDOO: Chair, no.

4 MR CHASKALSON SC: Let's look at Colonel

5 Nkebe, 15B. This is 15C, if we get 15B, it's the more

6 legible version, 15B. That's 15. Can we have 15B, capital

7 B? Two down, ja. That's C.

8 COMMISSIONER HEMRAJ: Mr Chaskalson, we

9 can't find the statements in our bundle. Have they been

10 given to us?

11 GENERAL NAIDOO: I also don't have them.

12 COMMISSIONER HEMRAJ: And are there

13 extras? Because I must say, I've been through these and I

14 can't find them. There are extras.

15 CHAIRPERSON: Mr Chaskalson, are they

16 exhibits?

17 MR CHASKALSON SC: Chairperson, they were

18 sent through on Sunday and we –

19 CHAIRPERSON: Oh. Oh, I see. Well, they

20 weren't –

21 MR CHASKALSON SC: - with instructions

22 that copies should be made available, sent through to SAPS

23 on Sunday with instructions that copies should be made

24 available.

25 CHAIRPERSON: Yes, sorry, I understand.

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1 So there are two points.

2 MR CHASKALSON SC: Yes.

3 CHAIRPERSON: The first is they haven't

4 been given to us. That's not an insurmountable obstacle,

5 but they haven't been given to us. The second point is

6 they have been given – there are three points really – have

7 been given to the witness, to the police therefore, who

8 were asked to give it to the witness, and the third point

9 is they're not exhibits. The witness is shaking his head.

10 Well, it may be some logistical problem in the police

11 service, but anyway, the first point is they're not

12 exhibits, so we'll have to make them exhibits. The second

13 point is if the witness hasn't got them then he must be

14 given an opportunity to look at them, and the third point

15 is we must get them. If those three points are

16 satisfactorily dealt with you can proceed.

17 MR CHASKALSON SC: Chairperson, I'm told

18 that if we start at the end of the list, the small green

19 files that are on your desk will include these statements.

20 They're probably blue rather than green. SAPS have

21 confirmed that they did receive them on Sunday night and

22 that Major General Naidoo should have had them, but if he

23 hasn't read them then he must have an opportunity to read

24 them at least one by one as I go through them.

25 COMMISSIONER HEMRAJ: They are at the

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1 back of these blue files. I just assumed that these were

2 from the Human Rights Commission when I saw the first

3 document.

4 CHAIRPERSON: Yes, it starts off with the

5 NIU and K9 at scene 2, which I think is a document prepared

6 by the Human Rights Commission. It certainly looks like Mr

7 Fischer's fingerprints all over it. But at the end of this

8 – I don't mean that in an unkind sense – at the back of the

9 file these documents are there. Are these ones with the

10 pink –

11 MR CHASKALSON SC: I'm afraid,

12 Chairperson, I don't have a master so I can't guide you

13 through the –

14 CHAIRPERSON: Alright, so which one are

15 you going to start with?

16 MR CHASKALSON SC: If we start with

17 Modiba, who would be MMM23, I think.

18 CHAIRPERSON: Where is he in the file? I

19 know you don't have the file in front of you because you

20 haven't got a master. It's difficult sometimes if counsel

21 haven't got masters.

22 MR CHASKALSON SC: Yes.

23 CHAIRPERSON: It hasn't got an index

24 either. I wonder whether it mightn't be sensible for us to

25 take a short little adjournment for – oh, I see, are we

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1 going to do – at the back I see we have Nkebe and then  
 2 Nyatela. Are they alphabetical?  
 3 MR CHASKALSON SC: Chairperson, I must  
 4 apologise, I don't know how they've been organised in your  
 5 files.  
 6 [12:07] I was hoping that they would have tags with names  
 7 on them but they don't. If we can possibly paginate your  
 8 files and then we'll be able to direct you to where they  
 9 are.  
 10 CHAIRPERSON: Well, the first question  
 11 is, has the witness got them because if he hasn't got them  
 12 then I think to be fair to him we must give him a chance  
 13 and while he's looking at them, possibly the housekeeping  
 14 can be done and the documents that we've got can be  
 15 paginated and flagged and so on. Ultimately we'll save  
 16 time but let's ask the witness. Major-General, have you  
 17 got these documents? Do you know what Mr Chaskalson is –  
 18 GENERAL NAIDOO: Chair, I've got the list  
 19 of statements that were given to me over the weekend.  
 20 CHAIRPERSON: Have you read them?  
 21 GENERAL NAIDOO: But for instance Nkebe I  
 22 don't have here among the statements. I've got Modiba,  
 23 I've got quite a few others.  
 24 CHAIRPERSON: I've found my Modiba now.  
 25 It's a further statement, yes, it's the one you have on the

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1 screen. The three of us have got the Modiba one, so you  
 2 want that to be MMM – oh, you've got Nkebe on the screen  
 3 now. Do you want to deal with Modiba or Nkebe?  
 4 MR CHASKALSON SC: Well, we did deal  
 5 first with Modiba, so let's make Modiba MMM23.  
 6 CHAIRPERSON: MMM23. Right and while  
 7 we're about it, shall we deal with Nkebe as well, is he  
 8 going to be the next one you refer to?  
 9 MR CHASKALSON SC: He is, but this is the  
 10 incorrect Nkebe.  
 11 CHAIRPERSON: Alright.  
 12 MR CHASKALSON SC: Nkebe has the  
 13 electronic file named 15B from the SAPS statement list,  
 14 this is not 15B.  
 15 CHAIRPERSON: Can you cross-examine in  
 16 the meanwhile on the statement of Colonel Modiba or are  
 17 going on to Nkebe now?  
 18 MR CHASKALSON SC: I just need to move on  
 19 to Nkebe. It's really literally two lines where Nkebe  
 20 indicates that they followed the protesters to the smaller  
 21 koppie. That's the only point I want to make about Nkebe  
 22 and I want to make a similar point about Ndlela.  
 23 CHAIRPERSON: Have you read these  
 24 statements, Major-General?  
 25 GENERAL NAIDOO: Chair, Ndlela would be

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1 what rank?  
 2 MR CHASKALSON SC: Lieutenant.  
 3 GENERAL NAIDOO: No, I don't have Nkebe  
 4 and neither do I have Ndlela.  
 5 CHAIRPERSON: I suggest we do is we take  
 6 a short adjournment now, the papers we have can be, and the  
 7 witness's papers can all be sorted out. Our papers can be  
 8 marked and then we can carry on. Do you want me to call  
 9 Nkebe's statement MMM24? We haven't got the right one  
 10 apparently but you're going to give it to us, are you? The  
 11 one we've got apparently is the one which is on the screen  
 12 which is the wrong one. Have you got the correct one for  
 13 the purposes of your cross-examination?  
 14 MR CHASKALSON SC: I certainly do but  
 15 Chairperson –  
 16 CHAIRPERSON: - we don't know? Is it not  
 17 possible for you to move onto something else in the  
 18 meanwhile and for these things to be sorted out at lunch  
 19 time?  
 20 MR CHASKALSON SC: I beg your pardon,  
 21 Chairperson, this statement is in fact the correct one. I  
 22 was the one who was confused.  
 23 CHAIRPERSON: Alright.  
 24 MR CHASKALSON SC: It's page 3 of the  
 25 statement at the top, paragraph 8. So this will be MMM24.

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1 CHAIRPERSON: I call this further  
 2 statement Lieutenant-Colonel V Nkebe. Have you got that,  
 3 Major-General?  
 4 MR CHASKALSON SC: And all that I would  
 5 emphasise is the passage at the top of page 3 where the  
 6 Colonel says after the shooting my groups moved to sweep  
 7 the koppie through the big koppie and followed the  
 8 protesters to the smaller koppie. So Colonel Nkebe also  
 9 understood that he was following the protesters to the  
 10 smaller koppie. And then finally Lieutenant Ndlela whose  
 11 statement –  
 12 CHAIRPERSON: You've put the question but  
 13 you haven't got the answer.  
 14 MR CHASKALSON SC: Well, let me put all  
 15 three –  
 16 CHAIRPERSON: Put all three –  
 17 MR CHASKALSON SC: - which indicate that  
 18 the NIU team knew that the protesters as a group had moved  
 19 to koppie 3. And if we then look at Lieutenant Ndlela and  
 20 page 2, if we can start at –  
 21 CHAIRPERSON: He will be MMM25.  
 22 MR CHASKALSON SC: He will be MMM25.  
 23 CHAIRPERSON: [Microphone off, inaudible]  
 24 The statement of – is he Lieutenant-Colonel, is he?  
 25 Lieutenant-Colonel VR Ndlela will be MMM25.

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1 MR CHASKALSON SC: Lieutenant,  
 2 Chairperson, not Colonel.  
 3 CHAIRPERSON: We'll demote him instantly,  
 4 he's lieutenant.  
 5 MR CHASKALSON SC: If we can go down a  
 6 couple of paragraphs, "After that I saw Colonel Modiba" –  
 7 this is after scene 1 – "after that I saw Colonel Modiba  
 8 from NIU Pretoria waving for the NIU team to move forward  
 9 towards the koppies. As we crossed the fence the teams got  
 10 mixed and we had to adapt to the situation. We formed an  
 11 extended line to start sweeping the koppies. At this time  
 12 the warriors were on the koppie, singing and clapping the  
 13 weapons. Colonel Modiba indicated that we were to move  
 14 forward and we did so. The protesters moved systematically  
 15 to one of the koppies at the back. Some members remained  
 16 to clear the main koppie. In our line we approached the  
 17 koppie with protesters." So he talks about a systematic  
 18 movement of the protesters to one of the koppies at the  
 19 back and in the context of his statement it is clearly  
 20 koppie 3." So Major-General, from these three statements  
 21 of officers of the NIU, I want to put to you that it was  
 22 clear to the men in charge of the NIU that what they were  
 23 dealing with was not a handful of one or two or even 10 or  
 24 15 protesters, it was the bulk of the strikers that  
 25 remained. Do you accept that, that it was clear to them?

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1 GENERAL NAIDOO: Chair, I don't think in  
 2 any of the statements they indicate to numbers, they just  
 3 refer to groups of protesters, some warriors, et cetera.  
 4 So they don't, I don't think I will be able to concede to a  
 5 numerical finalisation of this thing because as I  
 6 indicated, when I arrived there they indicated to me they  
 7 were sweeping, which coincides or corroborates what they  
 8 said here, and they came up to a point where they were  
 9 charged by some protesters and in the manner, as I  
 10 indicated, somebody also used that a few of them challenged  
 11 them. So in the manner that they communicated to me and  
 12 the words that they used, I'm still indicating that there  
 13 was no indication of a crowd. It was – and my perception  
 14 of pockets of resistance, small pockets of resistance,  
 15 still stands, Chair.  
 16 MR CHASKALSON SC: Did you ever ask  
 17 anyone from the NIU how many people are we dealing with?  
 18 GENERAL NAIDOO: Chair, no, because as I  
 19 indicated that one of the people that was relating  
 20 indicated that we were charged by a few. So I, at that  
 21 stage, took lead from what they said to say that it would  
 22 be a small number of people.  
 23 MR CHASKALSON SC: So you never took  
 24 steps to establish how many people you were dealing with?  
 25 GENERAL NAIDOO: Chair, they said that

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1 they were confronted by a few people. So based on a few  
 2 people, rather than saying a crowd of people, it was not  
 3 necessary.  
 4 MR CHASKALSON SC: Well, the people who  
 5 confronted of them may have been few, it may have been 15  
 6 or 20 or 10 or 15, that of course begged the question of  
 7 how many people remained in the koppie behind those people.  
 8 You didn't think it was necessary to ask questions to try  
 9 to establish that?  
 10 GENERAL NAIDOO: Based on the information  
 11 I had, it was not necessary.  
 12 MR CHASKALSON SC: You see, Major-  
 13 General, I want to put it to you that your evidence that  
 14 you thought you were dealing with 10 or 15 people is  
 15 utterly implausible, that anybody who had advanced on the  
 16 scene would have seen the line of protesters behind koppie  
 17 2 retreating to koppie 3 and that's what you did. That's  
 18 what the NIU saw and it's what you would have seen on your  
 19 advance as well. What's your response to that?  
 20 GENERAL NAIDOO: Chair, I think I've  
 21 clearly indicated and testified to what I saw and I also  
 22 indicated what was told to me when I arrived by the NIU.  
 23 So based on what I saw, I was still under the impression  
 24 that we were dealing with a small pocket of resistance and  
 25 never the size of, the number of people that we eventually

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1 arrested in that koppie.  
 2 MR CHASKALSON SC: But you concede that  
 3 you didn't specifically ask anyone from the NIU for details  
 4 of how many people they thought you were dealing with?  
 5 GENERAL NAIDOO: As I indicated, the  
 6 information that they gave me I required, I understood as  
 7 sufficient for the assessment that I made.  
 8 CHAIRPERSON: Can we take the comfort  
 9 break now? We'll take a comfort break for 10 minutes.  
 10 [COMMISSION ADJOURNS COMMISSION RESUMES]  
 11 [12:25] CHAIRPERSON: The Commission resumes.  
 12 You're still under oath, Major-General. Mr Chaskalson?  
 13 GENERAL NAIDOO: Still under oath, Chair.  
 14 GENERAL NAIDOO: s.u.o.  
 15 CROSS-EXAMINATION BY MR CHASKALSON SC (CONTD.):  
 16 Major-General, another aspect of your evidence is that you  
 17 have testified consistently that the NIU were at the koppie  
 18 when you arrived and you said in this context on Friday  
 19 that you can't be held responsible for their shooting that  
 20 took place before you reached the koppie, do you recall  
 21 that?  
 22 GENERAL NAIDOO: Chair, what I indicated  
 23 when this issued was raised, that there was shooting that  
 24 took place before I arrived, yes, which I would not be able  
 25 to explain, yes.

