

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 201

13 MARCH 2014

PAGES 24598 TO 24720



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64 10th Avenue, Highlands North, Johannesburg
P O Box 721, Highlands North, 2037
Tel: 011-440-3647 Fax: 011-440-9119 Cell: 083 273-5335
E-mail: realtime@pixie.co.za
Web Address: <http://mysite.mweb.co.za/residents/pak06278>



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1 [PROCEEDINGS ON 13 FEBRUARY 2014]
 2 [09:12] MR BRICKHILL: Chair, at the close of
 3 proceedings yesterday three -
 4 CHAIRPERSON: Before we start, there's a
 5 housekeeping announcement I have to make and that is I'm
 6 informed that in consequence of the death of the mother of
 7 Solomon Mahlangu the municipality of Tshwane wishes to use
 8 this chamber for holding a function in her memory this
 9 afternoon and so it follows that we will not be able to sit
 10 this afternoon. We will adjourn accordingly at 1 o'clock.
 11 It's probably best that I tell those present here early
 12 rather than later, so if they have to make, or wish to make
 13 arrangements they can do so.
 14 I'm sorry to have interrupted you, Mr Brickhill.
 15 You were saying, you were reminding us what happened
 16 yesterday just before we adjourned.
 17 MR BRICKHILL: Thank you, Chair. At the
 18 close of proceedings three documents were introduced as
 19 exhibits. They were numbered MMM49.1, 49.2, and 49.3. I
 20 had dealt with the first document, which is the policy on
 21 crime scene management, with Major General Naidoo, and was
 22 turning to deal with the procedure manual, exhibit MMM49.2.
 23 CHAIRPERSON: I'm sorry, Mr Brickhill,
 24 there's another housekeeping announcement I have to make,
 25 or actually a question I have to ask, which Adv Hemraj has

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1 drawn my attention to the fact that on our tables this
 2 morning is a document headed "In the Marikana Commission of
 3 Inquiry, witness statement Shadrack Zandihle Mtjamba. Now
 4 that is the statement I think that was previously filed by
 5 Mr Mpofo on behalf of the injured and arrested persons. I
 6 just want to confirm, are you going to be referring to it
 7 in your cross-examination -
 8 MR MPOFU: Yes, Chair -
 9 CHAIRPERSON: - or is Mr Brickhill going
 10 to deal with it?
 11 MR MPOFU: No, it was submitted by me,
 12 Chairperson, together with one or two other documents and a
 13 set of photographs. Those documents the Commissioners
 14 could just put aside.
 15 CHAIRPERSON: Yes, I just want to know
 16 what they were doing and if it's relevant -
 17 MR MPOFU: Yes, well, and Chairperson,
 18 the rest of the documents had been given to the witness.
 19 The Mtjamba statement he was given, he read it this
 20 morning. So -
 21 CHAIRPERSON: Yes, I've only got the
 22 Mtjamba statement on the table here.
 23 MR MPOFU: Oh, do you?
 24 CHAIRPERSON: But anyway -
 25 MR MPOFU: Sorry, I'm sorry. No, the

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1 rest are still here.
 2 CHAIRPERSON: In view of the fact that
 3 you are going to refer him to it, not Mr Brickhill -
 4 MR MPOFU: Yes, and not Mr Brickhill -
 5 CHAIRPERSON: I imagine, depending how
 6 lengthy he will be, it will probably be in order if you
 7 give them to us at teatime. Anyway, I think all the
 8 housekeeping, anyone got any other housekeeping points they
 9 want to raise? Housekeeping done. Carry on with your
 10 cross-examination.
 11 MR BRICKHILL: Chair, you should now also
 12 have before you copies of MMM49.3. That's the document
 13 provided at the close of proceedings yesterday by the SAPS.
 14 It was indicated to us that this is the revised and current
 15 version of what we had introduced as MMM49.2. We accept
 16 that that is so and shall address Major General Naidoo in
 17 relation to this document, MMM49.3.
 18 CHAIRPERSON: Well, the question that
 19 arises at the very beginning is, is this document a post-
 20 August 2012 document, or was it extant and applicable
 21 already in August 2012? You don't have to answer now, but
 22 that will be relevant, and if it's after that it's
 23 interesting as to improvement that they thought of, but -
 24 MR SEMENYA SC: It is a document since
 25 2010 and still applicable.

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1 CHAIRPERSON: Thank you, that answers
 2 that question.
 3 MR BRICKHILL: I'm indebted to my learned
 4 friend.
 5 CHAIRPERSON: Thank you, Mr Semanya.
 6 CROSS-EXAMINATION BY MR BRICKHILL (CONTD.):
 7 Major General Naidoo, you should have before you also a
 8 copy of what is now MMM49.3. It's headed "Module 9, Crime
 9 Scene Management."
 10 GENERAL NAIDOO: I do have.
 11 MR BRICKHILL: I would take you, please,
 12 to page 418 of the document. Under the heading
 13 "Introduction" and the broader heading "Crime Scene
 14 Process" it's indicated that the purpose of this crime
 15 scene Process Manual is to achieve more convictions in the
 16 courts of law of South Africa. Do you see that?
 17 GENERAL NAIDOO: I see that, Chair.
 18 MR BRICKHILL: If I could take you over
 19 the page to page 419, the second, third paragraph from the
 20 top beginning with the words "It is foreseen." It reads,
 21 "It is foreseen that these guidelines will apply to every
 22 crime scene, irrespective of the complexity or scope
 23 thereof. On smaller scenes one person may fulfil numerous
 24 activities, but on more complex scenes a different
 25 individual may perform each activity. Accordingly the

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1 process guide applies to all crime scenes." You accept
2 that?

3 GENERAL NAIDOO: I do.

4 MR BRICKHILL: It would accordingly apply
5 to what is –

6 CHAIRPERSON: I'm sorry, Mr Brickhill,
7 someone is so using the earphones that they can be heard
8 and they're a source of disturbance. Now I can hear it
9 now. Now whether that's what I'm saying being interpreted
10 or whether somebody is using their headphones in order to
11 listen to the radio, that I understand has also been
12 happening – we can still hear it. Now is that someone
13 interpreting what I'm saying or is that someone listening
14 to the radio? Apparently these headphones have been used,
15 so I'm informed, by people not to listen to what's
16 happening hear but plug it into their cell phones and
17 listen to the radio. Now that's got to stop. Anyone who
18 does that will be requested to leave the chamber and the
19 headphones will be taken away.

20 I still hear it. So we don't want to hear – and
21 I take it, it's not someone listening to the radio. It's
22 presumably the interpreter interpreting what I'm saying,
23 but if the volume is turned down sufficiently and the
24 person who's using the headphones has them on his or her
25 ears then we shouldn't hear it because it doesn't come from

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1 every set of headphones, it only seems to come from one or
2 two, and we're not going to carry on until it's been sorted
3 out. Let's hear if the interpreter interprets something
4 else I say, whether we can still hear it. Well, we'll
5 carry on in the meanwhile but if it becomes louder and a
6 source of disturbance we'll have to stop the proceedings
7 until that source of disturbance is removed.

8 MR BRICKHILL: Thank you, Chair. Major
9 General Naidoo, so we see that on page 419 the Process
10 Manual applies to all crime scenes. It would accordingly
11 apply to scene 1 at Marikana. Is that correct?

12 GENERAL NAIDOO: That's correct, Chair.

13 MR BRICKHILL: And it would also apply to
14 scene 2.

15 GENERAL NAIDOO: That is correct, Chair.

16 MR BRICKHILL: Now in the table on page
17 419, in the second half of the page we see an overview of
18 the processes and responsibilities in relation to crime
19 scene management. Do you see that?

20 GENERAL NAIDOO: I see that, Chair.

21 MR BRICKHILL: Now the processes begin
22 with the event; in this case the event would be the
23 incident at both scene 1 and scene 2. Is that correct?

24 GENERAL NAIDOO: That's correct, Chair.

25 MR BRICKHILL: And ordinarily we see that

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1 the next step would be a report, that would be a report in
2 most instances from the public to the SAPS. Is that
3 correct?

4 GENERAL NAIDOO: That's correct, Chair.

5 MR BRICKHILL: In the case of the
6 Marikana events the police were already obviously on the
7 scene and so those steps relating to the reporting by the
8 public to the police don't arise.

9 GENERAL NAIDOO: That is correct, Chair.

10 MR BRICKHILL: I would like to take you
11 now to page 434 where we are dealing with what is referred
12 to as the first member. I understand that the term
13 "responder" is also used to refer to the first member in
14 police operations. Is that correct?

15 GENERAL NAIDOO: Yes, it could be used.

16 MR BRICKHILL: Now we see from halfway
17 down the page that the first member is the nearest
18 available SAPS member, irrespective of unit, who is
19 dispatched to the crime scene. Is that correct?

20 GENERAL NAIDOO: That is correct, Chair.

21 MR BRICKHILL: We dealt yesterday with
22 the evidence that you were the most senior ranking officer
23 at scene 2 and you confirmed Brigadier Calitz's evidence
24 that you were in command and control at scene 2. Would you
25 accept then that you played the role of first member at

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1 scene 2?

2 GENERAL NAIDOO: Not entirely, Chair.

3 MR BRICKHILL: Please explain.

4 GENERAL NAIDOO: Chair, I think I
5 testified even yesterday at that stage that there were
6 numerous police officials on the scene and a lot of them
7 had places before I arrived. I also testified that there
8 were parts of the scene at that stage that I didn't even
9 visit because of the scale of the scene, so I would accept
10 I was the most senior member on the, at scene 2 and the
11 fact that I was first member at the entire scene cannot be
12 correct.

13 MR BRICKHILL: We're of course dealing
14 with a large scene, and as you correctly point out, there
15 were a number of police officials on the scene. The
16 language of the Process Manual is singular, a first member,
17 but you would put it then that those members initially on
18 the scene would constitute the first member. Is that
19 correct?

20 GENERAL NAIDOO: If there were other
21 members, yes. It does not, the identification of a first
22 member is not restricted to the most senior member. It
23 refers to the first member of the SAPS, irrespective of the
24 unit. So I have testified over the last few days that
25 there were various members at the scene, at different

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1 scenes, different parts of the scene, who could also fit
 2 the description of first member.
 3 MR BRICKHILL: In addition to you?
 4 GENERAL NAIDOO: Possibly.
 5 CHAIRPERSON: I have difficulty in seeing
 6 how that can be applied to the facts of this case. I
 7 understand, I've read parts of this document last night. I
 8 was puzzled how it applies in its entirety to what we're
 9 busy with. I mean among those police people, police
 10 members you refer to who were there before you were, were
 11 people who fired shots.
 12 GENERAL NAIDOO: Chair.
 13 CHAIRPERSON: They would in the eyes of
 14 IPID be potential accused. So you would have, I don't know
 15 whether I can call it a Gilbertian situation, but I suppose
 16 that's the best adjective that I can think of, where the
 17 first policeman on the scene who fires a shot may well have
 18 fired it in circumstances which were not justified. I mean
 19 he can't be the first member on the crime scene if the
 20 crime is a crime that he may have committed himself. So I
 21 don't quite understand how what is set out in the passage
 22 which is put before us at the moment applies in its
 23 entirety to the case we're busy with. Clearly some kind of
 24 adaptation would be required in a situation like the one
 25 we're busy with and I'm not quite sure what adaptation

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1 would be required. But that's a matter I trust you'll be
 2 exploring, Mr Brickhill, will you, with the witness?
 3 MR BRICKHILL: Indeed, Chair.
 4 CHAIRPERSON: You understand my problem?
 5 MR BRICKHILL: Indeed, Chair, and I'm –
 6 CHAIRPERSON: The first member physically
 7 on the scene may be someone who shot in circumstances where
 8 principles of self-defence and private defence don't apply,
 9 in which case he would actually be a person who committed
 10 the crime or a crime on the scene. On the other hand of
 11 course, to be fair, he may have acted in circumstances
 12 entirely covered by the doctrines of private defence or
 13 self-defence. Does that make him the first member even
 14 though IPID may suspect that he may be an accused and may
 15 open a docket against him? These instructions seem to deal
 16 with third parties of the force who are dispatched to a
 17 crime scene after it had been reported. Isn't that so?
 18 MR BRICKHILL: Chair, it is so that the
 19 policy, that was the initial issue that we dealt with. The
 20 policy initially contemplates that in most instances the
 21 public would call the police to the scene.
 22 CHAIRPERSON: To put it bluntly, one of
 23 the persons who fired shots was the Major General.
 24 GENERAL NAIDOO: Exactly.
 25 CHAIRPERSON: It may well be contended at

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1 the end that he wasn't entitled to shoot when he did and
 2 that he also is potentially an accused and we may even have
 3 Mr Mpofu making recommendations about him. I'm not saying
 4 that will necessarily happen, but I'm just mentioning it by
 5 way of a problem that arises in making him the first
 6 member. I can understand his job is to not tamper with the
 7 scene, to leave it as best he can, and it may well be
 8 argued that irrespective of this procedure, this process or
 9 policy document, as the senior member of the service there
 10 at the time he should have seen to it that the scene was
 11 not interfered with and he may well say that that's what he
 12 did. But anyway, but I'm not sure that he would
 13 necessarily be acting as dispatcher or first member or any
 14 of the other people who are referred to in this document,
 15 so I've got a problem which I hope will be solved by the
 16 end of your cross-examination.
 17 MR BRICKHILL: Chair, perhaps I can
 18 explore the issue further with the Major General.
 19 COMMISSIONER HEMRAJ: General, isn't
 20 there a standing order that relates to an officer attending
 21 a scene where a policeman on duty has discharged his
 22 firearm?
 23 GENERAL NAIDOO: I have also referred to
 24 that particular issue, yes. When a shooting occurs a
 25 senior member, preferably an officer, attends a shooting

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1 incident so that he can gather facts and submit a shooting
 2 report, which is not linked to the criminal investigation
 3 itself, and that is submitted as an internal document from
 4 where also possibly disciplinary action, etcetera, is
 5 considered.
 6 CHAIRPERSON: And where the member of the
 7 service is of the rank of major general and he discharges
 8 his firearm, does he have to wait for an officer senior to
 9 him to come before the procedure laid down in the standing
 10 order applies? How does it work in practice?
 11 GENERAL NAIDOO: Chair, I think I've
 12 already alluded in previous days that for those purposes
 13 there are standby officers that are placed at every station
 14 to attend to any scene. Obviously yes, the, when a senior
 15 officer is involved it gets a bit more complicated, but the
 16 responsibility of the duty officer is not diminished in
 17 terms of attending that scene, as I indicated with the fact
 18 that a Public Order Police official might, officer might be
 19 junior to the cluster commander, but he in terms of policy
 20 takes charge. Similarly with the crime scene; the crime
 21 scene manager is the authority who then manages a crime
 22 scene once he takes it over.
 23 CHAIRPERSON: You see, I'm maybe stealing
 24 some of Mr Brickhill's thunder and what I see on the screen
 25 that he's asked us, the page that he's asked us to look at

<p style="text-align: right;">Page 24610</p> <p>1 is the second paragraph under the heading – sorry, the 2 first paragraph under the heading “Appointment. The first 3 member is the first representative for the SAPS and has to 4 remain on the primary crime scene executing the duties of a 5 crime scene manager until the second handover to the 6 official crime scene manager.” Now who was the official 7 crime scene manager? Did an official crime scene manager 8 come to the scene? 9 GENERAL NAIDOO: Yes, Chair. 10 CHAIRPERSON: Who was he? 11 GENERAL NAIDOO: Captain Mohlaki. 12 CHAIRPERSON: I see, and before he came 13 who was obliged in terms of the sentence I’ve read to 14 execute the duties of the crime scene manager until Captain 15 Mohlaki arrived? 16 GENERAL NAIDOO: Chair, as I indicated, 17 at that stage once the incident occurred I did a number of 18 things - and I was taken under cross-examination – mindful 19 of the fact that yes, I had discharged rounds at the scene 20 and that had to be investigated, but at the same time I 21 could not then throw up my hands and say I’ll wait for 22 somebody to take charge of the scene, and several actions 23 which I have testified to were undertaken, which started 24 with also getting the detectives and Captain Mohlaki to the 25 scene, and they have indicated they already were, but they</p>	<p style="text-align: right;">Page 24612</p> <p>1 handling of the crime scene in due course? 2 GENERAL NAIDOO: That’s correct, Chair. 3 MR BRICKHILL: And so if you and the 4 other K9 members had not joined koppie 3, the complication 5 that the Chair raises that you also discharged a firearm 6 and subsequently had to take control of the crime scene 7 would not have arisen? 8 GENERAL NAIDOO: Chair, that was not 9 foreseen either. 10 MR BRICKHILL: It was not foreseen and it 11 would not have arisen? 12 GENERAL NAIDOO: Correct, Chair. 13 MR BRICKHILL: So following what you say 14 was the unforeseen decision to go to koppie 3 and at the 15 end of the shooting there, it was still necessary for 16 members on the scene to discharge the responsibilities of 17 the first member? 18 GENERAL NAIDOO: That is correct, Chair. 19 MR BRICKHILL: And it’s also correct that 20 you attempted to do so, you took a number of the steps that 21 as we all see constitute the responsibilities of the first 22 member? 23 GENERAL NAIDOO: Chair, I tried to ensure 24 some coordination, yes. 25 MR BRICKHILL: We see that under the</p>
<p style="text-align: right;">Page 24611</p> <p>1 went first via scene 1 and then came to scene 2. So I 2 think if we’re going to go through the process, maybe we’ll 3 derive a better understanding and answer be confirmed that 4 may be right. 5 [09:32] MR BRICKHILL: Major General, if I can 6 then just pick up on one of the issues that the Chairperson 7 has raised; in terms of the original operational plan it 8 was not the plan that you would join the activities at what 9 became koppie 3 and discharge a firearm. That was not part 10 of the plan. 11 GENERAL NAIDOO: Chair, in terms of the 12 original operational plan, when we requested the services 13 especially of the crime scene people the idea was that 14 there will be a contained area where either people would 15 lay down their weapons and disperse, or as we learned at 16 half past 2, a dispersal action will take place where the 17 area would be swept by first the tactical units after the 18 POPS and thereafter the K9, and then the crime scene people 19 would recover exhibits on the scene that remained. At that 20 stage there was no planned movement to a place called scene 21 2, koppie 3. I would have not been there, etcetera, yes I 22 agree. 23 MR BRICKHILL: So as we saw yesterday, 24 part of the designation for the forward holding area 1 25 reserve team was to release the LCRC and detectives for the</p>	<p style="text-align: right;">Page 24613</p> <p>1 heading “Appointment,” the second paragraph, it’s indicated 2 that, “The first member has to take control, secure the 3 scene, and see to the needs of the injured during the 4 initial stage of the crime scene management process.” Is 5 that correct? 6 GENERAL NAIDOO: That’s correct, Chair. 7 MR BRICKHILL: And you’ve already 8 testified in relation to the steps that you took to secure 9 the scene. 10 GENERAL NAIDOO: I did, Chair. 11 MR BRICKHILL: If we can turn then to 12 page 435, I’d like to deal first with the issue of care for 13 the injured. Under the heading “Note” halfway down the 14 page on page 435 the Process Manual states, “Care for the 15 injured takes preference, with due consideration for the 16 integrity of physical evidence.” Is that correct? 17 GENERAL NAIDOO: That is correct, Chair. 18 MR BRICKHILL: And care for the injured 19 is then dealt with in the first row immediately below that 20 note, which states, “See to the immediate needs of injured 21 persons on the scene.” Is that correct? 22 GENERAL NAIDOO: That’s correct, Chair. 23 MR BRICKHILL: And after a note about 24 possible animal injuries, the text continues, “If injured 25 persons can be moved, they should be moved to a designated</p>

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1 area away from the scene, after marking and noting the
2 positions that they were found in and if necessary and in
3 the interest of the safety of such person." Is that
4 correct?

