

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 197

07 MARCH 2014

PAGES 24066 TO 24168



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1 [PROCEEDINGS ON 7 FEBRUARY 2014]
 2 [09:27] CHAIRPERSON: The Commission resumes. As
 3 I indicated yesterday, we had a housekeeping meeting this
 4 morning at half past 8 and I anticipated it might take
 5 longer than half an hour, and it did. So I apologise to
 6 those who have been waiting here since 9 o'clock, but that
 7 was the reason. You're still under oath, Major General.
 8 GANASEN NAIDOO: Still under oath, Chair.
 9 CHAIRPERSON: Ms le Roux, you're
 10 continuing with your cross-examination.
 11 MS LE ROUX: Thank you, Chair.
 12 CHAIRPERSON: Or actually you haven't
 13 asked any questions yet, but we just marked all your
 14 exhibits.
 15 CROSS-EXAMINATION BY MS LE ROUX: Thank
 16 you, Chair. Good morning, Major General.
 17 GENERAL NAIDOO: Good morning.
 18 MS LE ROUX: Major General, I'd like to
 19 start where Mr Chaskalson ended off, just to clarify one
 20 aspect of your evidence, and if I could ask you to have in
 21 front of you MMM45, which is the CALS analysis document
 22 regarding the movement of K9 and NIU members on foot at
 23 koppie 3. Do you have that, Major General?
 24 GENERAL NAIDOO: I do.
 25 MS LE ROUX: Now to summarise, what this

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1 document does is it goes through some of the JJJ6-series
 2 photographs and then crops and zooms in on certain aspects
 3 of that in order to nail down the movement of K9 and NIU
 4 members once they arrive at koppie 3. What I'd like to do
 5 with this document is just to clarify the timing and your
 6 movements. You're so unclear on your oral evidence as to
 7 your movements around koppie 3. So could you just confirm
 8 for me, as I understand your evidence at present you arrive
 9 at the koppie, you're at the bottom of the set of rocks.
 10 You start climbing up those. You reach what you described
 11 as the first plateau. You then hear gunshots coming from
 12 your left. You observe a shooter who's in the trees or
 13 bushes there, accompanied by one other person. You then
 14 shoot twice in their direction. The NIU who are with you
 15 at this point also shoot in that direction. The shooting
 16 then stops and as I understand your evidence there is no
 17 further gunfire that you're aware of. You don't shoot
 18 again and the NIU that you're with don't shoot again. You
 19 then continue up the rocks to the second plateau. You come
 20 across three strikers in the crevices in the rocks and
 21 those are arrested, and then you move forward and down to
 22 the other side of the rocks. Am I correct that that's your
 23 evidence?
 24 GENERAL NAIDOO: Broadly, yes.
 25 MS LE ROUX: Is there any way in which

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1 that does not capture the sequencing of events,
 2 particularly when you shoot, particularly the evidence that
 3 you shoot to your left and only thereafter make the arrest
 4 of the three strikers? Is that the correct sequencing?
 5 GENERAL NAIDOO: That's correct, Chair.
 6 CHAIRPERSON: Major General, you said
 7 "broadly." Now does that mean that there are things that
 8 Adv le Roux put to you that aren't correct, or is it just
 9 an expression that you use in a general sense?
 10 GENERAL NAIDOO: Chair, I think it
 11 summarises our lengthy discussion yesterday, yes.
 12 COMMISSIONER HEMRAJ: I thought your
 13 evidence was that the shots came from the left as you said
 14 you crested the plateau as opposed to being on the plateau.
 15 GENERAL NAIDOO: Chair, that's why I
 16 indicated that as we came on to – we were still not on the
 17 flats, but not at the bottom as well, because I indicated
 18 we took a step back, I took a step back and I was able to
 19 get out of line of sight.
 20 MS LE ROUX: Major General, if I could
 21 then ask you to turn in MMM45, if you can skip the first
 22 few pages and get to slide 7. The preceding pages just
 23 deal with the arrival of K9 and NIU approaching the koppie.
 24 If we start on slide 7, that is timed at 16:14:27 and what
 25 you'll see on that slide is that's the full picture, which

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1 is exhibit KKK16.5127, and there are two areas marked 1 and
 2 2. Now if you could focus on the box marked 2, that
 3 targets the rocks over which you climb.
 4 If you turn then to slide 8, that just deals with
 5 the first box, zoomed section 1 which shows the K9 members
 6 approaching on foot, and if you can turn then to slide 9,
 7 which is that zoomed section around the rocks, now here we
 8 can see a line of members moving over the southern section
 9 of the koppie near the top of the first ridge, and then to
 10 the right of the rocks circled in red we see a man in beige
 11 trousers and a beige top being arrested. Now we've
 12 captioned that that this is a line of NIU members moving
 13 over the southern section. Are you one of those members
 14 that we can see circled in yellow? Are you able to
 15 identify where you were? Do you recall this moment?
 16 GENERAL NAIDOO: Chair, I can't
 17 specifically remember this moment or the setting. My view
 18 obviously was different from the ground, but there was, as
 19 I've indicated in my testimony yesterday, a long line of
 20 NIU members that swept the koppie from that position, yes.
 21 MS LE ROUX: And Major General, do you
 22 recall the man in the beige top and the beige trousers?
 23 GENERAL NAIDOO: Chair, not specifically,
 24 no.
 25 MS LE ROUX: If we then, if we can just

<p style="text-align: right;">Page 24070</p> <p>1 note on – Chair, if we can just note, and Major General, 2 the area in the foreground of this zoomed section, that's 3 obviously where Papa11 comes to stand in its final 4 position, and we can observe both in the zoomed section, 5 and then if you look back at slide 7, that there's no sign 6 of Papa11 yet in that vicinity. 7 CHAIRPERSON: Well, let's first of all 8 find out from the witness if he agrees that that's the 9 place where Papa11 eventually ended up, and then you can 10 proceed. What do you say about that, Major General? 11 GENERAL NAIDOO: Chair, I'm not sure. 12 Are we looking now from the other side? 13 CHAIRPERSON: Well, Ms le Roux says that 14 it's the foreground, you say, that near the bottom of the 15 picture? 16 MS LE ROUX: Yes, Chair, that's the 17 north, as I understand it. 18 CHAIRPERSON: Okay, there appears to be, 19 if one moves downwards towards the bottom of the picture 20 from the yellow oval, it does appear to be a slope in the 21 ground and then there's a position at the bottom of the 22 picture which seems to be a further, almost like a 23 depression as far as it appears on the photograph, and it's 24 either a shadow or a mark where the veld was burned. I'm 25 not sure what that dark section is. So where do you say</p>	<p style="text-align: right;">Page 24072</p> <p>1 the rocks. 2 CHAIRPERSON: Either from behind it or 3 from behind where it ultimately ended up. I'm not sure, I 4 take it you really mean it was taken before the Nyala 5 arrived – 6 MS LE ROUX: Correct, Chair. 7 CHAIRPERSON: - but from a position 8 behind where it ended up. Is that what you're putting? 9 MS LE ROUX: Correct, Chair. 10 CHAIRPERSON: And it also appears to 11 depict, I would think, part of block D2. Would that be 12 correct? 13 MS LE ROUX: Correct, Chair, and it may 14 also be helpful if we just note where the water cannon and 15 the two, the other two Nyalas are in sort of A, B, and C2 16 and 3, and then return to the zoomed section on – if we 17 return to page 7, which is the full picture before the 18 zooming, we can see those three vehicles in their position. 19 Chair, for the record, these are the three vehicles that we 20 see in a slight crescent shape between the zoom box 2 and 21 the zoom 1 in the bottom third of the photograph. 22 CHAIRPERSON: Is it the three vehicles 23 that are in – well, the first one is in A2 and A3. Is that 24 right? 25 MS LE ROUX: Correct, Chair.</p>
<p style="text-align: right;">Page 24071</p> <p>1 the Papa11 ended up, the Nyala, Ms le Roux? 2 MS LE ROUX: Chair, it's the extreme 3 bottom right-hand corner of this zoomed section. So beyond 4 the dark patch on the ground where you can sort of see 5 those track marks. It's that bottom corner of the zoomed 6 section. 7 CHAIRPERSON: What do you say about that, 8 Major General? 9 GENERAL NAIDOO: Chair, it could – 10 CHAIRPERSON: Would you agree that's 11 where the Nyala ended up? 12 GENERAL NAIDOO: It could be. As I said, 13 I can't say for certain, but yes, it's not impossible that 14 it was there. 15 COMMISSIONER HEMRAJ: Would it help if 16 this position was explained to you in terms of exhibit 17 MMM2, if you got the grid reference? Perhaps that would 18 assist, Ms le Roux. 19 MS LE ROUX: Right, Major General, if we 20 use MMM2, the photographs that we're using in slide 9 is 21 taken from what would be the top of the grid here. Papa11 22 we see in D3, its final position, which we can see is in 23 the flattened section of ground close to the rocks. So the 24 photographs that we're referring to in the CALS analysis 25 document is taken essentially from behind Papa11 towards</p>	<p style="text-align: right;">Page 24073</p> <p>1 CHAIRPERSON: The border between 2. The 2 second is effectively just inside B3, although there's a 3 little bit sticking into – 4 MS LE ROUX: Yes, that's correct, Chair. 5 CHAIRPERSON: - into A3, and then the 6 other one is more or less entirely in B2. 7 MS LE ROUX: Correct. 8 CHAIRPERSON: Those are the three 9 vehicles – 10 MS LE ROUX: Yes. 11 CHAIRPERSON: - that you say are between 12 the two zoomed boxes, as you call them. 13 MS LE ROUX: Yes, on slide 7. So if we 14 can then return to the zoomed section 2, which is slide 9, 15 but cross-referencing again back to MMM2 and the final 16 position of Papa11, we can see that it will ultimately end 17 up in a position which on this zoomed section will be the 18 bottom right-hand corner of the slide. 19 Major General, if you could then page forward to 20 slide 10, this is KKK16.5130 timed at 16:15:01. This shows 21 Papa11 arriving in the heart of the koppie, but not yet in 22 its final stationary position, and if we then turn to slide 23 11, this is the zoomed section of that photograph and here 24 we can see, in the yellow circle we see one member standing 25 on the ridgeline who appears to be holding a handgun.</p>

<p style="text-align: right;">Page 24074</p> <p>1 Could you identify that as yourself? Because we know you 2 were there with a handgun. Does that accord with any of 3 your recollection of your movements over the rocks? Behind 4 you then circled in red is a member who appears to be 5 holding a protester, who appears to have detained a 6 protester and then behind him is another member standing 7 over another protester circled in purple. Major General, 8 can you identify yourself as the member in the yellow 9 circle? 10 GENERAL NAIDOO: Chair, I can't say that 11 for sure, and I would not be able to say whether I was the 12 only member with a handgun, but the position would look 13 like the area where we arrested those three protesters, I 14 would say. 15 CHAIRPERSON: You're talking about 16 somebody being circled in purple. According to the text at 17 the foot of the exhibit it's pink. It does look more 18 purple to me, but just to avoid confusion later, it's the 19 person referred to in the last sentence of the text at the 20 bottom of the slide. It's a protester on the grass at the 21 base of the rocks has someone standing over him and there's 22 a circle which is either in pink or in purple, but – 23 MS LE ROUX: Well, that was pink, Chair. 24 CHAIRPERSON: [Microphone off, inaudible] 25 because of my interruption I missed your answer.</p>	<p style="text-align: right;">Page 24076</p> <p>1 corner we have Papa11 members who've now emerged from their 2 Nyala and they appear to be standing to its rear. Then on 3 the rocks we have three members circled in red. They're 4 coming over the ridgeline on the south-eastern side of the 5 koppie. Major General, is it possible for you to identify 6 if any of those three members is you? Are you able to – 7 GENERAL NAIDOO: No, Chair – 8 MS LE ROUX: - recall that movement at 9 all? 10 GENERAL NAIDOO: Chair, it more or less 11 traces the path that I sketched yesterday, but I would not 12 be able to say that this person is me, etcetera, sorry. 13 MS LE ROUX: Major General, if I 14 understood it, you said that the NIU members at some point 15 were to your rear. So would that mean you're the person 16 furthest across the rocks, the middle circle slightly below 17 the other two? 18 CHAIRPERSON: I understood him to say 19 that he's not sure that he is one of the group of three, 20 but I take it the question can be put to you on this basis; 21 that if you are, you're not sure whether you are or you 22 aren't – 23 GENERAL NAIDOO: No, Sir. 24 CHAIRPERSON: If you are, then it's 25 suggested to you that inasmuch as they were in your rear,</p>
<p style="text-align: right;">Page 24075</p> <p>1 GENERAL NAIDOO: Sorry, Chair, I would 2 indicate that I can't say for sure that was me, but it 3 would appear to be around the location where I indicated we 4 arrested those three protesters. 5 MS LE ROUX: And Major General, the NIU 6 line that was with you, none of those members had a 7 handgun, correct? That you recall. 8 GENERAL NAIDOO: Chair, not that I 9 specifically – I, as I indicated the two or three members 10 to my left had R5s. Sergeant Harmse I know at some stage 11 stopped, he slung his R5 - because he had a problem with 12 the R5 – at his back, so he possibly used his handgun. But 13 I would not be able to say for sure whether it was only me. 14 I know Colonel Modiba who was with us had a handgun only. 15 MS LE ROUX: Major General, if you can 16 then turn to slide 12, this is timed 16:16:09, exhibit 17 KKK16.5134, again this had a red square on it which is then 18 zoomed in the following slide, page 13. This shows Papa11 19 arriving in the heart of the koppie. Its door has now been 20 opened but no members have yet alighted. If we can go to 21 slide 13. So we see Papa11 arriving. We can see the left- 22 hand door is now open, but we don't see any members yet 23 outside of Papa11, and if you then page through to 14 we 24 have 16:16:39 and the first zoomed section of that then 25 appears on slide 15. This shows, in the bottom left-hand</p>	<p style="text-align: right;">Page 24077</p> <p>1 you would be the one presumably in the front red circle. 2 Would that be right? 3 GENERAL NAIDOO: Chair – 4 CHAIRPERSON: If it's you. 5 GENERAL NAIDOO: I did indicate that I 6 was walking about a pace or two in front of some of the 7 members. I did testify to that. 8 MS LE ROUX: Major General, we can skip 9 16, that just is the second zoomed area that shows the NIU 10 members who seem to be grappling with one of the arrested 11 strikers. The next photograph, full picture, is slide 17, 12 16:16:47, exhibit KKK16.5138. The zoomed section is the 13 red box to the right on that full picture, which is then 14 reproduced on slide 18. Here again we see the progress of 15 your group coming over the ridgeline. We've been able to 16 identify that, if we could go to slide 18, here we have 17 four members circled. The member circled in yellow appears 18 to be holding an R5 rifle. Major General, I'm not sure if 19 you would be able to help us by identifying, if it helps, 20 your recollection, could you recall which of these members 21 would be you? 22 GENERAL NAIDOO: Chair, I can just see 23 shapes, so it will be difficult for me to say which is me, 24 but there's people coming over the rocks. As I indicated, 25 it traces more or less the path that I described, but it</p>

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1 will be impossible to say from this picture that this
 2 person is me, etcetera.