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1 CHAIRPERSON: I think the thrust of the  
 2 question is, it was NIU shooting.  
 3 GENERAL NAIDOO: Well –  
 4 CHAIRPERSON: You now say there was  
 5 shooting before you got there and you can't explain it,  
 6 obviously you can't be held responsible for it either but  
 7 what Mr Chaskalson is putting to you is that it was NIU  
 8 shooting. Can you comment on that?  
 9 GENERAL NAIDOO: Well, what I indicated  
 10 was that when I arrived there, there were people that were,  
 11 as indicated in the picture, lying at the foot of the  
 12 cliff, which I at that stage presumed to have been shot by  
 13 NIU because they did indicate they did fire shots and I was  
 14 referring to that shooting, Chair.  
 15 MR CHASKALSON SC: Major-General, yes.  
 16 That's when you arrived at the NIU, at the position taken  
 17 by the NIU and when you left your bakkie and moved to the  
 18 position where you found the NIU.  
 19 GENERAL NAIDOO: That's correct, Chair.  
 20 MR CHASKALSON SC: But is your evidence  
 21 that when you and your K9 personnel reached the koppie, the  
 22 NIU were already there or had not yet reached the koppie?  
 23 GENERAL NAIDOO: My evidence was they  
 24 were already there and I could, from where they were,  
 25 observe people that were lying at the foot of the koppie or

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1 the rock, yes.  
 2 MR CHASKALSON SC: No, no. You could  
 3 observe people lying at the foot of the rock face when you  
 4 reached the position that the NIU had taken up. That was  
 5 some time after you reached the koppie because – or reached  
 6 the scene because you'll recall you got, you took your  
 7 vehicles to where they had been parked, where they were  
 8 ultimately parked.  
 9 GENERAL NAIDOO: That's correct.  
 10 MR CHASKALSON SC: And then you and, I  
 11 think it was Sergeant Harmse, proceeded on foot –  
 12 GENERAL NAIDOO: To the right.  
 13 MR CHASKALSON SC: To where you  
 14 ultimately found the NIU.  
 15 GENERAL NAIDOO: That's correct, Chair.  
 16 MR CHASKALSON SC: Now my question to you  
 17 is when you parked your vehicles –  
 18 GENERAL NAIDOO: Yes, Chair.  
 19 MR CHASKALSON SC: Or stopped your  
 20 vehicles at the scene –  
 21 GENERAL NAIDOO: Yes, Chair.  
 22 MR CHASKALSON SC: - had the NIU already  
 23 arrived or were they still yet to arrive?  
 24 GENERAL NAIDOO: Chair, I already  
 25 testified I observed them on my right, which is why I went

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1 to them.  
 2 CHAIRPERSON: So the answer is yes, they  
 3 had arrived there before you got there, am I –  
 4 GENERAL NAIDOO: That's correct, Chair.  
 5 CHAIRPERSON: - summarising the evidence  
 6 correctly?  
 7 GENERAL NAIDOO: That's correct, Chair.  
 8 CHAIRPERSON: Thank you.  
 9 MR CHASKALSON SC: Well, Major-General, I  
 10 have to put to you that that evidence is wrong and for this  
 11 we need to look quite slowly and carefully at screen shots  
 12 taken from exhibit CC22 because they show that you and your  
 13 K9 vehicles reached the scene well before the NIU did and,  
 14 Chairperson, what we're going to do now is to look at  
 15 screen shots from exhibit CC22. I put them together into a  
 16 presentation which I think should be an exhibit as well and  
 17 if we can give that exhibit –  
 18 CHAIRPERSON: This is the thing I  
 19 actually thought Mr Fisher had done, that's why I –  
 20 MR CHASKALSON SC: It turns out the  
 21 fingerprints were mine, not his.  
 22 CHAIRPERSON: Oh.  
 23 MR CHASKALSON SC: Although he should get  
 24 some credit, considerable credit for alerting me to this  
 25 fact in the first place.

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1 CHAIRPERSON: Well, so now that we know  
 2 who's responsible – [microphone off, inaudible] – the first  
 3 we have is in the folder. You've given us a folder headed,  
 4 which has got a cover which says "NIU and K9 at scene 2 and  
 5 gun evidence tampering." That's -  
 6 MR CHASKALSON SC: Yes, Chairperson.  
 7 CHAIRPERSON: How do you want me to mark  
 8 the exhibits?  
 9 MR CHASKALSON SC: Well, if one can just  
 10 do NIU and K9 at scene 2 to be MMM26.  
 11 CHAIRPERSON: Alright, so I will write  
 12 against scene 2 on the front cover, MMM26 and there are a  
 13 number of screen shots and so forth.  
 14 MR CHASKALSON SC: Yes, Chairperson, if  
 15 we can go through this document –  
 16 CHAIRPERSON: - number them, they go  
 17 through to statements. There's a cover that says  
 18 "Statements." Are these all the documents? Do we mark  
 19 them –  
 20 MR CHASKALSON SC: No, Chairperson, it is  
 21 just, this exhibit will just be –  
 22 CHAIRPERSON: The one that's now on the  
 23 screen?  
 24 MR CHASKALSON SC: Indeed, which is eight  
 25 slides.



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1 CHAIRPERSON: Eight slides. Alright,  
 2 okay. These will be MMM26.1, .2, .3, et cetera. Is that  
 3 correct?  
 4 MR CHASKALSON SC: That is correct,  
 5 Chairperson. MMM26.1 to 8.  
 6 COMMISSIONER HEMRAJ: [Microphone off,  
 7 inaudible]  
 8 MR CHASKALSON SC: Indeed. The starting  
 9 point is a slide from exhibit L which identifies what the  
 10 NIU line is.  
 11 COMMISSIONER HEMRAJ: The screen says  
 12 130, I've got it as 230.  
 13 MR CHASKALSON SC: It is 230. I'm not  
 14 sure why. Why it's 130 is that a blank heading slide, if a  
 15 blank heading slide is put back at the front, the 1 will  
 16 become a 2. Can we just reinsert the blank heading slide?  
 17 That is slide 230 of exhibit L and it is agreed between the  
 18 parties in terms of exhibit JJJ66 which is the  
 19 identification of times of documents, of photographs and  
 20 videos in exhibit L that the correct time of this document,  
 21 of this photograph in exhibit L, slide 230, is 16:06:32.  
 22 It's a screen shot from 902 on the exhibit CC22.  
 23 CHAIRPERSON: These are all screen shots  
 24 from L –  
 25 MR CHASKALSON SC: No, Chairperson. The

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1 first one is a screen shot from L, which is our starting  
 2 point and then we track the video forward from that  
 3 starting point to show how Major-General Naidoo's entourage  
 4 moves up to the koppie well in advance of the NIU.  
 5 CHAIRPERSON: Alright. So if we can  
 6 identify or orient ourselves on this slide and identify the  
 7 two key parties, the red square, the red rectangle on this  
 8 slide is the NIU line and that's reflected at the bottom of  
 9 the slide where it says, "Red depicts the NIU sweep line  
 10 completing the clearing of koppie 2 and preparing to move  
 11 forward to koppie 3." In the blue circles are Major-  
 12 General Naidoo's K9 vehicles moving forward and in the  
 13 second blue circle there is in fact one additional K9  
 14 vehicle and a helicopter that's got into the circle but the  
 15 blue circle on the right-hand side is one vehicle plus a  
 16 helicopter and at the foot of the slide exhibit L says,  
 17 "Blue depicts the forward holding area 1 members, K9 dog  
 18 handlers moving forward to assist at koppie 3." Now the  
 19 first observation about this slide is that the K9 group is  
 20 moving forward and has crossed the road, the gravel road  
 21 that Major-General Naidoo speaks of. That gravel road I'm  
 22 marking now, it runs from a point parallel with the bottom  
 23 of the 2 on the slide at 902 on the right-hand side  
 24 underneath the 2 of the 32 on a diagonal that will take it  
 25 to the topmost white car in the left blue circle. So three

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1 of the four blue cars in the left circle have already  
 2 crossed the gravel road. That, the K9 vehicles are moving  
 3 while the NIU line has just passed koppie 2 on slide 230.  
 4 If we go slide, further on in the presentation, we now roll  
 5 the video another 40 seconds on. So we're now at 16:07:12  
 6 and – sorry, can we go back to the previous slide because I  
 7 need to mark something else out for orientation purposes.  
 8 One sees coming out of the red rectangle of the NIU what is  
 9 the blue dye that the water cannon sprayed, the stain on  
 10 the ground caused by the water cannon spraying at the line  
 11 of protesters at koppie 2. The protesters have already  
 12 fled to koppie 3 by now but that blue dye line is a useful  
 13 marker to see how late it is that the NIU line moves  
 14 because one can measure the position of the NIU relative to  
 15 that blue dye line. Let's go forward.  
 16 We're now 40 seconds further, this is exhibit  
 17 CC22.942 16:07:12. The vehicles of the K9 are still ringed  
 18 in blue, three on the right-hand side, one on the left.  
 19 They are well past the gravel road which is visible at the  
 20 bottom of this picture and which has a road, a vehicle on  
 21 the gravel road. I don't know how to describe the position  
 22 of this, it's approximately a third of the way up on the  
 23 right-hand side and maybe 15% of the way from the left of  
 24 the shot.  
 25 CHAIRPERSON: In other words, to the

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1 right of the larger blue circle.  
 2 MR CHASKALSON SC: Yes.  
 3 CHAIRPERSON: To the right of the larger  
 4 blue circle on a clearly demarcated pathway which can be  
 5 seen on the slide running from essentially I take it the  
 6 window of the helicopter from which the slide was taken, up  
 7 towards, is that towards koppie 3?  
 8 MR CHASKALSON SC: No, it's up towards  
 9 koppie, to the back of koppie 1.  
 10 CHAIRPERSON: I see. The back of koppie  
 11 –  
 12 MR CHASKALSON SC: This is the road that  
 13 Major-General Naidoo may have taken but would have  
 14 encountered the barbed wire barrier to the right of the  
 15 picture or to the right outside the picture. So I'm  
 16 marking now, koppie 1 is on the right-hand side of the  
 17 picture just above halfway. Koppie 2 is just to the right-  
 18 hand side of the red rectangle demarcating the NIU line and  
 19 koppie 3 is in the left centre of the picture which is now,  
 20 it's the point at which blue dye, it's the koppie around  
 21 which blue dye has been sprayed by the water cannon. So –  
 22 CHAIRPERSON: And it's just below the  
 23 bottom right-hand corner of the inset in the top left-hand  
 24 corner of the slide.  
 25 MR CHASKALSON SC: That's correct,

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1 Chairperson. Now if we look at the NIU, we can see that  
 2 they haven't yet moved. The blue stain on the ground is  
 3 still ahead of them and their line is static. The cars of  
 4 Major-General Naidoo are now – or the convoy is moving  
 5 forward because there are also people on foot alongside it  
 6 although we don't see them from this side. Can we go to  
 7 the next slide? To start, this slide is now 10:34 which is  
 8 approximately another 40 minutes on. It's –  
 9 CHAIRPERSON: Seconds on, seconds.  
 10 MR CHASKALSON SC: 40 seconds on. It's  
 11 ETV time 16:08:04. We can see that the NIU's line has  
 12 still not moved. It's still behind the stain, the blue dye  
 13 stain on the ground. Major-General Naidoo's three vehicles  
 14 on the other hand have moved relatively close to the koppie  
 15 by this stage, they're in the big blue circle on the left-  
 16 hand side. The fourth vehicle is in the small blue circle  
 17 to the right. If we move forward, we're now at another 18  
 18 seconds on, I think. The NIU line is still behind in its  
 19 red rectangle, behind the dye patch on the ground. Major-  
 20 General Naidoo's vehicles are now relatively close to scene  
 21 2, they're in the big blue circle on the left. The fourth  
 22 vehicle is in the small circle on the right. We're at  
 23 16:08:30. We go to the next slide and now finally we start  
 24 to see some movement from the NIU line. We can see that  
 25 the NIU line has now moved to the very far tip of the blue

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1 dye spray, that's in the red rectangle but by this stage  
 2 Major-General Naidoo's vehicles are right alongside the  
 3 koppie in the big blue circle and if we go forward we will  
 4 see the NIU line continuing to move forward. I'm not sure  
 5 if we – the quality on the big screen is very poor here.  
 6 I'm going to move to the screen in front of Major-General  
 7 Naidoo, except the laser doesn't work there or here. If I  
 8 can – we're now at 11:25 which is two minutes and 24  
 9 seconds after our starting slide from exhibit L, slide 230.  
 10 What we see now is that the NIU line has moved towards the  
 11 end of the blue stain, it still isn't at the koppie but if  
 12 we look at Major-General Naidoo's vehicle in the big blue  
 13 circle, it's right alongside the koppie. It's probably in  
 14 the position where it was idling for four minutes before it  
 15 moved forward a little bit and then switched the ignition  
 16 off. And if we track forward we will see that by 12:23 the  
 17 NIU line has moved through the burnt area, the burnt area  
 18 to the right of the stain and Major-General Naidoo's  
 19 vehicles are at the koppie. The NIU line has still not  
 20 reached the koppie. It finally reaches the koppie in our  
 21 slide at 13:03 which is a full four minutes after that  
 22 sliding from exhibit L. There we see the NIU line to the,  
 23 at the top – well, on the north-east corner of the koppie.  
 24 Major-General Naidoo's vehicles are still more or less in  
 25 the same position that they've been for quite a while now

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1 alongside the koppie. Now Major-General, do you accept  
 2 that your vehicles reached the koppie before the NIU or do  
 3 you take issue with these screen shots?  
 4 GENERAL NAIDOO: Chair, what I want to  
 5 say is that, as I testified, when we eventually came to a  
 6 halt and when I moved to the right, the NIU were in  
 7 position. They were already there where we found them. I  
 8 was not alone. A member was accompanying me so we can also  
 9 check what was his testimony because as far as I know and  
 10 testify, when we arrived at the NIU line the shooting had  
 11 already taken place because these bodies that I indicated  
 12 were already lying in front of us. I have testified to  
 13 that fact. So as to the timing, I can't give specific  
 14 times, I've already testified to that as well but what I  
 15 have testified is after my vehicles came to a halt, I went  
 16 to the right where I noticed the NIU were, accompanied by a  
 17 member, and I have testified to what I found when I got  
 18 there.  
 19 MR CHASKALSON SC: Well, let's – Major-  
 20 General Naidoo, I can't, I have no knowledge of when you  
 21 went on foot to the NIU and I'm not interested in what  
 22 happened at that point for present purposes. What I'm  
 23 interested in is the point at which your vehicles reached  
 24 the koppie. Are you suggesting that at the point at which  
 25 the vehicles reached the koppie, the NIU were already

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1 there?  
 2 GENERAL NAIDOO: Chair, what I've  
 3 testified is I do not know at which point the NIU reached  
 4 the koppie. What I indicated to you, that I left my  
 5 vehicle and I went to the NIU because I observed them on my  
 6 right. So as to when they reached the koppie in  
 7 proportion, in relation to us, I testified I observed them  
 8 observing, approaching the koppie already much earlier in  
 9 my testimony. So I am not going to dispute that the NIU  
 10 reached it at a particular time because I am unable to  
 11 testify.  
 12 [12:45] What I can indicate is when I left my vehicle I  
 13 went to the NIU because they were already in cover in a  
 14 particular place.  
 15 COMMISSIONER HEMRAJ: General, could you  
 16 see the NIU line from where those vehicles were stationary  
 17 at that time?  
 18 GENERAL NAIDOO: That's correct, Chair.  
 19 I could see the NIU members, not the NIU line, and that's  
 20 why I went to them. I mean I would not go there if I could  
 21 not see them.  
 22 CHAIRPERSON: How soon after your vehicle  
 23 arrived where it came to a halt did you leave your vehicle  
 24 and go off in the direction of the NIU?  
 25 GENERAL NAIDOO: Chair, I can't really

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1 testify whether it was minutes or –

2 CHAIRPERSON: Sorry, I'm reminded you -

3 GENERAL NAIDOO: - or seconds –

4 CHAIRPERSON: Sorry, I'm reminded you

5 were walking alongside the vehicle.

6 GENERAL NAIDOO: That's correct, Chair.

7 CHAIRPERSON: So let me rephrase the

8 question. How long after your vehicle came to a stop did

9 you leave the area where, the immediate vicinity of where

10 it came to a stop and go off in the direction of the NIU?

11 GENERAL NAIDOO: Chair, in minutes – it

12 would be hard for me to indicate. What I can indicate is

13 when we realised that there were some shots coming from –

14 we brought the whole line to a halt, I indicated them to

15 hold. I then observed the NIU taking up position on the

16 right. So I asked the crew of the neighbouring vehicle to

17 accompany me to go and check exactly what is happening. So

18 I moved to the right and when I moved to the right and I

19 arrived at the NIU, as I indicated when I arrived there

20 already we saw those bodies that I saw lying at the foot of

21 the rock. So time-wise I'm not going to, you know,

22 indicate to you specifically per second. It's all very

23 fluid to me at the moment.