5 GENERAL NAIDOO: That is correct, Chair.
6 MR BRICKHILL: I'd now like to take you
7 back to exhibit MMM49.1, which is the policy on crime scene
8 management, for completeness on this issue, and I'd like to
9 take you to page 8, paragraph 12. Under the heading
10 "Controlling phase" the policy provides that "The first
11 member must execute all the duties of a crime scene manager
12 until the handover to the official crime scene manager has
13 been completed." So that's consistent with the same
14 provision, the equivalent provision in the Process Manual.
15 Is that correct?

16 GENERAL NAIDOO: Correct.
17 MR BRICKHILL: And then from paragraph
18 12.2(a) the policy provides, "Taking control and evaluation
19 of the crime scene. The first member must upon arrival on
20 the scene," and I'd refer you to the subparagraph (vi),
21 "with due consideration of the integrity of physical
22 evidence, the first member must assist the injured within
23 the limitations of his or her training as a matter of
24 priority." Do you see that?

25 GENERAL NAIDOO: I see that, Chair.

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1 MR BRICKHILL: I would now like to take
2 us to the transcript, day 193, page 23571. These are the
3 proceedings of 27 February 2014, during the course of my
4 learned friend Mr Chaskalson's cross-examination. From
5 line 15 there is an intervention by the Chairperson putting
6 a question that's already arisen from Mr Chaskalson, where
7 the Chairperson asks, "Is there a police protocol that says
8 that a member of the service with first aid training and
9 skills arrives on a scene where someone is injured, make it
10 more restricted, been injured by some kind of police action
11 is obliged, the member with the first aid skills is obliged
12 to endeavour to administer first aid to the person so
13 injured?" and you answer, "I would" and there's an
14 interjection by the Chair, "You don't know whether there's
15 such a protocol?" and you respond, "I would not think that
16 I would know for a specific thing." The Chairperson, "So
17 the answer is you don't know?" and your response is, "Yes."
18 So at that stage on the 27th of February 2014 you were not
19 aware of, or could not recall the provisions of the crime
20 scene management policy and the Process Manual that we are
21 now dealing with?

22 GENERAL NAIDOO: Not specifically.
23 MR BRICKHILL: For the record I would
24 then invite you to revise that testimony. You would
25 concede then that both the policy and the Process Manual

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1 impose the obligation that the Chairperson put to you, that
2 a member of the SAPS on a crime scene with first aid skills
3 is obliged to administer first aid to the injured within
4 the limits of their training?

5 GENERAL NAIDOO: Chair, I think I did
6 induce in that same testimony the indication that we had
7 Colonel McIntosh who was a paramedic, he had the training
8 and he did attend to a particular person. So I don't think
9 with respect to that there was any conflict in what I said.

10 MR BRICKHILL: General Naidoo, Major
11 General Naidoo, you're getting ahead of me. I just wanted
12 to confirm that in terms of the policy and the Process
13 Manual the obligation rests on SAPS members as I put it to
14 you. I can repeat it if necessary.

15 GENERAL NAIDOO: Chair, yes –
16 CHAIRPERSON: I'm sorry to interrupt.
17 What exactly are you referring to? Is it the block "Care
18 for injured; see to the immediate needs of injured persons
19 on the scene," then they talk about moving them and marking
20 their positions. Then they talk about guiding the
21 emergency services to the injured. Where does it say that
22 a member is under the obligation that you refer to? Have I
23 missed something?

24 MR BRICKHILL: Chair, we would first say
25 that the two must be read together, but it's made explicit

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1 in the policy at 12(a)(vi)(aa), "The first member must upon
2 arrival on the scene with due consideration of the
3 integrity of physical evidence, the first member must
4 assist the injured within the limitations of his or her
5 training as a matter of priority."

6 CHAIRPERSON: So you say that flows from
7 the policy and then you would say that the expression "see
8 to the immediate needs of injured persons on the scene"
9 interpreted in the light of the paragraph in the policy to
10 which you refer means that the first member must within the
11 limitation of his or her training assist the injured as a
12 matter of priority?

13 MR BRICKHILL: Indeed, Chair, that's our
14 interpretation.

15 CHAIRPERSON: Yes, I'm sorry, I was a
16 little bit slow in following, but I think I'm now where –
17 at least I hope I am –

18 MR SEMENYA SC: Chair, I hope in the
19 fullness of time Mr Brickhill would answer to the concerns
20 you raised, which are the concerns we have, because crime
21 scene management entails people who are not involved in the
22 scene, which it has to manage, and –

23 CHAIRPERSON: Well, yes, I agree with
24 you. Well, I put the problem and whether Mr Brickhill can
25 answer it or someone else can is another matter, but

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1 certainly it's a matter which is relevant I think in the
 2 present context.
 3 MR BRICKHILL: Chair, on the face of the
 4 policy it applies to all crime scenes. The extent to which
 5 it applies and potential breaches will ultimately be an
 6 issue for argument, we would submit with respect. But if I
 7 may I'll proceed to address the aspects of it with the
 8 Major General.
 9 Major General, my learned friend Mr Chaskalson
 10 addressed with you the expert report of Professor Boffard
 11 in relation to the delay in providing medical attention,
 12 medical assistance to the injured persons at crime scene 1.
 13 I would put it to you that if the members present at crime
 14 scene 1 had the requisite training, they therefore had an
 15 obligation in terms of the crime scene management policy to
 16 assist the injured at the scene as a matter of priority.
 17 Do you accept that?
 18 GENERAL NAIDOO: Chair, not totally. As
 19 you look through the crime scene manual it speaks more
 20 about the police effectively using and guiding the
 21 emergency services in terms of providing the expert
 22 assistance. Although it indicates here that within our
 23 limitations of training, in the guide it specifically
 24 refers to the use of emergency services, taking, getting
 25 them to the injured, using them to, in the access control,

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1 ensuring their proper access control, etcetera. So I would
 2 not say that only, or primarily the SAPS members had an
 3 obligation should they have the training to tend to the
 4 people there. I already testified that it's normal and
 5 foreseen and if people have the requisite skills, and I
 6 used Colonel McIntosh as an example, they could, but it
 7 also depends on the wide range of other issues that come
 8 with it, but to just say open-ended that had all the SAPS
 9 members at the, that particular scene had first aid
 10 training they could have prevented, or saved the lives, I
 11 think I would not agree with that as a blanket –
 12 CHAIRPERSON: On the facts of this matter
 13 I think it's clear from Professor Boffard's report that
 14 there doesn't appear to be criticism of the attention given
 15 to the injured persons at scene 2.
 16 GENERAL NAIDOO: That's correct, Chair.
 17 CHAIRPERSON: His report is confined to
 18 scene 1 and he appears to accept that as far as scene 2 is
 19 concerned, the injured were dealt with timeously. That is
 20 clear, is it not?
 21 GENERAL NAIDOO: That's clear, Chair.
 22 MR BRICKHILL: Major General, so once the
 23 medical personnel, paramedics or other specialists arrive,
 24 you would say it would then be appropriate for the police
 25 members present to step back in terms of assisting the

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1 injured and the medical personnel, who are the experts,
 2 should take the primary responsibility for assisting the
 3 injured?
 4 GENERAL NAIDOO: Chair, I did not in any
 5 way suggest such. It is clear, and it was a matter of
 6 record that the SAPS members supported and assisted the
 7 medical personnel during this process, so there's no, in no
 8 way did I suggest that as well. I merely indicated that
 9 the SAPS works with a broad number of role players in
 10 dealing with various issues and whilst there might be some
 11 overlaps, we do not take over the responsibilities of other
 12 expert line functionaries.
 13 MR BRICKHILL: So once the medical
 14 personnel arrive it is their primary responsibility to
 15 assist the injured?
 16 GENERAL NAIDOO: That's what I said,
 17 Chair.
 18 MR BRICKHILL: But until they arrive, if
 19 there are police members present on the scene with the
 20 requisite first aid training they have an obligation in
 21 terms of the policy to assist the injured within the limits
 22 of their training?
 23 GENERAL NAIDOO: Chair, but I've already
 24 indicated that and we used Colonel McIntosh as an example.
 25 They must have the requisite training and the environment

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1 must be provided for them to function as such.
 2 MR BRICKHILL: Let's move then to scene
 3 2, dealing with a related issue. If we return to page 435
 4 of the Process Manual, do you have it, Major General?
 5 GENERAL NAIDOO: I have it, Chair.
 6 MR BRICKHILL: In the row dealing with
 7 "Care for the injured," the second aspect to which I
 8 referred you is that, "If injured persons can be moved,
 9 they should be moved to a designated area away from the
 10 scene, after marking and noting the positions they were
 11 found in." I want to put it to you that at least in
 12 relation to Warrant Officer Breedt injured persons at the
 13 scene were moved, their positions were moved without
 14 marking and noting the positions that they were found in.
 15 Do you accept that?
 16 GENERAL NAIDOO: Chair, I think we
 17 already went over testimony in terms of how this particular
 18 issue is handled. Individual members in terms of our
 19 processes have to make pocketbook entries in terms of any
 20 movement that, or any contamination of the scene that may
 21 occur in the area that they are under control, and I don't
 22 know whether we have checked in terms of, extensively
 23 whether these members' pocketbooks have been so annotated,
 24 because in terms of the training they receive, when you get
 25 to a scene and if there's certain things that have to be

<p style="text-align: right;">Page 24622</p> <p>1 moved, they should make, individual members should make 2 notes of what the contamination was so that we have a 3 record of it. I'm not aware, I have not studied the 4 pocketbooks of the various members. 5 [09:52] MR BRICKHILL: The next step in relation 6 to the responsibilities of the first member is to assume 7 control of the crime scene, in the next row, do you see 8 that? 9 GENERAL NAIDOO: I see that, Chair. 10 MR BRICKHILL: And it's stated in the 11 second paragraph that the first member takes the first 12 handover from the public which has the effect that 13 exclusive control of the scene now rests with the first 14 member until the arrival of the official crime scene 15 manager. Now in relation to scene 2 there was no first 16 handover from the public, is that correct? 17 GENERAL NAIDOO: That is correct, Chair. 18 MR BRICKHILL: And you've dealt, you have 19 stated that you have difficulty accepting that you alone 20 constituted the first member. 21 GENERAL NAIDOO: I agree, I could not 22 exclusively be the first member, yes. 23 MR BRICKHILL: But you, and those other 24 officers that you suggest, bear the responsibilities of the 25 first member, then had the obligation to assume control of</p>	<p style="text-align: right;">Page 24624</p> <p>1 following what's going on. So please be patient with me 2 and help me. 3 MR BRICKHILL: Chair, it would indeed be 4 useful to clarify that issue. Major-General Naidoo, who in 5 your view bore the responsibilities of first member at 6 scene 2? 7 GENERAL NAIDOO: Chair, I have already 8 stated that there were several incidents all around scene 2 9 which were, there were several members and officers who 10 were there. So it would be difficult to say at scene 2 11 this was the first member and this is what I indicated 12 since we started with this line of questioning, that I 13 accept I was the most senior member there. I have accepted 14 that but there is a particular, I have a particular problem 15 with saying that I was exclusively the first member at the 16 scene because there were parts of the scene, I already 17 testified, that I never visited till very late that night 18 when I went with IPID the first time. So it is not a 19 textbook crime scene that we are dealing with there. It 20 was difficult, it was spread over a large area. I 21 emphasise that individual police officials who responded 22 and attended the crime had specific responsibilities as the 23 police official there as well and we'll have to take that 24 up collectively and see from there. And I also testified 25 that I summoned and secured the presence of the crime scene</p>
<p style="text-align: right;">Page 24623</p> <p>1 the crime scene. 2 GENERAL NAIDOO: I have agreed with that. 3 CHAIRPERSON: Forgive my interfering 4 again but I'm still puzzled by this. Who do you say was 5 the first member or were there different first members in 6 respect of different parts of scene 2? You know, for 7 example, the western side, this witness was really on the 8 eastern side, wasn't he and there were also people 9 approaching from the southern side. Now what are you going 10 to contend for? Are you going to say at the end when the 11 matter is argued that there was one first member and that 12 was this witness or are you going to say there were several 13 first members in respect of different parts of scene 2? 14 Then the question you will have to deal with is who you say 15 were the first members in respect of those different parts. 16 Now there's an area of unreality, if you'll forgive me for 17 saying, about a cross-examination along the lines that 18 you're proceeding with at the moment when it's not clear 19 what exactly the contention is in respect of who was or who 20 should be regarded as being the first member and who should 21 therefore be regarded, temporarily at least, to be the 22 crime scene manager. So I think we, surely we should clear 23 those points up before you carry on because the witness, I 24 think, is at a disadvantage in answering and I must confess 25 – perhaps it's my fault but I am at a great disadvantage in</p>	<p style="text-align: right;">Page 24625</p> <p>1 manager immediately who came to - and he has already 2 testified that when he arrived I indicated to him this is 3 the large crime scene and we'd have to take steps to start 4 securing it and he should indicate what assistance he 5 needed. So there's no straightforward answer saying that 6 that particular person was the first member because of the 7 scale of the whole incident. 8 COMMISSIONER HEMRAJ: And had you waited 9 for someone who was not part of the incident to arrive then 10 you'd run the risk of the medical personnel not getting to 11 the injured. 12 GENERAL NAIDOO: Chair, much more than 13 that. There were medical people, there were suspects being 14 arrested on the scene, it was getting dark, light was 15 fading, so there were several aspects that needed to be 16 dealt with and we dealt with them as, in priority as they 17 arose. 18 MR BRICKHILL: Major-General Naidoo, if 19 this was a shared responsibility, with which other specific 20 SAPS members would you suggest you shared the 21 responsibility of first member? 22 GENERAL NAIDOO: Chair, there were people 23 that were involved in various incidents and I don't think 24 I'm here in the position now to list the various incidents 25 – from the TRT side, the public order policing side, the</p>

<p style="text-align: right;">Page 24626</p> <p>1 NIU side as well as the K9 side from both forward holding 2 areas as well. So there were specific members and officers 3 that were, where specific incidents occurred they were 4 there, members and officers who, by way of this manual, 5 after the incident occurred had specific responsibilities 6 to secure that particular place, to ensure that certain 7 steps were taken until the crime scene people took over. 8 So if we're going to do that then we must start from one 9 side and go through every incident and identify every 10 member that came up and said I found a body or I found a 11 firearm or I found a panga.</p> <p>12 MR BRICKHILL: Major-General, you accept 13 that it was crucial to secure the crime scene before the 14 crime scene manager arrived on the scene and took over?</p> <p>15 GENERAL NAIDOO: Chair, I've already 16 testified that I did realise that.</p> <p>17 MR BRICKHILL: I want to put it to you 18 that as the senior officer in command at scene 2 you bore 19 the primary responsibility to ensure that the first 20 member's role was discharged.</p> <p>21 GENERAL NAIDOO: Chair –</p> <p>22 MR BRICKHILL: What is your response?</p> <p>23 GENERAL NAIDOO: I think there's a number 24 of things that we need to take into account in responding 25 to that. I think if we go to the same manual, page 400,</p>	<p style="text-align: right;">Page 24628</p> <p>1 MR BRICKHILL: Accepting that they were 2 necessary steps to take.</p> <p>3 GENERAL NAIDOO: Looking at what the 4 situation was, yes.</p> <p>5 MR BRICKHILL: Let's move then to the 6 next stage in the process, if we may, if you've completed 7 what you wanted to refer to.</p> <p>8 GENERAL NAIDOO: Chair, I think we'll 9 carry on with the questions.</p> <p>10 MR BRICKHILL: I would then take you to 11 page 436 of the process manual. I want to deal with the 12 issue of securing and protecting the scene. You'll see 13 there in the first paragraph the process manual provides 14 that, "In consultation with the public, the first member 15 establishes an inner cordon which must include the whole 16 crime scene. If this has already been done, the first 17 member confirms its perimeters." Now again the public were 18 not on the scene, that's correct?</p> <p>19 GENERAL NAIDOO: Other than the non- 20 police officials that were arrested, et cetera, medics.</p> <p>21 MR BRICKHILL: Now we know from your 22 evidence under cross-examination by my learned friend Mr 23 Chaskalson that the scene was subsequently cordoned off. 24 When did that happen?</p> <p>25 GENERAL NAIDOO: Chair, as I indicated,</p>
<p style="text-align: right;">Page 24627</p> <p>1 3.1.3 that deals with prioritisation. I'm indicating this 2 because it concurs with my testimony on this matter under 3 cross-examination.</p> <p>4 MR BRICKHILL: Yes, Major-General?</p> <p>5 GENERAL NAIDOO: If we can start from 3 6 point – "It is important that the first member who proceeds 7 to the scene of the crime has already determined his 8 priorities although the circumstances of the scene of the 9 crime often dictate what must be done first. The following 10 priorities must be borne in mind, emergencies, first aid to 11 injured members, deceased persons, suspect at or near scene 12 and securing the scene." And if you remember my testimony 13 under cross-examination by the evidence leaders, I have 14 testified to these things. I said I saw that the situation 15 was arising, I ensured that the crime scene people were 16 summoned immediately, I ensured that the first aid, the 17 medical people were brought in, I ensured that they 18 commence with the arrest and the moving of the suspects off 19 the crime scene to an open area and then we tasked the K9 20 to sweep the area and there are statements, various members 21 who have given statements that after sweeping they went to 22 the perimeter and they secured the crime scene. So in 23 terms of when I arrived there, without debating the fact of 24 who was the first member, as a senior person on the scene I 25 ensured that these steps were taken.</p>	<p style="text-align: right;">Page 24629</p> <p>1 after the K9 members had finished sweeping. Those that 2 were not engaged with escorting or, escorting the medics 3 were - not only them, members from the public order police 4 as well were moved to the outer limits to establish a 5 cordon, outer cordon. So as they finished sweeping they 6 were asked to move to the outer end of the koppie so that 7 they can allow for medics to do their job, the crime scene 8 people to start functioning and then provide security as 9 well.</p> <p>10 MR BRICKHILL: Was this the established 11 of a perimeter or a physical cordoning off at that stage?</p> <p>12 GENERAL NAIDOO: Chair, this particular 13 scene was not possible to establish a physical cordoning 14 off with barrier tape, et cetera. It was a few kilometres 15 around the scene so what we did was we posted the members 16 on the outer, to provide security to the people that were 17 functioning within the scene as well as to establish a 18 physical barrier to the outside. So Nyalas and K9 19 personnel and their vehicles were used to designate the 20 outer cordon.</p> <p>21 MR BRICKHILL: Did this happen before or 22 after the handover to the crime scene manager?</p> <p>23 GENERAL NAIDOO: Chair, the crime scene 24 manager arrived shortly after the emergency personnel were 25 there, so the sweeping action was still taking place whilst</p>