3 MS LE ROUX: No, I understand. Major
 4 General, then slide 19 is just the second zoomed section
 5 showing the NIU members still engaged in the arrest, and
 6 then slide 20 is 16:16:57. This is exhibit KKK16.5141, and
 7 if we then turn to slide 21, which is the zoomed portion,
 8 here again we can see the two members that are circled in
 9 red in the middle of the diagram still moving over the
 10 ridgeline. Here we can see in the zoom that one appears to
 11 be holding an R5, the member slightly to the left, and the
 12 other appears to be holding a pistol

13 [09:46] The member with the R5 rifle appears to be
 14 pointing in the direction of the group of protestors we see
 15 circled in blue in the bottom left-hand corner. And then
 16 the yellow circle is Papa11 where we now see members
 17 standing to its front and they appear to be looking up
 18 towards the rocks. And then we see NIU members circled in
 19 purple are still dealing with the arrest of strikers in the
 20 north-east. And there's another group circled in green
 21 that appear to be congregating around what we have
 22 identified as bodies A and B. And then if we just move
 23 through slide 22 –

24 CHAIRPERSON: I'm sorry, Ms Le Roux, I
 25 don't think it's appropriate to have that parenthetical

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1 statement NIU members continued to stand over and possibly
 2 on arrested strikers. It's introduced as an element we
 3 don't need, it's a speculative comment isn't it?

4 MR CHASKALSON SC: Chairperson, if you
 5 zoom in on that photograph it's not possibly, it's
 6 definitely. There are a series of these photographs where
 7 it's quite clear that an NIU man is standing on a striker
 8 in white or beige clothing. There's no doubt about it.

9 CHAIRPERSON: It's not so clear on this
 10 one, but you say there are others that indicate that that
 11 is so. All right.

12 MR CHASKALSON SC: Well it may be that
 13 the quality of this print is not good enough but if one
 14 tracks the sequence it is quite clear to me.

15 MS LE ROUX: Major-General, if we then
 16 turn to slide 2, this is a photograph –

17 CHAIRPERSON: Mr Semenya wishes to say
 18 something.

19 MR SEMENYA SC: Chair, I have confidence
 20 in the statement by Mr Chaskalson, but I think for it to
 21 carry with all of us we must be able to see what he says he
 22 sees and I'm not questioning it. But also true the
 23 narratives that come with these photographs are what they
 24 are. I think ultimately we're going to have to be pointed
 25 out to which elements of those narratives constitute

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1 evidence. For instance if it says three NIU plus Major-
 2 General Naidoo there, is that evidence, is that fact when
 3 the witness says I can't even identify whether I'm there or
 4 not.

5 CHAIRPERSON: To be fair, I don't think
 6 they do that. They say two NIU members or one NIU member
 7 and Major-General Naidoo. So it's in the alternative and I
 8 understand him to say that it could be he, on the other
 9 hand he's not sure. So it could be two NIU – no he wasn't
 10 asked about these two people, he was asked in the case of
 11 the previous slide. But anyway let's clarify with him.
 12 What do you say, Major-General? Do you see the reference
 13 in the text on the page – the beginning of the text at page
 14 21 it says two NIU members or one NIU member and you are
 15 moving over the Ridge lines, circled in red. Do you accept
 16 that you may be one of the two persons circled in red, but
 17 you're not sure? Would that be correct?

18 GENERAL NAIDOO: Chair, what I indicated
 19 was that the path that was taken now was yes similar or
 20 same as the path that I testified to yesterday. But I will
 21 not be able to say in terms of the shapes and forms down
 22 there whether it was for certain one of them was me –

23 CHAIRPERSON: Yes in other words you're
 24 agreeing with what I'm putting to you. It could be you,
 25 but there's a possibility that it isn't you. So that's why

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1 what they say either two NIU members or one NIU member and
 2 you are circled in red. Would that be correct?

3 GENERAL NAIDOO: That's correct.

4 CHAIRPERSON: One or the other.

5 GENERAL NAIDOO: One or the other.

6 Correct, Chair.

7 COMMISSIONER HEMRAJ: Mr Chaskalson, is
 8 there a clearer version of this picture that will assist
 9 with the identification or not?

10 MR CHASKALSON SC: With the possible
 11 identification of Major-General Naidoo?

12 COMMISSIONER HEMRAJ: Yes.

13 MR CHASKALSON SC: All that I can see is
 14 what's on the screen and because of the poor resolution of
 15 the screen. It's the same photograph, but if one looks at
 16 it on one's laptop one sees it better than on the screen.

17 COMMISSIONER HEMRAJ: Well the question
 18 is –

19 MR CHASKALSON SC: If one goes to – maybe
 20 the best way of going to it is to go to KKK16.5142 itself
 21 because that won't have suffered the loss of quality that
 22 the screen cut would have created. But it's a marginal
 23 loss of quality. I think the real difficulty is caused not
 24 by the file, but by the screen on which the file is being
 25 viewed. This is not the – I think this is 5142A on which

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1 SAPS tried to enhance a little, it's 5142 itself – yes
 2 that's –
 3 COMMISSIONER HEMRAJ: Well the real
 4 question is if you've looked at it on the best screen
 5 available is there anything that enables one to identify
 6 the witness as the person on the rock?
 7 MR CHASKALSON SC: All that one can see
 8 is that there are two people, one of whom is holding a
 9 pistol.
 10 COMMISSIONER HEMRAJ: Yes, thank you.
 11 MS LE ROUX: Major-General, if we can
 12 continue then with slide 22 which is 161701. That's the
 13 full picture of KKK16.5142. Again you see the two, if we
 14 go to slide 22 and then if we go to slide 23, the first
 15 zoomed section again we see two members, well three members
 16 circled in red, the two to the left the one appears to have
 17 an R5. The other a pistol and the third member also
 18 circled in red on the furthest right of that group of three
 19 appears to be kneeling while aiming shots with an R5. We
 20 still see the NIU members around bodies A and B circled in
 21 green and the purple group of members with the arrested
 22 strikers to the north-east. And then just to complete,
 23 slide 24 shows you the other zoomed section which is two
 24 groups of strikers hiding in the rocks and the trees and
 25 bushes. Now, Major-General, the reason I've gone through

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1 this is because this is the objective evidence that we've
 2 been able to analyse that correlates time wise with your
 3 arrival in the koppie and movements through the koppie on
 4 foot. And what this evidence shows seems to contradict
 5 your sequence that you confirmed for me this morning. The
 6 critical point being in your evidence to date, that you
 7 confirmed this morning, your shooting incident happened
 8 before arrests were made of strikers in the rocks and we
 9 know from the Papa11 statements taken that Mr Chaskalson
 10 took you through yesterday that the members that were in
 11 Papa11 give statements saying that they observed your
 12 shooting. But given how we've seen in this series of
 13 photographs that Papa11 only arrives on the scene after the
 14 point in time at which the arrests are made. And you say
 15 your shooting took place before that. For the Papa11
 16 members to have seen you shoot they have been seeing some
 17 different shooting incident. So either your shooting
 18 incident took place after the arrests rather than before it
 19 or Papa11 members saw you shoot in a totally different
 20 incident that you haven't yet testified about. Could you
 21 provide a comment on that?
 22 GENERAL NAIDOO: Chair, there's two
 23 things. In terms of the path I don't see any major
 24 contradiction. In terms of the shooting incident there was
 25 only one member who indicated that he saw me shooting into

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1 a bush and ducking behind a rock. And I stated yesterday
 2 that from the location where the shooting incident occurred
 3 there was in no way possible for any of the people at
 4 Papa11 to observe the shooting incident. And I at that
 5 stage, not knowing the exact location of Papa11, stated
 6 that they could have heard the shooting because of where
 7 the shooting occurred and it occurred below the crest that
 8 we alleged, or we have seen on the picture coming down. So
 9 as far as the statements of the members of Papa11 I do not
 10 see any contradiction other than the individual member who
 11 says that he saw me ducking behind the rock and shooting
 12 into the bushes. So I don't know where the contradiction
 13 comes from.
 14 MS LE ROUX: Major-General –
 15 MR SEMENYA SC: Chair, for our part we're
 16 interested to see which of the so-called objective
 17 evidence, not witness account that it is contended is a
 18 contradiction of the witness's evidence.
 19 MS LE ROUX: Major-General, perhaps we've
 20 missed each other. As I understand your evidence it's that
 21 your shooting incident happens – the shooting incident
 22 where you fire happens before the arrests, correct?
 23 GENERAL NAIDOO: That is correct, Chair.
 24 MS LE ROUX: And Papa 11 wasn't there
 25 when that happened, so the shooting incident that Papa 11

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1 members mention in their statements can't have been your
 2 shooting incident that you've testified about. It must
 3 have been a different incident because they weren't there
 4 yet. So they couldn't see your shooting incident, but now
 5 your evidence was that you didn't know of any other
 6 shooting incident after yours. So that's the difficulty we
 7 have with trying to match your evidence with these
 8 photographs which timed the Papa11 arrival with the Papa 11
 9 statements that they witnessed the shooting. Can you
 10 assist with that?
 11 MR SEMENYA SC: Chair, again Ms Le Roux
 12 refers to statements in plural of witnesses who say they
 13 saw the General shoot. It's not correct.
 14 CHAIRPERSON: No, no, no –
 15 MS LE ROUX: No, Chair, not observing –
 16 CHAIRPERSON: There were statements of
 17 people who said they saw NIU or a witness, a number of
 18 witnesses said they saw NIU people shooting. One of them,
 19 I think, said he saw the Major-General with a pistol in his
 20 hand, but did not see him shooting and another one said he
 21 did see him shooting. I understand what Ms Le Roux to be
 22 saying was there was a shooting incident, whether it
 23 involved this witness is a different question, but there
 24 was a shooting incident which the occupants of the NIU,
 25 sorry the occupants of the Nyala described having seen.

<p style="text-align: right;">Page 24086</p> <p>1 The point that she's putting to the witness is that on his 2 version he was in that vicinity from before the Nyala 3 arrived and obviously not afterwards. And he described the 4 shooting incident before the Nyala came, but doesn't 5 describe a shooting incident after it came. Her point is 6 the occupants of the Nyala say there was a shooting 7 incident after they came and the witness doesn't describe 8 it and she's asking him to explain that. I think that's in 9 order.</p> <p>10 MR SEMENYA SC: But, Chair, the witness 11 is testifying about NIU members shooting and we know 12 they're not only with General Naidoo, unless we know it is 13 with reference to those that are with the General then the 14 contradiction is not apparent.</p> <p>15 CHAIRPERSON: No, no but, Mr Semenya, one 16 witness said, described the shooting incident involving the 17 NIU people and said he saw Major-General Naidoo on the 18 scene with a pistol in his hand, but he said that he can't 19 say that he fired it. But what he does do is he puts him 20 on the scene, obviously when the Nyalas arrive in the 21 presence of or in close vicinity to NIU members who were 22 shooting. The point being put by Ms Le Roux is that the 23 witness, who was placed on the scene at the time the NIU 24 people were firing by the occupants of the Nyala, doesn't 25 describe, doesn't mention the incident which they mention.</p>	<p style="text-align: right;">Page 24088</p> <p>1 the bush flanks that particular area where we had spotted 2 the shooter, so in terms of where Papa11 was in relation to 3 where they heard the shooting, I did not even know at the 4 time of the shooting that Papa11 was over the crest. What 5 I testified yesterday shooting occurred before we went over 6 the second crest of the hill and after we crested we 7 arrested three suspected also and then we went down. So 8 they could not have seen and this is what I testified 9 yesterday, the one member who says that he saw the shooting 10 incident could not have seen the shooting incident that 11 occurred because we were out of sight of them. And two, I 12 also testified they could have heard the shooting and in 13 relation to their location I'm not sure, but they could 14 have heard the shooting because we crested shortly after 15 the shooting.</p> <p>16 MS LE ROUX: Major-General, I think I'll 17 have to leave it here because again from the time 18 photographs starting at slide 7 of this, we can see when 19 the arrests start, the shooting incident that you testified 20 about must be before that arrest is made. At the time of 21 the arrest Papa11 is not yet at the koppie. So whatever 22 the Papa11 members saw it must have been a different 23 shooting incident. But understand we can't take that point 24 any further with you.</p> <p>25 GENERAL NAIDOO: And there's two other</p>
<p style="text-align: right;">Page 24087</p> <p>1 It seems to be a perfectly admissible question I think. 2 He's asked to explain it. There are a number of possible 3 explanations, let's hear what his explanation is and then 4 move on. Only one of them says the witness fired, the 5 others don't, but the main point is he was on the scene, 6 according to these people, at a time after the Nyalas 7 arrived, when the shooting took place which he doesn't 8 describe to her. That's the point isn't it? Have I got it 9 right, Ms Le Roux?</p> <p>10 MS LE ROUX: Yes correct, Chair.</p> <p>11 CHAIRPERSON: Right, okay. Do you 12 understand the point, Major-General?</p> <p>13 GENERAL NAIDOO: Chair, yes.</p> <p>14 CHAIRPERSON: All right, can you give us 15 your answer?</p> <p>16 GENERAL NAIDOO: As I indicated, Chair, 17 in my testimony yesterday and this morning I confirmed, 18 after the shooting incident those members that were 19 accompanying me did not shoot at that stage and I would 20 have remembered, for a simple reason we had just arrested 21 three prisoners. They were securing the prisoners and 22 taking them back. That's why you'd find where I had more 23 members with me that the number of members reduced because 24 they escorted the prisoners back down the line. And the 25 other members that were in the line that were walking in</p>	<p style="text-align: right;">Page 24089</p> <p>1 issues, Chair, was that the only shooting on these koppies? 2 Because as I indicated there were three NIU lines. I was 3 part of the one which was the extreme left one and the 4 other two went around on the right-hand side. Did they 5 engage in shooting? Secondly, the member that's circled 6 here who appears to be kneeling while aiming shots with a 7 R5, he was actually covering the members that were 8 searching the bush. There were members in the bush, so he 9 could not have been firing shots into the bush because his 10 colleagues were searching the bush because the line 11 extended into the bush when we were doing the sweep.</p> <p>12 CHAIRPERSON: I think the expression 13 "aiming shots" doesn't mean firing shots, it means having 14 his rifle in a position to fire, but not necessarily 15 firing. He's aiming in other words.</p> <p>16 GENERAL NAIDOO: Aiming shots means that 17 you are discharging, aiming a rifle is –</p> <p>18 CHAIRPERSON: Well I never read that 19 well, I don't see how anyone can see from this photograph 20 that shots were being fired, I think what's meant – but 21 anyway let's find out from the –</p> <p>22 MS LE ROUX: Chair, by that caption we 23 don't intend to mean the NIU members is shooting.</p> <p>24 CHAIRPERSON: Okay, so it's an unhappy –</p> <p>25 MS LE ROUX: He's aiming his rifle.</p>

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1 CHAIRPERSON: He's aiming the rifle
 2 without the word shots actually.
 3 GENERAL NAIDOO: It would be a correct
 4 position because they were covering the members that were
 5 in the bush.
 6 CHAIRPERSON: So actually the thing to do
 7 was to cut out the word shots, I think, because that does
 8 create the wrong impression. All right, but you can't see
 9 the shots being fired in the photograph. All right, so –
 10 anyway I think Ms Le Roux has put the point to you and you
 11 have given your answers as far as it goes and she's moving
 12 on now unless there's something else you want to add.
 13 GENERAL NAIDOO: No, Chair.
 14 MS LE ROUX: Major-General, let me move
 15 on then to another topic which is –
 16 CHAIRPERSON: Forgive me, but can I ask
 17 something else? This exhibit here, page 23, that shows
 18 exhibit KKK16.5142. Now we have, of course, a very good
 19 enlargement cropped and gridded of the preceding
 20 photograph, 5141 contracted to MMM2. How many seconds
 21 before 5142 was taken was 5141 taken?
 22 MS LE ROUX: 5141 is 16:16:57 and then
 23 it's 16:17:01, so it's 4 seconds later.
 24 CHAIRPERSON: 4 seconds later, so page 23
 25 is 4 seconds after MMM2 effectively.