24 MR CHASKALSON SC: You see, Major

25 General, when I look at what the screenshots tell me it

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1 seems to me a much more likely explanation for your

2 movement to the NIU is that you were in position at the

3 koppie. You then heard - some time after you took up

4 position at the koppie the NIU arrived and you heard

5 shooting from the NIU and you then went to the NIU to see

6 what the shooting was about.

7 GENERAL NAIDOO: Chair, I already

8 testified that there was shooting much earlier before we

9 even started off in this direction. I already testified I

10 was not sure who it was, but the shooting was of course a

11 concern, otherwise we would have just went down the road

12 with the ambulances. We could not go down that road. So

13 as to the arrival there, as I indicated when I left my

14 vehicle I went to the NIU who were taking up position, or

15 who had taken up position.

16 MR CHASKALSON SC: Major General, I think

17 your evidence that you heard shooting beforehand is also

18 quite implausible. If we go back to slide 230 we'll see

19 that your entourage has already started moving, the very

20 first slide in this presentation, exhibit L, slide 230.

21 Your entourage has already started moving. So if it moved

22 in response to shooting at scene 2, shooting would already

23 have had to have taken place, and if that shooting came

24 from the NIU as you suggested, the NIU would be shooting at

25 the koppie from a distance of several hundred metres

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1 probably, through police lines.

2 GENERAL NAIDOO: Chair, I think there's

3 two things. I'd indicated I was not sure who was shooting

4 and I don't know, there's no indication of where all NIU

5 shots were taken from, whether there was any shooting taken

6 from there. As I said, I'm not aware, but I did not, I

7 specifically did not indicate that it was only the NIU

8 shooting. I was asked to assume could it have been the NIU

9 also involved in the shooting and I said it was not a,

10 necessarily an incorrect assumption because they also had

11 automatic weapons.

12 MR CHASKALSON SC: Well, Major General,

13 we know that the only people found dead or wounded with

14 bullet wounds were found in, or after scene 1 were found in

15 koppie 3. Has anyone from the NIU ever suggested that they

16 shot at people from a distance of over a hundred metres at

17 koppie 3?

18 GENERAL NAIDOO: Chair, I was not, I did

19 not interact or attempt to interview any members of the NIU

20 in terms of what they did. As I indicated, the process

21 that we followed, I have not even had sight of their

22 statements until this process here started. So what I'm

23 indicating is that have we established where the NIU, where

24 did the NIU actually started shooting from and put it in

25 relation to this because I know that the shooting took

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1 place while we were still at the power station. Who, I

2 cannot testify to.

3 MR CHASKALSON SC: Well, Major General,

4 if the NIU was shooting from a position further away from

5 the koppie, or the position that we see now or a position

6 further away from the koppie when you set off from the

7 power station, can you think of any justifiable

8 circumstances in which one might shoot at the koppie from

9 that distance?

10 GENERAL NAIDOO: Chair, as I indicated, I

11 have no idea who shot where and in which direction, so I

12 don't think I'm in a position to without all that

13 information provide any justification. What I'm indicating

14 is when we rounded the power station there was shooting. I

15 already testified I can't testify as to who was shooting

16 and so I can't provide any justification on that basis.

17 MR CHASKALSON SC: Well, you see Major

18 General Naidoo, your evidence now is a bit vaguer than it

19 was at the beginning because at the beginning you indicated

20 that it was the shooting that inspired you to move in to

21 koppie 3.

22 GENERAL NAIDOO: Chair, I have indicated

23 that there was shooting and it was clear that we were

24 travelling in close proximity to where the shooting was

25 occurring and hence the decision to send an advanced team

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1 to establish what the issue was.  
 2 MR CHASKALSON SC: But the advanced team  
 3 that you sent was sent to koppie 3. It wasn't sent in an  
 4 amorphous direction somewhere; it was sent to koppie 3, was  
 5 it not?  
 6 GENERAL NAIDOO: Where we perceived that  
 7 the shooting was taking place.  
 8 MR CHASKALSON SC: Yes, but you indicated  
 9 also that what you perceived was shooting possibly in both  
 10 directions, shooting from koppie 3, and you spoke about the  
 11 possibility that there might be a striker with an automatic  
 12 weapon and you mentioned specifically the NIU also shooting  
 13 and you thought that the automatic weapons may have come  
 14 from the NIU. You recall that?  
 15 GENERAL NAIDOO: Chair, yes, I did not  
 16 rule out the NIU as being involved in the shooting and  
 17 neither did I rule out anybody else that could have been  
 18 involved in the shooting.  
 19 MR CHASKALSON SC: I see. Do you have  
 20 any suggestion now as to who might have been involved in  
 21 the shooting from the police side if you say that shooting  
 22 took place before the slide, before your group left the  
 23 power station?  
 24 GENERAL NAIDOO: Chair, this is what I  
 25 indicate; I have no idea about the position of all the

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1 shooters, where did they exactly shoot from. So, and when  
 2 did they shoot. I don't have that cumulative information  
 3 before, or had sight of it. So I'm not in a position to  
 4 make that suggestion.  
 5 MR CHASKALSON SC: You see, Major  
 6 General, one of the points on which we and SAPS are in  
 7 agreement is that the first shooting that took place at  
 8 koppie 3 was in fact shooting by the TRT group on the west  
 9 side, the sort of southwest side, the group of Captain  
 10 Kidd. It's what exhibit L describes as incident 2 at  
 11 koppie 3, and that shooting took place a long time after  
 12 this slide is shown and considerably before the NIU got  
 13 anywhere near the koppie. So we find your evidence that  
 14 you heard shooting from the direction of koppie 3 before  
 15 you left the power station to be utterly unbelievable. Do  
 16 you have any response to that?  
 17 GENERAL NAIDOO: Chair, as I testified I  
 18 know what I have heard and I've indicated what I have heard  
 19 in my statement. I think that the matter should be  
 20 properly further expanded on and investigated in terms of  
 21 whether anybody else heard the shooting because it was last  
 22 week put here that none of the members specifically  
 23 indicated that they have heard the shooting and I think  
 24 that should be followed up. I already indicated my  
 25 position on that matter.

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1 MR CHASKALSON SC: Major General, would  
 2 you accept that if the evidence ultimately shows that you  
 3 and your entourage had reached koppie 3 before the NIU,  
 4 then you as the most senior commander and the man who  
 5 ultimately took command at koppie 3 should be held  
 6 responsible for shooting that happened on the part of the  
 7 NIU after you arrived and took command?  
 8 GENERAL NAIDOO: Chair, I don't  
 9 understand that question.  
 10 MR CHASKALSON SC: Would you accept that  
 11 if it is shown that your entourage and you in particular  
 12 reached koppie 3 before the NIU had done any shooting at  
 13 koppie 3, then you as the most senior officer and as the de  
 14 facto commander at koppie 3 can be held responsible also  
 15 for failing to prevent the NIU shooting at koppie 3?  
 16 GENERAL NAIDOO: Chair, I would not be  
 17 able to accept that proposition because I've already  
 18 testified that when I moved from my vehicle to the NIU they  
 19 were already in position.  
 20 MR CHASKALSON SC: Major General, you're  
 21 not understanding the question. The question is - that's  
 22 your testimony; let's assume that the evidence shows that  
 23 you were at koppie 3 before the NIU got there and that the  
 24 NIU only started shooting after you had been at koppie 3  
 25 for a few minutes. Would you accept that in those

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1 circumstances you can be held responsible for failing to  
 2 control the NIU shooting at koppie 3?  
 3 GENERAL NAIDOO: Chair, I think I've  
 4 already testified to the fact that any shooting that the  
 5 NIU did after I arrived was something yes, I would have to  
 6 as the person who took charge, but that does not take away  
 7 from what I have testified in terms of what I saw.  
 8 CHAIRPERSON: No, the question is a  
 9 conditional one. I think you made it clear earlier this  
 10 morning that you accept responsibility for firing that took  
 11 place from the police side after you got on the scene.  
 12 GENERAL NAIDOO: To the NIU, yes.  
 13 CHAIRPERSON: Yes, and so firing by - or  
 14 you couldn't be responsible if you didn't know about it,  
 15 but the people you knew about them, and you said that all  
 16 firing by the NIU after you got there you would accept  
 17 responsibility for, but you couldn't be responsible for any  
 18 firing they did before you got there. That was your  
 19 evidence.  
 20 GENERAL NAIDOO: That's right, Chair.  
 21 CHAIRPERSON: Now Mr Chaskalson is  
 22 putting it to you that you got there before - and I know  
 23 you deny this - you got there before the NIU did. It  
 24 follows from that, that if he's correct you're responsible  
 25 for all their firing. On the other hand if he's wrong and

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1 you got there after they got there and had done some  
 2 firing, you're not responsible for the earlier firing  
 3 before you got there. That must be clear, isn't it?  
 4 GENERAL NAIDOO: Chair, I think yes, we  
 5 are basically saying the same thing.  
 6 CHAIRPERSON: Yes, that's right.  
 7 MR CHASKALSON SC: There may be a subtle  
 8 difference because I don't know when you physically moved  
 9 on foot from your position at your vehicle at the koppie to  
 10 the NIU and I'm not talking about the point at which you  
 11 joined the NIU at the koppie; I'm talking about the point  
 12 at which you reached the koppie with your K9 entourage and  
 13 reached it, I say before the NIU arrived. Would you accept  
 14 that if it's shown that you reached the koppie before the  
 15 NIU arrived, if the NIU subsequently arrived on the scene  
 16 and started shooting in circumstances where you had done  
 17 nothing to control that situation, you would be held, you  
 18 should be held accountable for that shooting?  
 19 GENERAL NAIDOO: Chair, I think we are  
 20 saying the same thing. I would like to know what the  
 21 difference is.  
 22 CHAIRPERSON: Sorry to interrupt you. I  
 23 understand your point is you didn't arrive before the NIU  
 24 people did, therefore you say you're only responsible for  
 25 what happened –

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1 GENERAL NAIDOO: No.  
 2 CHAIRPERSON: - after you got there. The  
 3 question is put on an assumption which you reject, that is  
 4 that you did get there before the NIU did and in that event  
 5 you're asked do you accept responsibility if that is shown  
 6 and your evidence to the contrary is not accepted, do you  
 7 accept responsibility. I understand you to say yes, but  
 8 you reaffirm that the assumption on which the question is  
 9 posed is not correct, that you got there after the NIU did  
 10 and after they'd done some firing. Does that summarise  
 11 your evidence correctly?  
 12 GENERAL NAIDOO: Chair, what I said, and  
 13 I will continue to say, is that when I moved from my  
 14 vehicle to the NIU they were already in position and some  
 15 shooting had occurred. As to, you know, which were the  
 16 victims, etcetera, other than the two corpses I can't say.  
 17 So what I'm saying is when I moved from my vehicle to the  
 18 NIU, when I arrived at them and after, and there I told  
 19 them we should continue with the sweep that they had been  
 20 doing, yes, from there I would have to take responsibility  
 21 because I assume command of them.  
 22 MR CHASKALSON SC: Well, look –  
 23 Chairperson, I'm not sure if there's any utility in taking  
 24 this line further forward. It's a matter ultimately for  
 25 argument.

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1 CHAIRPERSON: I would imagine that is a  
 2 matter for argument and I see it's lunchtime, so perhaps  
 3 it's an appropriate stage for us to take the lunch  
 4 adjournment. Can you give us an indication whether there's  
 5 any possibility that Ms Le Roux, who's finally arrived here  
 6 after being entangled in a traffic jam, whether she's  
 7 likely to cross-examine today or are you likely to fill the  
 8 whole day with your cross-examination?  
 9 MR CHASKALSON SC: Chairperson, I will  
 10 definitely finish today. I suspect I'll use all, if not –  
 11 or all or almost all of the day for what remains.  
 12 CHAIRPERSON: But she has the  
 13 satisfaction of knowing there's a possibility that she may  
 14 get a slight look-in before the end of the day. Is that  
 15 right?  
 16 MR CHASKALSON SC: That's correct,  
 17 Chairperson.  
 18 CHAIRPERSON: Well, on that consoling  
 19 note we'll take the lunch adjournment.  
 20 [COMMISSION ADJOURNS COMMISSION RESUMES]  
 21 [13:55] CHAIRPERSON: The Commission resumes.  
 22 You're still under oath, Major-General. Mr Chaskalson?  
 23 GENERAL NAIDOO: Chair.  
 24 GENERAL NAIDOO: s.u.o.  
 25 CROSS-EXAMINATION BY MR CHASKALSON SC (CONTD.):

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1 Yes, thank you, Chairperson. Major-General, I'd like to  
 2 take you to some passages in the statement of the SAPS  
 3 expert, Mr De Rover. It's FFF11A, 11A pages 27 to 28 and  
 4 if we go to page 27 – sorry FFF11A, not FFF11.  
 5 CHAIRPERSON: Page 27 of FFF11A. I think  
 6 we were shown probably 11, his first statement. This is  
 7 now the supplementary statement of Mr De Rover, is it, that  
 8 you're referring to?  
 9 MR CHASKALSON SC: That's correct,  
 10 Chairperson.  
 11 CHAIRPERSON: Can that be shown to us,  
 12 please? Which paragraph are you referring to?  
 13 MR CHASKALSON SC: Paragraph 59 and 60.  
 14 CHAIRPERSON: They've clicked the wrong –  
 15 on the screen, they've clicked the wrong part of the, of  
 16 what appears on the screen. It's FFF11A which is on the  
 17 bottom right-hand corner of the screen, not the top left-  
 18 hand corner.  
 19 MR CHASKALSON SC: Page 27, paragraphs 59  
 20 and 60.  
 21 CHAIRPERSON: Now we have it, it's the  
 22 sentence beginning – that's it – "In the geography of  
 23 koppie 3."  
 24 MR CHASKALSON SC: Indeed, Chairperson.  
 25 If I can read it for you, Major-General, "In the geography

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1 of koppie 3 there is an area appearing to provide optimum  
 2 sight and fire cover. It is in this area that most of the  
 3 protesters were and from where they mounted their attacks  
 4 in various directions against approaching police. This  
 5 relatively small area was where most of the almost 280  
 6 people congregated for most of the time." Paragraph 60,  
 7 "It is in this area that nine people lost their lives. I  
 8 believe that loss of life was not a consequence of fire  
 9 aimed directly at them but rather the consequences of their  
 10 being struck by rounds fired for other reasons, travelling  
 11 through that area, rounds fired by members of POP from the  
 12 north, NIU from the east, TRT and K9 from the south and TRT  
 13 from the west. Possibly as many as half of all 325 rounds  
 14 fired, both 5.56 millimetre and 9 millimetre, maybe more,  
 15 may have travelled through this area although the exact  
 16 number is hard to calculate. As a consequence, this  
 17 apparently safe area was in fact the most dangerous  
 18 location within koppie 3." Now Major-General, is there  
 19 anything in paragraph 60, not paragraph 59, paragraph 60,  
 20 that you are in a position to dispute?  
 21 GENERAL NAIDOO: Chair, I don't think I'm  
 22 in a position to dispute anything without having sight of  
 23 whatever scientific or other information that it was based  
 24 on. At face value I can't see what I can dispute.  
 25 MR CHASKALSON SC: Can I then take you to