<p style="text-align: right;">Page 24630</p> <p>1 the crime scene manager was there. So the handover to the 2 crime scene manager was during the process, whilst they 3 were still sweeping and while the medical personnel were 4 still busy.</p> <p>5 MR BRICKHILL: And who ordered the 6 establishment of that perimeter? Did you give that order?</p> <p>7 GENERAL NAIDOO: Chair, it was not only 8 me but yes, the personnel that were around me, we indicated 9 to them as they finished with the sweeping to move to the 10 outer perimeter. I know the other side Brigadier Calitz 11 was busy with the arrested persons also and we had pictures 12 yesterday showed that these members were standing on the 13 outer cordon. He dealt with those members, primarily they 14 were POPS members and I think TRT members. So as I said, 15 it was a huge scene with various incidents and we tried to 16 manage it as best as we could.</p> <p>17 MR BRICKHILL: You've dealt previously 18 under cross-examination by my learned friend Mr Chaskalson 19 with the evidence relating to Warrant Officer Breedt and 20 the movement of weapons.</p> <p>21 GENERAL NAIDOO: That's correct.</p> <p>22 MR BRICKHILL: I want to put it to you 23 that those events must have taken place before the 24 perimeter that you refer to was established.</p> <p>25 GENERAL NAIDOO: Chair, I am not sure</p>	<p style="text-align: right;">Page 24632</p> <p>1 CHAIRPERSON: So his left hand was spent, 2 was occupied holding his dog.</p> <p>3 GENERAL NAIDOO: Mm.</p> <p>4 CHAIRPERSON: So he only had his right 5 hand to move the weapons with. He said he couldn't make 6 any notes for that reason and that's why he had 7 difficulties later in remembering where the weapons were. 8 That's why we can't be sure that any weapon was put back in 9 the right place because of that factor. Now would it not 10 have been sensible, if I may put this to you, to have 11 ensured that not only Breedt dealt with the weapons but 12 someone else as well, someone in fact who could have made 13 notes as to where things were, to make sure they were put 14 back in the right place. I understand the weapons had to 15 be moved, there isn't a problem with that. The difficulty 16 is, once they were moved there's a question and you know 17 there are suggestions of tampering and so on which we don't 18 have to go into but there are suggestions, to put it at its 19 lowest, that the weapons weren't put back in the right 20 place and we can never be sure now. Now if Breedt had had 21 assistance, that problem – I won't say would have been done 22 away with completely but would have been reduced. So 23 wouldn't it have been sensible to have ensured that the 24 weapons removal and then subsequent replacement was done by 25 more than just Warrant Officer Breedt?</p>
<p style="text-align: right;">Page 24631</p> <p>1 whether Warrant Officer Breedt gave us an indication of 2 exactly when and I'm not sure which events, is it the 3 removing of the weapons or the replacing of the weapons?</p> <p>4 MR BRICKHILL: Both the removing and the 5 replacing of the weapons.</p> <p>6 GENERAL NAIDOO: Chair, no, Warrant 7 Officer Breedt was escorting medics, so he would have 8 remained after most of the other members went into the 9 outer perimeter. So it could have happened before as well 10 as after the cordoning off.</p> <p>11 CHAIRPERSON: Were you present when 12 Warrant Officer Breedt started removing the weapons?</p> <p>13 GENERAL NAIDOO: Chair, as I said, I'm 14 not sure exactly when. I was there when the medics first 15 came in, so I would have been somewhere there.</p> <p>16 CHAIRPERSON: I understand, we've got his 17 statement, there was a request that the medics weren't 18 happy to go near the injured people –</p> <p>19 GENERAL NAIDOO: Yes.</p> <p>20 CHAIRPERSON: - while there were weapons 21 around, for reasons that were explained but what concerns 22 me, I must put this to you so you can deal with it, was 23 Warrant Officer Breedt explained he operated under great 24 difficulties. He had to keep his dog with him.</p> <p>25 GENERAL NAIDOO: Yes.</p>	<p style="text-align: right;">Page 24633</p> <p>1 GENERAL NAIDOO: Chair, yes. That would 2 have been the normal procedure. I indicated to you that 3 the K9 normally work in buddy pairs, so the sensible thing 4 would have been firstly that the buddy of the member should 5 have been accompanying, so one member provides cover whilst 6 the other member executes his duty. That's the way they 7 work, that's why we work in these buddy pairs, number 1. 8 Then that other member could also have been making notes. 9 A second thing is that whilst we make provision for the 10 moving of weapons, et cetera, you don't necessarily have to 11 replace it afterwards. It's just about the making of the 12 notes if you move this from there and there, that's it.</p> <p>13 CHAIRPERSON: But you see if it's a crime 14 scene, the integrity of the crime scene must be preserved, 15 then if anything is going to turn on where weapons were 16 then they've got to be replaced or at least there's got to 17 be a clear record of where they were before they were 18 removed. Now I take it a number of the people present 19 would have had cell phones on them. Someone could have 20 been given the job of photographing where the weapons were 21 before they were removed. Those things weren't done, were 22 they?</p> <p>23 GENERAL NAIDOO: Chair, yes –</p> <p>24 CHAIRPERSON: That's wasted – if you'll 25 forgive me for saying it – perhaps waste is the wrong word</p>

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1 but a lot of time in this Commission has been taken up and
 2 may still be taken up with this whole question because that
 3 elementary precaution of getting someone to assist Breedt
 4 preferably to take photographs, wasn't done.

5 GENERAL NAIDOO: Chair –

6 CHAIRPERSON: Would you agree with that?

7 GENERAL NAIDOO: We've agreed. We went,
 8 remember during cross-examining previously you have also
 9 raised this particular issue. As I said, in terms of our
 10 procedures, yes, a cell phone is something that has been
 11 introduced now and it is not written into our procedures
 12 that you should do that but, as you said, it was something
 13 that they could have done. In terms of our procedures the
 14 member may remove these things, as is quite clearly
 15 indicated here, the preservation of life is the paramount
 16 importance and all he had to do is make notes. And what
 17 I'm saying is yes, the situation could have been dealt with
 18 better –

19 CHAIRPERSON: [Microphone off, inaudible]
 20 dog in one hand.

21 GENERAL NAIDOO: No.

22 CHAIRPERSON: He couldn't take notes, he
 23 had the dog in one hand and the weapon in another.

24 GENERAL NAIDOO: Chair, hence I'm saying
 25 that K9s are normally, K9 handlers are normally deployed in

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1 two, precisely for the fact that when they go – I'm going
 2 to give you a practical example. If they get into a bush
 3 and they're busy handling the dog, they don't focus on the
 4 environment around them, they have a crew that does that
 5 and gives them cover. Similarly when they're getting into
 6 this sort of situation the crew could have performed that
 7 job of recording, we have moved such and such a thing and
 8 we're accepting it could have been done better.

9 [10:11] CHAIRPERSON: My next question is, if
 10 that's what should have happened and it was unfortunate it
 11 didn't happen, whose fault is it? Who was responsible for
 12 seeing to it that Warrant Officer Breedt was assisted in
 13 this task so that the factors that we've mentioned wouldn't
 14 come into operation?

15 GENERAL NAIDOO: Two things. I indicated
 16 that by the way they function, they're supposed to function
 17 in their pairs in terms of the normal functioning. So I
 18 don't know what the reason was that he separated from his
 19 crew and I think that would have to be checked on, why
 20 didn't he deploy with his crew because in any of the
 21 operation situations they don't leave their crew, their
 22 crew has to stay with them.

23 CHAIRPERSON: Yes, I understand that but
 24 I mean if someone was in charge, someone was seeing to it
 25 that the scene, the crime scene was being handled

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1 correctly, then that person in charge would have noticed
 2 that Breedt's buddy wasn't there and that Breedt wouldn't
 3 be operating under the handicaps which I've heard and would
 4 have done something about it. That's the point I'm busy
 5 with. Now was, are you the person who must – you know,
 6 with hindsight, I understand how these things work – are
 7 you the person who must accept responsibility or is there
 8 somebody else to whom we must attach that responsibility?

9 GENERAL NAIDOO: Chair, that's why I'm
 10 saying even without hindsight, on site there, there were so
 11 many members that were busy sweeping, escorting the
 12 paramedics, et cetera, so I would not be able to say but
 13 this policeman is only on his own and that policeman is
 14 working with his crew, et cetera. We've seen the
 15 photographs, there were a number of police officials on the
 16 scene. I still don't have any idea who was Warrant Officer
 17 Breedt's crew. So the obligation lays with the teams as
 18 they worked, that they should work in the way they were
 19 trained.

20 CHAIRPERSON: This is a Warrant Officer.
 21 Surely there's someone in charge? You can't just abdicate
 22 responsibility. I'm not suggesting that you did, I'm not
 23 sure whether you were the person who is responsible but you
 24 surely can't suggest the person who's responsible can
 25 abdicate responsibility and say, well, the K9 people should

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1 work in pairs and if they didn't it's tough luck, it's not
 2 my fault. It's not as easy as that, is it?

3 GENERAL NAIDOO: No, Chair, but you must
 4 remember and this was a thing even you yourself have
 5 mentioned, Chair, is that the size of this scene, it's not
 6 that somebody stood at a place and said Breedt, where's
 7 your crew or so-and-so where's this? It was not that
 8 straightforward and simple because these people were moving
 9 among the rocks and among bushes, et cetera.

10 CHAIRPERSON: It's not as easy as that
 11 either because if there'd been several Breedts all doing
 12 the job in different parts then that point might work, but
 13 where you've got one Breedt going around taking, if not
 14 all, certainly most of the weapons, then it doesn't help to
 15 say it was a big scene. One Breedt started somewhere,
 16 picked up the first weapon and then picked up the others.
 17 So it's not as easy as that so you still haven't helped me.
 18 Is it, are you the person who is responsible for not seeing
 19 to it that Breedt was assisted or is it somebody else?

20 GENERAL NAIDOO: Chair, as I said, I was
 21 not even aware that he needed assistance. Had he
 22 requested, I would have ensured that he got the assistance
 23 and I don't think it's correct that it was only Breedt that
 24 removed weapons. There were other K9 handlers who also
 25 indicated in that investigation that they also removed

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1 weapons.

2 COMMISSIONER HEMRAJ: Did you see Warrant

3 Officer Breedt remove the weapons?

4 GENERAL NAIDOO: I can't specifically

5 remember him, Chair, at that stage, no.

6 CHAIRPERSON: Sorry, Mr Brickhill, I

7 interrupted you. I hope I didn't interfere with your

8 carefully planned cross-examination.

9 MR BRICKHILL: No, not at all, Chair.

10 Those are crucial issues. Major-General, we were dealing

11 on page 436 with the step of creating, securing and

12 protecting the scene, creating a perimeter or a cordon and

13 you've testified to that, to what was done.

14 GENERAL NAIDOO: Yes, Chair. Correct,

15 Chair.

16 MR BRICKHILL: The purpose of securing

17 the perimeter or cordoning off the scene is obviously to

18 protect the scene against contamination?

19 GENERAL NAIDOO: That's correct, Chair.

20 MR BRICKHILL: And before the exchange

21 with the Commissioners, the Chairperson and other

22 Commissioner, you indicated that Warrant Officer Breedt's

23 conduct in removing and allegedly replacing the weapons may

24 have happened both before and after the perimeter was

25 established.

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1 GENERAL NAIDOO: That's correct, Chair.

2 MR BRICKHILL: Warrant Officer Breedt's

3 statement also alleges that an unknown, un-uniformed member

4 of the police force instructed him to return the weapons.

5 This was addressed with you also in relation, by Mr

6 Chaskalson, my learned friend Mr Chaskalson.

7 GENERAL NAIDOO: That's correct, Chair.

8 MR BRICKHILL: You didn't see that

9 happen?

10 GENERAL NAIDOO: Chair, on the scene

11 during the processing of the scene, as I indicated the

12 crime scene manager and his crime scene technicians arrived

13 on the scene, the detectives also arrived on the scene to

14 support the crime scene people, the intelligence people

15 also arrived on the crime scene. So yes, there were many

16 un, non-uniformed personnel that arrived on the scene.

17 MR BRICKHILL: So if we accept for

18 present purposes Warrant Officer Breedt's evidence in this

19 regard, this unknown officer would have been present at the

20 scene and giving Warrant Officer Breedt the instruction to

21 return the weapons.

22 GENERAL NAIDOO: Chair, firstly we say it

23 is an un-uniformed or non-uniformed person so as to his

24 rank, to assume that he's an officer would be difficult but

25 there were in all three categories, at least two of the

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1 categories, crime scene as well as intelligence, there were

2 people that were taking photographs, yes.

3 MR BRICKHILL: And as in relation to

4 Warrant Officer Breedt's conduct, this event, if it

5 happened, the instruction by the unidentified member, may

6 also have happened before or after the perimeter was

7 created.

8 GENERAL NAIDOO: It could have happened

9 either of the times because the detectives and the crime

10 scene people arrived as they were sweeping and as the

11 uniformed people withdrew from the scene they began their

12 work. So it could have happened before or after the

13 cordon.

14 MR BRICKHILL: I'd like now to take you

15 to exhibit FFF23 and if we can move – the document is

16 unnumbered but it's, the first statement is the statement

17 of, a typed statement and following that there's a

18 handwritten statement of Lieutenant-Colonel Koertzen, if we

19 can move to that statement. This document FFF23 is what's

20 known as the final tampering report and Lieutenant-Colonel

21 Koertzen's statement is one of the attachments, one of the

22 statements accompanying that report. I would refer you to

23 paragraph 5 of Lieutenant-Colonel Koertzen's statement.

24 The handwriting is more or less legible. It reads, "On

25 arrival at the scene I saw that several people were

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1 seriously injured and a large group of arrested persons.

2 While we were taking photos an unknown uniformed member

3 asked me if they can collect the weapons and put them

4 together." Do you see that?

5 GENERAL NAIDOO: I see that, Chair.

6 MR BRICKHILL: It continues, "I was

7 stationed at murder and robbery." He refers to his

8 evidence and the gist, his experience, and the gist of it

9 is that he instructed this unknown member not to do so.

10 What I want to address with you is, again accept just for

11 present purposes Lieutenant-Colonel Koertzen's evidence in

12 this regard, the unknown member made the request to

13 Lieutenant-Colonel Koertzen at scene 2 and this too could

14 have happened before or after the perimeter was created.

15 GENERAL NAIDOO: That's correct, Chair.

16 MR BRICKHILL: If we return then to the

17 process manual at page 436, we see at the foot of the

18 second row that the purpose of securing and protecting the

19 scene, as you've testified, is to protect the evidence and

20 the process manual confirms that deceased persons

21 constitute evidence. That's correct?

22 GENERAL NAIDOO: Chair, correct.

23 MR BRICKHILL: And it's crucial, in terms

24 of the process manual, to protect this evidence, including

25 deceased persons, from contamination.