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1 MS LE ROUX: Correct.
 2 CHAIRPERSON: And is there anything that
 3 we can see on MMM2 that had happened 4 seconds earlier
 4 which can assist us in regard to the point that you're
 5 making? The Nyala has already arrived, someone seems to
 6 have got out of it. We see people in F2, those are the
 7 people in your -
 8 MS LE ROUX: Chair, slide 20 of this
 9 exhibit is MMM2.
 10 [10:06] It's the same photograph. MMM2 of course is
 11 cropped and gridded, but it's the same source photograph,
 12 KKK16.5141.
 13 CHAIRPERSON: Yes, thank you, I hadn't
 14 noticed that. The point is that MMM2 is actually a clearer
 15 version of the slide which you say is your page 20 and then
 16 one can then look at the zoomed blocks which you deal with
 17 in 21 perhaps with greater clarity on MMM2, but I don't
 18 whether that's an exercise we need to perform now, but it
 19 just struck me that it might help us a bit because this is
 20 obviously a very, MMM2 seems to be a very good reproduction
 21 of the relevant slide. But I don't want to take you back
 22 on ground you've already covered, unless there's something
 23 to be derived from looking at the, taking advantage of the
 24 clarity on MMM2.
 25 MS LE ROUX: No, Chair, I don't think I

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1 need to go any further with Major General on that point.
 2 So Major General, can we then move on to another topic,
 3 which is the National Commissioner – and Chair, we don't
 4 need to go there, but for the record her testimony on this
 5 issue is day 65 commencing at page 6923 running to 6942.
 6 The National Commissioner testified that she asked you, as
 7 well as the Provincial Commissioner, to look into the
 8 incident that was described and raised by Warrant Officer
 9 Myburgh in his statement.
 10 GENERAL NAIDOO: Sergeant Myburgh, yes,
 11 correct, Chair.
 12 MS LE ROUX: And Major General, what have
 13 you done to date to fulfil the National Commissioner's
 14 request to you to investigate the allegations raised by
 15 Warrant Officer Myburgh?
 16 GENERAL NAIDOO: Chair, as it is known
 17 that the matter was brought to her attention on the 1st of
 18 October and immediately when I was informed of it I ensured
 19 that both the Provincial and the National Commissioner
 20 became aware of the incident. The National Commissioner
 21 and the Provincial Commissioner were obviously shocked and
 22 the National Commissioner instructed us to make sure that
 23 the matter is being dealt with appropriately.
 24 In the normal course of events the Provincial
 25 Commissioner could have appointed me to do the

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1 investigation. As I had been at the scene and been part of
 2 the shooting I could not, so then she appointed the Deputy
 3 Provincial Commissioner for Detectives to take a statement
 4 for Sergeant Myburgh and on receipt of the statement she
 5 ensured that it was submitted, and that's how the statement
 6 also ended before the Commission, because such conduct
 7 that's being alleged would fall within the domain of IPID
 8 for investigation and I was informed that they had taken a
 9 statement. I also had seen the statement when it was taken
 10 and so I knew that the process was underway.
 11 MS LE ROUX: Major General, other than
 12 taking the statement of Warrant Officer Myburgh, do you
 13 know of any other investigation that's been conducted into
 14 the allegations he makes?
 15 GENERAL NAIDOO: Chair, in a matter such
 16 as this, in our co-operation with the IPID, which involves
 17 internal role-players, we normally defer to their
 18 investigation and their opinion. They do make
 19 recommendations to us. I'm not aware to date whether we
 20 have received any recommendations from them on this matter.
 21 CHAIRPERSON: The matter has been
 22 referred to IPID?
 23 GENERAL NAIDOO: As far as I know, yes.
 24 CHAIRPERSON: And statement taken by your
 25 colleague, the deputy commissioner responsible for

<p style="text-align: right;">Page 24094</p> <p>1 detection. Has that statement been forwarded to IPID as 2 far as you know? 3 GENERAL NAIDOO: As far as I know, 4 because it was also handed in at the Commission when it was 5 received. 6 MS LE ROUX: So Major General, am I 7 correct in understanding your evidence that no further 8 investigation was undertaken other than referring the 9 matter to IPID? You're not aware of any other 10 investigation into the allegations made by Warrant Officer 11 Myburgh? 12 GENERAL NAIDOO: Chair, I am not aware, 13 and if there was something I would not be involved. As I 14 was a person at the scene I would be excluded because they 15 might require statements or testimony from me. 16 MS LE ROUX: Major General, what we've 17 now seen is a statement filed by Warrant Officer Swartz. 18 It's LLL14. Are you familiar with this second statement 19 that has been filed by Warrant Officer Swartz? 20 GENERAL NAIDOO: I have read it, Chair. 21 MS LE ROUX: And are you aware that it 22 contains the allegation that it was Sergeant Myburgh who 23 admitted to shooting an individual in koppie 3 and that he 24 thought he had killed that individual? 25 GENERAL NAIDOO: I have read that in the</p>	<p style="text-align: right;">Page 24096</p> <p>1 somebody inside the bushy area of koppie 3." 2 And then at paragraph 43 he states, "I remember 3 very well that I went to the scene with the police expert, 4 Mr de Rover, at scene 2 and I was present when Warrant 5 Officer Breedt of K9 showed Mr de Rover where he saw 6 Sergeant Myburgh turn into the rocks at scene 2." Major 7 General, who is Captain Aucamp? 8 GENERAL NAIDOO: He was the person that 9 was assisting with the administration from Roots with the 10 mass mobilisation of witnesses and the processes that 11 followed from Roots until the Commission moved to 12 Rustenburg. So he was an administrator. 13 MS LE ROUX: And what was his role and 14 function as an administrator? 15 GENERAL NAIDOO: Chair, he facilitated 16 the logistic side of things, the accommodation, 17 transportation, travelling, and the call-up, he was the 18 person that actually typed and drew up the call-ups to 19 Roots and various other call-ups to the Commission or for 20 consultation to the evidence leaders or the legal team. 21 MS LE ROUX: And was Captain Aucamp 22 charged in any way with investigation? 23 GENERAL NAIDOO: As I indicated, Chair, 24 he was an administrator facilitating the call-up and the 25 presenting of personnel for various reasons related to the</p>
<p style="text-align: right;">Page 24095</p> <p>1 statement, Chair. 2 MS LE ROUX: And are you also aware that 3 that statement is inconsistent with the entries that 4 Warrant Officer Swartz made in his pocketbook at the time? 5 GENERAL NAIDOO: I was not aware as at 6 that stage I have not had sight of Warrant Officer Swartz's 7 pocketbook. 8 MS LE ROUX: But Major General, what I'm 9 interested in, if you could turn, please, to exhibit LLL14, 10 which is the supplementary statement of Warrant Officer 11 Swartz, and in particular if you could go to the last page 12 of that and paragraph 42 in particular. Just to orientate 13 you, in the statement this is where Warrant Officer Swartz 14 talks about in paragraph 41 that, "Later in the year we 15 were called up to Siesta Impala Mine to consult with legal 16 team of SAPS in Rustenburg," and then at paragraph 42 he 17 states, "I was asked by Captain Aucamp if I knew who 18 Sergeant Myburgh is. I told him I don't know him. He then 19 showed us a photograph of where we were on the 16th of 20 August 2012. We had to point out where we were standing on 21 that day. I was sitting with Constable Mabe and Constable 22 Sebayane and other members. I asked them whether they knew 23 Sergeant Myburgh. They then showed me who he is and then I 24 immediately recognised him as the sergeant of K9 who was 25 talking to me at the scene and who told me he had killed</p>	<p style="text-align: right;">Page 24097</p> <p>1 Commission. 2 MS LE ROUX: Do you have any idea why 3 Captain Aucamp was then asking people who Sergeant Myburgh 4 is? 5 GENERAL NAIDOO: I have no idea, Chair. 6 MS LE ROUX: Do you know whether Captain 7 Aucamp was in any way responsible for investigating the 8 Myburgh allegations during these legal consultations in 9 Rustenburg? 10 GENERAL NAIDOO: Chair, Captain Aucamp 11 had no line responsibilities as far as the Commission is 12 concerned. As I indicated, he was an administrator working 13 at our nodal point, who was charged specifically with the 14 logistic facilitations. 15 MS LE ROUX: So can you explain why he's 16 showing people photographs and trying to get them to point 17 out where they were on that day? Why would he be doing 18 that if he's an administrator? 19 GENERAL NAIDOO: I have no idea, Chair, 20 but I'm sure we can ask him. 21 MR SEMENYA SC: Chair, if it helps we can 22 place on record it was at the request of the legal team 23 having this controversial reason. 24 MS LE ROUX: Chair, I'm not sure I 25 understand my learned friend's explanation. They asked</p>

<p style="text-align: right;">Page 24098</p> <p>1 Captain Aucamp to identify Sergeant Myburgh? 2 CHAIRPERSON: They asked Captain Aucamp 3 to – or he can explain to us again, but they asked Captain 4 Aucamp to assist in looking into this matter, as I 5 understand it. So Captain Aucamp acted on their 6 instructions in, at their request in asking Warrant Officer 7 Swartz if he knew who Sergeant Myburgh is. Is that 8 correct? And he was obviously – Captain Aucamp – was in 9 possession of a photograph of Sergeant Myburgh, which was 10 then – 11 MS LE ROUX: Chair, I think what we'll do 12 is we'll – 13 CHAIRPERSON: Sorry, I've got it wrong. 14 He was in possession of a photograph showing a number of 15 members of the service, including the people mentioned in 16 paragraph 42. That's correct, is it? 17 MR SEMENYA SC: That is correct, Chair. 18 MS LE ROUX: Thanks, Chair. We'll engage 19 with the SAPS legal team because it may be helpful to just 20 obtain a statement from Captain Aucamp that describes the 21 circumstances of that interaction, because it does appear 22 to go beyond his administrative duties. 23 CHAIRPERSON: It does, but he was asked 24 to do it by the legal team. 25 MS LE ROUX: Yes, correct, Chair. Major</p>	<p style="text-align: right;">Page 24100</p> <p>1 put to you is it's normally a reliable document because 2 it's very difficult for a policeman who's fired three 3 rounds to get away with saying he's only fired one because 4 then they'll say to him where are the other two, because 5 there are checks after every operation, I take it – 6 GENERAL NAIDOO: Could be paraded – 7 CHAIRPERSON: - how many rounds have been 8 fired, how many rounds are left over. 9 GENERAL NAIDOO: That's correct. 10 CHAIRPERSON: And if the arithmetic 11 doesn't work out then the, or depending which way the 12 arithmetic goes, but if the arithmetic doesn't work out and 13 a member is three rounds short, that he says he only 14 discharged one, then he's got a lot of explaining to do. 15 So that's why Adv le Roux says to you the discharge list is 16 normally a very reliable document. That's her point. Am I 17 right? 18 GENERAL NAIDOO: Hence my comment that 19 the declaration that the member makes contributes to the 20 discharge list, yes. 21 MS LE ROUX: Major General, is it 22 possible though that members would bring their own 23 ammunition and then that would not be reflected on the 24 discharge list? Is that a possibility? 25 GENERAL NAIDOO: Chair, I can't speak on</p>
<p style="text-align: right;">Page 24099</p> <p>1 General, obviously the SAPS have investigated the 2 allegations – 3 GENERAL NAIDOO: Which allegations, 4 Chair? 5 MS LE ROUX: Sorry, Major General. The 6 SAPS have obviously been investigating various aspects of 7 the events in the relevant week in Marikana because they've 8 been doing things to prepare for this Commission, and with 9 respect to Warrant Officer Myburgh we know from FFF8 that – 10 which is the discharge list – that he fired a single round 11 of R5 at scene 2. Now I wanted to ask you, FFF8, the 12 discharge list, that should be an accurate source for us to 13 use with respect to members discharging ammunition, 14 correct? There shouldn't be other ammunition that SAPS 15 members used on the day. 16 GENERAL NAIDOO: Chair, the discharge 17 list was supposed to be the declaration by the various 18 members either to their commanders or by way of statements 19 in terms of the ammunition they expended on the particular 20 day. As I testified that the original discharge list was 21 taken and they went through it with the various statements 22 to try and reconcile. So that discharge list is supposed 23 to be the discharge, the firearms that were discharged on a 24 particular day. 25 CHAIRPERSON: Yes, but the point being</p>	<p style="text-align: right;">Page 24101</p> <p>1 the possibilities of individual members. We work on the 2 basis that when the members come on duty they have to 3 declare the ammunition that they carry on a parade by their 4 immediate supervisor, and that is entered into their SAP15 5 to indicate that this is what they declare, and at the end 6 of the duty, as I had just indicated, they have to declare 7 that they are free from injuries and there was no other 8 incidents or if they have used their weapon they have to 9 declare the circumstances and the number of rounds shot. 10 So in between that if a member decides to do something, I 11 mean I can't generalise this and say it's possible or it's 12 not possible. We work on the basis of having members who 13 adhere to our code of conduct and – 14 CHAIRPERSON: Ja, well that may be a 15 rather bold assumption, but the short point is this, that 16 it's possible – the question, I mean anything is possible. 17 A member can somehow get hold of other ammunition and take 18 it along with him because he feels that he may need to use 19 it and may want to fire shots that he doesn't have to 20 declare. I mean that's all possible – 21 GENERAL NAIDOO: It can't be excluded – 22 CHAIRPERSON: - but whether it's – ja, it 23 can't be excluded, but whether it's in accordance with what 24 one can call the overwhelming probabilities, whether it's a 25 practical reasonable possibility is presumably another</p>

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1 question.