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1 exhibit FFF4, FFF4, and this is the report that was sent to  
 2 the Department of International Relations and Co-operation  
 3 with a view to being forwarded to the President to explain  
 4 what had happened at Marikana. It was a report prepared on  
 5 the night of the 16th or the evening to night of the 16th.  
 6 Did you participate in the drawing up of this report?  
 7 GENERAL NAIDOO: No, not personally.  
 8 MR CHASKALSON SC: Do you recall briefing  
 9 Major-General Annandale in the aftermath of the 16th?  
 10 GENERAL NAIDOO: I remember providing  
 11 him, yes, information.  
 12 MR CHASKALSON SC: Major-General  
 13 Annandale – well, do you recall briefing the National  
 14 Commissioner?  
 15 GENERAL NAIDOO: That's correct, the  
 16 briefing that I referred to –  
 17 MR CHASKALSON SC: On the night of the  
 18 16th, the evening to night of the 16th.  
 19 GENERAL NAIDOO: That's correct.  
 20 MR CHASKALSON SC: Now, Major-General  
 21 Annandale testified that on the evening of the 16th he got  
 22 his information about scene 2 from you and Brigadier  
 23 Calitz. That appears in his testimony on the 14th of May at  
 24 page 9695. There he's talking – 9695, it's not 9694. It's  
 25 the 14th of May, not the 13th of May and right at the bottom

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1 of 9694 Mr Mpofu asks, "Thank you, Chairperson. Okay, now  
 2 General, it's correct, isn't it, that you – or rather, the  
 3 information that you had about the events in respect of  
 4 which the actual shooting and all that, all the events  
 5 where you were not present, when you were at the JOC, at  
 6 the Lonmin JOC, that those events were as reported to you  
 7 primarily by Generals Naidoo and Calitz. Correct?" And  
 8 then Major-General Annandale says, "Hoofsaaklik die twee  
 9 betrokke offisiere, maar nie uitgesluit ander nie." "Yes.  
 10 Yes, and knowing what we know now, General Naidoo would  
 11 have given you the briefing mainly about scene 2 and  
 12 Brigadier Calitz about scene 1. Correct?" Major-General  
 13 Naidoo – sorry, Major-General Annandale, "Voorsitter,  
 14 Naidoo pertinent rondom 'scene' 2, maar Calitz in terme van  
 15 beide." Mr Mpofu, "And it was as a result of those  
 16 briefings that you formed the view – secondary as it is –  
 17 that both events, in respect of both events the deaths were  
 18 as a result of self-defence/private defence." "Dis korrek,  
 19 Voorsitter." Now, Major-General Naidoo, did you report to  
 20 Major-General Annandale on the evening of the 16th that the  
 21 deaths at scene 2 were deaths flowing from private defence  
 22 and self-defence?  
 23 GENERAL NAIDOO: Chair, I think what we  
 24 related that evening was what we experienced. I don't  
 25 think at that stage I specifically used the words "private

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1 defence" or "self-defence." We explained in terms of  
 2 narrative what happened when we got there and what  
 3 transpired up to the point that the scene was secure. So  
 4 we conveyed the information as we knew it at that stage and  
 5 you will see even the number of fatalities was not yet  
 6 finalised, so people were still busy at the scene.  
 7 MR CHASKALSON SC: Were you present for  
 8 Brigadier Calitz's report to Major-General Annandale?  
 9 GENERAL NAIDOO: Chair, I'm not sure, I  
 10 think I came in before him or after him but no, we did not  
 11 all go and arrive at the same time. We came from different  
 12 locations so I can't specifically remember hearing  
 13 Brigadier Calitz's submission but people were coming in and  
 14 out. As people arrived, they came in, gave a briefing and  
 15 they left. That's what I can remember.  
 16 MR CHASKALSON SC: What exactly did you  
 17 report to Major-General Annandale to explain the additional  
 18 13 deaths?  
 19 GENERAL NAIDOO: Chair, what I indicated  
 20 was that there was the situation which I have already  
 21 testified to in terms of what we saw, where we were going  
 22 to and I indicated that there were these various shooting  
 23 incidents by various units and when we had managed to  
 24 secure the scene, that we had identified so many protesters  
 25 that were injured and so many that were wounded and I'm not

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1 sure if other commanders at the scene were also called.  
 2 I'm not, there's no indication at that stage because  
 3 commanders that were at scene 2, as they withdrew from the  
 4 scene, came back to the JOC. So I can remember in terms of  
 5 my input was that specifically.  
 6 MR CHASKALSON SC: You say various  
 7 shooting incidents by various units. What were you able to  
 8 report in that regard to Major-General Annandale? What  
 9 details were you able to give him?  
 10 GENERAL NAIDOO: Chair, once we had  
 11 secured the scene we realised that there were specific  
 12 victims that were shot by the TRT as well as possibly by  
 13 the public order police members, so I did not have the  
 14 specific details as to who the shooters were, et cetera.  
 15 What I did have at that stage was confirmation of how many  
 16 fatalities, how many injuries, how many firearms that were  
 17 recovered. I had that kind of general information because  
 18 members were still busy on the scene and also being  
 19 withdrawn as the night shift came on. So I communicated as  
 20 much information that I had as possible.  
 21 MR CHASKALSON SC: Let's go to FFF4 on  
 22 page 2. One more paragraph down. This is the report of  
 23 scene 2 to the President or for the President. "The  
 24 dispersion action had commenced at this time and the  
 25 protesters were driven from their stronghold to a high

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1 bushy ground in the close vicinity. The police members  
 2 encircled the area and attempted to force the protesters  
 3 out by means of water cannons, rubber bullets and stun  
 4 grenades. The police advanced to arrest the armed  
 5 protesters, resulting in police officers having to again  
 6 employ force to defend themselves at close quarters. This  
 7 resulted in 13 more protesters' deaths with 15 more wounded  
 8 at the second incident." Did you report to Major-General  
 9 Annandale that deaths could be attributed to policemen  
 10 having to defend themselves at close quarters?  
 11 GENERAL NAIDOO: Chair, I reported  
 12 deaths. I did not give an analysis. They wanted figures,  
 13 how many people had been killed, how many people had been  
 14 injured, whether any police officials had been injured, et  
 15 cetera. So at that stage there was no analysis done in  
 16 terms of what each case was and at that stage I don't think  
 17 I would have been in a position to give an analysis as  
 18 well.  
 19 MR CHASKALSON SC: Do you accept that  
 20 this picture of 13 deaths as a result of police officers  
 21 having again to employ force to defend themselves at close  
 22 quarters is a misrepresentation of the facts, it's not  
 23 correct?  
 24 GENERAL NAIDOO: Chair, I would not think  
 25 that this is a misrepresentation. It was basically a

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1 summary of what was reported by the various people. As I  
 2 indicated, I gave them the statistics in terms of the  
 3 number of people killed or injured by the police and I was  
 4 not at that stage au fait with each and every death and I  
 5 had no idea at that stage whether they had spoken to the  
 6 other commanders to glean this information.  
 7 MR CHASKALSON SC: Major-General, to this  
 8 day, we're talking now 18 months after the event, SAPS is  
 9 unable to provide any explanation whatsoever for the deaths  
 10 of 12 of the 17 people who died in koppie 3. No  
 11 explanation whatsoever, cannot even begin to describe the  
 12 circumstances of those deaths, hasn't offered any  
 13 explanation. There are five deaths in which some sort of  
 14 explanation has been proffered, 12 in which none whatsoever  
 15 has been proffered. How, on that basis, on the night of  
 16 the event was it possible to report to the President that  
 17 there were 13 more protesters' deaths as a result of having  
 18 to employ force to defend yourselves at close quarters?  
 19 GENERAL NAIDOO: Chair, as I indicated,  
 20 the information that I provided was more statistical in  
 21 nature and I think the people that compiled this would have  
 22 to explain their choice of words. As I said, I don't  
 23 remember being part of such an exercise, I was not even  
 24 there. What I can indicate to you, that at that stage what  
 25 we had was the raw information from the scene, that is what

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1 I conveyed to the meeting that was that night. I could not  
 2 in any way talk about each of the 13 deaths as I was not  
 3 aware of specifically who were the members involved in each  
 4 of the shootings.  
 5 MR CHASKALSON SC: And you didn't convey  
 6 anything in relation to the circumstances of the shooting?  
 7 GENERAL NAIDOO: Chair, that's why I  
 8 indicate, all I could narrate was what I experienced and  
 9 what I've already testified here. I could not link to say  
 10 that particular person was shot in these circumstances and  
 11 that one was shot in that circumstances. That was not  
 12 possible for me, I didn't have that kind of information  
 13 with me. What I gave them was, this is what we have now on  
 14 the scene, this is what has been done in terms of that and  
 15 this is where we are now.  
 16 MR CHASKALSON SC: So this version of 13  
 17 deaths because of close quarter self-defence action by the  
 18 police was not a version that came from you, it came from  
 19 someone else?  
 20 GENERAL NAIDOO: Chair, as I indicated  
 21 from my narrative, there was close quarter engagement with  
 22 the various strikers, we did arrest people at close  
 23 quarters. We didn't arrest them, you know, from a distance  
 24 but in terms of the compilation I can't comment because I  
 25 was not part of the compilation.

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1 MR CHASKALSON SC: Well, Major-General,  
 2 apart from the case of victim C which you didn't witness  
 3 and about which I haven't heard you suggest any knowledge,  
 4 are you aware of any case of anyone being killed in the  
 5 course of an attempt to arrest them?  
 6 GENERAL NAIDOO: Chair, as I said, on  
 7 that night I did not have specific information other than  
 8 what was second hand related to me, so I would not be able  
 9 to say that this particular incident fell in this category  
 10 and that particular incident fell in that category. I can  
 11 only testify –  
 12 MR CHASKALSON SC: Major-General, I'm no  
 13 longer talking about that night, I'm talking about today as  
 14 you sit before us, are you aware of anybody other than  
 15 victim C who was killed as a result of action taken at  
 16 close quarters by SAPS in an attempt to arrest that person?  
 17 GENERAL NAIDOO: Chair, I'm not familiar  
 18 with all the victims so at this stage I won't be able to  
 19 indicate, you know, which one I'm familiar with, about  
 20 close quarters or not.  
 21 [14:15] I heard the presentation and the narrative about  
 22 a victim that was shot or fell onto a policeman, heard of  
 23 another one where people were rushed, but I would not be  
 24 able to say this is victim C and this is victim A. I have  
 25 a general knowledge of some of the incidents that were

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1 narrated in the presentation of the police.  
 2 MR CHASKALSON SC: Yes, but you talked  
 3 about action at close quarters to arrest people. I was  
 4 asking if you were able to link that in any way to killing  
 5 of people.  
 6 GENERAL NAIDOO: Chair, I indicated  
 7 arrests. We have arrested people, I've testified to that,  
 8 and that was done at close quarters. That's my, what was  
 9 what I was indicating that there were several people that  
 10 we arrested at the koppie where we went to them and made  
 11 them surrender their weapons. I didn't indicate at any  
 12 stage about any of the deaths.  
 13 MR CHASKALSON SC: Yes, but the report  
 14 speaks of deaths caused by action to defend yourself at  
 15 close quarters and when I asked you in that regard you said  
 16 well, we were arresting people at close quarters. I  
 17 thought you were answering a question that was going to  
 18 explain how this report could account for deaths caused by  
 19 self-defence action at close quarters, but it seems not.  
 20 Did I misunderstand your answer?  
 21 GENERAL NAIDOO: Chair, the choice of  
 22 grammar in terms of wording of this, I am unable to  
 23 indicate how they arrived at it. I think the compiler  
 24 would be best placed to do that.  
 25 MR CHASKALSON SC: Sorry, you think?

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1 GENERAL NAIDOO: The compiler, or the  
 2 people that were involved in compilation of this would be  
 3 best placed to indicate how they arrived at the choice of  
 4 the grammar.  
 5 MR CHASKALSON SC: Yes, but you certainly  
 6 didn't convey an impression that deaths were caused at  
 7 scene 3 by self-defence action at close quarters?  
 8 GENERAL NAIDOO: Not to my knowledge, no.  
 9 MR CHASKALSON SC: Well, it's not a "not  
 10 to my knowledge," Major General. It should be something  
 11 that you are capable of answering positively yes or no.  
 12 Did you create this impression or not?  
 13 GENERAL NAIDOO: Chair, I was not in  
 14 close proximity to, at any of the attempts to arrest when  
 15 any of the possible deaths, or when any of the deaths  
 16 occurred, so I would not be able to indicate such.  
 17 CHAIRPERSON: The short point is that if  
 18 one looks at your consolidated statement, JJJ108, there's  
 19 no paragraph in that statement which indicates that you  
 20 have any knowledge of how any one of the persons killed at  
 21 scene 2, koppie 3, died. You mentioned various incidents,  
 22 but you describe arrests and shots being fired and so on,  
 23 but you don't at any point claim to have any knowledge  
 24 about how anybody died. That's correct, isn't it?  
 25 GENERAL NAIDOO: That's what I've

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1 testified to.  
 2 CHAIRPERSON: So therefore in light of  
 3 that you could not appropriately have given information to  
 4 those compiling the statement for the President which dealt  
 5 with how any of those 13 people died. That's is correct?  
 6 GENERAL NAIDOO: Chair, that's what I  
 7 testified. I had no knowledge on the specific incidents.  
 8 CHAIRPERSON: I see. You didn't even  
 9 have hearsay knowledge? You know what I mean?  
 10 GENERAL NAIDOO: No, at that stage, no.  
 11 MR CHASKALSON SC: If we can move to a  
 12 new topic, Major General, which is your failure to control  
 13 the crime scene after the shootings at scene 2. We've now  
 14 established that you had effectively assumed command of the  
 15 scene well before the shootings stopped at scene 2 and when  
 16 SAPS brought scene 2 under – sorry, when SAPS brought scene  
 17 2 under control you were effectively in command. You  
 18 accept that?  
 19 GENERAL NAIDOO: Until the crime scene  
 20 people took over, yes.  
 21 MR CHASKALSON SC: Now we know that there  
 22 was a great deal of movement of weapons around the crime  
 23 scene. The version put forward by SAPS is that the  
 24 movement of weapons to place them alongside dead bodies or  
 25 in the vicinity of dead bodies was for the most part done



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1 by Mr Breedt.

2 GENERAL NAIDOO: I think he has given us

3 information to that effect, yes.

4 MR CHASKALSON SC: He was a K9 member who

5 was under your direct control.

6 GENERAL NAIDOO: That is correct, Chair.

7 MR CHASKALSON SC: You'd actually brought

8 him into the scene.

9 GENERAL NAIDOO: To escort the medics,

10 Chair.

11 MR CHASKALSON SC: Well, no, Major

12 General, you brought him in, in the first instance with the

13 rest of your entourage long before medics came anywhere

14 near the scene.

15 GENERAL NAIDOO: Well Chair, I'm

16 referring to came into the koppie, yes. But yes, he

17 arrived there before, yes.

18 MR CHASKALSON SC: No, if we follow what

19 Major Breedt – sorry, Sergeant Breedt says about his – is

20 it sergeant or warrant officer?

21 GENERAL NAIDOO: Warrant officer.

22 MR CHASKALSON SC: - Warrant Officer

23 Breedt says about his movements –

24 GENERAL NAIDOO: Yes.

25 MR CHASKALSON SC: - he had in fact come

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1 in with the K9 at your instance from the power station.