<p style="text-align: right;">Page 24642</p> <p>1 GENERAL NAIDOO: That's correct, Chair.</p> <p>2 MR BRICKHILL: I want to put it to you</p> <p>3 that no effective perimeter or cordon was put in place that</p> <p>4 would achieve this purpose of protecting the evidence</p> <p>5 against contamination. What's your comment?</p> <p>6 MR SEMENYA SC: But Chair, all these</p> <p>7 questions ought properly to have been put to Captain</p> <p>8 Mohlaki who came and testified and was their crime scene</p> <p>9 manager.</p> <p>10 MR BRICKHILL: Chair, that's not so, with</p> <p>11 respect. We're dealing with the obligations prior to</p> <p>12 handover and separate from the obligations of crime scene</p> <p>13 manager. We're dealing with the obligations of first</p> <p>14 member and the obligations of those present on the scene to</p> <p>15 secure the scene.</p> <p>16 MR SEMENYA SC: But the first member must</p> <p>17 be despatched to the crime scene. This is not the witness</p> <p>18 who was despatched there.</p> <p>19 CHAIRPERSON: That's a point that can be</p> <p>20 argued later. I'll allow you to proceed with the cross-</p> <p>21 examination. It's unfortunate the questions weren't asked</p> <p>22 of Captain Mohlaki but if necessary he can be asked to</p> <p>23 provide an affidavit on particular questions, in response</p> <p>24 to particular questions. If necessary, he may even have to</p> <p>25 come back if this is a point to be taken further but – so</p>	<p style="text-align: right;">Page 24644</p> <p>1 arrested persons or the others that were guarding specific</p> <p>2 prisoners that were arrested, especially three with</p> <p>3 firearms, or escorting the medics, were all removed from</p> <p>4 the scene to form an outer perimeter. So those were the</p> <p>5 means that were at our disposal and those were the means we</p> <p>6 utilised to handle that current situation. So as far as</p> <p>7 access to the scene, the people, once these people finished</p> <p>8 their responsibilities the only people that had access to</p> <p>9 the scene were the detectives, the crime scene people and</p> <p>10 the intelligence people.</p> <p>11 MR BRICKHILL: The two unidentified</p> <p>12 persons allegedly on the scene, the first referred to by</p> <p>13 Warrant Officer Breedt and the second by Lieutenant-Colonel</p> <p>14 Koertzen, were also on the scene.</p> <p>15 GENERAL NAIDOO: Chair, I've already</p> <p>16 indicated the number of un or non-uniformed personnel that</p> <p>17 were on the scene. There may have been people that were</p> <p>18 unknown to Warrant Officer Breedt because we had personnel</p> <p>19 working from Gauteng as well as the North-West Province on</p> <p>20 these teams, so it's not unusual for him not to know these</p> <p>21 people. For instance, the Colonel that was referred to is</p> <p>22 not stationed in the North-West Province. He was also part</p> <p>23 of the deployment from Gauteng, so it's not unusual for him</p> <p>24 not to know. I've already testified I don't know 90% of</p> <p>25 the people that worked with me, I've never seen them before</p>
<p style="text-align: right;">Page 24643</p> <p>1 there's substance in that part of the objection but we can</p> <p>2 deal with it, but you may proceed in the meanwhile, Mr</p> <p>3 Brickhill.</p> <p>4 MR BRICKHILL: Chair, I was very careful</p> <p>5 to phrase the proposition that I put to –</p> <p>6 CHAIRPERSON: [Microphone off, inaudible]</p> <p>7 in support of my ruling, just carry on.</p> <p>8 MR BRICKHILL: I'd like to put the</p> <p>9 proposition to the Major-General and to clarify that it</p> <p>10 doesn't relate to his specific responsibility. I've left</p> <p>11 that issue aside. What I put to you, Major-General, is</p> <p>12 that this step of establishing an effective perimeter to</p> <p>13 protect evidence, including deceased, against contamination</p> <p>14 was not effectively taken.</p> <p>15 GENERAL NAIDOO: Chair, I have already</p> <p>16 testified in terms of what we did. I have also explained</p> <p>17 in terms of the practicalities of the scene, what was</p> <p>18 possible and what was not possible. I also indicated that</p> <p>19 even the crime scene manager when he arrived just after the</p> <p>20 medics arrived, also realised that certain things were</p> <p>21 problematic and he tried within his means to do that. I</p> <p>22 also testified that I've indicated to him any assistance</p> <p>23 that he requires in terms of executing his responsibilities</p> <p>24 he had to just ask. Members, after finishing their sweeps,</p> <p>25 with the exception of those people that were processing the</p>	<p style="text-align: right;">Page 24645</p> <p>1 and I don't know if I'll see them again.</p> <p>2 MR BRICKHILL: Those two persons have not</p> <p>3 at this stage been identified, though.</p> <p>4 GENERAL NAIDOO: Chair, I think the</p> <p>5 external, the investigation that was tasked or commissioned</p> <p>6 by the National Commissioner was for that particular</p> <p>7 purpose and they have not given us any indication whether</p> <p>8 they have been identified. They gave us a final report and</p> <p>9 that's where it is.</p> <p>10 MR BRICKHILL: Did you discuss the</p> <p>11 presence of either of these two unidentified persons at the</p> <p>12 Roots conference?</p> <p>13 GENERAL NAIDOO: Chair, we only became</p> <p>14 aware of the situation on the first, during – when was it,</p> <p>15 October, November, somewhere there and immediately when it</p> <p>16 was discovered the National Commissioner appointed somebody</p> <p>17 who was not involved in the process to conduct an</p> <p>18 investigation. So it would have not been possible to</p> <p>19 discuss this at Roots.</p> <p>20 MR BRICKHILL: If we can return then to</p> <p>21 the process manual and the next stage in the process. On</p> <p>22 page 436, after dealing with access control and securing</p> <p>23 the scene, the following stage is to establish a command</p> <p>24 centre. I wanted to explore with you whether this took</p> <p>25 place in relation to scene 2. Was an effective crime scene</p>

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1 control centre established?

2 GENERAL NAIDOO: Chair, two things. We

3 have to distinguish between what happened when I arrived

4 and what actions I took and those of Captain Mohlaki who,

5 shortly thereafter, came and took charge of the scene. I

6 testified already to the fact that I was at a more central

7 place where the injured people were and from that point I

8 was tasking people to ensure that various activities were

9 done. I would consider that as the point where I, the

10 command post in terms of until Captain Mohlaki came in a

11 few minutes later and he found me there and from that point

12 I indicated to him that this is the crime scene. After

13 this was completed the crime scene personnel came and took

14 over and I know that they did establish a command centre.

15 There were vehicles that they brought in, crime scene

16 vehicles and a lot of equipment, et cetera. So yes, I

17 think that was done.

18 MR BRICKHILL: Okay, the next stage –

19 CHAIRPERSON: Mr Brickhill, when it's

20 convenient we'll take the first comfort break.

21 MR BRICKHILL: This would be a convenient

22 stage.

23 CHAIRPERSON: We'll take the first

24 comfort break. I hope everyone will try to be back in 10

25 minutes.

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1 [COMMISSION ADJOURNS COMMISSION RESUMES]

2 [10:48] CHAIRPERSON: The Commission resumes.

3 Major-General, you're still under oath. Mr Brickhill?

4 GENERAL NAIDOO: Still under oath, Chair.

5 GENERAL NAIDOO: s.u.o.

6 CROSS-EXAMINATION BY MR BRICKHILL (CONTD.):

7 Major-General, we were dealing with the processes in terms

8 of the process manual and we were on page 438. We dealt

9 with the issue of establishing a command centre and you had

10 confirmed that that was done. Sorry, we were on page 437.

11 The next stage in the process concerns the handling of

12 suspects. In respect of the mineworkers who were present

13 on the scene is it correct that they were considered

14 suspects and all those remaining on koppie 3 were rounded

15 up and arrested?

16 GENERAL NAIDOO: That's correct, Chair.

17 MR BRICKHILL: I don't intend to explore

18 those events with you. The next stage in the process

19 concerns the handling of evidence and it's really the

20 crucial, crucial stage in this process. It appears at the

21 foot of page 437 and the process manual records two rules.

22 The first rule is, "Do not handle evidence at all and take

23 steps to protect all possible evidence matter." Do you see

24 that?

25 GENERAL NAIDOO: I see that, Chair.

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1 MR BRICKHILL: The second rule provides

2 for the contingency where it's not possible to comply with

3 the first rule. The second rule provides, "If unavoidable,

4 remove the evidence with the minimum of handling and mark

5 and note the position from where it is removed in order to

6 protect it from damage or contamination." Is that correct?

7 GENERAL NAIDOO: I note that, yes,

8 correct.

9 MR BRICKHILL: You've already testified

10 that this is, I think your words were standard, standard

11 procedure that where any evidence is to be moved, the

12 person moving it must mark and note the position. You

13 confirm that?

14 GENERAL NAIDOO: That's correct, Chair.

15 MR BRICKHILL: So that, what you describe

16 as standard procedures, is provided for specifically in the

17 process manual?

18 GENERAL NAIDOO: Correct.

19 MR BRICKHILL: Now in relation to the

20 first rule there was obviously a departure from the first

21 rule of, do not handle evidence at all because we know that

22 Warrant Officer Breedt and possibly others did indeed

23 handle the evidence, is that correct?

24 GENERAL NAIDOO: Yes, Warrant Officer

25 Breedt and others did, yes.

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1 MR BRICKHILL: In relation to this issue

2 of Warrant Officer Breedt and others I'd like to take us

3 briefly to the transcript of your earlier evidence. Day

4 195, page 23870 where you testified as follows, "Chair,

5 that is correct. Any member, as I indicated, our procedure

6 makes provision for any member who needs to support a medic

7 in saving a life may do that and as far as I'm concerned, I

8 don't think that Warrant Officer Breedt could have been the

9 only member. What I know for sure he's the only member who

10 owned up and said yes but because he knows that these

11 things happen at crime scenes, he's an old police officer.

12 So as to the other weapons that were moved from other

13 bodies I'm sure that there would have been other members.

14 Whether we've exhausted getting all of them or whether we

15 stopped when we got to Mr Breedt I'm not sure, Warrant

16 Officer Breedt, but the team that was tasked to do that

17 particular investigation I'm not sure whether they

18 canvassed all other members as well. But what the logic

19 for me was that any member escorting the medics would, at

20 the request of the medics have done what Warrant Officer

21 Breedt did." That was your evidence previously in cross-

22 examination by my learned friend Mr Chaskalson.

23 GENERAL NAIDOO: Correct, Chair.

24 MR BRICKHILL: And consistent with that

25 evidence it is possible that other members in addition to

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1 Warrant Officer Breedt may have moved weapons in breach of
 2 the rules set out in the process manual, at least in breach
 3 of the first rule, do not handle the evidence at all.
 4 GENERAL NAIDOO: Chair, I wouldn't agree
 5 with saying in breach of because I think the manual
 6 provides specifically that circumstances where, if it's
 7 necessary and I think we referred there to life-
 8 threatening, that they could but the procedure they should
 9 follow in terms of noting, et cetera, so –
 10 CHAIRPERSON: Yes, if they didn't break
 11 the first rule because they're covered by the exception in
 12 the second, then they didn't comply with the second rule.
 13 GENERAL NAIDOO: Yes, sir.
 14 CHAIRPERSON: Isn't that so? If
 15 unavoidable, remove the evidence with the minimum of
 16 handling and mark and note the position –
 17 GENERAL NAIDOO: That's correct.
 18 CHAIRPERSON: - from where it's removed
 19 in order to protect it from damage and contamination.
 20 GENERAL NAIDOO: That's correct.
 21 CHAIRPERSON: So they didn't do that. So
 22 either they broke the first rule or they broke the second
 23 rule. Either way they broke a rule, didn't they? You
 24 can't avoid that.
 25 GENERAL NAIDOO: No, I, as I indicated,

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1 the proposition was that they broke a rule by moving the –
 2 and they acted in the interests of the situation at that
 3 time, not with the intention to break the rules. I think
 4 the intention is the most important thing.
 5 CHAIRPERSON: They escaped breaking the
 6 first rule but they then proceeded to break the second, so
 7 either way they're in trouble, aren't they?
 8 GENERAL NAIDOO: Chair, okay.
 9 MR BRICKHILL: Under the section dealing
 10 with the handling of evidence the process manual re-
 11 emphasises that the deceased is also regarded as evidence.
 12 GENERAL NAIDOO: That is correct, Chair.
 13 MR BRICKHILL: And should be handled as
 14 such.
 15 GENERAL NAIDOO: That's correct, Chair.
 16 MR BRICKHILL: So the breach, to the
 17 extent that it took place, of the first and second rules in
 18 relation to the handling of evidence also related
 19 specifically to deceased as evidence.
 20 GENERAL NAIDOO: Chair, I'm not sure
 21 which breach now specifically is being referred to.
 22 MR BRICKHILL: I think we've already got
 23 it on the record, I'll move on. It was a clumsy question.
 24 The next stage in the process over the page is concerned
 25 with handling the media. Did you take any steps in

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1 relation to handling the media?
 2 GENERAL NAIDOO: Chair, I indicated that
 3 –
 4 MR BRICKHILL: At the scene?
 5 GENERAL NAIDOO: - there was a cordon
 6 already so I don't think, as far as I know there was no
 7 media on scene.
 8 MR BRICKHILL: The next stage in the
 9 process manual concerns identifying secondary scenes.
 10 There was some debate earlier between yourself and the
 11 Chairperson, Major-General, regarding whether scene 2
 12 constituted a single crime scene or a number of discreet
 13 scenes. How did you regard it?
 14 GENERAL NAIDOO: Chair, a number of
 15 distinct scenes.
 16 MR BRICKHILL: You would suggest then
 17 that scene 2 consisted of a number of separate, distinct
 18 scenes?
 19 GENERAL NAIDOO: That's correct, Chair.
 20 MR BRICKHILL: How many distinct scenes
 21 would you suggest?
 22 GENERAL NAIDOO: Chair, I think I
 23 testified to the fact that there were a number, we can go
 24 through it and try to determine that. I have not been
 25 through that exercise.

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1 CHAIRPERSON: In one sense there were
 2 several scenes but it was thereafter treated as one scene,
 3 wasn't it? I mean you called one crime scene manager –
 4 GENERAL NAIDOO: Chair, yes.
 5 CHAIRPERSON: And you did one walk
 6 through with that person, is that right?
 7 GENERAL NAIDOO: We put a cordon as wide
 8 as possible around the affected areas, yes.
 9 CHAIRPERSON: Yes, ja.
 10 MR BRICKHILL: So perhaps it may be more
 11 accurate to describe it as a single scene with distinct
 12 parts.
 13 GENERAL NAIDOO: Possibly.
 14 MR BRICKHILL: It may be that nothing
 15 turns on that issue. The next stage is concerned with the
 16 second handover of the scene. The first handover concerns
 17 the handover, in theory, from the public to the first
 18 member. The second handover concerns the handover of the
 19 scene from the first member to the crime scene manager or
 20 investigating officer. You testified that you effectively
 21 handed over the scene to Captain Mohlaki as crime scene
 22 manager.
 23 GENERAL NAIDOO: Yes, I did summon him
 24 and he did take over the scene, that's correct.
 25 MR BRICKHILL: Under the second paragraph

<p style="text-align: right;">Page 24654</p> <p>1 in this column it is indicated that the first member 2 undertakes the following when performing the second 3 handover, indicates the access routes to the scene – did 4 you discuss access routes with Captain Mohlaki? 5 GENERAL NAIDOO: Chair, we did discuss 6 how did he access the scene as opposed to how did I access 7 the scene, yes. 8 MR BRICKHILL: The second step is to 9 indicate a temporary command centre. You've already 10 confirmed that a command centre was established and 11 subsequently Captain Mohlaki assumed responsibility for 12 that, is that correct? 13 GENERAL NAIDOO: That's correct. 14 MR BRICKHILL: The third stage concerns 15 indicating designated areas for witnesses and suspects. 16 Did you discuss that with Captain Mohlaki? 17 GENERAL NAIDOO: Chair, as I indicated 18 from where we stood we could see where all the suspects who 19 had been arrested were being processed. 20 MR BRICKHILL: The next stage is 21 identifying those possible witnesses and suspects, you've 22 spoken to that. After that, the first member provides 23 information on possible evidence and the location thereof. 24 GENERAL NAIDOO: Chair, I've indicated 25 and I think Captain Mohlaki also testified to that fact</p>	<p style="text-align: right;">Page 24656</p> <p>1 MR BRICKHILL: It continues, "The first 2 member fully briefs the crime scene manager on all 3 activities on the crime scene, including key aspects of the 4 scene." You've testified to that. 5 GENERAL NAIDOO: Yes, Chair. 6 MR BRICKHILL: And then finally, "The 7 first member then hands over the scene to the crime scene 8 manager or investigating officer by an entry in his pocket 9 book which is countersigned by the crime scene manager or 10 investigating officer." I take it that that too, in the 11 circumstances, did not take place. 12 GENERAL NAIDOO: That was not possible, 13 Chair. 14 MR BRICKHILL: The next stage in the 15 process, over the page at page 439, it actually begins at 16 the foot of 438 and continues on to 439 is scene processing 17 and investigation and the role of the first member in that 18 regard, in the second paragraph at the top of page 439, is 19 to give a final situation report to the dispatcher and may 20 only leave the scene with the approval of the CSM, crime 21 scene manager or investigating officer. In this case there 22 was no dispatcher because there was no public call and so 23 you wouldn't have given a final situation report to the 24 dispatcher, is that correct? 25 GENERAL NAIDOO: That's correct, Chair.</p>
<p style="text-align: right;">Page 24655</p> <p>1 that I gave him an indication that this was a huge crime 2 scene, I had not been over the entire scene and that we 3 would have to begin processing the scene as soon as 4 possible. 5 MR BRICKHILL: And then the final step in 6 this handover process is to hand over any notes. 7 GENERAL NAIDOO: There were no notes, 8 Chair. 9 MR BRICKHILL: And there's also a 10 reference there to annexure 2. Annexure 2 is a form for 11 the first member report on handover to the crime scene 12 manager. I take it that that form similarly was not 13 completed or submitted to Captain Mohlaki. 14 GENERAL NAIDOO: Chair, the circumstances 15 here were different. I think to just take you back to 16 yesterday, there was an indication on specific planning for 17 issues of larger or – I think the reference was major 18 incidents. In this case Captain Mohlaki and his team were 19 already on site, although not at the scene and they were 20 not at the scene for obvious reasons. Should they become 21 involved in the scene during police action then they would 22 not be allowed to process the scene and the planning in 23 terms of the plan was that the crime scene manager and the 24 crime scene team would immediately step in and take charge 25 of a scene. So yes, the annexure 2 was not completed.</p>	<p style="text-align: right;">Page 24657</p> <p>1 MR BRICKHILL: Presumably you did then 2 leave the scene with the approval of the crime scene 3 manager, is that correct? 4 GENERAL NAIDOO: Chair, I've testified 5 that I informed the JOC that the crime scene people were at 6 the scene and then I was subsequently informed to go and 7 meet with the IPID people and bring them in and that's what 8 I did, I left the scene. 9 MR BRICKHILL: The next and penultimate 10 stage in this process, the responsibilities of the first 11 member, concerns debriefing subsequently and the process 12 manual states, "The first member must, if at all possible, 13 be present at the debriefing session." That would be the 14 debriefing session specifically in relation to the crime 15 scene, as I indicated, is that correct? 16 GENERAL NAIDOO: That's correct, Chair. 17 MR BRICKHILL: Did you attend a 18 debriefing with Captain Mohlaki as crime scene manager and 19 possibly others, concerning the crime scene? 20 GENERAL NAIDOO: Chair, I did not attend 21 any debriefing session of the crime scene management 22 people. 23 MR BRICKHILL: The final phase concerns 24 the evaluation, evaluation phase. It reads, "The first 25 member must be present at the crime scene evaluation</p>