2 GENERAL NAIDOO: Correct, Chair.

3 MS LE ROUX: Major General, in your

4 experience have you had members bring their own ammunition

5 to an operation?

6 GENERAL NAIDOO: Personally, I have not

7 personally seen members coming to an operation with their

8 own. I know that a lot of members apply, especially the

9 members who are enthusiastic on their job, they do

10 supplement their equipment with better equipment, etcetera,

11 which I suppose, you know, things like an extended mag and

12 then we normally issue 30 rounds per firearm, an extended

13 mag takes much more rounds, but all this has to be declared

14 when you're booking on duty as what you have with you. So

15 in those circumstances, yes.

16 MS LE ROUX: Major General –

17 CHAIRPERSON: Sorry, you didn't answer

18 the question. The question was relating to almost what one

19 can call a "skelm" policeman who comes, who's issued with

20 30 rounds but he wants to fire a few more shots, so he

21 brings an extra 10 on him, doesn't declare them, so at the

22 end of the day when he has to explain how many rounds he's

23 fired he says I fired one and he produces a magazine with

24 29 rounds in it. But in fact he's fired more because he

25 had these other ones. The question is whether you've ever

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1 encountered that situation in practice?

2 GENERAL NAIDOO: Chair, not me personally

3 directly. However, I know there was a recent incident

4 involving a police official, which is still under

5 investigation by IPID, and well, you know, the specific

6 detail about that I don't have it myself, but operations

7 which were directly under my control I did not eventually

8 have that kind of problem, but I am aware that there was a

9 recent incident which IPID is investigating.

10 CHAIRPERSON: Now this incident, does

11 that relate to rounds for an R5 or does it relate to

12 pellets?

13 GENERAL NAIDOO: It relates to shotgun.

14 CHAIRPERSON: Yes, so it's pellets.

15 GENERAL NAIDOO: That's correct.

16 MS LE ROUX: So Major General, in light

17 of the possibility that members would bring their own

18 ammunition, how confident are you that FFF8 accurately

19 captured all the ammunition that was discharged on that

20 day?

21 GENERAL NAIDOO: Chair, as I indicated,

22 we work - and I think the word you used, the probability

23 that people won't do this - we work on the basis of the

24 equipment and the resources that we issue to our members is

25 what they should bring. They are inspected and that's what

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1 they're deployed with. So I can't, you know, indicate the

2 levels of probability of things happening or otherwise, but

3 it is - we, for instance in the crowd management

4 environment there are steps taken to try and manage this

5 issue of ammunition.

6 What happens with the ammunition, for example I'm

7 talking now purely Public Order Policing, they, members

8 only book out the firearms, they don't book out the

9 ammunition. The ammunition is given to the section leader,

10 so if there's 250 rounds that are given it's given to that

11 section leader and when there's a deployment, he then

12 physically issues this ammunition and notes that he has

13 issued so many rounds of rubber to that member and so many

14 rounds of R5 to that member, and at the end of the duty he

15 has to retrieve that ammunition. He has to certify it and

16 he goes and books it back, because he has to give a report

17 in terms of a particular - so those are the control

18 mechanisms that we put in place. So whether we, when

19 members come to work, whether we search them and go through

20 their kit, we don't do that. We work on a system where we

21 accept that everybody would have the integrity to adhere to

22 the regulations.

23 CHAIRPERSON: What would happen if you

24 discovered, you or the section head or whoever it was

25 discovered that a particular member had gone on an

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1 operation with extra ammunition? That's the first

2 question, and the a fortiori question is if he fired some

3 of his extra ammunition and then when he said how many

4 rounds he discharged only accounted for those which had

5 been issued to him and not those that he brought along with

6 him, what would happen to such a member?

7 GENERAL NAIDOO: If we do discover it,

8 Chair, there's two aspects to it. There's obviously an

9 internal disciplinary inquiry which has to - because as I

10 just alluded to you, there are internal procedures on the

11 booking out of weapons and ammunition and the booking in

12 and accounting.

13 [10:26] Secondly, that possession of the additional

14 ammunition, I mean we are guided by law in terms of

15 possession of ammunition and firearms, is it legal; that

16 has to be determined firstly because it's possible that the

17 member may have a private firearm, say if we are talking

18 about a 9mm, so he might legally be in possession of the

19 ammunition, but that ammunition will differ from the one

20 that we use in the State because, I mean our ammunition is

21 produced, it has particular serial numbers and the private

22 ammunition is produced elsewhere and it's got different

23 range of serial numbers, and those things obviously could

24 lead to criminal prosecution as well.

25 CHAIRPERSON: So are you saying that if

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1 it was discovered that a member had behaved in the way I've
2 described, that would be a matter for IPID to go into?
3 GENERAL NAIDOO: Chair, it will depend on
4 the circumstances. If there was a shooting, yes, IPID
5 attends to all our shootings now, and, but also internally
6 in terms of our procedures IPID then will deal with the
7 shooting as well as the unlawful possession of ammunition,
8 if it was unlawful, etcetera.
9 MS LE ROUX: Major General, that
10 explanation of the procedures was certainly helpful, but it
11 didn't answer my question, which –
12 CHAIRPERSON: Ms le Roux, before you
13 carry on, Mr Ntsebeza has turned his light on. A slip of
14 the finger?
15 MR NTSEBEZA SC: It was by mistake, Mr
16 Chairman.
17 CHAIRPERSON: A slip of the finger.
18 Carry on, Ms le Roux.
19 MS LE ROUX: Thanks, Chair. Major
20 General, as I was saying, your explanation of the
21 procedures was certainly helpful, but it doesn't answer my
22 question, which is how confident are you that FFF8 captures
23 all ammunition used on the day?
24 GENERAL NAIDOO: Chair, once again I
25 would say is we work on a daily basis on this basis with

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1 members. We issue them with that amount of equipment and
2 we have this process of when they book on duty, when they
3 book off duty, so I'm entirely in their hands if, and they
4 declare. So I don't work on the basis that I doubt their
5 integrity. I work on the basis that we work on the same
6 level in terms of that and that's why the shooting list
7 which we have there is based on those declarations, so I
8 would have to accept that those members did, unless I get
9 evidence to the contrary.
10 COMMISSIONER HEMRAJ: If there's a
11 possibility that someone had a spare magazine in his
12 pocket, then there must be equal possibility that the
13 discharge list might not be accurate.
14 GENERAL NAIDOO: That's true.
15 MS LE ROUX: Major General, I'll try one
16 last time. Given your experience and your familiarity and
17 your acknowledge of the possibility that members will come
18 with their own ammunition, that means FFF8 may not be a
19 reliable document. Can you give me a sense of your
20 confidence that FFF8 is a reliable document? Are you 80%
21 confident in it, 50% confident in it, 100% confident that
22 no-one brought their own ammunition to Marikana?
23 GENERAL NAIDOO: Chair, I think it won't
24 be fair to, for me to say, indicate a percentage in terms
25 of that. I work on a daily basis with members of the South

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1 African Police Service. I place my life in their hands as
2 well when I go to these places. If I did not have
3 confidence in them measuring up to my expectations in terms
4 of these things, then I mean I would be in a very
5 compromised position. So I always work from the point of
6 departure that the information that I received is the
7 correct information, until I get something to the contrary.
8 There's some things which would be obviously glaring and
9 which may require scrutiny by me, but I can't at the, on
10 the face of things just say that this thing is a hundred
11 percent or it's 50% correct, or I'm confident a hundred
12 percent or 50%. I don't think that would be a fair way of
13 making an assumption.
14 CHAIRPERSON: Have you worked with the
15 discharge statements? Is that what they call them?
16 GENERAL NAIDOO: You're talking about
17 this particular one?
18 CHAIRPERSON: Yes, yes – no, no,
19 discharge lists, are they discharge lists –
20 GENERAL NAIDOO: Chair, yes –
21 CHAIRPERSON: What is the correct
22 terminology?
23 GENERAL NAIDOO: No –
24 CHAIRPERSON: Discharge list, discharge
25 statement, what?

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1 GENERAL NAIDOO: Chair, this is an
2 exception where we have discharge lists because of the
3 number of members that –
4 CHAIRPERSON: Ja.
5 GENERAL NAIDOO: Over the years as a
6 young police officer I had to attend to shooting incidents
7 and normally just one, two, three members that are involved
8 in shooting, not hundreds of police officials. So you
9 don't compile a discharge list, you complete a report as a
10 shooting officer – as a duty officer where you interview
11 the members, you look at the scene, you count the shells,
12 you check his firearm. Those are the kind of things that
13 will normally happen and that is why I say on the basis of
14 that experience there's nothing for me to say look, that
15 this would happen. This was an exception because of the
16 size of the operation.
17 CHAIRPERSON: Yes, yes, I understand.
18 Well, let me put it this way; in your experience in dealing
19 with this kind of situation, namely checking the number of
20 rounds that were discharged and that sort of thing, in your
21 experience have you ever come across a case where a rogue
22 policeman – that was the word I was looking for earlier
23 when I used another expression – where a rogue policeman
24 has actually, you discovered it later, fired off more
25 rounds than he said he did?

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1 GENERAL NAIDOO: Not me personally,
 2 Chair, but they may have. I can't say that, yes.
 3 CHAIRPERSON: And over what period of
 4 time does your experience extend in this area, in this
 5 regard?
 6 GENERAL NAIDOO: Chair, I was a captain
 7 for, a lieutenant for more than two years. I was a captain
 8 also. So we're talking more than five-plus years, and I
 9 was a warrant officer also. As a shift commander we used
 10 to attend to some of these incidents previously. So I'm
 11 talking of more than, between five to eight years
 12 experience.
 13 CHAIRPERSON: Yes, thank you.
 14 MS LE ROUX: So Major General, as I think
 15 I understand where we are, there's a possibility that
 16 members brought their own ammunition to Marikana, and we
 17 must keep that possibility in mind when we otherwise rely
 18 on FFF8, the discharge list. Would that be an accurate
 19 summation of where we are?
 20 GENERAL NAIDOO: Well, Chair, I think
 21 without labouring the point, yes.
 22 MS LE ROUX: Okay, so then –
 23 CHAIRPERSON: [Microphone off, inaudible]
 24 making sure she's got it right. She's just summarising the
 25 evidence as she understands it and wants to know whether

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1 you agree with her summary, and the answer I take it is you
 2 do.
 3 GENERAL NAIDOO: Yes –
 4 MS LE ROUX: Then to return to Warrant
 5 Officer Myburgh, we –
 6 GENERAL NAIDOO: Chair, can we be
 7 correct? It's Sergeant Myburgh.
 8 CHAIRPERSON: Yes, one thing we've
 9 learned in this Commission, we must get the ranks right.
 10 We mustn't promote people unduly, we mustn't demote them
 11 unduly. You were doing the former. Sometimes we've done
 12 the latter. But let's avoid errors in both directions.
 13 MS LE ROUX: Thank you, Chair.
 14 CHAIRPERSON: He's a sergeant.
 15 MS LE ROUX: He is referred to as a
 16 warrant officer, but I'll refer to him as a sergeant from
 17 now on. So what we see from FFF8, the discharge list, is
 18 Sergeant Myburgh declaring that he fired one R5 round, and
 19 if we look at his statement, that's FFF7, the relevant
 20 passages for these purposes are paragraphs 2 and 3 where
 21 Sergeant Myburgh sets out that, "On the 16th of August I was
 22 officially on duty at Marikana where there was a strike
 23 taking place. We were briefed by Major General Naidoo for
 24 our duties at the koppies, searching for firearms and
 25 weapons, and as we approached the scene at the koppies from

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1 the southern side there were miners shooting at us. I
 2 emerged from the vehicle, took cover behind the driver and
 3 passenger doors, as I moved to see clearly who is shooting
 4 at us. After most of the shooting had stopped I entered
 5 into koppies searching for suspects to arrest. I found
 6 about three injured people lying down, turned away from
 7 them, searching for other suspects," and then he accounts
 8 the NIU constable incident that we've been dealing with.
 9 He –
 10 CHAIRPERSON: Is this just a statement,
 11 or is this a warning statement? Could we see –
 12 MS LE ROUX: Chair, my learned friend for
 13 the police will have to identify this document. I mean it
 14 is signed before a commissioner of oaths in Mafikeng –
 15 GENERAL NAIDOO: Can I perhaps assist –
 16 CHAIRPERSON: Yes, yes, please give us
 17 your –
 18 GENERAL NAIDOO: This was the statement
 19 that General Tsumane, the Deputy Provincial Commissioner
 20 took –
 21 CHAIRPERSON: I see, so it wasn't a
 22 warning statement taken from him –
 23 GENERAL NAIDOO: No.
 24 CHAIRPERSON: - as a participant in the
 25 operation.

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1 GENERAL NAIDOO: No, it was –
 2 CHAIRPERSON: It was dealing with this
 3 allegation.
 4 GENERAL NAIDOO: That's correct, Chair.
 5 CHAIRPERSON: But was a warning statement
 6 taken from him?
 7 GENERAL NAIDOO: Chair, there's a second
 8 statement here as well –
 9 CHAIRPERSON: There is another statement,
 10 okay.
 11 GENERAL NAIDOO: - which –
 12 CHAIRPERSON: Is that an exhibit?
 13 MS LE ROUX: Chair, we have Myburgh as
 14 one pack, so if we go down there should be the handwritten
 15 statement which is headed "Additional statement," so if we
 16 go through –
 17 CHAIRPERSON: As part of our housekeeping
 18 exercise yesterday we went through these various statements
 19 which you presented us with and can you now tell me what –
 20 they're alphabetical, aren't they?
 21 MS LE ROUX: Yes, Chair, this should be
 22 MMM39.25.
 23 CHAIRPERSON: Sorry, let me get there
 24 first.
 25 MS LE ROUX: This additional statement.