2 GENERAL NAIDOO: Correct.

3 MR CHASKALSON SC: And he had gone into

4 the koppie himself and shot at some people before you asked

5 him to do anything in relation to medics.

6 GENERAL NAIDOO: Chair, I think we have

7 been over the issue of Mr Breedt previously when we

8 discussed the issue of the Special Task Force. We have

9 identified that his point, vantage point was behind the

10 Special Task Force Casspir when he was involved in the

11 shooting. We have discussed that and it was not contested.

12 MR CHASKALSON SC: Now you say you at a

13 later stage ordered Warrant Officer Breedt to collect the

14 medics to bring them into the scene.

15 GENERAL NAIDOO: Chair no, initially as

16 soon as the shooting had subsided and I realised that we

17 could bring the medics in I asked for both the K9 as well

18 as the medics to move in, the K9 to sweep the place because

19 of the possible, possibility of people being concealed,

20 firearms being concealed, and the medics simultaneously to

21 come in under escort so that they could start tending to

22 the injured.

23 MR CHASKALSON SC: How long was it before

24 you sent for the medics and the point at which they arrived

25 at the scene?

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1 GENERAL NAIDOO: Chair, I think it was a

2 few minutes. I can't testify exactly how long because

3 there were various activities taking place, but it was not

4 very long.

5 MR CHASKALSON SC: And you wouldn't have

6 sent for the medics until the crime scene was safe, you'd

7 established that the crime scene was safe enough to call

8 the medics in?

9 GENERAL NAIDOO: Chair, there was

10 sufficient policemen that were saturating the scene,

11 arresting people, etcetera, so I considered it to be safe.

12 MR CHASKALSON SC: Did you take any steps

13 when you, at the point at which you called the medics in to

14 secure the integrity of the crime scene?

15 GENERAL NAIDOO: Chair, in terms of the

16 crime scene there was – firstly the first thing I did was

17 to summon the crime scene people and the detectives - who I

18 was struggling to get hold of, but I eventually did - to

19 come to the crime scene. Then our next priority was to

20 ensure that the people that were wounded received medical

21 attention as soon as possible.

22 The third priority was to secure the people that

23 were arrested, the suspects that were arrested, and remove

24 them from the immediate vicinity of the crime scene so that

25 police work could go – and I think I dealt with them more

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1 or less in that order.

2 MR CHASKALSON SC: So are you suggesting

3 that the crime scene personnel arrived on the scene before

4 the medics?

5 GENERAL NAIDOO: Chair no, there's no way

6 I'm suggesting that. I just indicated the priority issues

7 that I had to deal with at that stage.

8 MR CHASKALSON SC: Why would it have been

9 more of a priority to call for crime scene people than to

10 get medical care to the wounded?

11 GENERAL NAIDOO: Chair no, I knew that

12 the crime scene people were close by. I tried to call them

13 via cell phone. The medics I called on the radio and I

14 asked the people that were escorting them to bring them

15 forward, so I'm not now speaking chronologically. I just

16 indicated that issues that I had to deal with.

17 MR CHASKALSON SC: So when you said first

18 priority, second priority, third priority, it wasn't in

19 order of importance, it was just numerical?

20 GENERAL NAIDOO: The things that I had to

21 deal with, yes.

22 MR CHASKALSON SC: Now you sent for the

23 medics. The crime scene people are not there.

24 GENERAL NAIDOO: Yes, Chair.

25 MR CHASKALSON SC: Was it not incumbent

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1 upon you to take steps to preserve the integrity of the  
 2 crime scene?  
 3 GENERAL NAIDOO: Chair, I'm not sure what  
 4 steps are we talking about because this was a crime scene  
 5 with quite a few police officials on the scene. It was at  
 6 that stage that Brigadier Calitz and I came together. I  
 7 remember Brigadier Calitz specifically calling out to the  
 8 members and specifically telling them because we had  
 9 observed some of the POP members were stacking some of the  
 10 traditional weapons together, he specifically instructed  
 11 the people not to move the weapons because this is a crime  
 12 scene. So that was done.  
 13 MR CHASKALSON SC: But that was only done  
 14 after the damage had been done.  
 15 GENERAL NAIDOO: Chair, yes.  
 16 MR CHASKALSON SC: And nothing was done  
 17 in advance either to prevent people from moving weapons  
 18 around or to photograph the weapons in advance of their  
 19 being moved.  
 20 GENERAL NAIDOO: Chair, two things; this  
 21 was an active crime scene, active in the sense that there  
 22 were victims and suspects on the crime scene and that's why  
 23 I indicated the two priority issues was to tend to the  
 24 people that were injured, the victims, as well as to remove  
 25 suspects from the crime scene in order to facilitate that

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1 the police could do their job.  
 2 As far as the photographs, the photographing of  
 3 the crime scene, I, if I remember correctly there was a  
 4 member that started taking photographs as and when the  
 5 whole process died down, stabilised, and I know that  
 6 process continued.  
 7 MR CHASKALSON SC: Yes, the member who –  
 8 well, one of the members who took the first photographs was  
 9 Warrant Officer Nong.  
 10 GENERAL NAIDOO: That's correct.  
 11 MR CHASKALSON SC: He seems to have taken  
 12 the first photographs inside koppie 2, but nobody directed  
 13 him to take photographs of victims with weapons on them  
 14 before those victims were going to receive medical  
 15 treatment.  
 16 GENERAL NAIDOO: Chair, I think each  
 17 section of the Public Order Police have got the capacity to  
 18 have, to take photographs and to, even to do video filming,  
 19 and it is part of their standard operating procedure that  
 20 when they're involved in a particular incident that they  
 21 take those photographs. For me it was important that I get  
 22 the crime scene people there because they needed to ensure  
 23 also when in securing the exhibits that the integrity of  
 24 the exhibits are not tampered with in any way, that they  
 25 understand what the position of the exhibits are on the

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1 scene.  
 2 MR CHASKALSON SC: Well, you see, because  
 3 you didn't take any steps to secure the crime scene, by the  
 4 time the crime scene people came in that crime scene was  
 5 pretty close to irreparably tainted. Exhibits had been  
 6 moved backwards and forwards and all sorts of difficulties  
 7 had been created for SAPS in relation to prosecutions  
 8 flowing from evidence concerning the exhibits.  
 9 GENERAL NAIDOO: Chair, I don't agree  
 10 with that in the sense that this is something that happens  
 11 in major crime scenes on an ongoing basis where the  
 12 priority is to remove suspects from a crime scene and to  
 13 tend to the injured at the crime scene, and let me give you  
 14 a practical example, Chair. If we get to a crime scene  
 15 where a person has attempted suicide and may still be alive  
 16 or could be saved, we will not wait until, the first  
 17 responders there would not wait until a photographer is  
 18 available to take photographs, etcetera.  
 19 The priority is to deal with the lives that can  
 20 be saved and obviously the process that's supposed to be  
 21 followed - and this is catered for in terms of our  
 22 procedure - the member that tampers, or contaminates a  
 23 scene should make a note of what he has done to indicate  
 24 that this firearm was lying in the hand of the person lying  
 25 in this position, etcetera. Because the medics had to

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1 attend to that person I moved the firearm and this is how  
 2 it was. We don't have cameras in all our vehicles that  
 3 attend to crime scenes, so the first responders are not in  
 4 a position to do that.  
 5 So it is perfectly in order that in order to save  
 6 lives or to arrest a suspect we don't leave the firearm on  
 7 the suspect so that a photograph can be taken. We secure  
 8 the suspect and we put the exhibits in an appropriate  
 9 location so that it can be photographed. So what I'm  
 10 saying is in this particular scenario there were various of  
 11 these victims, there were various of these suspects and  
 12 they had to be dealt with. It would have been a bonus,  
 13 yes, that we could as we went along took photographs, but  
 14 the priority was to save lives and arrest suspects.  
 15 MR CHASKALSON SC: Well, several  
 16 responses, Major General. The first is you don't need  
 17 expensive camera equipment; all you need is a cell phone  
 18 and I would imagine that most SAPS members on the scene had  
 19 a cell phone. Would you accept that?  
 20 GENERAL NAIDOO: I accept that, but there  
 21 is no imperative on them to take a photograph with a cell  
 22 phone.  
 23 MR CHASKALSON SC: Indeed, there is no –  
 24 CHAIRPERSON: Unless their commanding  
 25 officer orders them to do so. Unless the person in charge

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1 seems the problem arising and requests them to take  
 2 photographs. Isn't that so?  
 3 GENERAL NAIDOO: That could be.  
 4 MR CHASKALSON SC: Now you had several  
 5 minutes before medics, between the point at which the scene  
 6 was safe and medics could be called in and the point at  
 7 which the medics came in. They had to be fetched from the  
 8 power station, or had to come up from the power station.  
 9 You agree with that?  
 10 GENERAL NAIDOO: I think we need to be  
 11 more clear when we say a few minutes, what are we talking  
 12 about?  
 13 MR CHASKALSON SC: Well, you tell me.  
 14 How long did it take between the point at which you were  
 15 satisfied that the scene was safe and the point at which  
 16 medics actually arrived on the scene as opposed to left the  
 17 power station?  
 18 GENERAL NAIDOO: Chair, we've agreed that  
 19 the distance is approximately 300 plus metres, so I don't  
 20 know what speed they were travelling at and how.  
 21 MR CHASKALSON SC: Did they come in on  
 22 foot or did they come in by vehicle?  
 23 GENERAL NAIDOO: They brought in their  
 24 ambulances to the edge of the koppie, to the line where the  
 25 other K9 vehicles were already parked.

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1 MR CHASKALSON SC: Would you accept that  
 2 it would have been possible for you in that period to  
 3 instruct a handful of SAPS members to photograph the  
 4 injured and possibly deceased persons in the positions in  
 5 which they were lying with weapons around them, if there  
 6 were weapons around them?  
 7 GENERAL NAIDOO: Chair, I think I've  
 8 already testified that there was a member already taking  
 9 photographs. I can't indicate, you know, to the specific  
 10 time, but I observed him going from person to person,  
 11 taking photographs. So I, why would I see it necessary to  
 12 give a general instruction?  
 13 MR CHASKALSON SC: Now are you then  
 14 saying that the first person who took photographs, who was  
 15 Warrant Officer Nong, was taking those photographs of  
 16 victims before the medics came in?  
 17 GENERAL NAIDOO: Chair, I, as I said I  
 18 can't bring this taking of the photographs in relation to  
 19 when the medics came, but I do know that there was a  
 20 person, who was from Public Order Police because I realised  
 21 his red badge, who was taking photographs. So I've already  
 22 testified that my priority was the medics, to also make  
 23 sure that the suspects were in an area away from the place  
 24 where the weapons were lying, and I was trying to locate  
 25 the crime scene people because I realised that this was a

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1 huge sprawling crime scene and it would be difficult to  
 2 manage. So I did not give an instruction generally to  
 3 members to take photographs and at that stage I did not  
 4 think it necessary because as I testified, I saw a member  
 5 taking photographs.  
 6 MR CHASKALSON SC: Well, you see the key  
 7 point at which the crime scene gets contaminated is the  
 8 point at which SAPS members start moving weapons around  
 9 without recording the original state of affairs, moving  
 10 weapons and bodies of victims around. Now it's prior to  
 11 that point that there's a need for photographs. Are you  
 12 saying that from the presence of Warrant Officer Nong you  
 13 were satisfied that his photographs would serve that  
 14 purpose?  
 15 GENERAL NAIDOO: Chair no, what I  
 16 testified to already was that provision in our procedures  
 17 are made for the moving of exhibits or people that may be  
 18 injured at a crime scene, and the member moving should  
 19 record in their pocketbook exactly how they contaminated  
 20 that particular scene. The issue of taking photographs is  
 21 a new one. We said, we agreed yes, there is a possibility  
 22 that that could have been done, but in terms of the  
 23 procedures we have, if a member moves something he records  
 24 it.  
 25 [14:35] And he then makes sure that the people from the

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1 crime scene kept that information that I moved X from  
 2 certain place to Y for instance. So as far as my  
 3 understanding of it that is how we were handling that  
 4 particular crime scene.  
 5 MR CHASKALSON SC: Now you said also that  
 6 it was urgent to get the medics to the wounded victims and  
 7 so it was in that context that movement of weapons took  
 8 place to facilitate access of the medics.  
 9 GENERAL NAIDOO: Chair, I think it's  
 10 matter of record as far as the particular exhibit here that  
 11 the medics refused to approach any of the injured people if  
 12 there were weapons lying in their possession or near them  
 13 as well.  
 14 MR CHASKALSON SC: You see the issue  
 15 that's always struck me as odd in relation to that is that  
 16 all of the weapons appear to have been moved by one person,  
 17 Warrant Officer Breed. Now if there was an urgency in  
 18 getting medics to wounded victims you would have thought  
 19 that whoever was escorting a medic to a particular victim  
 20 would have taken responsibility or if he or she acted  
 21 responsibly would first have photographed the scene or  
 22 noted the scene and then taken responsibility for moving  
 23 the weapons away and making it safe for the medic. You  
 24 wouldn't expect one person to have moved all of the  
 25 weapons. Any thoughts about that?