<p style="text-align: right;">Page 24658</p> <p>1 session where the following activities take place, 2 commendation of correct actions, correcting mistakes made, 3 co-ordination of follow-up activities, exchanging further 4 information, ensuring ongoing co-operation to support the 5 investigating officer." Has, to your knowledge, a crime 6 scene evaluation session contemplated here taken place? 7 GENERAL NAIDOO: Chair, I'm not aware. 8 The crime scene management component does not resort under 9 the Provincial Commissioner, they are a national component 10 and they conduct their activities independent – they 11 support our policing activities but they don't report to 12 the Provincial Commissioner. 13 MR BRICKHILL: And so to the extent that 14 such a session did take place, you obviously weren't 15 present. 16 GENERAL NAIDOO: That's what I'm 17 indicating, yes, unless I was invited. 18 CHAIRPERSON: What happens in a case such 19 as the present where you've got a crime scene – I should 20 say, I suppose, an alleged crime scene – where it's 21 possible that a number of crimes were committed, some of 22 them which would be appropriately the subject matter of 23 investigation and handling by the police. 24 GENERAL NAIDOO: That's correct. 25 CHAIRPERSON: And others which were – or</p>	<p style="text-align: right;">Page 24660</p> <p>1 or the LCRC people sit with because in some cases we are 2 their primary client, the SAPS, and in other cases IPID is 3 their primary client. So I think it assists the fact that 4 they don't report directly to us here in the province, so 5 we don't exercise any direct control over them. But as to 6 whether they do separate evaluations, I can establish that. 7 I'm not aware. 8 CHAIRPERSON: Taking up the example you 9 gave, do you know what happened in relation to the crime 10 scene on the 13th? You know, I take it the crime scene 11 would have been that field where what we can call the 12 engagement took place, and then there was the area in front 13 of one of the shacks I think in the informal settlement 14 where the third civilian died, and then I think there's a 15 suggestion, the evidence is that one of the strikers was 16 actually shot on the other side of the river. So the crime 17 scene, whether you want to regard it as one crime scene or 18 three, but that would have been the crime scene. 19 GENERAL NAIDOO: Correct. 20 CHAIRPERSON: Do you know what happened 21 there? If you – 22 GENERAL NAIDOO: I have no idea. 23 CHAIRPERSON: If you don't I don't want 24 to waste time on something you don't know about. 25 GENERAL NAIDOO: I have no idea.</p>
<p style="text-align: right;">Page 24659</p> <p>1 which would be the sort of matters which would be referred 2 to IPID. So IPID would investigate possible crimes 3 committed by members of the police and they would open a 4 docket and so forth, take statements and on the other side 5 the police would also open dockets and investigate crimes 6 allegedly committed by, in this case, the strikers at the 7 scene. Now when you come to crime scene evaluation 8 sessions, do IPID regard it from the point of view of their 9 investigation as being involved in an evaluation of the 10 crime scene, the crimes being the alleged crimes committed 11 by the police and is there a separate crime scene 12 evaluation done by the police in respect of the crimes 13 they're investigating? How do the two things fit together 14 in a case such as this? 15 GENERAL NAIDOO: Chair, an example of 16 what you refer to now is the scene of the 13th where there 17 are dockets that the police are investigating. 18 [11:08] And there are dockets that IPID is investigating, 19 and as far as I can recall, initially we gave all the 20 dockets to IPID, but they then agreed, or they requested 21 that we should assist because there are dockets that are 22 outside their mandates and I know that there has been 23 cooperation. So the cooperation is based on in terms of 24 achieving each, each line function achieving their 25 objective, and this is a predicament that the crime scene,</p>	<p style="text-align: right;">Page 24661</p> <p>1 CHAIRPERSON: But that would be a neat 2 illustration, would it not – 3 GENERAL NAIDOO: That's the example – 4 CHAIRPERSON: - as you point out by 5 giving this example – 6 GENERAL NAIDOO: Yes. 7 CHAIRPERSON: - of how the overlap can or 8 should be handled. 9 GENERAL NAIDOO: Yes. 10 CHAIRPERSON: But you can't help us on 11 that? 12 GENERAL NAIDOO: I have no idea, Chair. 13 CHAIRPERSON: I see. Thank you. 14 MR BRICKHILL: Major General Naidoo, 15 we've now gone through the various steps delineated in the 16 Process Manual, which are broadly consistent also with the 17 stages outlined in the policy. We've identified, I would 18 put it to you, that in certain respects the crime scene was 19 secured in accordance with the requirements of the Process 20 Manual, and in other respects it was not. 21 GENERAL NAIDOO: Chair, I'm not sure as 22 to which was and which was not. As I indicated from my 23 testimony I indicated what we did. 24 MR BRICKHILL: I would put it to you that 25 of particular concern was the conduct relating to the</p>

<p style="text-align: right;">Page 24662</p> <p>1 handling of evidence and the movement of weapons without 2 the taking of notes to mark positions. 3 GENERAL NAIDOO: Chair, I don't think 4 that points to an unsecure crime scene. Yes, and we've 5 agreed during the testimony that there are personnel that 6 have not complied procedurally with things, but I don't 7 think that points to an unsecure crime scene. 8 MR BRICKHILL: Let's come then finally to 9 the detail of the movement of those weapons. Warrant 10 Officer Breedt's evidence in his statement is that he 11 removed, and he says replaced weapons in respect of the 12 bodies described as I, J, K, and M, and he says possibly O. 13 He says he can't remember O. I would take us to the SAPS 14 opening statement, it's exhibit FFF9, and if we can go to 15 paragraph 45.8.3. It's on page 22. This is the opening 16 statement at the commencement of the Commission proceedings 17 on behalf of the SAPS, where there's a summary account at 18 that initial stage of the case in relation to one category 19 of bodies, and it reads as follows, "The bodies marked D, 20 E, G, H, J, K, L, M, were among the large group of armed 21 protesters who were inside the koppie," that's koppie 3. 22 "Gunshots were fired at the police from inside the koppie. 23 The police fired shots in the direction of the firing 24 group, killing these eight persons. The police service 25 does not yet have ballistic reports relating to these</p>	<p style="text-align: right;">Page 24664</p> <p>1 GENERAL NAIDOO: I'm not aware 2 specifically, no. 3 MR BRICKHILL: If I can take us now to 4 exhibit FFF8, and to the third page, FFF8 is a list of the 5 shooters at scene 2 and on page 3 from row 50 the K9 6 members who discharged firearms – 7 CHAIRPERSON: We haven't got 50, that's 8 five-oh, is it? Oh, we have got five-oh. 9 MR BRICKHILL: Five-oh, Chair. 10 CHAIRPERSON: Is that Sergeant Brazier? 11 MR BRICKHILL: Indeed so, Chair. 12 CHAIRPERSON: I see. Okay, thank you. 13 Yes. 14 MR BRICKHILL: This is a list from row 50 15 down of the K9 members who discharged firearms at scene 2. 16 Is that correct? 17 GENERAL NAIDOO: That's correct, Chair. 18 MR BRICKHILL: They include among others, 19 Warrant Officer Breedt. 20 GENERAL NAIDOO: That's correct, Chair. 21 MR BRICKHILL: And this list also 22 includes you as having discharged a firearm at the scene. 23 GENERAL NAIDOO: That is correct, Chair. 24 MR BRICKHILL: That group of K9 members 25 listed in FFF8 all formed part of the forward holding area</p>
<p style="text-align: right;">Page 24663</p> <p>1 deaths and is at this stage unable to speak more 2 specifically to each of the deaths. The evidence may 3 reveal that the response of some police officers may have 4 been disproportionate to the danger they faced from the 5 group of more than 200 armed protesters." 6 What I want to put to you is that in respect of 7 the bodies referred to by Warrant Officer Breedt, it's the 8 bodies I, J, K, M – my learned attorney draws to my 9 attention that in passage of the opening statement it 10 appears that body I is omitted in error; nothing turns on 11 this, but does appear to us that I was intended to be 12 included in that list, and – 13 CHAIRPERSON: [Microphone off, inaudible] 14 Mr Semenya to confirm whether that is so. Is that right, 15 Mr Semenya, or can't you recall precisely? It was a long 16 time ago. 17 MR SEMENYA SC: I'll look into it, Chair. 18 CHAIRPERSON: Thank you. 19 MR BRICKHILL: Chair, nothing turns on it 20 for present purposes. What I want to put to you, Major 21 General, is that in respect of the bodies mentioned by 22 Warrant Officer Breedt from which he allegedly removed and 23 replaced weapons, those are bodies I, J, K, M and possibly 24 O, at this stage the precise shooters, people responsible 25 for the deaths are unconfirmed.</p>	<p style="text-align: right;">Page 24665</p> <p>1 1 deployment? 2 GENERAL NAIDOO: That is correct, Chair. 3 MR BRICKHILL: And all fell under your 4 command? 5 GENERAL NAIDOO: That is correct, Chair. 6 MR BRICKHILL: I'd like now to take us to 7 exhibit L, slide 232 – 8 CHAIRPERSON: Which is the particular 9 slide you want to look at? 232? 10 MR BRICKHILL: Slide 232. 11 CHAIRPERSON: We now have it on the 12 screen, thank you. 13 MR BRICKHILL: Slide 232 and the 14 preceding and subsequent slides set out summary of the 15 incidents during phase 3, a synopsis of the shooting 16 incidents reported at koppie 3, and different incidents are 17 itemised. I would refer you first to incident 5 at the top 18 of slide 232. Incident 5 is summarised as follows, 19 "Forward holding area 1 members fire at a protester who was 20 firing a pistol at them from the southern side of koppie 3. 21 The protester was moving between the bushes on the south- 22 western side of the koppie." So there's an incident there 23 reflected in which forward holding area 1 members fired at 24 a protester at koppie 3. Those would have been among the 25 K9 members that we've seen listed. Is that correct?</p>

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1 GENERAL NAIDOO: Chair, I think if we go
 2 back to the testimony and evidence led by the evidence
 3 leader and the slide that we looked at, we already
 4 established that that particular incident on the south-
 5 western side was a combination of forward holding area 1
 6 and 2 personnel. That has already been established.
 7 MR BRICKHILL: Yes, the next incident to
 8 which I'd refer you is incident 7, which records as
 9 follows. "K9 members shot at an armed protester who was
 10 making his way through the bushes on the south-eastern side
 11 towards Major General Naidoo, who was moving to the NIU
 12 members." You note that incident?
 13 GENERAL NAIDOO: I have noted.
 14 MR BRICKHILL: And then the final
 15 incident to which I'd refer you is incident 10 on slide
 16 233. Incident 10 reads, "The K9 members approach and enter
 17 the bushes on the south-western side of koppie 3 and shoot
 18 at armed protesters who attempt to attack them when moving
 19 between the large rocks." Do you see that?
 20 GENERAL NAIDOO: I have noted that.
 21 MR BRICKHILL: So we have recorded in
 22 exhibit L a summary account of incidents involving the
 23 discharge of firearms towards striking mineworkers by K9
 24 members under your command.
 25 GENERAL NAIDOO: I have noted that,

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1 Chair.
 2 CHAIRPERSON: Sorry, in relation to
 3 incident 10, remind me, this relates to the south-western
 4 side of koppie 3 and you'll remember there were K9 members
 5 under the command of Captain Kidd who came from forward
 6 holding area 2. Now does this incident refer to K9 members
 7 who were part of the group under the command of the
 8 witness, or do they constitute part of the group under the
 9 command of Captain Kidd who came from forward holding area
 10 2, or don't we know?
 11 MR BRICKHILL: Major General Naidoo, are
 12 you able to comment on that?
 13 GENERAL NAIDOO: Chair, I've already
 14 pointed out that we have, previously went there and we did
 15 establish that there were members from both forward holding
 16 areas at the south-western side. So the reference there to
 17 specifically who, I'm not sure.
 18 CHAIRPERSON: Yes, these shots may have
 19 been fired by people under your command, if one can use
 20 that expression, or they may have been fired by people
 21 under Captain Kidd's command. Is that right?
 22 GENERAL NAIDOO: That's correct, Chair.
 23 MR BRICKHILL: Chair, perhaps to clarify
 24 this we could go back to FFF8, the list of scene 2
 25 shooters.

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1 CHAIRPERSON: You'll remember I read out
 2 yesterday from Captain Kidd's statement that he reflected
 3 there's quite a number of his people, including K9 people,
 4 who fired a fair number of rounds. You remember that. But
 5 anyway, is there information, further information on this
 6 point here in this exhibit –
 7 MR BRICKHILL: Chair, there isn't –
 8 CHAIRPERSON: - FFF8?
 9 MR BRICKHILL: Excuse me, Chair. Chair,
 10 there's isn't.
 11 CHAIRPERSON: That's the point, isn't it?
 12 I mean so this is an incomplete list. I don't know whether
 13 it purports only to relate to people who were under the
 14 command of General Naidoo, in which case it's complete as
 15 far as it goes. But if you look at Captain Kidd's
 16 statement it's quite clear that – remember I gave the
 17 reference yesterday – quite a lot of rounds fired by his
 18 people.
 19 MR BRICKHILL: Chair, it may indeed be
 20 incomplete. For purposes of the present issue that I wish
 21 to broach with the Major General it's not necessary to
 22 resolve it, but we do note that apparent incompleteness in
 23 the list. Major General, in relation to the bodies from
 24 which Warrant Officer Breedt claims that he removed and
 25 subsequently replaced weapons, you've confirmed that the

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1 shooters are at present unconfirmed, the specific shooters.
 2 GENERAL NAIDOO: I said I was not aware
 3 if anybody had been –
 4 MR BRICKHILL: In respect of those – let
 5 me put it differently. The K9 members who discharged their
 6 firearms at koppie 3 all provided warning statements.
 7 GENERAL NAIDOO: That is correct, Chair.
 8 MR BRICKHILL: And they constitute in
 9 theory potential suspects in relation to the deaths that
 10 took place at scene 2.
 11 GENERAL NAIDOO: Correct, Chair.
 12 MR BRICKHILL: Accordingly Warrant
 13 Officer Breedt and the possible others you've suggested may
 14 also have moved weapons would have removed, and they allege
 15 replaced weapons from bodies in respect of which they are
 16 potential suspects?
 17 GENERAL NAIDOO: Chair, as I indicated,
 18 the person that confirmed that he has done both is Warrant
 19 Officer Breedt, yes.
 20 MR BRICKHILL: I want to put it to you
 21 that this conduct is of even greater concern where it takes
 22 place, or it's performed by a potential suspect. Do you
 23 agree?
 24 GENERAL NAIDOO: Chair, I don't agree for
 25 the simple reason, when a member responds to a crime scene

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1 and when he gets to the crime scene there's a victim and
 2 there is a suspect on scene, the member has to act. He
 3 potentially will try to arrest the suspect and in doing so
 4 he could have shot or injured the suspect. He is the first
 5 member on the scene and there are responsibilities
 6 allocated to him in terms of what he discovers there. So
 7 if we are saying then that if a member who is involved in
 8 this then should step outside the scene and wait until
 9 somebody else arrives, I think it's impractical. So that
 10 is why on that basis I don't agree with the proposition
 11 that's been put.

12 MR BRICKHILL: I want to put it to you
 13 that this conduct, if it was necessary, of removing and
 14 replacing the weapons would preferably have been performed
 15 by a SAPS member who had not discharged firearm at the
 16 scene. Do you agree?

17 GENERAL NAIDOO: Chair, the ideal
 18 situation was that everybody who discharged their firearms
 19 were not involved in any way with the scene, but we did not
 20 have an ideal situation and the situation we had there was
 21 quite clearly also articulated by the paramedic themselves
 22 who indicated what – I'm talking specifically with regard
 23 to Warrant Officer Breedt – who articulated specifically
 24 what the situation was and corroborates what he said to a
 25 large extent in terms about the removal, so the

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1 proposition, I can't accept that.

2 MR BRICKHILL: I want to move away from
 3 the crime scene and deal finally with two issues relating
 4 to your role in reporting subsequently. The first briefly
 5 for the record, on the 16th of August itself you've
 6 testified that a hot debrief took place. Is that correct?

7 GENERAL NAIDOO: Chair, I don't remember
 8 using the term "hot debrief."

9 MR BRICKHILL: It may be that the term
 10 comes from General Annandale's testimony. Did a hot
 11 debrief take place on the 16th?

12 GENERAL NAIDOO: Chair, I think I'd have
 13 to have more specific indication of what is being sought.

14 MR BRICKHILL: A debrief between, a
 15 first-level debrief between the commanders and their
 16 members immediately after the event.

17 GENERAL NAIDOO: As I testified in my
 18 evidence-in-chief that the JOC did instruct the groups as
 19 they were withdrawing from the scene to, for commanders to
 20 establish exactly what's the situation with each with their
 21 members and report to the JOC. So if that's the reference
 22 to the hot debrief, as far as I know, yes. I was not part
 23 of them because I was still at the crime scene and by the
 24 time I had returned from the crime scene most of the
 25 dayshift members had gone off.

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1 [11:27] MR BRICKHILL: Okay, thank you. The
 2 second issue which I'd like to address in relation to
 3 reporting, that you testified in your cross-examination in
 4 response to questions put by my learned friend Mr
 5 Chaskalson that you returned to the scene subsequent to the
 6 events of the 16th on at least one occasion to attend the
 7 SAPS reconstruction. Is that correct?

8 GENERAL NAIDOO: Chair, that was an issue
 9 where the appointed legal team wanted clarity, yes.

10 MR BRICKHILL: You attended that
 11 reconstruction event?

12 GENERAL NAIDOO: With our lawyers, yes.

13 MR BRICKHILL: And part of that
 14 reconstruction exercise was the attendance by Mr Cees de
 15 Rover. Is that correct?

16 GENERAL NAIDOO: I think yes.

17 MR BRICKHILL: And the reconstruction
 18 involved among other things walking through the scene at
 19 scene 2?

20 GENERAL NAIDOO: Chair, ja primarily it
 21 involved indicating where did you stand when most of the
 22 shooting occurred, etcetera. I think they were trying to
 23 establish the picture in their mind as to what was
 24 contained in statements, yes.

25 MR BRICKHILL: Were any other K9 members

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1 from the events at scene 2 present at that reconstruction?

2 GENERAL NAIDOO: Chair, I cannot
 3 specifically remember K9 members, but I'm sure we can
 4 establish that. I think what I can indicate, it's not all
 5 members that were involved in the incident at that time
 6 were there, as far as I can recall.

7 MR BRICKHILL: Can you specifically
 8 remember whether there were any other K9 members present?

9 GENERAL NAIDOO: Chair, as I've
 10 indicated, I cannot specifically remember K9 members, but I
 11 may be wrong. As – no, but I can ascertain that, yes.