<p style="text-align: right;">Page 24114</p> <p>1 CHAIRPERSON: Ja, so this is MMM?</p> <p>2 MS LE ROUX: 39.25.</p> <p>3 CHAIRPERSON: MMM39.25.</p> <p>4 MS LE ROUX: Yes.</p> <p>5 CHAIRPERSON: Right, and that's now on</p> <p>6 the screen.</p> <p>7 MS LE ROUX: And Chair, just to note,</p> <p>8 although it's headed "Additional statement," we understand</p> <p>9 it to precede the typewritten statement that was FFF7. For</p> <p>10 these purposes I just note that for the record, but in this</p> <p>11 additional statement the relevant paragraphs, again if we</p> <p>12 start paragraph 3, Sergeant Myburgh states there, "We moved</p> <p>13 in and approached the koppie from the south side and as we</p> <p>14 came near the koppie there was gunshots coming from the</p> <p>15 koppie where the striking mineworkers were shooting at us."</p> <p>16 CHAIRPERSON: "Shooting at us."</p> <p>17 MS LE ROUX: "Shooting at us." Then</p> <p>18 paragraph 4, "I fired one shot with my R5 rifle," gives the</p> <p>19 serial number, "about 10 metres into the ground as a</p> <p>20 warning shot." So this appears to be the single shot that</p> <p>21 we have recorded on FFF8, the discharge report, and from</p> <p>22 Sergeant Myburgh's statement it appears that he fires that</p> <p>23 shot outside the koppie a fair distance from the koppie on</p> <p>24 the south side.</p> <p>25 If we can then look at Mutsi's statement, which</p>	<p style="text-align: right;">Page 24116</p> <p>1 MMM39.24B, if we could go to that statement on the display.</p> <p>2 It's saved as Mutsi 2 of 3. Yes.</p> <p>3 CHAIRPERSON: Which paragraph are you</p> <p>4 referring to?</p> <p>5 MS LE ROUX: If we turn down to paragraph</p> <p>6 8 –</p> <p>7 CHAIRPERSON: Thank you.</p> <p>8 MS LE ROUX: To orientate you, this is</p> <p>9 once – Chair, it may actually just be helpful to start at</p> <p>10 paragraph 7. It states, "During the approach I then saw</p> <p>11 the miners coming out of the mountain towards our direction</p> <p>12 and they were ordered to stop and to drop their weapons and</p> <p>13 that stage police officers were trying to take cover and</p> <p>14 the miners turned and went, ran back to the mountain, and</p> <p>15 there were bushes, so they hidden themselves with the</p> <p>16 bushes."</p> <p>17 Paragraph 8, "And at that stage they then fired</p> <p>18 shot from the bush where they entered and shot were fired</p> <p>19 towards our direction and I couldn't take cover because it</p> <p>20 was just an open space. Then I shot rounds to the</p> <p>21 direction where the shots were coming from with an R5 rifle</p> <p>22 on kneeling position."</p> <p>23 Paragraph 9, "I then saw TRT members on my left-</p> <p>24 hand side shooting to the bush, trying to retreat as they</p> <p>25 indicated that there are people shooting at them from the</p>
<p style="text-align: right;">Page 24115</p> <p>1 is MMM8, I believe –</p> <p>2 CHAIRPERSON: You've given us in your</p> <p>3 bundle, is it two Mutsi statements?</p> <p>4 MS LE ROUX: Yes, Chair, so there are</p> <p>5 three in total. This MMM7 is the first and it's, we don't</p> <p>6 actually need to detain ourselves with that one. Then in</p> <p>7 the pack that has been given to you, which are now marked</p> <p>8 MMM39.24A would be the typewritten warning statement that</p> <p>9 goes with the IPID form, and then there's a second</p> <p>10 handwritten statement which would be MMM39.24B.</p> <p>11 CHAIRPERSON: That's the one –</p> <p>12 MS LE ROUX: And that's the one we want.</p> <p>13 CHAIRPERSON: Is that the one that's</p> <p>14 already an exhibit? It's not?</p> <p>15 MS LE ROUX: Yes, it is.</p> <p>16 CHAIRPERSON: Okay, and then there's</p> <p>17 another one at the end where he says he fired 18 rounds.</p> <p>18 That's MMM39.24C. Is that right?</p> <p>19 MS LE ROUX: Yes, Chair. So –</p> <p>20 CHAIRPERSON: Now which of the three are</p> <p>21 you looking at?</p> <p>22 COMMISSIONER HEMRAJ: The manuscript one.</p> <p>23 CHAIRPERSON: The manuscript one, which</p> <p>24 is –</p> <p>25 MS LE ROUX: The manuscript one, which is</p>	<p style="text-align: right;">Page 24117</p> <p>1 bush. I then decided to shoot to give cover to TRT members</p> <p>2 because it was difficult for them to shoot going backwards</p> <p>3 and I shot till they took cover with the police bakkie."</p> <p>4 Paragraph 10, "I am declaring that I'm not sure</p> <p>5 as to how many people did I shoot because at some stage I</p> <p>6 was joined by Sergeant Myburgh and Warrant Officer Baloyi</p> <p>7 and at total I shot 18 rounds with an R5 rifle."</p> <p>8 So what we see from the Mutsi statement, and</p> <p>9 obviously we'll just set aside for now the concern that he</p> <p>10 isn't sure how many people he shot, Mutsi's statement seems</p> <p>11 to imply that he shot, when he was shooting there were two</p> <p>12 people with him, Warrant Officer Myburgh - Sergeant Myburgh</p> <p>13 and Warrant Officer Baloyi. Now it's clear from Mutsi's</p> <p>14 statement that that shooting takes place at the open area</p> <p>15 some distance from the koppie. So it seems likely that</p> <p>16 Sergeant Myburgh's single shot that he describes, it's</p> <p>17 possible that it was when he's also in the open area and</p> <p>18 not inside the koppie.</p> <p>19 MR SEMENYA SC: Chair, no seriously, this</p> <p>20 may very well be interesting to test the tension between</p> <p>21 the accounts by Myburgh and Swartz, but this witness's</p> <p>22 relevance around this issue is he says I was instructed to</p> <p>23 take this witness by the National Commissioner. That's</p> <p>24 all.</p> <p>25 CHAIRPERSON: Yes, I [microphone off,</p>

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1 inaudible] considerable force in Mr Semenya's contention.
 2 Aren't you asking these questions of the wrong witness?
 3 What are you asking? You're putting to him something is
 4 possible. Well, it's obvious it's possible. We don't need
 5 his say-so it's possible. We can see it's possible
 6 ourselves. There are two possibilities, aren't there? The
 7 one possibility is he fired indeed when Mutsi fired, if
 8 Mutsi's version is correct. The other possibility is he
 9 fired when he got into the koppie, as Swartz alleges.
 10 Now there's no way we can – there are two
 11 problems. There's no way we can decide that point just on
 12 the say-so of these witnesses on paper. But the further
 13 point, which is Mr Semenya's point, is this witness isn't
 14 going to help us at all. Even if we embark upon that
 15 factual inquiry, this witness won't be able to help us,
 16 will he? Because he says he deliberately didn't involve
 17 himself in any investigation once this report surfaced
 18 because he'd been involved at koppie 3 and it would have
 19 been inappropriate for him to do so. So can he help us any
 20 further?
 21 MS LE ROUX: Chair, the way in which the
 22 Major General can help us is if he can tell us whether he
 23 knows whether Warrant Officer Mutsi or Baloyi have been
 24 interviewed or if any investigation has been made that
 25 includes interviewing them, because they seem to be with

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1 Sergeant Myburgh when he fires his only shot and therefore
 2 he can't be the person that Warrant Officer Swartz says
 3 killed somebody in the koppie.
 4 CHAIRPERSON: Can you help us on that at
 5 all? Were you involved in investigations? Do you know
 6 what the investigation dealing with the matters to which
 7 Adv le Roux has referred, how it's proceeded?
 8 GENERAL NAIDOO: Chair, I –
 9 CHAIRPERSON: Who's doing it, what's
 10 happened?
 11 GENERAL NAIDOO: I don't have any of
 12 those details.
 13 CHAIRPERSON: So I think that's the
 14 answer to that, Ms le Roux. I suggest –
 15 MS LE ROUX: Major General –
 16 CHAIRPERSON: May I suggest you move on
 17 to the next point after we've taken tea? Would that be
 18 alright?
 19 MS LE ROUX: Just one question and then
 20 if we could take tea.
 21 CHAIRPERSON: Alright.
 22 MS LE ROUX: Major General, in referring
 23 the Myburgh allegations to IPID, have you referred them to
 24 the statements of Warrant Officer Mutsi or Warrant Officer
 25 Baloyi? Sorry, Warrant Officer Swartz.

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1 GENERAL NAIDOO: Chair, I think I –
 2 MS LE ROUX: Have you referred that
 3 statement to IPID?
 4 GENERAL NAIDOO: I think I was clear,
 5 Chair, when I, after the appointment of General Tsumane to
 6 take the statement I had no further involvement in the
 7 investigation because there's still a possibility of me
 8 being asked to give a statement in the matter as well.
 9 MS LE ROUX: But Major General, the
 10 Swartz allegations are new allegations. Have you referred
 11 those to IPID when you became aware of them?
 12 GENERAL NAIDOO: Chair, I became aware of
 13 them when I got my bundle and I'm going through the
 14 statements. So I have not done anything with it yes.
 15 CHAIRPERSON: I understand, I don't want
 16 to get involved in this in any depth. I understand that Mr
 17 van Tonder, an investigator on the staff of the Commission,
 18 working with the evidence leaders, was involved to some
 19 extent in taking the Swartz statement, but I also
 20 understand – and I think we've had this evidence already –
 21 that it had been, it was a matter that was known to the
 22 SAPS when Mr van Tonder heard about it, so it's been dealt
 23 with by members of the SAPS, but you don't know what
 24 exactly they've done.
 25 [10:46] GENERAL NAIDOO: No, Chair.

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1 CHAIRPERSON: I think that's where it is.
 2 So shall we take tea at this point? And we'll resume on
 3 another point, I trust, after tea.
 4 [COMMISSION ADJOURNS COMMISSION RESUMES]
 5 [11:35] CHAIRPERSON: The Commission resumes. We
 6 were asked not to come back to the chamber until the
 7 evidence leaders have concluded a meeting that they were
 8 having and they've now concluded the meeting, which is why
 9 we're back in the chamber. I apologise to those who were
 10 inconvenienced by our late return from the tea adjournment.
 11 Major General, you're still under oath.
 12 GANASEN NAIDOO: Still under oath, Chair.
 13 CHAIRPERSON: Ms le Roux, if you're ready
 14 to ask questions. Before you do so, I just want to ask Mr
 15 Semenya a question. We received yesterday I think it was
 16 some opposing papers in relation to the application for,
 17 amongst other things, an order that we should sit in
 18 camera, one of the witnesses called by the police. Do the
 19 police intend replying to those papers, and if so, when are
 20 we likely to receive it?
 21 MR SEMENYA SC: We do intend to reply,
 22 Chair, and it will be in the early part of next week.
 23 CHAIRPERSON: It will be?
 24 MR SEMENYA SC: Early part of next week.
 25 CHAIRPERSON: Early part of next week,

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1 thank you. I've been asked to set a date for the actual
2 application and it seems to me that a sensible date to fix
3 would be Monday, the 17th. So the first business that we
4 will hear on Monday, the 17th – so I'm reminded that
5 Wednesday the 19th, we looked at our diaries in respect of
6 the week beginning the 17th, Wednesday the 19th is the third
7 Wednesday in the month. So it's a day upon which this
8 chamber is not available and the 21st is a public holiday
9 and we were asked in the circumstances to avoid people
10 having to come back here and then go away again just for
11 one day, not to sit on the 20th. I'm sure the day can be
12 profitably spent in research and preparation, so we're not
13 sitting from the 19th through to the 21st, but we will be
14 sitting the 17th and the 18th and the proposal is that we
15 hear the in camera application on the morning of the 17th.
16 I understand also that it's not envisaged that the witness
17 whose evidence will be the subject of the application would
18 be, it's not proposed that he be called immediately after
19 the application, in other words the idea would be to get
20 the application dealt with some time before he's due to
21 appear at the witness table.

22 So for the benefit of all those concerned I
23 hereby announce that we will hear the application at 9
24 o'clock on the 17th and we will interrupt the evidence of
25 whoever is giving evidence at that time for the purpose of

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1 hearing the application. Ms le Roux, I'm sorry to have
2 kept you further away from continuing with your cross-
3 examination, but you may now proceed with your cross-
4 examination.

5 CROSS-EXAMINATION BY MS LE ROUX (CONTD.):

6 Thank you, Chair. Major General, when did you first
7 understand that the injuries at scene 1 were very serious
8 and in fact some miners had died?

9 GENERAL NAIDOO: Chair, I think I've
10 testified at that stage I had no idea to the nature and the
11 extent of the injuries because in terms of the radio
12 communication which alerted us to that, it merely said
13 people were down, people were – later on said people were
14 injured, etcetera. So on scene 1 the full extent and, of
15 injuries or the people that were killed, I only visited
16 scene 1 much later that evening.

17 MS LE ROUX: So Major General, was that
18 the first time you understood that people had died at scene
19 1 is when you got to scene 1 later in the evening?

20 GENERAL NAIDOO: It's the first time I
21 saw the extent, yes.

22 MS LE ROUX: Major General, I understand
23 that's when you first saw some of the dead strikers, but
24 when did you first know, when did you first hear that
25 people had died at scene 1? Was it before that, over the

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1 radio or when you called the JOC or from some other member
2 contacting you? Did you know before you actually visited
3 scene 1 that people had died?

4 GENERAL NAIDOO: Chair, I can't remember
5 specifically when I heard that people had died as it was,
6 you know, it was a rush of many activities and I was busy
7 at scene 2. So I would not be able to specifically
8 indicate when I knew the extent or the size of the injuries
9 and the deaths at scene 1, but it was, yes, some time
10 during the evening.

11 MS LE ROUX: And did you hear that people
12 had died at scene 1 before or after the scene 2 shooting
13 had ended, or was it much later on in the evening, even
14 after scene 2 shooting had ended?

15 GENERAL NAIDOO: Chair, no, as I said the
16 radio communication was indicating that people were down,
17 people were shot. It never, well I did not get a sense of
18 that people were all dead or seriously injured, etcetera.
19 I didn't get the sense of how bad it was. We knew that
20 people required medical assistance, but the sense of it,
21 no. As I said, the first time I realised the extent of
22 scene 1 was when I got to there with the IPID people.

23 MS LE ROUX: Major General, you've
24 testified earlier – for the record, we don't need to go
25 there, it was day 191, page 23210 – that you had no

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1 difficulty receiving your radio communications and you said
2 that you could follow everything that you heard on the
3 radio, correct?

4 GENERAL NAIDOO: That's what I said,
5 Chair.

6 MS LE ROUX: And you also testified that
7 when you heard Lieutenant Colonel Vermaak say that there
8 were 18 bodies down, you didn't understand that to mean
9 that anyone was dead, correct?

10 GENERAL NAIDOO: Chair, I think at some
11 stage I testified that initially he did not indicate 18
12 bodies down; he indicated that people were down. I think
13 at some later stage he was counting how many people,
14 etcetera. So initially, no, I had no idea.