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1 GENERAL NAIDOO: Chair, that is correct.  
 2 Any member, as I indicated, our procedure makes provision  
 3 for any member who needs to support a medic in saving a  
 4 life may do that and as far as I'm concerned, I don't think  
 5 that Warrant Officer Breed could have been the only member.  
 6 What I know for sure he's the only member who owned up and  
 7 said yes but because he knows that these things happen at  
 8 crime scenes, he's an old police officer. So as to the  
 9 other weapons that were moved from other bodies I'm sure  
 10 that there would have been other members. Whether we've  
 11 exhausted getting all of them or whether we stopped when we  
 12 got to Mr Breed I'm not sure, Warrant Officer Breed, but  
 13 the team that was tasked to do that particular  
 14 investigation I'm not sure whether they canvassed all other  
 15 members as well. But what the logic for me was that any  
 16 member escorting the medics would, at the request of the  
 17 medics have done what Warrant Officer Breed did.  
 18 MR CHASKALSON SC: That, of course, would  
 19 explain, sorry let me take that back. You see Warrant  
 20 Officer Breed accounts for a large proportion of all of the  
 21 weapons that were moved. I forget the number of cases that  
 22 he owns up to, but it's not one or two or three, it's many  
 23 more than that. Why would the same person be involved in  
 24 moving weapons away from multiple victims?  
 25 GENERAL NAIDOO: Chair, if I could

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1 remember correctly there was somebody and as I said from  
 2 what I was observing, there was the one medic who appeared  
 3 to be more senior, who was as he was proceeding assessing  
 4 each victim and calling out to the others, you know, in  
 5 terms of categorising them, etcetera. So it's possible  
 6 that he was going ahead of the others and prioritising  
 7 cases, etcetera, but I can't say that's the one that  
 8 Warrant Officer Breed – I don't know, I'm not sure exactly  
 9 who Warrant Officer Breed escorted. But I did notice that  
 10 there was I think one of two of them that were calling out,  
 11 prioritising what type of case it was and the others were  
 12 responding and dealing with it. Possibly that is the  
 13 suggestion, but as I said, I can't say because I don't know  
 14 which of the medics that Warrant Officer Breed himself  
 15 escorted.  
 16 MR CHASKALSON SC: Well would you accept  
 17 that as a good protocol going forward that if one has a  
 18 crime scene like this in the future and there is a need to  
 19 remove weapons to make the scene safe for medics that SAPS  
 20 members should photograph the scene before those medics  
 21 come in and the weapons are moved?  
 22 GENERAL NAIDOO: Definitely. Anything  
 23 that can capture the scene as it was before it was  
 24 contaminated will definitely assist the investigation as we  
 25 go along. So anything that will promote that obviously has

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1 to be supported.  
 2 MR CHASKALSON SC: You see, Major-  
 3 General, the practise that was followed in this case, or  
 4 the lack of practise that was followed in this case seems  
 5 to me to have had three very unfortunate consequences.  
 6 I'll tell you what those consequences are and then we'll go  
 7 through them one by one with illustrations. The first is,  
 8 I want to put it to you that it actually brought the SAPS  
 9 into disrepute. There were front page headlines of  
 10 photographs of what appeared to be SAPS planting weapons on  
 11 victims. The second is that it seriously prejudiced future  
 12 prosecutions in respect of which the integrity of the crime  
 13 scene would be important. I'll take you to an example.  
 14 And the third is that it raises questions about the  
 15 veracity of SAPS's version in this Commission and I'll  
 16 explain to you why I say that. Let's take the first one,  
 17 bringing SAPS into disrepute. Can we go to exhibit K,  
 18 slide 15? I'm sorry, Chairperson, I think we need an  
 19 instruction before we start viewing these pictures. Can we  
 20 close that slide?  
 21 CHAIRPERSON: Mr Chaskalson informs me  
 22 that we're going to be shown slides showing some of the  
 23 deceased who were killed at scene 2 lying on the ground.  
 24 And it is likely that those who are close to, or were close  
 25 to those people, their loved ones, relatives and so on will

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1 experience serious emotional trauma if they have to look at  
 2 the pictures, bring back unhappy and sad memories to them.  
 3 So I'm going to ask that a minute elapse after what I've  
 4 said has been translated before there slides are looked at,  
 5 starting now. This is to enable those who wish to leave  
 6 and not see the pictures have the opportunity to do so. I  
 7 don't think it's necessary for us to wait the full minute  
 8 because half a minute has elapsed and no one shows any sign  
 9 of moving. So I suggest we proceed.  
 10 MR CHASKALSON SC: If we can then show  
 11 the slide again. This is a series of photographs of victim  
 12 M at scene 2, Mr Pato. Now if we look at the top  
 13 photograph we'll see - which is the official crime scene  
 14 photograph after Warrant Officer Breed has moved a yellow  
 15 handled panga back. We'll see that Warrant Officer Breed  
 16 to do this has had to lift up the arm of a dead man to slip  
 17 a panga under his hand. You'll see that the panga actually  
 18 is under the hand of Mr Pato. Can we zoom in on that top  
 19 picture? You'll see that Mr Pato's hand is resting on the  
 20 panga. I would put to you that a situation where a dead  
 21 man's arm is lifted to put a weapon underneath his hand is  
 22 something that is just utterly unacceptable and this sort  
 23 of practise brings SAPS seriously into disrepute. What is  
 24 your response to that?  
 25 GENERAL NAIDOO: Chair, two things. The

1 first one is I agree it was completely contrary to our  
2 procedures in terms of SAPS. I've testified that we may  
3 move or intentionally contaminate a scene for medical  
4 purposes. The second point that I would like to make it  
5 was that these particular discrepancies were discovered by  
6 us, the SAPS and we brought it to the attention of the  
7 Commission because obviously it was –

8 MR CHASKALSON SC: No, no, no, Major-  
9 General, they were discovered by SAPS but they were brought  
10 to the attention of the Commission not by SAPS, by the  
11 evidence leaders.

12 GENERAL NAIDOO: Chair, no.

13 CHAIRPERSON: The evidence leaders in  
14 fact led evidence, as I understand from what happened in  
15 2012 already, led evidence in good faith of these weapons  
16 in position next to deceased people. They subsequently  
17 came across other photographs which you're going to see in  
18 a moment, you see this photograph's been taken at night,  
19 you can see that from the light. They subsequently came  
20 across earlier photographs which had been taken during the  
21 day time which showed the weapons weren't there. This was  
22 after these photographs with the weapons on the scene next  
23 to the deceased people had been shown to the Commission.  
24 They then realised what had happened, that weapons had been  
25 put back, back is a controversial word maybe, had been put

1 our slide shows photographs deferred from the ones that  
2 were being presented by the people from the criminal  
3 records centre. And then I'm aware that the National  
4 Commissioner consulted the legal team who indicated that we  
5 should inform the Commission immediately. And the National  
6 Commissioner should give a report. So the chronology about  
7 whether the information was first or the document from SAPS  
8 was first, I am not familiar, but my understanding was it  
9 happened simultaneously.

10 MR CHASKALSON SC: It may have happened  
11 simultaneously, but it happened independently and the first  
12 people to alert the Commission to this problem were the  
13 evidence leaders who had discovered it completely  
14 independently.

15 GENERAL NAIDOO: I'm not, not aware of  
16 that, Chair.

17 MR CHASKALSON SC: I said the second  
18 problem with what happened compromises future prosecutions  
19 and in this regard let's look at one of the firearms that  
20 was found at scene 2. And there is a series of slides  
21 called Gun Presentation or something along those lines  
22 which we should call up now. Now what I have done in this  
23 presentation is I have assembled in chronological order  
24 photographs from the scene of the position where a gun was  
25 allegedly found.

1 on the scene after weapons had already been removed from  
2 the scene and photographs had been taken with no weapons.  
3 It then turned out that this matter had already come under  
4 the attention – come to the attention of the National  
5 Commissioner who had ordered an investigation –

6 GENERAL NAIDOO: That's correct.

7 CHAIRPERSON: - to be conducted by Major-  
8 General Johnson and whose information was then given to the  
9 Commission, but after the evidence leaders, as I say had  
10 already in good faith, led this evidence which I've  
11 summarised. So that's the true position actually. It is  
12 true that the SAPS were aware of this, it is true that  
13 Major-General Johnson investigated it. It is also  
14 unfortunately true that that brought timeously to the  
15 attention of the evidence leaders, so they wouldn't have  
16 committed the mistake they made of leading this evidence in  
17 good faith. I'm not sure, I don't think there's any basis  
18 for suggesting actual mala fides on the part of the police.  
19 I think it's a bona fide error, but it created a very, very  
20 unfortunate impression.

21 GENERAL NAIDOO: Sorry Chair, ja hence my  
22 statement because as you can understand I was not involved  
23 in the investigation and I could not be involved in the  
24 investigation because my understanding was this was  
25 discovered only once the Commission was in progress that

1 CHAIRPERSON: Mr Chaskalson, sorry to  
2 interrupt you. You have given us these in the files we  
3 were presented with. If they're already exhibits they  
4 don't have to be marked-

5 MR CHASKALSON SC: This presentation  
6 should be a separate exhibit.

7 CHAIRPERSON: Sorry, Mr Chaskalson, are  
8 these already exhibits or not?

9 MR CHASKALSON SC: They are already  
10 exhibits, but what I've done is I have put them together,  
11 given them times and indicated the change in orientation of  
12 the gun.

13 CHAIRPERSON: So this will then be MMM27,  
14 shall I simply call it Gun Presentation?

15 MR CHASKALSON SC: Gun Presentation will  
16 be fine.

17 CHAIRPERSON: And as you proceed you'll  
18 tell us – how many paragraphs are there, maybe we must  
19 number them. And as we go along you can tell us what they  
20 are. So MMM27.1 is the first, the second is 27.2, the  
21 third 27.3, fourth 27.4 and the fifth 27.5. Then as you go  
22 along you can tell us what they are.

23 MR CHASKALSON SC: The first photograph  
24 and the earliest photograph is the photograph taken by  
25 Warrant Officer Nong on Colonel Mere's camera. It's JJJ8

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1 3732 and it's eTV time 16:38:38. Now I have circled on  
 2 that camera, on that photograph a knife which is a knife  
 3 next to which a gun will subsequently appear. I cannot,  
 4 I've zoomed in on this photograph and I cannot see the gun  
 5 next to the knife in this photograph which is the first  
 6 one. If we go down to the next photograph that's Warrant  
 7 Officer Barnard's JJJ27 9425. That's the same scene but  
 8 now there is a gun which is under the leaves alongside the  
 9 knife and the orientation of the gun is marked with the  
 10 yellow arrows. And I'd ask the Commission to look at the  
 11 orientation of the gun relative to the knife. If we move a  
 12 little further we get to a subsequent photograph taken by  
 13 Warrant Officer Nong, this is at 17:05:06, JJJ8 3745. The  
 14 knife and the gun are still together, but the orientation  
 15 of the gun relative to the knife has changed. And the  
 16 holster appears – it's possible that the holster has been  
 17 opened. If we then go to the next photograph this is the  
 18 first photograph of the gun taken by Warrant Officer  
 19 Ramanala, JJJ29 254. There's a man with a pocket book  
 20 pointing in the direction of the gun, but the orientation  
 21 of the gun has changed a third time. If we go to the next  
 22 photograph this is Colonel Vermaak's photograph of the gun,  
 23 JJJ10 4555 at 17:44:50. The orientation of the gun has  
 24 changed yet again. Now, Major-General, at some stage SAPS  
 25 would have wanted to be able to prosecute someone in

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1 relation to either unlawful possession of this firearm or  
 2 in relation to the unlawful possession of a firearm at a  
 3 gathering, you would accept that?  
 4 GENERAL NAIDOO: That's correct.  
 5 MR CHASKALSON SC: Do you accept that  
 6 this completely haphazard treatment of the crime scene  
 7 which has been chronicled through these photographs is  
 8 going to make that prosecution much, much more difficult  
 9 that it might otherwise have been?  
 10 GENERAL NAIDOO: Chair, I can't comment  
 11 on the evidentiary value of the particular thing. Yes it  
 12 shows movement and contamination, but what I do remember of  
 13 this particular point because here the arresting officer or  
 14 the member who discovered the firearm and arrested the  
 15 individual was at all times with the firearm. He did not  
 16 break the chain so to speak of where he discovered the  
 17 firearm.  
 18 [14:54] So I don't know if that's of any value.  
 19 MR CHASKALSON SC: Well, you're still  
 20 going to have a difficult time explaining why that chain  
 21 starts with a broken link, why there is no firearm in the  
 22 first photograph of the position where the firearm  
 23 subsequently emerges, covered in leaves in a later picture  
 24 and then spins round like a top through the next 90  
 25 minutes.

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1 GENERAL NAIDOO: As I indicated, Chair,  
 2 the member that made the discovery obviously would testify  
 3 as to what he found. The photographs were obviously taken  
 4 in its original state and then also to get both sides of  
 5 the firearms, whether they have recorded in their pocket  
 6 books what they discovered before doing this, I am not sure  
 7 specifically but yes, I think there's two parts to the  
 8 evidence that will be given. Yes, the photograph, but I  
 9 think the evidence that the member that conducted the  
 10 arrest gives would be the primary evidence that should be  
 11 used.  
 12 MR CHASKALSON SC: Do you accept that  
 13 whether a prosecution in relation to this gun will or will  
 14 not succeed, there are a whole lot of unnecessary issues  
 15 that have been created by the failure properly to control  
 16 this crime scene in relation to this gun?  
 17 GENERAL NAIDOO: Chair, not necessarily  
 18 because it happens quite often that we arrest a person with  
 19 a firearm and don't take the photographs and the arresting  
 20 officer, as I indicated we don't necessarily carry the  
 21 equipment with us, he removes the person to a police  
 22 station and conducts the arrest and then the prosecution  
 23 follows and we have successful prosecutions. So you know,  
 24 that's based on the evidence that he gives, so I don't know  
 25 if I – I don't think I'm in a position to debate the

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1 evidentiary value, et cetera. We agree that yes, the  
 2 firearm was moved and it possibly shouldn't have but in  
 3 terms of the prosecution I said that there was a member who  
 4 found it, I found him there and he was explaining to  
 5 everybody how he discovered the firearm, et cetera. So I  
 6 think when we talk about the difficulty in prosecution, I  
 7 think it's not as difficult as is being alleged.  
 8 MR CHASKALSON SC: We may agree to  
 9 disagree on that one, Major-General.  
 10 CHAIRPERSON: Let me put this to you. It  
 11 may be that the difficulties are not insurmountable. It  
 12 may be that the arresting officer will be able to give  
 13 evidence on the point which will be believed by the court  
 14 and the conviction will follow but the point put to you, I  
 15 think, is that the difficulties may not be insurmountable,  
 16 only time will tell, but unnecessary difficulties have been  
 17 created by the fact that before the medics arrived a member  
 18 under your command, with a cell phone, should have been  
 19 instructed to take pictures of all the necessary, all the  
 20 relevant firearms and so on – I think it may only be one  
 21 firearm – all the relevant weapons on the scene, to put  
 22 arguments of the kind that may well be raised, totally in  
 23 the realm of impossibility.  
 24 GENERAL NAIDOO: Chair, of course the  
 25 ideal situation, that's what one would want. Even going