12 MR BRICKHILL: And during the
 13 reconstruction did you engage with Mr de Rover?

14 GENERAL NAIDOO: Chair, he did ask
 15 questions and yes, we gave him responses in terms of
 16 questions.

17 MR BRICKHILL: And what did you
 18 personally report to him?

19 GENERAL NAIDOO: Chair, it was now quite
 20 some time ago. I can't remember the specific questions,
 21 but I'm sure it related to locations and directions and
 22 distances. That was his primary interest, I think, in
 23 terms of –

24 MR BRICKHILL: If we could please pull up
 25 exhibit FFF11, this is the original statement of Mr de

<p style="text-align: right;">Page 24674</p> <p>1 Rover and if we can go to paragraphs 82 and 83. Paragraph 2 82, this is dealing with scene 2, paragraph 82 reads, "In 3 the absence of a countermanding order the implementation of 4 the operation at scene 2 went ahead with the on-scene 5 commander unaware of the incidents that had just produced 6 at scene 1." The reference to the on-scene commander, 7 would that be a reference to you or to Brigadier Calitz? 8 GENERAL NAIDOO: Chair, I'm not sure who 9 he intended, but if he refers to scene 1 then he must be 10 talking about Brigadier Calitz. 11 CHAIRPERSON: No, no, hang on, it's not 12 as simple as that. "In the absence of a countermanding 13 order the implementation of the operation at scene 2 went 14 ahead" - that's obviously correct - "with the on-scene 15 commander unaware of the incidents that had just produced" 16 - he means been produced - "at scene 1." Now you knew, did 17 you know what had happened at scene 1? 18 GENERAL NAIDOO: Chair, we heard the 19 shooting. I testified to that, we did - 20 CHAIRPERSON: Ja, so that's the point. 21 You knew that scene - you didn't know where it was 22 precisely, but you knew that there had been a scene where 23 various things had happened - 24 GENERAL NAIDOO: Medics were required, 25 yes.</p>	<p style="text-align: right;">Page 24676</p> <p>1 that because I have also testified to that effect. The 2 other part, in terms of the actions of individuals, no I 3 don't remember at any time discussing the actions of other 4 individuals, but I may have mentioned the issue of the 5 lighting conditions. I have also testified to that effect. 6 CHAIRPERSON: Would you say that what Mr 7 de Rover describes as low light conditions started to 8 prevail at scene 2 during the period when actions of 9 individuals that are relevant were happening? 10 GENERAL NAIDOO: Chair, if you remember, 11 I did testify at the stage when I was with the NIU I did 12 comment that, the fact that the sun was going in the other 13 direction leading to, was one of the considerations in 14 terms of my assessment of the situation. 15 CHAIRPERSON: Yes, I understand that, but 16 there's a difference between knowing that the sun is going 17 to set soon, you'd better get on with it, you've got half 18 an hour of light left, and low-light conditions starting to 19 prevail. Now what he says is, "At scene 2 by that time 20 low-light conditions started to prevail." So when would 21 you say did low-light conditions start to prevail at scene 22 2? Surely it was after the final shot was fired. 23 GENERAL NAIDOO: Yes, after the incident. 24 As I indicated, I was concerned that it will start to 25 prevail, but it had not started at the time when we were</p>
<p style="text-align: right;">Page 24675</p> <p>1 CHAIRPERSON: You heard on the radio and 2 you heard the gunshots. 3 GENERAL NAIDOO: That's correct, Chair. 4 CHAIRPERSON: So I think it's pretty 5 clear, is it not, that the reference to the on-scene 6 commander must be a reference to Brigadier Calitz - 7 GENERAL NAIDOO: That's correct. 8 CHAIRPERSON: - who claims that he was 9 unaware of the incident at scene 1. 10 GENERAL NAIDOO: Of the shooting, yes. 11 MR BRICKHILL: Do you recall discussing 12 this issue with Mr de Rover? 13 GENERAL NAIDOO: Is it point 82? 14 MR BRICKHILL: Paragraph 82, yes. 15 GENERAL NAIDOO: No. 16 MR BRICKHILL: If we can move to 17 paragraph 83, paragraph 83 reads, "At scene 2 by that time 18 low-light conditions started to prevail, affecting the 19 ability of officers on that scene to properly appreciate 20 facts in the actions of the individuals at that scene. Did 21 you tell Mr de Rover that low light was affecting the 22 ability to appreciate facts in the actions of individuals 23 at the scene? 24 GENERAL NAIDOO: Chair, I may have 25 mentioned the issue that the sun was going down in terms of</p>	<p style="text-align: right;">Page 24677</p> <p>1 busy. 2 MR BRICKHILL: You would accept then, 3 Major General, that taken on its own terms paragraph 83 is 4 at least misleading? 5 GENERAL NAIDOO: Chair, I wouldn't say 6 that because I'm not sure what other members, who he 7 interviewed, because he interviewed various members, what 8 they would have seen and how they have perceived it. I 9 only indicated what my position was in terms of that. 10 CHAIRPERSON: No, but the thrust of the 11 point is that by the time the shooting was over low-light 12 conditions hadn't yet started to prevail and therefore as a 13 statement of what happened paragraph 83 is not accurate. 14 Whether it was based upon information which Mr de Rover got 15 from other people which isn't right, is a different matter, 16 but what Mr Brickhill is concerned with, I think, is 17 whether objectively viewed the statement in paragraph 83 is 18 correct, and I understood you to concede that low-light 19 conditions didn't start to prevail until after the last 20 shot was fired. So therefore it would appear prima facie 21 that paragraph 83 requires some amendment to bring it into 22 line with the correct facts. Would you accept that? 23 GENERAL NAIDOO: Chair, what I would say 24 is when I arrived at the NIU low-light conditions had not 25 started. Obviously events proceeded and we lost track of</p>

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1 time, and at some stage when everything was done we
2 realised, and it's clear in the photographs it was dusk,
3 sun was setting. So what I'm saying is that paragraph 83
4 could not be solely attributed to any comment that I would
5 have made. I can't, you know, discount somebody else would
6 have said something that would have created that
7 impression.

8 MR BRICKHILL: But taken on its own the
9 paragraph is at least inaccurate.

10 GENERAL NAIDOO: Chair, I stand by what I
11 said. I can't agree that – because I can only indicate
12 what my contribution was. Somebody could have said
13 something else.

14 MR BRICKHILL: Chair, no further
15 questions –

16 CHAIRPERSON: You've made the point.
17 Have you got no further questions?

18 MR BRICKHILL: Those are our questions,
19 Chair.

20 CHAIRPERSON: Alright, thank you. Before
21 Mr Mpfu starts we'll take the tea adjournment and we'll be
22 back in about quarter of an hour, I hope.

23 [COMMISSION ADJOURNS COMMISSION RESUMES]
24 [12:03] CHAIRPERSON: The Commission resumes. I
25 see, Mr Mpfu, that you've handed us or caused to be handed

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1 to us some documents. Do you want to, from the point of
2 view of housekeeping do you want to mark them now before
3 you –

4 MR MPOFU: Chairperson –

5 CHAIRPERSON: I'm in your hands.

6 MR MPOFU: No, I think let's mark them as
7 we get to them.

8 CHAIRPERSON: Alright, okay. You're
9 still under oath, Major-General.

10 GENERAL NAIDOO: Still under oath, Chair.

11 CHAIRPERSON: Mr Mpfu, I've given you
12 leave on five topics. I would think that three have
13 already been covered with your colleague Mr Ntsebeza.
14 You'll notice, you remember I did give leave on condition
15 that the matter has not been dealt with by previous cross-
16 examiners. I think you'll find if you look at 3, that's
17 been covered by Mr Ntsebeza but there may be a couple of
18 questions you can ask.

19 MR MPOFU: Yes, there will be a couple,
20 Chairperson.

21 GENERAL NAIDOO: s.u.o.

22 CROSS-EXAMINATION BY MR MPOFU: Good
23 afternoon, Major-General.

24 GENERAL NAIDOO: Good afternoon,
25 Advocate.

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1 MR MPOFU: Would it be fair to say that
2 this operation was one of the biggest operations in your
3 life or in your career?

4 GENERAL NAIDOO: Chair, no.

5 MR MPOFU: It was not one of them?

6 GENERAL NAIDOO: No.

7 MR MPOFU: Have you previously been
8 involved in operations where there were so many fatalities?

9 GENERAL NAIDOO: Chair, I think with
10 regard to big, I'm not sure, was there a reference to
11 fatality. I have not been involved in an operation with
12 that many fatalities.

13 MR MPOFU: Okay, so let's say then it was
14 the operation with the biggest number of fatalities that
15 you have ever been involved in, correct?

16 GENERAL NAIDOO: That is correct, Chair.

17 MR MPOFU: And also the largest number of
18 injuries?

19 GENERAL NAIDOO: That's correct, Chair.

20 CHAIRPERSON: The largest number of
21 members of the force? I think you've told us, am I
22 correct, 600 is about the right number on the 16th?

23 GENERAL NAIDOO: Between 6, 700 yes, it's
24 updated on a daily basis.

25 CHAIRPERSON: Yes, but on the 16th there

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1 were between 6 and 700 as far I remember.

2 GENERAL NAIDOO: That's correct, Chair.

3 CHAIRPERSON: Now have you been involved
4 in operations previously where more members were involved
5 in the operation?

6 GENERAL NAIDOO: I have, Chair.

7 CHAIRPERSON: Oh, you have. I see.

8 MR MPOFU: How many?

9 GENERAL NAIDOO: Chair, for the World
10 Summit on Sustainable Development in Johannesburg the SAPS
11 dedicated 8 000 members and those 8 000 members formed part
12 of the operation. I was the support commander for that
13 operation.

14 CHAIRPERSON: Well, let's draw a
15 distinct. I'm sorry, Mr Mpfu –

16 MR MPOFU: Yes, no –

17 CHAIRPERSON: Forgive me.

18 MR MPOFU: Thank you, Chair.

19 CHAIRPERSON: - between peaceful
20 operations, I understand you don't know in advance always
21 whether an operation will be peaceful but operations that,
22 op die ou einde, eventually turned out to be peaceful and
23 operations such as the present where there were what we can
24 call hostilities, if you understand the distinction I'm
25 drawing.

<p style="text-align: right;">Page 24682</p> <p>1 GENERAL NAIDOO: Chair –</p> <p>2 CHAIRPERSON: I understand the operation</p> <p>3 you've just mentioned where there were so many members of</p> <p>4 the service involved, was that a peaceful operation, as it</p> <p>5 turned out?</p> <p>6 GENERAL NAIDOO: Chair, based on the</p> <p>7 track analysis where we expected more than 200 world</p> <p>8 leaders, obviously various eventualities had to be planned</p> <p>9 for and given the climate at that time, so that's why I</p> <p>10 indicated to that particular operation.</p> <p>11 CHAIRPERSON: I'm not suggesting you had</p> <p>12 an excessive number, I understand the potential threats, I</p> <p>13 understand the international importance of what was</p> <p>14 involved, so I'm sure that every single member who was</p> <p>15 involved was regarded as necessary but if you draw the</p> <p>16 distinction that I've drawn between an operation which in</p> <p>17 the end turned out to be peaceful, the threats didn't</p> <p>18 materialise in any significant way, and an operation like</p> <p>19 the Marikana one where there were, to use a neutral word,</p> <p>20 hostilities and people were killed and injured, is the</p> <p>21 Marikana operation the biggest one of that kind you've been</p> <p>22 involved in?</p> <p>23 GENERAL NAIDOO: Chair, definitely, the</p> <p>24 Marikana operation was a very large operation.</p> <p>25 MR MPOFU: Yes and bearing in mind the</p>	<p style="text-align: right;">Page 24684</p> <p>1 correct?</p> <p>2 GENERAL NAIDOO: I understand that,</p> <p>3 Chair.</p> <p>4 MR MPOFU: And I will not, I will do my</p> <p>5 best not to traverse the ground that has been properly</p> <p>6 traversed by other cross-examiners but I do represent some</p> <p>7 of the people who were injured at both scenes 1 and scene</p> <p>8 2. You understand that?</p> <p>9 GENERAL NAIDOO: I do understand that,</p> <p>10 Chair.</p> <p>11 MR MPOFU: So if it would turn out then</p> <p>12 that in the process of discharging your firearm that you</p> <p>13 may have killed someone, that would be the first time,</p> <p>14 correct?</p> <p>15 GENERAL NAIDOO: In my life, Chair.</p> <p>16 MR MPOFU: Okay. Also just to situate</p> <p>17 the questions I'm going to ask you, another significance of</p> <p>18 your testimony is that you are one of the people who were</p> <p>19 involved with these incidents for a long period. I</p> <p>20 wouldn't say from the beginning to the end but close to the</p> <p>21 beginning right up to the end. Do you understand that?</p> <p>22 GENERAL NAIDOO: Chair, I think to be</p> <p>23 more specific, which incident's date?</p> <p>24 MR MPOFU: No, I'm talking about the</p> <p>25 events, sorry, the events of Marikana and I'm now talking</p>
<p style="text-align: right;">Page 24683</p> <p>1 distinction that the Chairperson has correctly drawn, would</p> <p>2 you then agree, in summary would you agree that from the</p> <p>3 point of view of the number of fatalities, the number of</p> <p>4 injuries, the severity of those injuries, the number of</p> <p>5 policemen in one place at the same time this was one of the</p> <p>6 biggest operations you've ever been involved in?</p> <p>7 GENERAL NAIDOO: It's one of the larger</p> <p>8 ones, yes, Chair.</p> <p>9 MR MPOFU: Thank you. Now, and would it</p> <p>10 be fair to say at a personal level this was a life-changing</p> <p>11 experience for you?</p> <p>12 GENERAL NAIDOO: Very much so, Chair.</p> <p>13 MR MPOFU: And you are not the same</p> <p>14 person that you were before Marikana, correct?</p> <p>15 GENERAL NAIDOO: Most definitely.</p> <p>16 MR MPOFU: Before the Marikana operation</p> <p>17 had you ever killed a person during an operation?</p> <p>18 GENERAL NAIDOO: Me personally, Chair?</p> <p>19 MR MPOFU: Yes.</p> <p>20 GENERAL NAIDOO: Never, Chair.</p> <p>21 MR MPOFU: Now, the importance of your</p> <p>22 evidence in the context of this Commission is that you are</p> <p>23 the first shooter, as it were, the first person who</p> <p>24 discharged a firearm that we are interacting with, so you</p> <p>25 understand that I'll be asking a few questions around that,</p>	<p style="text-align: right;">Page 24685</p> <p>1 about the whole span of the events from, which we can say</p> <p>2 started around the 10th up to the 16th?</p> <p>3 GENERAL NAIDOO: Chair, yes.</p> <p>4 Specifically directly involved from the 11th until the 16th,</p> <p>5 yes.</p> <p>6 MR MPOFU: And one of the things that I</p> <p>7 would like to ask you about is whether you can assist us</p> <p>8 with the evolution of this crowd from what seems to have</p> <p>9 been a peaceful crowd around the 10th to what SAPS certainly</p> <p>10 regarded as being a violent crowd by the 16th and the first</p> <p>11 question I'm going to ask you in respect of that is in</p> <p>12 relation to the injuries, the people who were injured on</p> <p>13 the 11th. You were involved before those injuries took</p> <p>14 place, correct?</p> <p>15 GENERAL NAIDOO: Chair, not directly</p> <p>16 involved. When you say I was involved, I was informed of</p> <p>17 the incident and responded in terms of providing additional</p> <p>18 resources for the –</p> <p>19 MR MPOFU: Yes – yes, sorry, no. I</p> <p>20 didn't, when I said involved I don't mean you were at the</p> <p>21 scene. What I'm trying to say is by the time those</p> <p>22 injuries occurred you were already part of the whole setup.</p> <p>23 GENERAL NAIDOO: Chair, I'm not sure</p> <p>24 which injuries because as I –</p> <p>25 CHAIRPERSON: You went to Marikana on the</p>

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1 morning –

2 GENERAL NAIDOO: Of the 13th.

3 CHAIRPERSON: - of the 13th. You were

4 present when there were discussions with Brigadier Calitz

5 and the Lonmin people. Various things happened which

6 you've told us about and you then were travelling back, as

7 I understand you, with General – with the Provincial

8 Commissioner Mbombo to Potchefstroom.

9 GENERAL NAIDOO: Yes.

10 CHAIRPERSON: When there were reports

11 received over the telephone about what had happened, so

12 your involvement in the sense that you've already described

13 before you went back towards, to Potchefstroom –

14 GENERAL NAIDOO: Chair –

15 CHAIRPERSON: - began therefore on the

16 Monday morning but you weren't physically involved at all

17 and that's not being suggested to you.

18 GENERAL NAIDOO: Yes, no –

19 CHAIRPERSON: But I think Mr Mpofo is

20 right to put it the way he has and I think you'd agree with

21 him –

22 GENERAL NAIDOO: Chair -

23 CHAIRPERSON: Now that I've explained it

24 to you.

25 GENERAL NAIDOO: I'm just clarifying so

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1 that I answer the question correctly. As I indicated that

2 on the 11th I was contacted by the Provincial Commissioner

3 after an incident, so I'm just trying to clarify that

4 aspect.

5 MR MPOFU: Alright. It's not that

6 important. What I – maybe I should start by saying this.

7 When you were kind of getting involved and trying to trace

8 what's going on here, were you informed about the fact that

9 on the 10th there had been what I think is common cause had

10 been a peaceful march by the protesters to management

11 offices.

12 GENERAL NAIDOO: That's correct, Chair.

13 MR MPOFU: Yes and also on the 11th you

14 were also made aware that they had also marched to the NUM

15 offices.

16 GENERAL NAIDOO: That I became aware of

17 on the 11th, yes.

18 MR MPOFU: Yes and that in the process

19 of, in the course of that march there had been shots fired

20 at them.

21 GENERAL NAIDOO: Chair, that's when I

22 received the information, yes.

23 MR MPOFU: Yes and that their reaction to

24 the shots which were fired at them was to flee, as it were,

25 and run away to be at the koppie.

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1 GENERAL NAIDOO: Chair, I think just to

2 clarify, the information I received that shots had been,

3 not indicating whether it was one party or the other and

4 that yes, the crowd had dispersed or ran through an area,

5 et cetera, yes.

6 MR MPOFU: Yes. More specifically what

7 I'm getting at is the fact that the evidence or at least

8 our version is that that incident is what led to them

9 occupying the koppie in the first place.

10 GENERAL NAIDOO: I accept that, yes.

11 MR MPOFU: Thanks. Now, alright, I just

12 want to clarify a few things which I'm going to be using in

13 the cross-examination. The first one is, I'd like to find

14 out what your role is or rather was in the compilation of

15 certain documents.

16 GENERAL NAIDOO: Chair –

17 MR MPOFU: Do I understand correctly that

18 you were involved in the compilation of the report which

19 was prepared for the President?

20 GENERAL NAIDOO: Chair, I'm not sure. If

21 I could see specific, because –

22 CHAIRPERSON: FFF4, is that right?

23 MR MPOFU: Yes, that's correct. FFF4 is

24 –

25 GENERAL NAIDOO: Chair, I was cross-

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1 examined about this. I had not been involved in the

2 compilation but I think it was agreed that some of the

3 information that I did impart may have been used.

4 MR MPOFU: Okay, fair enough and I

5 suppose that goes for FFF5 as well.

6 CHAIRPERSON: FFF5 was the statement

7 which was made by the National Commissioner –

8 GENERAL NAIDOO: Media statement.

9 CHAIRPERSON: On the 17th.

10 GENERAL NAIDOO: Yes, no, the media

11 people were involved, yes.

12 MR MPOFU: Okay, same response. In other

13 words you may not have been involved in the compilation but

14 you supplied information.

15 GENERAL NAIDOO: That is correct, Chair.

16 MR MPOFU: Yes. Okay. Now there's also

17 the SAPS opening statement which is FFF9 which you've been

18 questioned about. What was your involvement in the

19 preparation of that statement?