15 MS LE ROUX: Major General, Warrant
16 Officer Mabogwana was with you. He's a POP member and he
17 was with your contingent at forward holding area 1. Could
18 you turn to what's been marked as exhibit MMM40.5B, which
19 is Warrant Officer Mabogwana's pocketbook, and if we can
20 turn in that to the two pages that are marked 31 and 32 and
21 in particular if you could look at the second entry in the
22 column on the left-hand side. Unfortunately the time is
23 cut off in our copy of it, but that column is headed
24 "Thursday 2012, August 16," and there's a report there
25 noted which says, "Report message over the radio that plus-

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1 minus 18 bodies were lying in the open veld and others
 2 injured and the scene was cordoned for further gathering of
 3 exhibits." Now did you hear the transmission that Warrant
 4 Officer Mabogwana records there, "18 bodies lying in the
 5 open veld, others injured"?

6 GENERAL NAIDOO: Chair, I did indicate
 7 that at some stage Colonel Vermaak was counting and
 8 indicating the number of people who were down. I can't
 9 testify to whether he said there were bodies or they were
 10 injured or they were dead, but I remember him saying
 11 "people down" and then at some stage counting people a
 12 little later. I did hear that on the radio.

13 MS LE ROUX: And Major General, do you
 14 recall when you heard the report of 18 bodies down, a
 15 distinction being drawn between 18 bodies and then others
 16 injured, other people being injured, a distinction between
 17 people that were down and people that were injured?

18 GENERAL NAIDOO: Chair, not specifically.

19 MS LE ROUX: When Lieutenant Colonel
 20 Vermaak later reports the two bodies lying at the back of
 21 the second koppie, did you similarly not understand that
 22 transmission to be about dead people?

23 GENERAL NAIDOO: Chair, we had realised
 24 that there had been shooting. The nature and the extent
 25 from the radio transmissions did not necessarily mean

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1 people were dead. It could mean that people were shot. I
 2 testified to that effect as well, but the sense of whether
 3 they were dead or alive, no, I could not –

4 CHAIRPERSON: Isn't the short point that
 5 you didn't know whether they're dead or alive –

6 GENERAL NAIDOO: No.

7 CHAIRPERSON: - it was a possibility they
 8 were dead. There's a possibility they were still alive but
 9 injured –

10 GENERAL NAIDOO: That's correct.

11 CHAIRPERSON: - a possibility they were
 12 seriously injured or not seriously injured, but injured.

13 GENERAL NAIDOO: That's correct.

14 CHAIRPERSON: All those possibilities
 15 were there, isn't that so?

16 GENERAL NAIDOO: I didn't rule out the
 17 possibility –

18 CHAIRPERSON: And I think you indicated
 19 to us that you understood that you had to assume the worst
 20 in order to proceed as soon as you could with the necessary
 21 despatch and expedition to the scene –

22 GENERAL NAIDOO: Yes.

23 CHAIRPERSON: - so that the medics could
 24 do what had to be done.

25 GENERAL NAIDOO: Correct, Chair.

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1 CHAIRPERSON: You didn't require, as it
 2 were, proof beyond reasonable doubt that people were
 3 seriously injured before you hastened to the scene. Once
 4 there was a possibility of that and inherent in the
 5 circumstances that you knew from the radio that TRT people
 6 had probably fired and they had R5s, so there was a
 7 distinct possibility that people would be dead or seriously
 8 injured. Is that correct?

9 GENERAL NAIDOO: People were injured,
 10 yes.

11 MS LE ROUX: Major General, to explore
 12 the Chair's question of these different possibilities,
 13 could I ask you to turn to KKK42, which is the annotated
 14 notes of Captain van Heerden made at the JOC. Do you have
 15 the document, Major General?

16 GENERAL NAIDOO: I do.

17 MS LE ROUX: If you could, let's start
 18 with that document, if you use the times on the side, at
 19 16:09:22, this is where Captain van Heerden notes, "Six
 20 arrests are made." That correlates to the Protea Coin
 21 chopper video at 11:52. The next entry is 16:09:30 which
 22 we get again from the Protea Coin chopper video, "Two
 23 bodies at the back of the second koppie." Then the entry
 24 16:11:18, "People encircled; arrests can be made.
 25 Instructions for medics to go in at holding area." That's

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1 the instruction to you to take your medics forward from the
 2 holding area, and then the next significant entry in these
 3 notes is where Captain van Heerden notes, "30 people lying
 4 down, some dead, some injured." Now we don't know the
 5 exact timing of that notation because we can't correlate it
 6 to another source like the Protea Coin chopper video, but
 7 we do see that the following report is 16:14:09, so we know
 8 "30 people lying down, some dead, some injured," must be
 9 before that point in time. Now did you hear the radio
 10 transmission "30 people lying down, some dead, some
 11 injured"?

12 GENERAL NAIDOO: Chair, I can't
 13 specifically remember the – as I said I heard people were
 14 injured, I heard various things, but to specifically
 15 testify that I do remember the 30 people lying down, some
 16 dead, I can't specifically remember, no.

17 CHAIRPERSON: Yes, sorry, may I ask the
 18 question that's been put to me by Adv Hemraj. Perhaps I
 19 must ask Mr Chaskalson to get it out of the way, if it's
 20 something that should be got out of the way. According to
 21 Captain van Heerden's notes there's a note here 16:14:31
 22 that says, "Medics with Captain Loest move into the kraal."
 23 Now we've been informed that medics only got to scene 158
 24 minutes after the shooting. Now is that correct in the
 25 light of this entry, or is that something that's going to

<p style="text-align: right;">Page 24130</p> <p>1 be clarified in the evidence later?</p> <p>2 MR CHASKALSON SC: Is it correct that</p> <p>3 they only got there 59 minutes after the shooting? Yes, it</p> <p>4 is correct.</p> <p>5 CHAIRPERSON: So what is this –</p> <p>6 presumably –</p> <p>7 MR CHASKALSON SC: I think that this is</p> <p>8 clarified in Brigadier Pretorius's supplementary statement</p> <p>9 where she indicates that this was an instruction.</p> <p>10 CHAIRPERSON: Yes, yes, okay I</p> <p>11 understand, and because the medics under the supervision or</p> <p>12 control or whatever it is of this witness weren't able to</p> <p>13 go to scene 1 for reasons that we don't have to go into,</p> <p>14 other medics had to be sent and they came, I think from</p> <p>15 somewhere near the JOC. Is that correct? Or even from</p> <p>16 somewhere else.</p> <p>17 MR CHASKALSON SC: I understand that, and</p> <p>18 I mean I don't have any clear evidence to this effect, but</p> <p>19 I understand that the medics who came to scene 1 were</p> <p>20 ultimately Lonmin, Netcare medics arranged at the instance</p> <p>21 of Lonmin through the JOC. That's what I understand the</p> <p>22 situation to be.</p> <p>23 CHAIRPERSON: Yes, yes, so they were –</p> <p>24 MR CHASKALSON SC: They were certainly</p> <p>25 Netcare medics. Their vehicles were branded Netcare 911.</p>	<p style="text-align: right;">Page 24132</p> <p>1 Lonmin vehicles that escorted ambulances to scene 1 and</p> <p>2 we'll hopefully be able to give you some sort of indication</p> <p>3 from their trackers as to what time those ambulances</p> <p>4 arrived there.</p> <p>5 CHAIRPERSON: They've also got tracking</p> <p>6 equipment like this witness's –</p> <p>7 MR VAN AS: Correct, Mr Chairperson.</p> <p>8 CHAIRPERSON: Thank you. That evidence</p> <p>9 will be very helpful. I take it you can give it to us on</p> <p>10 affidavit once it comes to hand, if it comes to hand.</p> <p>11 MR VAN AS: We're in the process of</p> <p>12 preparing such an affidavit, Chairperson.</p> <p>13 CHAIRPERSON: Thank you very much. I'm</p> <p>14 sorry, Ms le Roux, forgive me for interrupting but it</p> <p>15 seemed to be an important point that required investigation</p> <p>16 promptly.</p> <p>17 MS LE ROUX: Yes, Chair, and of course</p> <p>18 just to note for the record, obviously in the occurrence</p> <p>19 book entry 1018 similarly places the matching entry between</p> <p>20 its entries of 16:10 and 16:30, so also in that timeframe</p> <p>21 that that request goes out.</p> <p>22 So Major General, from the timing of these</p> <p>23 entries we know that it's before you go in to koppie 3, but</p> <p>24 just so I'm clear, you don't recall hearing these radio</p> <p>25 communications that distinguish between dead miners and</p>
<p style="text-align: right;">Page 24131</p> <p>1 CHAIRPERSON: And presumably arranged –</p> <p>2 well anyway, this is something we'll go into later,</p> <p>3 possible if necessary by affidavit; we don't necessarily</p> <p>4 have to have oral evidence on it. So but the point, what</p> <p>5 you're telling us is that arrangements were made presumably</p> <p>6 at 16:14:31, or began to be made for other medics, not the</p> <p>7 ones who had been at forward holding area 1, other medics</p> <p>8 to go to the kraal and they only got there, you say 58 or</p> <p>9 59 minutes after the shooting. Is that the factual</p> <p>10 position?</p> <p>11 MR CHASKALSON SC: Yes, Chairperson, also</p> <p>12 that one must bear in mind on this document that 16:14:31</p> <p>13 is the time of "Canterers must move faster." The precise</p> <p>14 time of when that entry, "Medics with Captain Loest move</p> <p>15 into the kraal" took place would be somewhere between</p> <p>16 16:14:31 and 16:32:30.</p> <p>17 CHAIRPERSON: Yes, I understand. Yes,</p> <p>18 thank you. I know it wasn't directly relevant to the</p> <p>19 evidence at the moment, but it's a point that arose that we</p> <p>20 thought we'd better get out of the way while we could.</p> <p>21 Thank you very much. Mr van As?</p> <p>22 MR VAN AS: Mr Chairperson, I may be able</p> <p>23 to assist. We're in the process of trying to track some of</p> <p>24 the vehicles that escorted ambulances in to the kraal. I</p> <p>25 was at Marikana on Wednesday and we're trying to track the</p>	<p style="text-align: right;">Page 24133</p> <p>1 injured miners?</p> <p>2 GENERAL NAIDOO: Chair, I think I've</p> <p>3 testified already that I did hear radio communication about</p> <p>4 people being injured, etcetera. I, what I testified now is</p> <p>5 that I cannot specifically remember the detail in terms of</p> <p>6 some of the communications. It's been a long time.</p> <p>7 MS LE ROUX: Right, Major General, I now</p> <p>8 want to move on to look at just a few points of clarity</p> <p>9 around your movements from forward holding area 1 to koppie</p> <p>10 3 and the reasons for that diversion to koppie 3. As I</p> <p>11 understand your testimony mainly on day 190, page 23136 to</p> <p>12 23139, you testified there that the entire capacity of K9</p> <p>13 resources was committed to escorting the medics to the</p> <p>14 scene. You also talked about it being your primary focus</p> <p>15 to get medical personnel to the scene of the shooting and</p> <p>16 that your mission was to get the medics to where they were</p> <p>17 required, and so the first question is did you inform the</p> <p>18 K9 members that were with you that their primary focus,</p> <p>19 their mission was to escort medics to the scene on that</p> <p>20 day?</p> <p>21 GENERAL NAIDOO: Chair, in the briefing</p> <p>22 that we had just after the 2:30 briefing we discussed the</p> <p>23 job at hand that the K9 would have to do.</p> <p>24 [11:54] The issue of the escorting of the medics was</p> <p>25 something that we had with us since Tuesday. The medics</p>

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1 were in fact in our vehicles, so I did not specifically
2 refer to the medics at any time because we understood that
3 the medics were with us and when necessary they will be
4 deployed. So I did not specifically refer to the medics.
5 My discussions with the members was primarily flowing from
6 the practical issues and I think I made it clear to them
7 that the K9 would be deployed after the dispersal. And the
8 K9 would be used to sweep the koppies for weapons and
9 possibly persons that are hiding in the koppies and bushes.

10 MS LE ROUX: Major-General, when you set
11 off from forwarding holding area 1 did you inform the
12 members that you were moving in order to take the medics to
13 scene 1?

14 GENERAL NAIDOO: Chair, we were in a
15 line, I was sitting in the first vehicle. We agreed at
16 some stage that, at the briefing, that they would follow or
17 take instruction or follow lead from me. So when I
18 indicated after we heard the shooting and I heard that
19 people had been injured, when we began moving the convoy
20 followed. So normally the procedure would have been to
21 communicate on the radio, a convoy that long that would be
22 the more feasible, but the radio was occupied and so I did
23 not have the opportunity with the radio.

24 MS LE ROUX: Major-General, did you at
25 least tell your driver, Lieutenant-Colonel Tongwane that he

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1 it was not necessary now to have another briefing, merely
2 the execution of our original discussion.

3 MS LE ROUX: Did you give your driver any
4 instruction that he must get there quickly because the
5 medics were needed and that's why you were going?
6 GENERAL NAIDOO: Chair, on the radio the
7 communication when I got into the vehicle was clear that
8 there was an incident that was taking place. I did not
9 speak to him, we were listening to the radio, so I did not
10 think it necessary to appraise him with the urgency of
11 getting there because we were aware now and we had also
12 heard the shooting.

13 MS LE ROUX: So as I understand it you
14 then drive down the road to the power station, you take a
15 wrong turning before the small sub-station, you circle
16 around. And you then continue down westwards towards the
17 large power station.

18 GENERAL NAIDOO: That's correct, Chair.

19 MS LE ROUX: And as you drive down
20 towards the large power station you miss three turnings of
21 roads that could have taken you directly to scene 1.

22 CHAIRPERSON: Ms Le Roux, I don't want to
23 stop you, but a lot of the material you're now dealing with
24 has been dealt with in extenso by Mr Chaskalson and the
25 permission I gave you was this was subject to the proviso

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1 needed to go to the scene of the shooting because you were
2 escorting medics?

3 GENERAL NAIDOO: Chair, I indicated to
4 him yes let's go. I didn't use the term let us escort the
5 medics, etcetera, I merely indicated let us proceed and he
6 proceeded.

7 MS LE ROUX: But where did you tell him
8 to go?

9 GENERAL NAIDOO: Chair, we had agreed
10 that the place where we had stopped, if we turned right in
11 terms of our understanding at that stage that that road
12 would take us directly to where the operation was being
13 conducted. So he turned right and he proceeded.

14 MS LE ROUX: But, Major-General, do you
15 recall the specific you gave Lieutenant-Colonel Tongwane?

16 GENERAL NAIDOO: I'm not sure whether I
17 said let's go or let's get there or whatever the case may
18 be. I can't remember the specific words, yes.

19 MS LE ROUX: It was that you told him to
20 get there. You didn't identify specifically where you
21 wanted him to go.

22 GENERAL NAIDOO: Chair, we had discussed
23 prior to this that we would be going to the – in the
24 briefing, in our discussion that we would go to the – our
25 deployment would be at the what we now know as scene 1. So

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1 that there wasn't to be repetition and there wasn't going
2 to be overlap.

3 MS LE ROUX: Correct, Chair, and if we –
4 I'm getting to the one point that I need to cover in this
5 document with Major-General. MMM43, The CALS Analysis
6 Routes From Forward Holding Area 1 to Scene 1. Do you have
7 that document, Major-General?