<p style="text-align: right;">Page 23882</p> <p>1 into a tactical situation one would want to have a 2 situation where we can have a live feed so these things are 3 captured as they happen. All these things are what we 4 would like to have and would like to achieve but I'm now 5 talking in terms of how currently, what the reality is, 6 that members function according to their best understanding 7 of the procedures and their understanding of what they 8 would be able to successfully do and deal with in the 9 country and maybe from our side what we need to do is to up 10 that game in terms of moving away from the practical old 11 policing but enhance the use of technology. I'm not 12 putting technology down, it's a valuable tool and it can 13 assist a lot but I'm saying in this particular case it was 14 not so.</p> <p>15 MR CHASKALSON SC: Major-General, I said 16 the third problem about what happened through a lack of 17 control of the crime scene is that it casts doubt on the 18 veracity of the SAPS versions before this Commission and in 19 this regard I'd like to look at the case of victim N, Mr 20 Mkhonjwa, and he's a very important person at scene 2 21 because he is the first person to be shot at scene 2, at 22 least according to the SAPS version. If we go to slide 231 23 of exhibit L –</p> <p>24 CHAIRPERSON: Will this point take a long 25 time or – I was proposing to take tea round about now but</p>	<p style="text-align: right;">Page 23884</p> <p>1 leading.</p> <p>2 MR SEMENYA SC: I will not be leading 3 him.</p> <p>4 CHAIRPERSON: So that presumably only 5 after that or at some stage perhaps during the course of 6 his evidence the application will be brought. Is that 7 correct?</p> <p>8 MR SEMENYA SC: That's my reasoning, 9 Chair.</p> <p>10 CHAIRPERSON: Yes, yes. Thank you. 11 Thank you, Mr Semenya. We've also been given some extra 12 material by CALS. We will mark it if we get to it today. 13 Major General, you're still under oath.</p> <p>14 GANASEN NAIDOO: Still under oath, Chair. 15 CHAIRPERSON: Mr Chaskalson.</p> <p>16 CROSS-EXAMINATION BY MR CHASKALSON SC (CONTD.): 17 Major General, I was talking about the case of victim N, Mr 18 Mkhonjwa, and in slide 231 SAPS records Mr Mkhonjwa's case 19 as the first case of sharp-point ammunition. That's 20 incident 2. FHA2 members fire at two charging armed 21 protesters on the western side of the koppie, of koppie 3, 22 killing one and wounding the other, and the bodies of Mr 23 Mkhonjwa and the wounded victim are visible on most of the 24 aerial shots taken from the west. I don't need to go to 25 them now, but it's quite clear that incident 2 refers to Mr</p>
<p style="text-align: right;">Page 23883</p> <p>1 if you can deal with this point very shortly we'll deal 2 with it before tea, otherwise perhaps we could take it 3 after tea. I'm in your hands.</p> <p>4 MR CHASKALSON SC: Chairperson, I think 5 it may make sense to take it after tea.</p> <p>6 CHAIRPERSON: Alright, we'll take the tea 7 adjournment now.</p> <p>8 [COMMISSION ADJOURNS COMMISSION RESUMES] 9 [15:20] CHAIRPERSON: The Commission resumes. 10 During the adjournment I was requested to, or we were 11 requested, the three of us, to grant an extension to those 12 parties minded to oppose the application for us to sit in 13 camera, with certain other relief, in relation to the 14 evidence of Mr X. The request was only for an extension 15 until tomorrow and so in the absence of any conceivable 16 prejudice I granted the application. I don't know when you 17 were likely to be moving that application, Mr Semenya, but 18 clearly an extension till tomorrow won't prejudice you in 19 any way.</p> <p>20 MR SEMENYA SC: No, it won't, Chair. 21 CHAIRPERSON: Do you know when you're 22 likely to be moving the application? I gather the next 23 witness is likely to be Colonel Vermaak. Is that correct? 24 MR SEMENYA SC: Indeed, Chair. 25 CHAIRPERSON: Who you will not be</p>	<p style="text-align: right;">Page 23885</p> <p>1 Mkhonjwa, victim N.</p> <p>2 Now that first shooting incident on the west side 3 of the koppie may well be the first stage of the process 4 that produces the crossfire between the TRT on the west and 5 the K9 and others on the east. Certainly in terms of 6 timing there are K9 members in position at the time that Mr 7 Mkhonjwa's death is reported from the sky by Lieutenant 8 Colonel Vermaak where he says "JOC chopper, JOC chopper, 9 two bodies at the back of the small koppie."</p> <p>10 Now I've taken you to the passage of Mr De 11 Rover's statement where he speculates that as many as nine 12 deaths might be crossfire deaths. We would merely make the 13 point that it may be considerably higher. In fact apart 14 from victim N there are only three deaths at scene 2 that 15 had been clearly explained by SAPS in circumstances which 16 rule out the possibility of crossfire. So it could be that 17 13 of the 16 remaining deaths were crossfire deaths, and if 18 they are crossfire deaths it's a tragedy, whatever the 19 cause. If they're crossfire deaths that was triggered by 20 shooting at an unarmed victim, well then it's more than a 21 tragedy; it's something of a disgrace to SAPS.</p> <p>22 So let's see what the story is in relation to 23 victim N and his weapons. If we can go to slide 9 of 24 exhibit K, if we go to the top photograph in slide 9 we see 25 that by the time the crime scene photographers had arrived</p>

<p style="text-align: right;">Page 23886</p> <p>1 there were a series of weapons around the body of victim N.  2 There was a knobkierie, a sort of flattened pole, and a  3 homemade spear. If we look at the earlier photographs  4 which were taken before the crime scene photographers  5 arrived, there are none of these weapons present.  6 Now the interesting thing about victim N is he's  7 a victim in respect of which Warrant Officer Breedt  8 disavows responsibility. If we go to the statement of  9 Warrant Officer Breedt at page 12, the statement of Warrant  10 Officer Breedt is part of the Moonoo reporting to - FFF15.  11 So I think that may be the best place to find it.  12 CHAIRPERSON: It's part of exhibit FFF15,  13 as you say, and it's in the evidence leaders' cross-  14 examination bundle of the present witness. It will be  15 found after the supplementary statement of Mr De Rover.  16 MR CHASKALSON SC: So if we just go to  17 the end of the information note where the statement starts  18 and find the statement of Warrant Officer Breedt, and if we  19 go down to paragraph 12 of that statement, sorry, page 12.  20 It's page 12, paragraph 14. The 12 is a page number, not  21 a -  22 CHAIRPERSON: Yes, 14 begins of course on  23 page 11.  24 MR CHASKALSON SC: Of we can turn to the  25 next page, "Ek herken nie die foto N op die fotoalbum nie.</p>	<p style="text-align: right;">Page 23888</p> <p>1 We can see a better shot of this homemade spear in that  2 position. This is just a context shot. In JJJ28, 9429 and  3 9432, 9429 will be another context shot. JJJ27, sorry, not  4 28. 9429, sorry, 9429, not 9428, and this is the same  5 scene and we see the homemade spear there under the feet of  6 the - under the foot of the SAPS officer, and if we see a  7 close-up at 9432 we'll see the homemade spear again.  8 That's a close-up, and we'll see more close-ups at 9442 and  9 9443. That's all of the same position that we've seen  10 though.  11 I've said the only place where I've seen a weapon  12 like this elsewhere on the scene is on the other side of  13 the koppie. I qualified that statement with "before the  14 weapons planting took place," because this weapon looks  15 very much like the weapon that was planted on victim K, Mr  16 Mngxande. So maybe if we can go to exhibit K, slide 7, if  17 we can go to exhibit K, slide 7, and if we zoom in on the  18 upper photograph of Mr Mngxande, exhibit K, slide 7, we  19 will see - again the quality of this photograph is not  20 particularly good, but there's a weapon that looks very  21 similar to that weapon on the body of Mr Mngxande, which  22 wasn't there at an earlier stage, if we go to the before  23 pictures at the bottom of that slide.  24 Maybe if we can get Captain Mohlaki's photograph  25 of - original photograph so we won't have the difficulty</p>
<p style="text-align: right;">Page 23887</p> <p>1 Ek is nie so seker van foto O in die fotoalbum nie. Daar  2 is egter 'n moontlikheid dat ek wapens hier kon verskuif of  3 teruggeplaas het. Ek kan ook nie die res van die foto's in  4 die fotoalbums - daar is vyf - herken nie." So Warrant  5 Officer Breedt doesn't recognise Mr Mkhonjwa's body and  6 doesn't claim any responsibility for the movement of  7 weapons onto the body of Mr Mkhonjwa.  8 If we can go back - and nobody else has provided  9 any explanation of how the weapons came to be on Mr  10 Mkhonjwa's body when the crime scene photographers arrived.  11 If we can go back to the photograph in exhibit K, slide 9,  12 because there's an interesting feature of these weapons and  13 the quality of the photograph is not great, but if we zoom  14 in on the homemade spear - can we zoom in on the homemade  15 spear? I've looked extensively at the photographs of scene  16 2 and the only photographic evidence I've seen of a spear  17 like this before the weapons planting took place is at the  18 other side of the koppie. It's next to victims I and J.  19 Maybe if we can go to JJJ8, 3734, 3734. And if we zoom in  20 at the point where I am pointing the pointer now, which is  21 - gosh, roughly in the centre of the page on the horizontal  22 axis and maybe a quarter of the way from the top of the  23 page, if we zoom in, we see a weapon like the homemade  24 weapon that appears next to the body of victim N. The  25 bodies in the foreground are the bodies of victims I and J.</p>	<p style="text-align: right;">Page 23889</p> <p>1 appearing in the gloom to see the shape of that weapon.  2 Unfortunately Captain Mohlaki's photographs are not  3 exhibits yet. Maybe if I can make a copy of this  4 particular photograph of Captain Mohlaki and - Chairperson,  5 maybe we should make this photograph an exhibit because  6 it's not an exhibit in its own right.  7 CHAIRPERSON: [Microphone off, inaudible]  8 seeing you've shown it to us we have to make it an exhibit,  9 don't we? So we'll make it MMM28. What's Mohlaki's rank?  10 MR CHASKALSON SC: Captain.  11 CHAIRPERSON: Captain Mohlaki's  12 photograph of whom?  13 MR CHASKALSON SC: Of Mr Mngxande, M-N-G-  14 X -  15 CHAIRPERSON: M-N-G-X.  16 MR CHASKALSON SC: - A-N-D-E.  17 CHAIRPERSON: A-N-D-E.  18 MR CHASKALSON SC: Photograph number  19 0500.  20 CHAIRPERSON: Photo 0500, right, I've got  21 that.  22 MR CHASKALSON SC: Now that, there is  23 next to the body of Mr Mngxande a homemade spear that looks  24 very similar to the homemade spear that was previously  25 above victims I and J and thereafter the homemade spear</p>



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1 that was next to victim N, and if we go to exhibit B, page  
 2 47, which gives us Captain Mohlaki's sketch plan of the  
 3 whole koppie at page 47, on page 47 Captain Mohlaki has  
 4 mapped the positions of bodies. I'm marking the position  
 5 of body I and J as it's marked by Captain Mohlaki. I'm  
 6 marking the position of Mr Mngxande as it's marked by  
 7 Captain Mohlaki, and victim N, Mr Mkhonjwa, is up to the  
 8 top of the picture a long way away from those bodies.  
 9 If it is the same spear it's very difficult to  
 10 see how that spear could have got to victim N innocently,  
 11 and I must say there's no clear evidence that it is the  
 12 same homemade spear, but there are some strange  
 13 coincidences in this regard. If we go – you recall when we  
 14 went to exhibit K, slide 9, that there was a kerie and a  
 15 flattened pole next to the spear alongside Mr Mkhonjwa and  
 16 if we go to JJJ27, 9442, we see that there's also a kerie  
 17 and a flattened pole next to the homemade spear that was  
 18 above victims I and J, 9442. I'm marking the homemade  
 19 spear, the kerie, and the flattened pole, and we'll see  
 20 those three also in 9432 and that's a very strange  
 21 coincidence that the homemade spear, the kerie and the  
 22 flattened pole in the one place where we've seen the  
 23 homemade spear also seem to resurface next to victim N.  
 24 It may or may not – I mean it may be a  
 25 coincidence, may not be, but if we were in a different

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1 situation, Major General, if you had exercised proper  
 2 control of the crime scene we wouldn't be left here  
 3 speculating about whether this whole tragic debacle at  
 4 scene 2 was triggered by SAPS shooting at a man who was not  
 5 armed at all. We'd know.  
 6 [15:40] Either he was armed and he had been – the fact  
 7 that he was armed was recorded properly before the crime  
 8 scene was messed around with, or he wasn't. We'd know that  
 9 fact and we wouldn't be left speculating as we are now  
 10 speculating. Do you have any response to that?  
 11 GENERAL NAIDOO: Chair, I think the last  
 12 two photographs are the photographs of the same scene  
 13 because I also see a knife which was not mentioned and I  
 14 saw it in the previous photograph as well. That's one  
 15 thing. Two, Chair, I think the only way to reconcile  
 16 whether there were similar weapons, all these weapons that  
 17 were recovered are exhibits and maybe one of the things to  
 18 address the issue is to go and see if there were similarly,  
 19 how many of similar weapons. Obviously if there were not  
 20 enough similar weapons then whatever can be inferred from  
 21 that, but what I can say is there were a lot of weapons  
 22 that were lying around generally and even some of the  
 23 members started heaping and Brigadier Calitz stopped them.  
 24 So, one, it's conceded that the members had a particular  
 25 procedure and they could have dealt with this thing in a

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1 better manner, individual members that were attending to  
 2 different bodies and number 2, I am indicating that the  
 3 similarities between the weapons can be eradicated by the  
 4 fact of viewing the exhibits and seeing how many of them  
 5 that look similar because I think at some stage it was  
 6 indicated that a lot of the weapons, et cetera, were  
 7 purchased from particular people, so I can't rule out the  
 8 fact that there were some similarities there.  
 9 CHAIRPERSON: I take it all the weapons  
 10 are still marked as exhibits, are they? Some of them  
 11 obviously will be used in some, the cases.  
 12 GENERAL NAIDOO: Chair –  
 13 CHAIRPERSON: Some cases, of course,  
 14 there'll be – in the case of some weapons they won't be  
 15 able to be linked to anybody so they won't feature as  
 16 exhibits presumably, will they?  
 17 GENERAL NAIDOO: Chair –  
 18 CHAIRPERSON: But are they all, as far as  
 19 you know, all safely under lock and key properly marked?  
 20 GENERAL NAIDOO: As far as I know they're  
 21 supposed to be because they're linked to these dockets that  
 22 IPID is currently responsible to investigate.  
 23 MR CHASKALSON SC: My point is not that  
 24 it's clear that weapons were planted on victim N. It's  
 25 just that we're left speculating that they may well have

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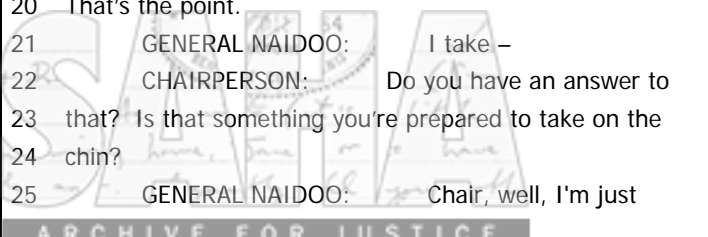
1 been planted at victim N and that's something that could  
 2 have been avoided if proper crime scene management had  
 3 taken place. Would you accept that?  
 4 GENERAL NAIDOO: Chair, as I indicated,  
 5 based on the size of the crime scene and the extent of the  
 6 crime scene, individual members that are attending to  
 7 individual areas where they are attending to people have a  
 8 responsibility to record in any way when they contaminate a  
 9 particular scene and it will – this is not a crime scene, a  
 10 one area crime scene, it was as the sketch plan indicated,  
 11 something that was strewn over a large area and I have  
 12 testified that the first time that I actually visited the  
 13 crime scene from one end to the other was when I did it  
 14 with the members of IPID. So one concedes that members  
 15 that were responsible or who attended to specific things  
 16 had a responsibility to record if they did contaminate it  
 17 and inform the criminal record centre personnel that were  
 18 attending that this is the contamination that they  
 19 inflicted on that scene.  
 20 MR CHASKALSON SC: Major-General, I'm  
 21 going to leave this topic now and to move to the facts of  
 22 when you yourself shot at scene 2.  
 23 CHAIRPERSON: Can I just ask a question  
 24 on this? I understand individual members are supposed to  
 25 do various things in relation to crime scenes and so on but

1 if they're not doing it or it's not clear they're doing it,  
 2 isn't it a responsibility which cannot so easily be  
 3 sloughed off by the person in command or in charge of the  
 4 crime scene, in this case you, to say, to issue a command,  
 5 everybody here must please see to it, either using his own  
 6 cell phone or if he hasn't got one, using someone else's  
 7 cell phone, that photographs be taken of these weapons,  
 8 where they are in position before they're moved. We are  
 9 going to have to move them soon because the medics are  
 10 coming, it's important that they have a safe scene to  
 11 operate in but in the meanwhile, before that happens,  
 12 please ensure that photographs are taken of the scene.  
 13 Isn't that something that you should have done?  
 14 GENERAL NAIDOO: Chair, I indicated  
 15 already when Brigadier Calitz and I came together we did  
 16 notice some of the members of the public order police  
 17 moving the weapons and he did then call out to all the  
 18 members there indicating, listen, this is a crime scene and  
 19 you can't move these weapons, you know what the procedure  
 20 is at a crime scene so we need to preserve the crime scene  
 21 as it is because the LCRC people will come in and take over  
 22 the scene. So there was – there was no specific  
 23 indication, yes, you must take a photograph, et cetera, as  
 24 I already testified to.  
 25 CHAIRPERSON: When exactly did that