20 GENERAL NAIDOO: Chair, I think once

21 again there may have been some information that I would

22 have provided that would have found its way in there but I

23 did not sit with a team and compile an opening statement,

24 if that is the indication.

25 CHAIRPERSON: Were you presented with a

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1 draft before it was –

2 GENERAL NAIDOO: No, no, Chair.

3 CHAIRPERSON: - finalised and presented

4 to the Commission –

5 GENERAL NAIDOO: Not to me –

6 CHAIRPERSON: Was your role merely the

7 providing of certain information which may or may not have

8 been used?

9 GENERAL NAIDOO: That's what I'm

10 indicating, Chair.

11 MR MPOFU: Okay and then there is of

12 course exhibit L where you are mentioned at various places.

13 A, where you obviously did supply information that was

14 contained there.

15 GENERAL NAIDOO: That's correct, Chair.

16 MR MPOFU: Ja, but more than that, were

17 you involved in the compilation thereof?

18 GENERAL NAIDOO: Chair, I think I've

19 testified to the fact that the original presentation was

20 compiled at Roots.

21 MR MPOFU: Mm.

22 GENERAL NAIDOO: And - yes and from

23 there, there were various sessions. At some stage before

24 the final version, I know I did not see the final version

25 for various reasons, I was possibly not around but yes,

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1 with the initial compilation and presentation to the role

2 players I was.

3 MR MPOFU: Yes and you saw some of the

4 earlier drafts even though, as you correctly say, you

5 didn't see the final version.

6 GENERAL NAIDOO: That's correct, Chair.

7 MR MPOFU: Alright. Okay, then can you

8 also help me with other kind of situational issues?

9 Brigadier Calitz, I think, said that NATJOC was the only

10 structure that can deploy across provinces, is that true?

11 GENERAL NAIDOO: They are the mandated

12 structure in terms of – actually if you'd look at it

13 literally it's the National Commissioner but the NATJOC is

14 in the office of the National Commissioner's structure that

15 executes those tasks on her behalf, yes.

16 MR MPOFU: Yes, okay. So I suppose then

17 we can say the National Commissioner and the NATJOC are the

18 only bodies that can deploy across provinces?

19 GENERAL NAIDOO: Chair, when we say deploy I think

20 we also have to be clear we're talking about larger scale

21 deployments. On a daily basis we get police officials

22 working in one province and the other on investigation on a

23 particular task but that is, that is authorised by the

24 relevant Provincial Commissioner so that they can do their

25 duties outside. So the issue of NATJOC is to move a

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1 significant amount of resources in response to something

2 that would now require national support and attention.

3 MR MPOFU: Ja. No, I understand that. I

4 mean exactly that, I mean deploy in the sense of the

5 context of an operation such as the one we are dealing with

6 here.

7 GENERAL NAIDOO: That's correct.

8 MR MPOFU: Obviously hot pursuit and

9 things like that can cross provincial borders.

10 GENERAL NAIDOO: That's correct, Chair.

11 MR MPOFU: Ja. Also just trying to

12 understand, you know, the rules of the game. The

13 Provincial Commissioner to your knowledge, his or her

14 involvement in an operation of this kind, should ordinarily

15 be channelled through the C-JOC, correct?

16 GENERAL NAIDOO: Sorry, I think just to

17 clarity, you're indicating the Provincial Commissioner –

18 I'm not getting the full story?

19 MR MPOFU: No, I'm saying – okay, a

20 Provincial Commissioner in an operation such as the one we

21 are dealing with here, is ordinarily supposed to channel

22 her instructions via the C-JOC. Would that be a fair

23 statement?

24 GENERAL NAIDOO: Yes. The Provincial

25 Commissioner does not necessarily physically take charge of

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1 an operation of this nature. there is a relevant

2 operational person who she appoints as the C-JOC, yes.

3 MR MPOFU: Yes. And again all things

4 being equal, the briefings to the operational commanders

5 and instructions would come from the C-JOC?

6 GENERAL NAIDOO: That's correct, he would

7 then be responsible for implementing the instructions of

8 the Provincial Commissioner.

9 MR MPOFU: Right. And a person like

10 yourself would have no authority for example to give

11 instructions to the NATJOC?

12 GENERAL NAIDOO: To the NATJOC?

13 MR MPOFU: Ja.

14 [12:22] GENERAL NAIDOO: No, the communication to

15 the NATJOC would be via the Provincial Commissioner or in

16 her absence or by way of her delegation, via the person

17 that's appointed to a specific operation or the deputy

18 Provincial Commissioner, operational services.

19 MR MPOFU: Yes. So specifically in

20 relation to this operation a person like yourself would not

21 be, have the authority to communicate with the NATJOC

22 unless if you were specifically asked by the PC?

23 GENERAL NAIDOO: That's correct, Chair.

24 MR MPOFU: And if one looks at the kind

25 of hierarchy of things, the NATJOC is the decision making

<p style="text-align: right;">Page 24694</p> <p>1 structure above the JOC, the specific JOC of that 2 operation, correct? 3 GENERAL NAIDOO: Chair, I'm not sure. In 4 decision making in respect to what, because in terms of the 5 operation the Provincial Commissioner is legally tasked and 6 responsible and accountable for any operation in her 7 province. The NATJOC is a co-ordinating body which ensures 8 that we co-ordinate and we have uniform standards and 9 things like that. So there are times that the National 10 Commissioner does issue instructions in terms of her 11 mandate in terms of things like the elections, et cetera. 12 She will issue national instructions to set a standard in 13 terms of how we would deal with something but operationally 14 it's the Provincial Commissioner who is responsible and 15 accountable for operational aspects in a province. 16 MR MPOFU: Yes. No, thank you, ja. I 17 think maybe my question was a bit vague. I'm talking now 18 more specifically around the question of deployment. It 19 would be fair to say that around that issue the NATJOC is, 20 has wider powers, as it were, to make decisions than the 21 Provincial Commissioner, correct? 22 GENERAL NAIDOO: Chair, yes. I don't 23 think they can make decisions exclusively on their own or 24 to override a particular Provincial Commissioner 25 unilaterally. Yes, it may, we get a real situation where</p>	<p style="text-align: right;">Page 24696</p> <p>1 GENERAL NAIDOO: Chair, if the unit is in 2 her province, she can deploy any unit in her province. 3 It's only when it's out of her province that she has to, 4 number 1, consult with the affected Provincial Commissioner 5 and do that liaison through the NATJOC because the national 6 picture in terms of force levels are maintained by the 7 NATJOC. 8 MR MPOFU: Alright, okay. In any event, 9 you as an experienced General, I'm sure you've been in many 10 joint operation centres in your life, correct? 11 GENERAL NAIDOO: That's correct, Chair. 12 MR MPOFU: And would you agree that as a 13 general rule the JOC should be run by members of SAPS and 14 not by private citizens? 15 GENERAL NAIDOO: Chair, a joint 16 operational centre is just that. It indicates that the 17 role players in a particular operation are the people that 18 serve in the joint operational centre. For example, if 19 it's an election there are various role players that will 20 be there. What is important is who is commanding and who 21 is leading the operation, that would be a significant 22 aspect but as to the limitations of who is in the joint 23 operations centre, that is determined by the nature of the 24 operation and the requirements of the operation. 25 MR MPOFU: Yes, but do you agree or do</p>
<p style="text-align: right;">Page 24695</p> <p>1 there's - because these decisions have to be taken in 2 consultation with the other Provincial Commissioners. So 3 if the National Commissioner overrides a decision of a 4 Provincial Commissioner, obviously the consequences of 5 overriding that instruction then lies with the National 6 Commissioner, the accountability goes higher. So the whole 7 structure works on the premise that we consult before we 8 execute. If we get to a particular province and we want to 9 draw a platoon of crowd management people to go to another 10 province and if that particular province has a particular 11 challenge in doing that, obviously we can't then 12 unilaterally say you will send them, we have to first make 13 sure that their problems are addressed. So that's why I'm 14 reluctant to say that they can just override or instruct 15 one province over another because the Provincial 16 Commissioner you must remember has her own powers that are 17 directly allocated to such Provincial Commissioner. 18 MR MPOFU: Okay, I think maybe my 19 attempts to clarify the question are also still not 20 successful. All I'm saying is this, that when it comes to 21 deployment, the powers of the PC are limited or are 22 narrower than those of the NATJOC, correct? In other 23 words, for example she might think that, well, this 24 situation needs this or that unit, but she wouldn't have 25 the power to deploy that unit whereas NATJOC would.</p>	<p style="text-align: right;">Page 24697</p> <p>1 you not agree that a joint operation centre for a specific 2 operation is something that's ordinarily occupied by 3 policemen and run by policemen and maybe soldiers 4 sometimes? 5 GENERAL NAIDOO: Chair, no. That's 6 precisely the point I'm trying to indicate. For instance 7 at the NATJOC, the structure that we were just talking 8 about now, the NATJOC is not only a structure in the 9 hierarchy, it's a physical venue and at the NATJOC, 10 depending on the nature of the operation or the issue 11 that's being held, any role player is asked to make sure 12 they have representation there to deal with that particular 13 issue. A case in point, if we're dealing with soccer 14 issues the people from FIFA would sit in the NATJOC and 15 give us feedback on specific issues that affect our line 16 function. I use the election as a good indicator where, at 17 our - I'm going to indicate now the provincial situation - 18 at our provincial JOC all and any person that, or body that 19 has an impact on us, our ability to deliver services for 20 that particular operation is represented there. There are 21 security issues where obviously we would not include them 22 if the security considerations are there but as for 23 representation at the JOC, it's not limited. I mean we 24 don't, we function in a much more open system now as 25 previously in the older dispensation and the role players</p>

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1 that we have that sit in our JOC now are people that never
2 previously sat in.

3 MR MPOFU: Yes. Alright, so your
4 evidence therefore is that it's an improvement to the
5 previous system, as it were, the fact that you now are able
6 to involve so-called role players.

7 GENERAL NAIDOO: That's correct.

8 MR MPOFU: But in the same vein would you
9 agree that the involvement of role players must be done in
10 an impartial way? In other words, you'd have to involve
11 all the role players.

12 GENERAL NAIDOO: Of course. All role
13 players that we require should be there, yes.

14 MR MPOFU: Yes. And in the context of
15 the Marikana operation, would you agree that the role
16 players involved, well, the primary conflict was between
17 the management of Lonmin and the strikers, correct?

18 GENERAL NAIDOO: That would appear so.

19 MR MPOFU: And therefore those were the
20 primary role players, correct?

21 GENERAL NAIDOO: It would appear so, yes.

22 MR MPOFU: Yes. I now want – thank you,
23 thank you for that assistance. I now want to move to the
24 events of the 13th just from a particular point of view.
25 You remember your evidence was that, or rather let me put

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1 it this way. You were questioned at length about the
2 assistance which should or should not be given to injured
3 persons in a particular scene, you remember that?

4 GENERAL NAIDOO: Chair, we were
5 discussing the legal and practical implications, yes.

6 MR MPOFU: Yes. Now, I'm going to argue
7 at the end that the way that you – not you personally –
8 that SAPS treated the injured protesters and those kinds of
9 people, differed significantly from the way you treated
10 other citizens in the same position and that that cannot
11 just be explained away with the explanations that you have
12 offered but indicate that you, in plural as SAPS, placed
13 less store in the safety of other people who were not your
14 members. And now I'm going to ask you a few questions
15 which will justify that argument at the end. Do you
16 understand?

17 GENERAL NAIDOO: I understand.

18 MR MPOFU: Ja. Were you aware that when
19 members of SAPS were injured and/or killed on the 13th there
20 was, one of the injured members, I think Warrant Officer
21 Baloyi, was rushed to hospital by means of a helicopter?

22 CHAIRPERSON: I think he's a Lieutenant.

23 GENERAL NAIDOO: Lieutenant Baloyi.

24 MR MPOFU: Lieutenant, yes, sorry.
25 Lieutenant Baloyi was rushed to hospital by means of a

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1 helicopter, I think under the control of Lieutenant-Colonel
2 Vermaak.

3 GENERAL NAIDOO: I'm aware.

4 MR MPOFU: And you would be aware that
5 that emergency rescue, for lack of a better word, might
6 have saved Lieutenant Baloyi's life.

7 GENERAL NAIDOO: Chair, I'm aware of the
8 specific details of his medical condition, et cetera, but I
9 knew that he was seriously injured there.

10 MR MPOFU: Okay, fine, fair enough. You
11 knew that he was rushed to hospital.

12 CHAIRPERSON: I take it Mr Mpofo's point
13 is it's certainly a possibility, a distinct possibility
14 that the fact that he got to the hospital quickly through
15 the assistance of the helicopter may well have saved his
16 life.

17 GENERAL NAIDOO: Chair, I'm not disputing
18 that. I say I'm not in a position to.

19 MR MPOFU: Alright, fair enough. In any
20 event, I want to contrast that with the situation where
21 there were people who were severely injured, I think that's
22 common cause, on the 16th and on the 16th there were
23 actually four helicopters as opposed to one and yet, as we
24 know for example at scene 1, it was more than an hour or
25 round about an hour before they were even attended to.

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1 Would you care to comment? Would that be a fair
2 comparison?

3 GENERAL NAIDOO: Chair, I'm not sure.
4 Maybe if that question could be asked again because I
5 missed it somewhere. It was about helicopters and then –

6 MR MPOFU: Yes.

7 GENERAL NAIDOO: - scene 1.

8 MR MPOFU: Yes. No, no, okay. Let me –

9 CHAIRPERSON: As I understand it, it's
10 despite the fact that there were four helicopters in use,
11 the people who were injured at scene 1 did not receive
12 attention, medical attention until almost an hour after the
13 shooting. That's the question and the helicopters weren't
14 used to take them to hospital. That's what counsel –

15 GENERAL NAIDOO: Chair, I think there's
16 two things. Firstly, there was a medical helicopter on the
17 scene that was used. I think the issue in terms of the
18 delay and with regard to the times of the medic – we have
19 already traversed that aspect of it but the two aspects
20 about the helicopters that I want to indicate is, firstly,
21 there was a medical helicopter that did land and based on
22 the priorities of the paramedics, did take people off the
23 scene. The second aspect with regard to this issue, I did
24 indicate to you when we looked at the issue of the role of
25 the SAPS in providing medical treatment, et cetera, and I

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1 think I alluded to the prevailing attitude and the issues
2 that prevail as far as the use of state transport and state
3 – at that stage it became a state vehicle and the situation
4 is there, so I'm not contesting the fact that there were X
5 amount of helicopters there, and as I indicated, I'm not
6 sure what the specific instructions around the use of the
7 helicopters are but around the use police vehicles I know
8 there is a tendency to discourage the transportation of
9 people, injured people – I'm now referring to non-SAPS
10 members especially and rather to use emergency service
11 personnel.

12 MR MPOFU: Okay, well, there are two
13 issues around that. Firstly, the helicopter that I was
14 using in the comparison that was used to transport
15 Lieutenant Baloyi, was not a medical helicopter, correct?

16 GENERAL NAIDOO: That is correct, Chair.

17 MR MPOFU: Ja. So the fact that there
18 were non-medical helicopters should have equally been of
19 assistance to the injured, the other injured people, would
20 you agree, if like were treated alike?

21 GENERAL NAIDOO: Chair, I think I'm
22 indicating what the prevailing position is and I indicated
23 specifically the difference between using any form of
24 transportation for an SAPS member versus the issue of
25 transporting a non-SAPS member. I've just indicated what

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1 would not do and to address that I'm saying that policy
2 does not allow them to do these particular things, does not
3 provide for it specifically and there is a prevailing
4 attitude. I have indicated that and the difficulty I have
5 also highlighted is that constable or whomever is at that,
6 at the coalface of where these incidents happen, is faced
7 with this tough decision that he has to make.

8 MR MPOFU: Okay, fine. We'll leave that
9 aspect of it for argument. The second leg from what you
10 said is this, that on your evidence now you're saying at
11 least one of those helicopters was a medical helicopter,
12 correct?

13 GENERAL NAIDOO: Chair, I indicated there
14 was a medical helicopter and it did transport injured to
15 hospital.

16 MR MPOFU: Okay, so that one, there's no
17 question about civil claims and so on. They were there
18 specifically to airlift people who needed to be airlifted,
19 correct?

20 GENERAL NAIDOO: Chair, they were manned
21 by trained paramedics and – yes.

22 MR MPOFU: Yes. And therefore even this
23 issue of civil claims and policies and all that wouldn't
24 apply to that particular helicopter. What would then be
25 the explanation of that medical not having airlifted people

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1 the prevailing position is, I didn't make a distinction
2 between a vehicle and a helicopter.

3 MR MPOFU: Ja, okay. Well, so the sum
4 total of that, of that evidence, paraphrasing what you said
5 earlier when you were questioned by somebody else on this
6 topic, is that if there is a SAPS member who might be in
7 danger of dying, that SAPS member may be rushed by any
8 means necessary and their life possibly saved but if
9 there's a citizen, another citizen of South Africa in the
10 same position, that citizen may be left there to die or to
11 worsen their situation merely because there might be a fear
12 of some theoretical civil claim.

13 GENERAL NAIDOO: No, Chair. I think it's
14 being taken in a literal context. In the discussions
15 around this one I clearly indicated that SAPS, as any other
16 public institution, works on the basis of policy and in
17 terms of the prevailing practices, this is what exists and
18 should we want to change that – we had a discussion around
19 the development and implementation of policy, so we can't
20 fault a police official who functions in a vacuum. I also
21 said there's also, he's also a human being, that police
22 official, and I'm sure that that particular situation will
23 appeal to him to try and see how he could address it as
24 well, he would not just ignore it but we must now, we are
25 talking in terms of what the police should and can do and

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1 for about an hour?

2 GENERAL NAIDOO: Chair, I can't speak on
3 behalf of the people that were at the, that flew the
4 helicopter, et cetera. I think that would be difficult for
5 me to testify but what I can say is that that was a
6 specific piece of equipment with suitably trained and
7 qualified people to do a specific job and that's why it's
8 referred to as a medical helicopter.

9 MR MPOFU: Yes.

10 COMMISSIONER HEMRAJ: The medical
11 helicopter referred to, are you referring to its use at
12 scene 1 or 2?

13 GENERAL NAIDOO: Well, I can talk to
14 scene 1 because it landed at – scene 2, because it landed,
15 I'm not sure whether it landed at scene 1.

16 MR MPOFU: Well, okay. Well, I don't
17 know where I get this but provisionally you can accept it
18 but my recollection is that the medical helicopter was only
19 used at scene 2. Would you be able to confirm or if you
20 are aware of that?