8 GENERAL NAIDOO: I have it.

9 MS LE ROUX: And if you page through that
10 part 1 of the document is the three roads that you didn't
11 take and if you can then turn to part 2 of that document
12 and if we start at page 11. And it runs through to slide
13 17. What this part of this document shows you is that
14 there's a vehicle that drove from north to south along the
15 second route.

16 CHAIRPERSON: I'm sorry, Ms Le Roux, the
17 copy we have doesn't appear to have numbered pages, so I
18 won't strike the matter from the roll because of that, but
19 hopefully you can tell us what page you're referring to.

20 MS LE ROUX: Yes, Chair, if you page
21 through page 8 is where part 2 starts, Evidence of the use
22 of routes 1 and 2 immediately before the forward holding
23 area 1 convoy sets off.

24 CHAIRPERSON: That's page 8.

25 MS LE ROUX: That's page 8.

<p style="text-align: right;">Page 24138</p> <p>1 CHAIRPERSON: All right [inaudible, 2 microphone off] and then 10 and 11. 11, is that – just to 3 make sure I've got it right, is that the document headed 4 "Exhibit CC38 Flir Camera at 15:55:08? 5 MS LE ROUX: Correct, Chair. 6 CHAIRPERSON: All right, thank you. 7 MS LE ROUX: Major-General, in fact that 8 slide that – 9 CHAIRPERSON: Ms Le Roux give the Major- 10 General a chance to catch up as well. Are you with us now 11 on that page? 12 GENERAL NAIDOO: Yes. 13 CHAIRPERSON: All right. 14 MS LE ROUX: Major-General, you've 15 obviously looked at these documents when they were provided 16 to you a little while ago, a few days ago. 17 GENERAL NAIDOO: That's correct. 18 MS LE ROUX: The pages 11 through 17 show 19 you how we've managed to identify using the Flir camera, 20 exhibit CC38, that there is another vehicle. It appears to 21 be a bakkie that uses the road that is route 2 and it 22 drives north to south, turns onto the power station road 23 less than 30 seconds before you miss that turn off to route 24 2. The only question I have for you is did you see the 25 vehicle that we've identified on the Flir camera? Did you</p>	<p style="text-align: right;">Page 24140</p> <p>1 from the east, past koppie 1 and more than halfway towards 2 koppie 3. You observed the water canon spraying and you 3 observed a stationery STF vehicle which we've been able to 4 identify, of course, also using MMM2. But again I don't 5 want to waste time going there. Mr Chaskalson then on day 6 192 went through this and showed that that account doesn't 7 match up with some of the objective evidence as well as 8 some of the vehicle tracking data. So what we've done is 9 prepared a document which is marked MMM44, if you can turn 10 to that document. It's the CALS Analysis Movement of 11 Forward Holding Area 1 Convoy Koppie 3. And again, I'm not 12 going to go through this entire document. There are just a 13 few points that I'd be grateful if you could confirm for 14 us. In that document if you could turn to slide 12. Do 15 you have that, Major-General? 16 GENERAL NAIDOO: I have it. 17 MS LE ROUX: Slide 12 time 15:58:33 it 18 denotes what's known as position 6 of your vehicle, circled 19 in red. This is what Mr Chaskalson referred to as the 20 first idling position. And of course, Chair, this 21 correlates across to MMM42, the chronology document, but we 22 don't need to use for now. Now this shows us, it shows us 23 your vehicle rounding the sub-station at approximately 24 15:58:33. This is the first idling position and you stay 25 there for the four minutes. You've testified about it</p>
<p style="text-align: right;">Page 24139</p> <p>1 see that vehicle using this road before you? 2 GENERAL NAIDOO: Chair, I think I was 3 examined on this particular issue and I indicated that 4 there was quite a bit of traffic. So I cannot specifically 5 say that I remember that vehicle. There were several, we 6 did not interrupt the normal flow of traffic on the road. 7 So that specific vehicle I would not be able to testify I 8 remember that one. 9 MS LE ROUX: Major-General, in all that 10 traffic that you observed did you see a vehicle turning 11 onto the road that we've marked as route 2? 12 GENERAL NAIDOO: Chair, I could not 13 specifically remember a vehicle turning anywhere along 14 there. As I also indicated, I was not driving the vehicle 15 at that stage as well. 16 MS LE ROUX: Major-General, if I can move 17 onto the next point which is – just to make sure that I've 18 got clear exactly what you saw when you rounded the power 19 station and when you first heard the gunshots. Because 20 your evidence on this, unfortunately, has not been clear to 21 us, so on day 190, the relevant pages are 23144 to 46, we 22 don't need to go there. You testified that as you rounded 23 the power station and your phrasing was at or shortly after 24 the time at which you come around the power station you 25 observed three things. NIU members approaching in a line</p>	<p style="text-align: right;">Page 24141</p> <p>1 before. Now as I understand your answer under cross- 2 examination, it was that you used the four minute period of 3 idling because you wanted to orientate yourself because 4 you'd realised you'd gone the wrong way. Am I correct that 5 that was your evidence? 6 GENERAL NAIDOO: Chair, I indicated that 7 I was orientating myself, yes. 8 MS LE ROUX: But then my question to you 9 to clarify is in examination in chief Mr Semenya went to 10 paragraph 62 of your statement where it says due to the 11 fact that your group had soft skin sedans and bakkies you 12 had to use the road around the sub-station to pass what's 13 now known as koppie 3 to move towards koppie 1. And day 14 189, page 22912 you confirm that. So I'm just trying to 15 reconcile those two answers. Did you use the road in error 16 and therefore you had to pause for the four minutes to re- 17 orientate yourself – 18 GENERAL NAIDOO: Chair – 19 MS LE ROUX: - or did you use it because 20 you had soft skin vehicles? 21 GENERAL NAIDOO: Chair, there was a 22 couple of issues that we needed to address at one stage. 23 As I indicated that we - firstly we were trying to 24 orientate ourselves and I indicated that we did this in 25 relation to where we saw koppie 1 which was visible. The</p>

<p style="text-align: right;">Page 24142</p> <p>1 second issue and I'm not linking it to whether I'm at that 2 position or in a further position because the second issue 3 was I indicated that we heard gunshots in the distance 4 which also caused a particular concern for us and that's 5 was where the issue of the soft skin vehicles. In the 6 statements that were provided in this bundle we had two 7 members who specifically mention these shots. One them 8 being a van Zyl and the other one Breed. Breed in fact 9 indicates that when we stopped the vehicles there and when 10 we got out of the vehicles and then I decided to go towards 11 the shooting. That was in his first statement that he made 12 in regard to the evidence tampering. So in relation to the 13 stopping orientation and idling I think I tried to answer 14 them all.</p> <p>15 MS LE ROUX: All right, but Major- 16 General, I'm trying to understand what seems to be a 17 contradiction between your evidence that you took the road 18 in error and your evidence that you deliberately took it 19 because you had soft skin vehicles that you wanted to 20 protect.</p> <p>21 GENERAL NAIDOO: Chair, no. I think we 22 are talking past each other. As I indicated and the 23 question – maybe we should go a step back so that we can 24 really address the issues that are there. The first 25 question was around the routes and the question that was</p>	<p style="text-align: right;">Page 24144</p> <p>1 Carry on, Major-General.</p> <p>2 GENERAL NAIDOO: Chair, yes. I then 3 indicated that we took at a turn at the power station and 4 it took us around the power station to the left of the 5 power station. And this is how we ended up to the point 6 where we are now having the cross-examination.</p> <p>7 MS LE ROUX: Major-General, could I then 8 just ask you to go back to MM43, the CALS analysis document 9 routes from forward holding area 1 to scene 1 because it 10 now is relevant to look at the first few slides of this 11 document. Major-General, do you have that document?</p> <p>12 GENERAL NAIDOO: I have it.</p> <p>13 MS LE ROUX: If you could turn to page 2 14 which is the map, possible and actual routes from 15 forwarding holding area 1 to scene 1. The street view 16 image you've just provided to us, where does that fit on 17 this map?</p> <p>18 GENERAL NAIDOO: It's the turn off 19 indicated in yellow for route 4 as well as possible route 20 3.</p> <p>21 MS LE ROUX: Right, so then if you turn 22 in our document to page 6, turn off to routes 3 and 4, that 23 would be the correlating image to your, the street view 24 image you managed to obtain, correct?</p> <p>25 GENERAL NAIDOO: That is the view into</p>
<p style="text-align: right;">Page 24143</p> <p>1 left unanswered around the routes is why didn't I take an 2 obvious turn before the power station which I was tasked to 3 go and ascertain why I didn't. I said I could not 4 specifically remember. I have went and I had a look and I 5 will hand this in, but it's a Google shot of the turn. And 6 if you take that turn you are standing in front of a gate 7 to the power station which I could then understand why the 8 person that was driving me did not take the first right 9 turn and he went onto the next right turn.</p> <p>10 CHAIRPERSON: Exhibit MMM46. How do I 11 describe it?</p> <p>12 GENERAL NAIDOO: Chair, I think in the 13 index you referred to it as the turn off I missed.</p> <p>14 CHAIRPERSON: Google Earth photograph of 15 turn off on eastern side of large power station showing 16 gate. All right. Well it's Google Earth photograph of 17 turn off on eastern side of large power station showing 18 gate.</p> <p>19 GENERAL NAIDOO: Chair, so that was the 20 first issue that had to be dealt with. Why did we not take 21 the first turn and then thereafter –</p> <p>22 MS LE ROUX: Major-General, could I just 23 ask a question on that because that is on this point?</p> <p>24 CHAIRPERSON: No, don't interrupt. Let 25 him finish his answer and then you can ask your question.</p>	<p style="text-align: right;">Page 24145</p> <p>1 the turn, that's correct.</p> <p>2 MS LE ROUX: All right. But, Major- 3 General, if you go back to page 2, the document that shows 4 the route you'll see that it clearly – it turns off there, 5 heads towards the power station and then goes around the 6 gate that you've just identified. So you can see there's 7 the gate that blocks off the entrance to the power station, 8 but the route actually goes around that. And on the image 9 you've provided to us you can see there's a track that 10 turns and goes right and then left around the fence line.</p> <p>11 GENERAL NAIDOO: Chair, I'm not disputing 12 that. What I'm indicating is that at stage I could not 13 understand why the driver did not turn there and I had to 14 go and have a look. And it's obvious when you look on the 15 right that he saw a gate and he thought that there was no 16 way past it. So he looked for the next turn. That's the 17 view we have, it's not – it gets to a gate and it stops 18 there. That's the turn off, that's where it leads to. The 19 thing that it goes past fence, around the fence I don't 20 think I'm going to answer for whether he saw it or not.</p> <p>21 MS LE ROUX: Major-General, when you 22 approached that turn off did your driver slow down at all 23 to assess it?</p> <p>24 GENERAL NAIDOO: Chair, we were not 25 driving at very high speed so I can't remember specifically</p>

<p style="text-align: right;">Page 24146</p> <p>1 whether he was slowing down or – but I just know he didn't 2 take the turn. 3 [12:14] MS LE ROUX: So Major-General, just to 4 return to the question that closes out this point, did you 5 take the road that you took in error or because you wanted 6 to protect your soft skin vehicles? 7 GENERAL NAIDOO: Chair, the issue around 8 the soft skin vehicles was related to the issue that we had 9 heard shots and it would seem that we were going to drive 10 to or past the area where we perceived the shooting to be. 11 That was the evidence we led. The route that we took was 12 not because of the soft skin vehicles, we thought we were 13 taking the most direct route to. Yes, we did get lost and 14 I think we have already dealt with that in evidence. 15 MS LE ROUX: Major-General, can I ask you 16 to go to paragraph 62 of your statement, which is JJJ108? 17 Paragraph 62 is on page 10 of that statement and there you 18 say, "Due to the fact that my group had soft skin sedans 19 and bakkies, I had to use the road around the electricity 20 substation to pass what is now known as koppie 3 to move 21 towards koppie 1." 22 GENERAL NAIDOO: Yes, Chair. I've noted 23 that, Chair. 24 MS LE ROUX: So Major-General, we just – 25 we don't understand your evidence because here you seem</p>	<p style="text-align: right;">Page 24148</p> <p>1 yes. 2 MS LE ROUX: And that was scene 1? 3 GENERAL NAIDOO: Well, that is where we 4 perceived scene 1 to be, yes. 5 MS LE ROUX: Now in your examination-in- 6 chief, which for the record was day 189, pages 22913, all 7 the way through to 22920, you said that at the time of the 8 gunfire you could see the line of NIU members approaching 9 koppie 3, halfway between koppies 1 and 2, you could see 10 the STF Casspir stationary adjacent to the koppie and you 11 could see the water cannon proceeding around the South of 12 the koppie accompanied by an Nyala. Am I correct that that 13 is what you saw at the time that you heard the automatic 14 gunfire? 15 GENERAL NAIDOO: Chair, ja, I am not sure 16 if I put it in sequence, but yes, I heard gunfire and I saw 17 the vehicles. Chronologically I'm not going to say I saw 18 this first and I heard that second, yes. 19 MS LE ROUX: Major-General, can I ask you 20 to then turn back to MMM44, the CALS analysis document, 21 movement of forward holding area 1 convoy to koppie 3, 22 because we think we've been able to time the scene that you 23 described reasonably accurately and specifically in that 24 document if you could start at slide 14, which is timed 25 16:03:23, position 7. Now in this document where we've</p>
<p style="text-align: right;">Page 24147</p> <p>1 quite clear that that's the reason you took that road or is 2 this supposed to encompass all of the possible routes that 3 you could've taken? 4 GENERAL NAIDOO: Chair, as I indicated, 5 at that stage and up to very recently we were working on 6 the map that we had and on the indication that if we had 7 turned at that particular place we would get directly to 8 scene 1 and yes, I already testified that my observation 9 was that when we came around, that there was koppie 1 to 10 our right in front of us and the possibility that we would 11 be driving in the close proximity of where we had heard 12 shooting and the fact that we had soft skin vehicles. You 13 had the – the situation of the wrong route led to my 14 concern for the soft skin vehicles and vice versa, because 15 we had thought that we would come directly behind the 16 police line. 17 MS LE ROUX: Major-General, let me move 18 on to my next point. I just want to be clear, your 19 evidence was that the automatic gunfire that you heard is 20 what diverted you from your destination at scene 1. So am 21 I correct that if you hadn't heard the gunfire you wouldn't 22 have gone to koppie 3, you would've proceeded to what we 23 know as scene 1? 24 GENERAL NAIDOO: We would've proceeded 25 directly to the koppie that we could see in front of us,</p>	<p style="text-align: right;">Page 24149</p> <p>1 been able to identify your particular vehicle we've circled 2 it in red, just so you can understand the key. So here we 3 see the vehicles moving forward from the first idling 4 position, stopping in the second idling position. So we 5 can see that you are there by 16:03:23. If we turn to the 6 next page, slide 15, you're still there at 16:05:10, we've 7 circled you in red. If you turn then to slide 16, which is 8 at the same time 16:05:10, we see the NIU line, which is in 9 green, sweeping koppie 2 and the water cannon and the STF 10 Casper still fairly far away. Page 17, 16:06:30 we see you 11 start moving towards the koppie with the other vehicles, 12 the NIU line is still at the Western base of koppie 2 and 13 we can see the POP dispersion line about 60 meters from 14 koppie 3. The next two slides, 18 and 19, are 16:07:10 and 15 show you about halfway to that koppie, the NIU line is 16 still at the base of the second koppie and the STF Casspir 17 is still not in its final stationary position. So then 18 slide 20, 16:07:35, is the closest scene that we can 19 identify in the objective evidence to what you described in 20 your evidence, because here we have a stationary STF 21 Casspir, the water cannon accompanied by an Nyala and we 22 can time that incident to 16:07:35. Now this is after you 23 had started moving towards koppie 3 though. So you said 24 when you heard the shooting you saw the NIU line, you saw a 25 stationary STF Casspir and you saw the water cannon with</p>