1 indicating that no, that's not what I did.  
 2 CHAIRPERSON: I know it's not what you  
 3 did. The question is, it will be argued that you should  
 4 have, you see. We are going to have to make a finding on  
 5 that so do you have a comment on that?  
 6 GENERAL NAIDOO: Chair, yes, we went to –  
 7 as I indicated at that stage there was somebody already  
 8 taking photographs. We've already testified to that, it  
 9 was the driver of the Nyala that Brigadier Calitz was in,  
 10 papa1, yes. So obviously on that basis we would not say  
 11 such a thing because we know that there's a person that's  
 12 busy taking photographs even before I saw Brigadier Calitz.  
 13 MR CHASKALSON SC: But I must again come  
 14 back to the question that I asked you earlier, the person  
 15 you saw taking photographs would have been Warrant Officer  
 16 Nong. He was the first person taking photographs at scene  
 17 2. Was this before the medics arrived because if it was  
 18 before the medics have arrived then we can go to the  
 19 photographs that Warrant Officer Nong took and we can see  
 20 the scene in its pristine state?  
 21 GENERAL NAIDOO: Chair, as I indicated  
 22 already, I could not remember the specific sequence but I  
 23 did note that there was somebody taking photos. I  
 24 testified to that as well.  
 25 CHAIRPERSON: The evidence which was

1 happen? When did Brigadier Calitz come to the scene?  
 2 GENERAL NAIDOO: Chair, as we proceeded  
 3 over the rocks and came to the front, as the arrests  
 4 started taking place, Brigadier Calitz joined me. So he  
 5 then indicated look, he will take the suspects, as soon as  
 6 the Canter arrives he will take them away and I would  
 7 remain there until the crime scene people arrived.  
 8 CHAIRPERSON: Had the paramedics arrived  
 9 yet?  
 10 GENERAL NAIDOO: Chair, I can't  
 11 specifically indicate whether they had already arrived or  
 12 were arriving, no, I can't specifically indicate.  
 13 CHAIRPERSON: You see the point that will  
 14 be made obviously is, before the paramedics came, while  
 15 they were still on the way you should have ensured – and I  
 16 think before Brigadier Calitz came – you should have  
 17 ensured that this kind of problem would never arise by  
 18 giving a clear instruction to the people concerned to take  
 19 photographs so that there can be no arguments later.  
 20 That's the point.  
 21 GENERAL NAIDOO: I take –  
 22 CHAIRPERSON: Do you have an answer to  
 23 that? Is that something you're prepared to take on the  
 24 chin?  
 25 GENERAL NAIDOO: Chair, well, I'm just

1 gathered by Major-General Johnson was that when the medics  
 2 arrived – it's in the statement that we have before us –  
 3 what one could perhaps call the leader of the paramedics  
 4 said we can't do anything here until the scene is rendered  
 5 safe, and so nothing apparently appears to have been done  
 6 as far as moving the weapons are concerned until there was  
 7 a specific request from, if I can call it the head of the  
 8 paramedics. So it would seem that prior to the arrival of  
 9 the paramedics it would have been possible to have done  
 10 what should have been done and it also appears it wasn't  
 11 done. So the question is who was responsible for that?  
 12 GENERAL NAIDOO: Chair, as I said, I  
 13 personally was at that stage not aware that the paramedics  
 14 had indicated they will not treat somebody who had a  
 15 firearm. Those were things that were communicated to the  
 16 members that were physically guarding, so I suppose had the  
 17 member been given that or had we become aware of it we  
 18 could have said yes, before we move it, we could have but  
 19 I, at that stage, did not know that the paramedic had  
 20 refused to treat a person because of all these things. I  
 21 had the K9 there to guard the paramedics first of all, yes.  
 22 MR CHASKALSON SC: Major-General, I can  
 23 answer my own question. I was hoping that Warrant Officer  
 24 Nong's photos would give us a pristine picture of the  
 25 scene, but the first photograph of the victim by Warrant



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1 Officer Nong is in fact a photograph of the victim being  
 2 handled by paramedics. So they come after the paramedics  
 3 arrive on the scene. Chairperson, I'm moving on to a  
 4 fairly lengthy topic now. I'm in your hands on this. I  
 5 can use the next 10 minutes to start it or I can begin the  
 6 topic tomorrow morning.

7 CHAIRPERSON: I would like you to use as  
 8 much time as you can, so if it can be done without  
 9 inconvenience I'd be grateful if you'd start. The sooner  
 10 you start, the sooner you finish, the sooner Ms Le Roux  
 11 gets a chance to start.

12 MR CHASKALSON SC: Alright. Major-  
 13 General, the topic I'm going to move to now, the  
 14 circumstances in which you shot at scene 2 and if I  
 15 understand your version correctly it's that you and the NIU  
 16 members who were with you at the time shot in self-defence  
 17 at a striker who was shooting at you.

18 GENERAL NAIDOO: Chair, yes. What I  
 19 indicated is that I was part of a line, I was walking a  
 20 little in front and there was a person that shot at me. I  
 21 returned two shots before I managed to get to cover. I am  
 22 aware that behind me there were members from the NIU that  
 23 fired, yes.

24 MR CHASKALSON SC: Now, and from your  
 25 statement at page 12, paragraph 75, the shots that you

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1 returned were directed at the shooter who was some 50  
 2 metres away and who was with another person.

3 GENERAL NAIDOO: Chair, yes. I could  
 4 see, there was a tree – or I'm not sure if there was a rock  
 5 in front of the tree or the tree in front of the rock and  
 6 these people were behind this rock, yes.

7 MR CHASKALSON SC: There was one shooter,  
 8 two people.

9 GENERAL NAIDOO: I noticed two people, it  
 10 could have been more or less – more, I'm not sure but I  
 11 specifically noticed two.

12 MR CHASKALSON SC: But you'd only seen  
 13 one person shoot.

14 GENERAL NAIDOO: I saw the one person  
 15 that was, yes, using the tree as shelter.

16 MR CHASKALSON SC: And if I understand  
 17 your evidence correctly, after these shots and the shots  
 18 from the NIU members alongside you at the man who was  
 19 shooting at you, you and the NIU group with whom you were  
 20 coming over the rocks, did no more shooting that day?

21 GENERAL NAIDOO: Chair, as far as I  
 22 remember, yes, there was no shooting other than that  
 23 incident. I only used, I discharged two rounds as far as  
 24 that's concerned.

25 MR CHASKALSON SC: Yes, but I'm talking

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1 about your, the line that was coming over the rocks with  
 2 you. In your presence –

3 GENERAL NAIDOO: Chair –  
 4 MR CHASKALSON SC: - after that shooting,  
 5 no NIU member shot later that day?

6 GENERAL NAIDOO: Chair, there were two  
 7 lines of NIU. If you're referring to the NIU line on my,  
 8 on the left, the approximately three or four members  
 9 together with a member of K9, yes, I'm referring to those  
 10 two. As far as I can recall after that incident they did  
 11 not shoot again.

12 MR CHASKALSON SC: Now, Major-General,  
 13 this version that you've testified to in the Commission  
 14 paints a very different version to the one that is  
 15 described by Warrant Officer Mamabolo in exhibit KKK61. So  
 16 if we can call up KKK61 and if we, while we're calling up I  
 17 might add that the version of Warrant Officer Mamabolo in  
 18 KKK61 is confirmed on oath as being correct by all of the  
 19 other occupants of papa11 who were witness to that episode  
 20 at the time. Can we have KKK61? It is KKK61. We'll get a  
 21 copy of KKK61 to you. In the meantime maybe for  
 22 orientation purposes if we could call up KKK16.5141,  
 23 KKK16.5141. In fact that's probably an unnecessary  
 24 orientation photograph because a better orientation  
 25 photograph is MMM2, which I can now see has papa11 in the

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1 shot. So if we can call up MMM2 first to orient ourselves  
 2 and, Major-General, if I understood your evidence  
 3 correctly, the point at which you shot was somewhere  
 4 between F2 and F3, is that correct roughly, or would it be  
 5 E2 and E3?

6 GENERAL NAIDOO: Chair, I think more  
 7 likely in F3, somewhere there, somewhere a little more to  
 8 the right. Without zooming in I can't specifically say but  
 9 somewhere in F3, yes.

10 MR CHASKALSON SC: Alright, so you shot  
 11 in F3. Papa11 is the vehicle that I'm pointing to now in  
 12 D3 and Warrant Officer Mamabolo describes seeing you and  
 13 the NIU coming over the rocks which would be the rocks on  
 14 column, on row 3 from F3 through to E3. And what he says,  
 15 if we go to KKK61 and we start at paragraph 14, "Our  
 16 movement from where the arrests were effected to the  
 17 koppie" – and when he's talking about where the arrests  
 18 were effected he's talking about the position where he was  
 19 next to Brigadier Calitz to the north of the koppie – "Our  
 20 movement from where the arrests were effected to the koppie  
 21 is reflected in the photo ETV document 1514 and Botha video  
 22 1821." Those were documents that formed part of the  
 23 presentation that was used in the cross-examination of  
 24 Brigadier Calitz. "We proceeded to the koppie, went past  
 25 the water cannon, the two Nyalas and proceeded into the

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1 koppie where we ultimately parked our Nyala" and we've just  
 2 seen that position in MMM2. "At the time that we arrived  
 3 at the koppie the firing of live ammunition was still  
 4 occurring. There were a number of police officers who were  
 5 busy arresting the protesters and made them to lie on the  
 6 ground as we passed the two Nyalas and the water cannon.  
 7 I'm not able to state from which unit the arresting  
 8 officers were."  
 9 [15:59] And again if we can go back to MMM2 to orient  
 10 ourselves, what Warrant Officer Mamabolo is describing is  
 11 driving into the copy either through the diagonal – I  
 12 forget whether it's through the diagonal from B1 to the  
 13 position where he is in D3, or down the gap in column D,  
 14 from D1 to where he is. He's passing the water cannon,  
 15 which I'm marking in B2, and the two Nyalas that are in B3  
 16 and A3 and he's seeing people who were being made to arrest  
 17 in the area that in MMM3 is vacant, is open, but at the  
 18 time of Warrant – well, he's there already; it shouldn't  
 19 be. So there should be people in C2, some people being  
 20 made to arrest. It's possible that one cannot see them  
 21 because of they are behind the bushes that I'm marking  
 22 between C2 and C3.  
 23 He then states in paragraph 15, if we go back to  
 24 KKK61, "We parked our Nyalas such that the police and the  
 25 arrested protesters were separated." If we can go back to

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1 MMM2 so that we understand what he's saying, he's parking  
 2 his Nyala between the police who are going to come over the  
 3 koppie and the arrested protesters on this side to the left  
 4 of the picture as we watch. "I got out of the Nyala on the  
 5 side of the police who were on top of the boulder" - the  
 6 boulder he refers to are these rocks in column F and  
 7 possibly column E - "firing live ammunition towards the  
 8 direction of the protesters. I expected the members to  
 9 notice me and I shouted at them, 'Cease fire and stop  
 10 fire.' I raised my hands to indicate to the police to stop  
 11 and cease fire, but the shooting continued. As the  
 12 shooting of live ammunition described above continued, I  
 13 observed General Naidoo emerging on top of the boulder from  
 14 the same position that the firing occurred, with a pistol  
 15 in his hand, but I'm not in a position to state whether or  
 16 not he shot. Except for General Naidoo other police  
 17 officers had rifles in their possession. At the koppie at  
 18 that stage I did not see any deceased persons. Once the  
 19 shooting of live ammunition stopped I observed some of the  
 20 protesters coming out of the bushes behind the  
 21 boulders/rocks with their raised hands. Suddenly I saw one  
 22 of the protesters falling on the ground. Some of the  
 23 protesters were crawling towards the open area where the  
 24 arrested protesters were. The shooting of live ammunition  
 25 that I observed was not by POP members. I instructed the

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1 crew of the Papa11 to get out of the Nyala and to direct  
 2 the protesters to the area where other arrested persons  
 3 were. I did not see any protesters shooting at the police  
 4 using firearms or attacking the police with dangerous  
 5 weapons."  
 6 And this version is, as I say, confirmed by six  
 7 other occupants of Papa11. They are Constable Sebane,  
 8 Constable Zondi, Constable Xhosa, Constable Malesa – I  
 9 think it's Constable Malesa – and let me not give people  
 10 the wrong ranks, it is Constable Malesa, Constable Mathavha  
 11 and Warrant Officer Makonyana. Everybody other than  
 12 Constable Mathavha just confirms the correctness of that  
 13 version insofar as it's relevant for present purposes, but  
 14 Constable Mathavha goes further, and if we can call up his  
 15 statement, which will need to be an additional exhibit –  
 16 CHAIRPERSON: Mr Chaskalson, I wonder  
 17 whether we can record his statement as an exhibit and look  
 18 at it on the morrow. It's already after 4 o'clock.  
 19 MR CHASKALSON SC: Chairperson, if I can  
 20 merely read the relevant passage and then I won't ask  
 21 questions beyond that, but just identify it. It will be –  
 22 CHAIRPERSON: 29, is it? How do you  
 23 spell his surname?  
 24 MR CHASKALSON SC: M-A-T-H-A-V-H-A.  
 25 CHAIRPERSON: M-A-T-H-A?

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1 MR CHASKALSON SC: V-H-A.  
 2 CHAIRPERSON: V-H-A, Constable, his  
 3 statement, alright. Okay, read the relevant passage and  
 4 then –  
 5 MR CHASKALSON SC: In paragraph 3 he  
 6 says, "I've read the supplementary statement of Warrant  
 7 Officer MP Mamabolo and state that save for what is set out  
 8 in paragraphs 3.1 to 3.4 of this statement, I have observed  
 9 and witnessed the accounts as set out in paragraphs 4 up to  
 10 19 of Mamabolo's statement," and that covers everything  
 11 we've read. "In this paragraph I set out the following  
 12 information. As I was driving the Nyala following the  
 13 Gauteng water cannon I had to navigate my way because of  
 14 the veld fire that had occurred. Whilst inside the koppie  
 15 I heard the firing of live ammunition from the western  
 16 side, but did not know who was responsible for such  
 17 shooting. As the shooting occurred I noticed some  
 18 protesters moving out of the bush and behind the rocks with  
 19 their raised hands. Later on I noticed members of TRT  
 20 emerging from the western side. At the koppie I did not  
 21 get out of the Nyala. I saw General Naidoo firing a pistol  
 22 into the bush on the southern side whilst he took cover  
 23 behind a rock."  
 24 So Constable Mathavha confirms everything but  
 25 says that he also saw you shooting while you took cover

1 from behind a rock. Chairperson, if I can pick this up  
2 tomorrow morning – Thursday –  
3 CHAIRPERSON: Tomorrow morning you'll be  
4 on your own here. Well, you won't; there will be other  
5 people having a committee meeting here, but if you would  
6 like to be back with us I suggest you come back on Thursday  
7 morning at 9 o'clock, to which time we will now adjourn.

8 [COMMISSION ADJOURNED]

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