21 GENERAL NAIDOO: Chair, I can't confirm.
22 As I said, my recollection of the helicopter was when it
23 landed at scene 2. I don't know about the other scene.

24 MR MPOFU: Yes. Yes, no, that's
25 important because I'm discussing, I'm busy discussing scene

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1 1 with you and the point I'm merely making is that in
 2 respect of scene 1 – or maybe let me ask you this.
 3 [12:42] The medical helicopter, would it form part of
 4 what is broadly described as emergency services or medical
 5 emergency services?
 6 GENERAL NAIDOO: It would, yes.
 7 MR MPOFU: Which were under your command?
 8 GENERAL NAIDOO: Chair, the helicopter
 9 was not under my command. I had the three medic,
 10 paramedics that were under my command, the three paramedic
 11 units. The medical helicopter, I'm not sure where it stood
 12 off. I don't have that detail.
 13 MR MPOFU: Okay, fair enough. Whether or
 14 not it was under your direct command, but you yourself, you
 15 have no explanation to offer to the Commission as to why
 16 the medical helicopter specifically would not have rushed
 17 people beyond, or before the expiry of an hour in respect
 18 to scene 1?
 19 GENERAL NAIDOO: Chair, no, I can't, I
 20 didn't command the helicopter, no.
 21 MR MPOFU: Okay. Now just not now
 22 confined to the issue of the helicopter but generally, do
 23 you find it strange that it would seem that the injured
 24 people at scene 2 received attention before the injured
 25 people at scene 1, despite the fact that scene 2 happened

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1 maybe half an hour later?
 2 GENERAL NAIDOO: Chair, I don't know
 3 about the time, but I think we've also –
 4 CHAIRPERSON: No, no, no, that's not
 5 right. The difference between, the time difference between
 6 scene 1 and scene 2 wasn't as long as an hour. It was
 7 substantially less than that, but the general point –
 8 MR MPOFU: I didn't say an hour,
 9 Chairperson.
 10 CHAIRPERSON: You did. I thought you
 11 did.
 12 MR MPOFU: I said more or less half an
 13 hour.
 14 CHAIRPERSON: Half an hour?
 15 MR MPOFU: Yes.
 16 CHAIRPERSON: I'm not sure even that's
 17 right, but it doesn't matter –
 18 MR MPOFU: Yes, it doesn't matter.
 19 CHAIRPERSON: - for the purposes of the
 20 thrust of –
 21 MR MPOFU: It happened subsequently, ja.
 22 GENERAL NAIDOO: Chair, yes, I think we
 23 already had testimony to that effect and the fact that we
 24 came upon the scene 2 before the scene 1 and we obviously
 25 could not leave something that was in front of us. We went

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1 through that testimony already in cross-examination.
 2 MR MPOFU: Okay, I'm going to ask you a
 3 question related to this, but which deals with another
 4 topic that Mr Brickhill dealt with, with you extensively.
 5 So I'm not going to – which is the tampering issue.
 6 GENERAL NAIDOO: Okay, Chair.
 7 MR MPOFU: Again would you agree that the
 8 gist of the SAPS explanation for the removal of weapons was
 9 to assist paramedics?
 10 GENERAL NAIDOO: Chair, yes.
 11 MR MPOFU: And it was even said that some
 12 of the paramedics had complained or requested, or rather
 13 voiced concerns about their safety?
 14 GENERAL NAIDOO: Chair, I think we've got
 15 statements from paramedics who requested such assistance.
 16 MR MPOFU: Yes.
 17 GENERAL NAIDOO: They have indicated that
 18 they requested such assistance.
 19 MR MPOFU: Correct. Now given the fact
 20 that the first medical assistance at scene 1 arrived about
 21 an hour later, would you agree that that excuse does not
 22 hold at scene 1 because the paramedics were not there to
 23 make those complaints?
 24 GENERAL NAIDOO: Chair, I was not at
 25 scene 1 and as to the issue of the paramedics, which we've

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1 already testified to, I think that was going to be followed
 2 up in terms of those specific paramedics and members
 3 involved there, so the issue around the clearing of the
 4 scene, allowing the paramedics to do their work, I think
 5 would be best directed to the officer that was dealing with
 6 that particular matter. I know he has been questioned on
 7 that matter as well.
 8 MR MPOFU: Okay. Okay, General, again
 9 maybe I didn't ask the question clearly, or I should have
 10 prefaced it with something else. You can accept for the
 11 purposes of what I'm asking you that at scene 1 there is
 12 evidence, visual and otherwise, and I don't think it's
 13 contested that immediately, or shortly after the actual
 14 shooting, within seconds or minutes there was removal of
 15 weapons from among the bodies of people. Do you accept
 16 that?
 17 GENERAL NAIDOO: That's correct.
 18 MR MPOFU: Ja, all I'm saying to you is
 19 that that removal of weapons at scene 1 cannot be explained
 20 on the basis of some paramedics who were saying this or
 21 that or the other, because they were not there for an hour,
 22 which was long after the removal. Do you agree with that?
 23 GENERAL NAIDOO: Chair, I don't know
 24 where it was indicated that the removal of those weapons
 25 were primarily for paramedics. I have not seen anywhere

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1 such testimony.

2 CHAIRPERSON: Mr Mpofo, I didn't give you

3 permission to cover this topic. I've allowed you to cover

4 it to some extent. This witness isn't able to give us

5 evidence on it. There will be evidence either orally or by

6 affidavit as to attempts made by Brigadier Pretorius from

7 the JOC to get medics to, or paramedics to scene 1 from

8 16:08 I think it was and there will also be some evidence,

9 I think on affidavit probably, as to when those people

10 arrived. We know they arrived about –

11 MR MPOFU: Yes.

12 CHAIRPERSON: - as far as we know about

13 58 minutes after the shooting, and there will, I hope, be

14 some evidence to explain the lapse of time between 16:08

15 when Brigadier Pretorius tried to get people and the time

16 when they actually arrived, but this witness can't help us

17 at all as far as that is concerned.

18 MR MPOFU: Yes. Chairperson, I accept

19 wholeheartedly what you're saying. Once again maybe –

20 CHAIRPERSON: [Microphone off, inaudible]

21 matter that has to be investigated.

22 MR MPOFU: Yes.

23 CHAIRPERSON: It will be.

24 MR MPOFU: Yes, maybe once again it's my

25 fault and I'm only going to ask one question. All I'm –

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1 let me try and explain what I'm saying. All I'm saying is

2 that, General, you and I have agreed that the primary

3 reason given by SAPS for the removal of weapons at scene 2

4 had something to do with the paramedics, correct?

5 GENERAL NAIDOO: Correct, Chair.

6 MR MPOFU: Ja.

7 GENERAL NAIDOO: That's with regard to

8 the evidence tampering, yes.

9 MR MPOFU: Yes, yes.

10 GENERAL NAIDOO: Yes.

11 MR MPOFU: Now I'm saying that the

12 removal of the weapons at scene 1, whatever the reason,

13 good or bad or indifferent, could not have anything to do

14 with paramedics because there were no paramedics there for

15 about an hour. Do you understand what I'm saying?

16 GENERAL NAIDOO: I agree, I understand

17 what you're saying.

18 MR MPOFU: And you agree?

19 GENERAL NAIDOO: I agree on what –

20 MR MPOFU: Thank you.

21 GENERAL NAIDOO: - on what, Chair? I'm

22 not sure. I said I understand what he says, but –

23 CHAIRPERSON: As I understand your

24 problem is you don't know why –

25 MR MPOFU: No –

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1 CHAIRPERSON: - the weapons were removed

2 at scene 1.

3 GENERAL NAIDOO: Yes.

4 CHAIRPERSON: Captain Loest who was there

5 will hopefully be able to tell us the answer to that. It

6 may have been – or I'd better not say what it may have

7 been. There are various possibilities and they can be

8 explored with him when he comes, but you can't help us.

9 That's the position?

10 GENERAL NAIDOO: Chair, and in addition

11 to that I think this morning we dealt with the step-by-step

12 on the handling of a crime scene and the first member

13 securing that crime scene, ensuring that the threats to

14 personal safety, etcetera, are dealt with. So without

15 being at crime scene 1 I cannot specifically talk about

16 what they did, but I would refer to the testimony we had

17 this morning on dealing with crime scenes where these

18 issues are covered.

19 MR MPOFU: Ja, okay. I promise you this

20 is my last attempt on this. I'm saying the Chairperson is

21 correct, you cannot assist us as to the reason for the

22 removal of the weapons. There may have been a million

23 reasons for the removal of those weapons. All I'm saying

24 to you is included in those million reasons cannot be a

25 request by paramedics because paramedics were not there.

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1 GENERAL NAIDOO: Chair, as I said, I was

2 not there and –

3 CHAIRPERSON: [Microphone off, inaudible]

4 the answer to that must be yes. There weren't paramedics

5 there for 58 minutes. Weapons were removed substantially

6 earlier than 58 minutes after the shooting. Therefore the

7 answer to the question must be whatever the reason was for

8 the removal of the weapons, it wasn't a request which came

9 from paramedics because there were no paramedics there to –

10 GENERAL NAIDOO: Not necessarily a

11 request, yes, Chair.

12 CHAIRPERSON: Ja, that's the answer.

13 MR MPOFU: Thank you, Chairperson.

14 Sorry, we somehow got distracted into something else. I

15 was still, you and I were still busy with the issue of the

16 accusation I was making, saying, or rather that I was

17 saying I will make when we argue, that there was

18 discrimination in the way you treated your members and how

19 you treated other citizens.

20 Now on the 13th is it correct that the bodies, I

21 think, the bodies of the deceased members were taken to a

22 nearby hospital?

23 GENERAL NAIDOO: Chair, I'm not sure

24 about the bodies. I only viewed one body at the Andrew

25 Saffy –

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1 MR MPOFU: Yes.

2 GENERAL NAIDOO: - where somebody was

3 rushed to for medical attention, one body. I did not see

4 any of the other bodies.

5 MR MPOFU: Ja. No, no, you're quite

6 right because the other, I think the other member died in

7 hospital or on the way, yes. But in any event, the body of

8 the person who died on the scene was taken to Andrew Saffy,

9 correct?

10 GENERAL NAIDOO: Incorrect, Chair. It's

11 the member who died on the way to hospital or I think at

12 the hospital that was at Andrew Saffy.

13 MR MPOFU: Okay, the body of the member

14 who died at the scene, who was hacked, or something like

15 that - I'll check the statement - was removed to a

16 different location, correct?

17 GENERAL NAIDOO: Chair, as far as I know

18 and from the visuals that we've seen as part of this

19 Commission the body of one police officials was still at

20 the scene and the other police official was the one who

21 died in hospital and then the third one was airlifted to -

22 CHAIRPERSON: Yes, what Mr Mpofo is now

23 busy with is what happened to the body of the police member

24 who died on the scene.

25 MR MPOFU: Yes.

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1 CHAIRPERSON: Was the body taken to

2 hospital or was it taken to the mortuary, or where was it

3 taken?

4 GENERAL NAIDOO: Chair, I did not attend

5 to that scene, so I'm unable to answer that question.

6 MR MPOFU: Okay, fine. I think I'll come

7 back to that aspect once I've looked at the statement.

8 Therefore one cannot discount the possibility that had - or

9 let me put it this way. Are you aware or not aware, and

10 I'm quite mindful that you were not at the scene, but in

11 getting the reports were you made aware or not aware

12 whether the civilians who died at that scene had died

13 instantly or had died later?

14 GENERAL NAIDOO: Chair no, I was not

15 aware specifically.

16 MR MPOFU: No, but -

17 GENERAL NAIDOO: By the time it was more

18 than two hours, so, before I got back to Marikana.

19 MR MPOFU: That's okay, we'll ask other

20 people about that. But what we certainly know is that the

21 frenzy that followed - or sorry, maybe that's a loaded word

22 - the escalation that was ordered thereafter was triggered

23 by what you regarded as the murder of the policemen. I

24 think Mr Ntsebeza questioned you about that.

25 GENERAL NAIDOO: Chair no, we discussed

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1 that and we said there were two issues that had to be

2 addressed. We addressed the public order situation, as

3 well as this investigation which resulted, the murders of

4 the policemen which resulted in the circulation of several

5 firearms, and those were the things that we discussed

6 yesterday.

7 CHAIRPERSON: That was dealt with by Mr

8 Ntsebeza.

9 MR MPOFU: Yes, I -

10 CHAIRPERSON: I indicated I thought that

11 item 3 on the permission I gave you has been covered by -

12 MR MPOFU: Yes, no Chairperson, I'm

13 aware. That's exactly why I mention that, so that I'm not

14 getting into all that. I'm just building up to something

15 else. Surely, General, the escalation such as we know that

16 happened of hundreds and hundreds of people being deployed

17 and equipment and all sorts of things, surely that was not

18 geared towards the investigation of murder?

19 GENERAL NAIDOO: Chair, I agree, and I've

20 testified to that fact. I think when we went to the next

21 paragraph of my statement I clearly indicated that since

22 Saturday there had been so many attacks and so many

23 murders, resulting at that stage in nine people being

24 killed, culminating in the murder of the two policemen, and

25 then we also mentioned the civilians that were killed. I

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1 expanded on that. I clearly indicated that the first

2 paragraph dealt with issues that we were focussing on

3 specific, police specific, investigation and public order.

4 Those were the broad ones, and then I took it even further

5 and I mentioned all the other incidents as well which

6 culminated in this operation being escalated so

7 drastically.

8 MR MPOFU: Ja, I think we don't

9 understand each other. I'm saying yes, let's assume nine

10 murders; even for nine murders the escalation -

11 CHAIRPERSON: I think we must be careful

12 with the nine murders because I think among the nine were

13 three of the strikers. Now I don't know whether you would

14 regard those as murders. I mean Mr Mpofo may argue later

15 they were, but I don't think you regard them as murders, do

16 you? Certainly the police don't.

17 GENERAL NAIDOO: Chair, we discussed

18 that. We were talking when we say "murders" we talk in

19 terms of criminal cases that -

20 CHAIRPERSON: Yes, yes, I see. Murders

21 cases -

22 GENERAL NAIDOO: Just to make it -

23 CHAIRPERSON: Ja, murder cases.

24 GENERAL NAIDOO: Just to make it even in

25 terms of how we discuss it, yes.

<p style="text-align: right;">Page 24718</p> <p>1 MR MPOFU: Yes -</p> <p>2 CHAIRPERSON: We're going to have to</p> <p>3 adjourn in a minute, but can I ask you this question which</p> <p>4 is relevant to the matter that Mr Mpofu is now dealing</p> <p>5 with. Is it possible for you to tell us what would have</p> <p>6 happened if those two policemen had not been killed on the</p> <p>7 13th and Lieutenant Baloyi had not been injured? Can you</p> <p>8 tell us whether the escalation would have been the same as</p> <p>9 the escalation that took place, or would fewer policemen</p> <p>10 have come there?</p> <p>11 GENERAL NAIDOO: Chair -</p> <p>12 CHAIRPERSON: Because that's really the</p> <p>13 point he's busy with.</p> <p>14 GENERAL NAIDOO: Yes, Chair, I think</p> <p>15 there's two things to consider when we discuss that, that</p> <p>16 the escalation was trying to bring some proportion to the</p> <p>17 police presence versus the number of strikers, the alleged</p> <p>18 perpetrators, etcetera. So that was the one, the crowd</p> <p>19 management aspect of it. Then the, we spoke about the</p> <p>20 tactical support where we, I indicated the use of</p> <p>21 especially the Special Task Force for supporting the</p> <p>22 investigation and a large, larger than normal contingent of</p> <p>23 Intelligence people were brought in to assist them to</p> <p>24 support with the investigation.</p> <p>25 The task team that was doing the investigation</p>	<p style="text-align: right;">Page 24720</p> <p>1 Monday evening meeting, the activities that would have to</p> <p>2 be conducted, that obviously had told us what resources</p> <p>3 would be required, so nine murders would have been nine</p> <p>4 murders and a crowd of 3 to 4 000 would have been a crowd 3</p> <p>5 to 4 000.</p> <p>6 CHAIRPERSON: Even six murders and a</p> <p>7 crowd of 3 to 4 000 -</p> <p>8 GENERAL NAIDOO: Exactly.</p> <p>9 CHAIRPERSON: Would that still have</p> <p>10 brought in, in its train the same escalation of police</p> <p>11 numbers at the scene?</p> <p>12 GENERAL NAIDOO: Chair yes, and I also</p> <p>13 conceded that a significant factor in our consideration was</p> <p>14 now the increased number of firearms in circulation, which</p> <p>15 we could see was going to just aggravate the situation that</p> <p>16 existed.</p> <p>17 CHAIRPERSON: I understand that, thank</p> <p>18 you. It's now 1 o'clock. As I explained this morning the</p> <p>19 chamber is required for a municipal ceremony in relation to</p> <p>20 the death yesterday, I think it was, of the mother of the</p> <p>21 late Mr Solomon Mahlangu, so that's why we can't sit here</p> <p>22 this afternoon, so we will resume our sittings tomorrow</p> <p>23 morning at 9 o'clock. We now adjourn.</p> <p>24 MR MPOFU: Thanks, Chairperson.</p> <p>25 [COMMISSION ADJOURNED]</p>
<p style="text-align: right;">Page 24719</p> <p>1 into the murders of the police officials were not only</p> <p>2 investigating the murders of the police officials, they</p> <p>3 were investigating all nine murders at that time, and I,</p> <p>4 and there was at that time an understanding that the</p> <p>5 centralisation of these cases would give the police a</p> <p>6 better perspective and see if there's some commonalities,</p> <p>7 because there were some commonalities.</p> <p>8 MR MPOFU: Yes -</p> <p>9 CHAIRPERSON: You didn't answer the</p> <p>10 question. The question is, is it possible to say that if</p> <p>11 the two policemen had not been killed and the third</p> <p>12 policeman had not been injured on the 13th, that fewer</p> <p>13 policemen would have been sent to Marikana than was the</p> <p>14 case in fact?</p> <p>15 GENERAL NAIDOO: Chair ja, this is, was</p> <p>16 one of the issues that we discussed in the previous</p> <p>17 testimony. As I indicated when we had these discussions in</p> <p>18 terms of what the taskings of the SAPS would be at</p> <p>19 Marikana, then that is how we determined what resources we</p> <p>20 would require. So had it been nine people that were killed</p> <p>21 that were not police officials or nine people killed - the</p> <p>22 investigation aspect of it would have still required the</p> <p>23 same support. The size of the crowd would still require</p> <p>24 this concomitant resources to support that. So when we sat</p> <p>25 down and we worked out the activities, or we refer to the</p>	

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