<p style="text-align: right;">Page 24150</p> <p>1 its Nyala and the objective evidence confirms that that 2 scene would have occurred 16:07:35, but this is before the 3 shooting would've – so Major-General, the scene that we've 4 managed to time at 16:07:35 is obviously after you started 5 moving towards the koppie. So it can't be that the 6 shooting took place and then you decided to move to koppie 7 3, because this correlation of the scene you observe is 8 after you've started moving towards the koppie and before 9 the shooting.</p> <p>10 GENERAL NAIDOO: Chair, I don't agree 11 with that assumption. I've also been through the analysis 12 list and I read the statements firstly of the bundle that 13 was provided to me. Firstly, the statement of Van Zyl, 14 which was provided in the bundle, clearly indicates that he 15 heard the shooting whilst he was still coming around the 16 power station and Van Zyl – and as you know it was a long 17 corridor – a long convoy and then secondly Warrant Office 18 Breed in his statement he clearly indicates the scene where 19 we stopped – that was the idling period where we got out of 20 the vehicles and then he indicated that we heard the 21 shooting and then I had tasked him to go towards the 22 direction of the shooting. So I'm not going to try and 23 debate about which time and the estimation of time. I am – 24 I recounted my evidence in terms of how I experienced them 25 and that's to deal with the time when we heard the</p>	<p style="text-align: right;">Page 24152</p> <p>1 statement which specifically mentions me as giving an 2 instruction after the shooting.</p> <p>3 MS LE ROUX: But Major-General, I'm 4 asking your evidence -</p> <p>5 GENERAL NAIDOO: Yes.</p> <p>6 MS LE ROUX: - is you hear the shooting, 7 then you decide to go to koppie 3.</p> <p>8 GENERAL NAIDOO: That is correct, Chair.</p> <p>9 MS LE ROUX: What all of this shows is 10 that you have already – and you testified what scene you 11 observed when you heard the shooting?</p> <p>12 GENERAL NAIDOO: That is correct, Chair.</p> <p>13 MS LE ROUX: Here we've managed to time 14 that scene, but it is after you start moving towards the 15 koppie.</p> <p>16 GENERAL NAIDOO: I don't agree, Chair. 17 As I said, there are two statements that substantiate that 18 whilst we were still – when we just came to a halt at the 19 side of the power station, that we heard the shooting and 20 that is what I testified to. I testified that I heard 21 gunfire, I could see the NIU, I could see the TRT, I could 22 also see the special task force moving along, so I don't 23 know how that picture that I have differs from the 24 situation. I could not say that they were so many hundred 25 meters away from the koppie, etcetera. I also indicated I</p>
<p style="text-align: right;">Page 24151</p> <p>1 shooting. The second issue, well, I went through some of 2 the NIU statements and there are – there is a member, 3 Constable Dubeni, who in his statement he clearly indicates 4 that he shot long before they got to koppie 3. He shot, he 5 says, more than a 150 meters away from – before they get to 6 koppie 3. Thirdly, there is another Constable Nkaweni who 7 also said at that stage he was with Nkaweni – Dubeni, who 8 said he thought he shot 5 rounds, but he actually shot 25 9 rounds in the air. So I'm just trying to paint the 10 picture, I can't place you know these individuals at so 11 many metres away, etcetera. I was just looking for the 12 areas where the shooting could've possibly happened and 13 that excludes the possibility of the shooting that would've 14 occurred by people that were already at the copy.</p> <p>15 MS LE ROUX: Major-General, we'll get to 16 the statements of the members that were in your contingent, 17 but we just want to understand again between your evidence- 18 in-chief and the cross-examination and what we've been able 19 to time and identify on the video and photo evidence, the 20 scene that you described as having heard it when the 21 shooting first started that you observed, that you heard 22 and experienced, that scene only happens after you started 23 moving?</p> <p>24 GENERAL NAIDOO: Chair, as I indicated I 25 do not agree, as I already indicated that there is a</p>	<p style="text-align: right;">Page 24153</p> <p>1 was not even sure who exactly was shooting.</p> <p>2 MS LE ROUX: Well, Major-General, I don't 3 think I can take the point any further. We'll make 4 submissions on what the objective evidence shows. If we 5 can then turn to the CALS statement analysis, which has 6 been marked MMM41 and then point 1.2 and point 3 refer to 7 the K9 POP and Mounted Units respectively. Chair, I'm 8 sorry to do this, but could I just have a 5-minute 9 adjournment quickly? I just need to clarify an 10 instruction.</p> <p>11 CHAIRPERSON: The Commission will adjourn 12 for 5 minutes.</p> <p>13 MS LE ROUX: Thank you.</p> <p>14 [COMMISSION ADJOURNS COMMISSION RESUMES]</p> <p>15 [12:35] CHAIRPERSON: The Commission resumes. I 16 understand from Ms le Roux that she's going to move on to 17 another point and come back to the point she was dealing 18 with before we adjourned, on Monday morning. Ms le Roux, 19 please proceed. You're still under oath, Major General.</p> <p>20 GANASEN NAIDOO: Still under oath, Chair.</p> <p>21 CROSS-EXAMINATION BY MS LE ROUX (CONTD.): 22 Thank you, Chair. Just for the record, Major General, when 23 you referred to the three statements that you identified in 24 your answer, the reason I needed the short adjournment is 25 it appears that we don't have some of the statements that</p>

<p style="text-align: right;">Page 24154</p> <p>1 you've referred to, that our versions are incomplete. So 2 we are engaging obviously to obtain copies of the full 3 extent of the statements that you have. That may mean that 4 we need to revise the summary document that I've provided 5 to you, so what I'll do is we'll have to do that over the 6 weekend, provide it to you and I'll pick that up on Monday. 7 But there is one point that I can cover now and 8 probably conclude before we adjourn today and that's with 9 respect to the allegations that are made about miners 10 charging at koppie 3. Now neither in your statement, nor 11 in your oral evidence as I read it have you alleged that as 12 you arrived at the koppie a group of armed strikers charged 13 at the police. Of course what you do mention in your 14 statement, for the record it's JJJ108, paragraph 68, is 15 that you confronted and arrested the three strikers that 16 were armed, and in oral evidence, day 191, page 23197 you 17 elaborated on that and explained they were lying in the 18 long grass when you came across them. So am I correct that 19 you did not see miners that were charging at SAPS members 20 as your K9 contingent approached koppie 3? 21 GENERAL NAIDOO: Chair, as I testified, 22 by the time my vehicle came to a halt and I moved to the 23 right to check with the NIU, who I could see on my right, I 24 did not experience a direct charge. We, I indicated that 25 we arrested 3. I was involved in one arrest. The other</p>	<p style="text-align: right;">Page 24156</p> <p>1 next to it on the right, of the picture of MMM2 could have 2 experienced it and I would have not seen it because it 3 would have not been directly in my view. 4 MS LE ROUX: Major General, was Warrant 5 Officer Mentesh one of the K9 members that was near to you? 6 GENERAL NAIDOO: Yes, he was, Chair. I – 7 when I say near to me, he was part of the members there. I 8 can't precisely say who he was or which one of them he was 9 because I mean there was a lot of members and I've not met 10 all of them. I did not know all of them. 11 MS LE ROUX: Could I ask you to turn to 12 the statements provided by Warrant Officer Mentesh? They 13 are marked as MMM39.15A and B. In MMM39.15A, the first 14 statement, do you have that, Major General? 15 GENERAL NAIDOO: I have it. 16 MS LE ROUX: If you go down to the last 17 paragraph on the first page he states there, "When we 18 approached the koppie where the group was we advanced them, 19 shouted to them to come out of bush. They charged to us 20 having pangas, spears, knobkieries. I then heard gunshots, 21 then my police dog ran away because of the shots were 22 fired. I managed to get back." 23 But then if we compare that to the second 24 statement that Warrant Officer Mentesh provided, that's 25 MMM39.15B, and in particular paragraphs 4, 5 and 6 of that</p>
<p style="text-align: right;">Page 24155</p> <p>1 two occurred further down the line at some of the other 2 vehicles. I can't remember precisely who. When I left the 3 convoy from where I was to the NIU, at that time I had not 4 experienced any charging, no. 5 MS LE ROUX: And Major General, as you 6 moved forward in your group you would have been in a 7 position to see charging miners with respect to your view 8 of the koppie from your position? You would have been able 9 to see miners. There wasn't anything blocking your view? 10 GENERAL NAIDOO: Up to the time that I 11 came on halt with my vehicle, no. 12 MS LE ROUX: Right, you see the 13 difficulty for us is that some of the K9 members in their 14 statements allege that as they approach the hill a crowd of 15 armed miners charged out at them, but you didn't observe 16 that? 17 GENERAL NAIDOO: Chair, it, if you look 18 at the distance that this incident occurred it's not 19 impossible that I would have not seen, I was on the extreme 20 right of the line of five vehicles and I would have not – 21 as I indicated, I did not and I don't remember any of the 22 members in this vehicle, in my vehicle or the one alongside 23 me indicating that we had seen, because I had not seen, but 24 it was not impossible that the vehicles to the left, 25 starting from the one with the extreme left and the one</p>	<p style="text-align: right;">Page 24157</p> <p>1 statement he's canvassing the same aspect of the operation. 2 So paragraph 4 starts, "At about between 3:30 and 4 o'clock 3 General Naidoo instructed us to follow him to the southern 4 side of koppie 2. We parked vehicles near the power 5 station, we walk on foot. At that stage I didn't know what 6 was happening. As we advanced forward I heard gunshot from 7 the koppie. I kept on advancing. I then realised there 8 are people in the bush, some hiding behind trees and the 9 rocks, and gunshots still fired. It happened that my 10 police dog ran backwards where the vehicles were parked as 11 it was scared of gunshots. I managed to caught it and I 12 turned back to join other members. I spotted a person 13 behind the rock with a pistol in his, and fired towards me 14 and that bullet hit the ground next to me. I pulled out my 15 9mil pistol, fired one shot towards the direction where 16 that person was hiding himself. I cannot disclose whether 17 I hit or missed because after I shot I immediately took 18 cover with General Naidoo's vehicle. Afterwards I went to 19 check that person and found he was not there." 20 And now of course what's interesting to us is in 21 the second statement Warrant Officer Mentesh doesn't 22 mention a group of miners charging with pangas, spears and 23 knobkieries. You can't possibly help us on this, can you? 24 GENERAL NAIDOO: Chair, as I indicated 25 that I had left my vehicle to go and join the NIU where I</p>

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1 perceived the shooting to come from and at the time when I
 2 was at my vehicle and until I left to the NIU I did not see
 3 a charge, or I did not witness this particular incident
 4 because there was also another incident, which I was not
 5 aware of until later, where another member witnessed a
 6 miner circling us, attempting to cut us off on our attempt
 7 to get to the NIU, but both at this particular incident as
 8 well as that I could not see the perpetrators at all.

9 MS LE ROUX: Chair, I'm trying to
 10 navigate because now I do need to turn to the summary. I
 11 suppose I can start the point and then if we over the
 12 weekend need to revise the summary I'll have to revisit,
 13 unless the –

14 CHAIRPERSON: The summary I take it is
 15 basically accurate because most of the statements are
 16 summarised, are accurately summarised and the documents you
 17 haven't got don't change that. But carry on with the ones
 18 that are accurate as far as you're concerned and then you
 19 can proceed on Monday with a correct summary in respect of
 20 the statements you're going to obtain over the weekend.

21 MS LE ROUX: Thank you, Chair.

22 CHAIRPERSON: By the way, before we move
 23 on, should we not on a housekeeping basis mark – I don't
 24 think, have we marked your chronology document? Yes, we
 25 did. That's MMM42, is it? The chronology of movements and

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1 phone calls.

2 MS LE ROUX: It's MMM42.

3 CHAIRPERSON: Yes, I didn't mark mine.
 4 MMM42, yes. [Microphone off, inaudible] I don't want to
 5 force you to do something if you're not entirely ready to
 6 do it, but –

7 MS LE ROUX: Chair, I think let me start
 8 and if I need to revisit it on Monday morning, as far as we
 9 get in the next 15 minutes, then we'll have to do that.
 10 But I'm in your hands.

11 CHAIRPERSON: I don't want you to revisit
 12 it; you mean carry on, on points that you're not dealing
 13 with now. I don't mean you have to revisit and revise the
 14 whole of your cross-examination between now until 1
 15 o'clock, but you must make an election and obviously I'll
 16 give you as much assistance as I can as far as time is
 17 concerned.

18 MS LE ROUX: Chair, I think let me start
 19 with the second point, because it doesn't cover the
 20 individuals mentioned by the Major General. So if we could
 21 look at the CALS statement analysis, MMM41, Major General,
 22 you familiarised yourself with this document, have you?

23 GENERAL NAIDOO: I have.

24 MS LE ROUX: And if we look at the – for
 25 the record, what this document does is it summarises the

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1 statements of members that were in the contingent that went
 2 to koppie 3. They're split into K9, POP and the Mounted
 3 United, and then the statements are all analysed to address
 4 certain issues which are listed across the top of the
 5 document. What I'm interested in if we start is the last
 6 two columns on the right, these are columns J and K, if we
 7 could pull up the first one, K9, if we start with column
 8 J –

9 CHAIRPERSON: Sorry, the copies that we'd
 10 been given don't contain either the column A, which is the
 11 numbers of the – sorry, before column A there's a list of
 12 numbers; those we haven't got. We've got what according to
 13 the screen are columns A to K, but the letters at the top
 14 are not on the copies we have and I don't know what is
 15 going to happen in relation to the exhibits before us. It
 16 might just be sensible to refer to the column headed
 17 "Orders from other commanders" which is K or [inaudible]
 18 "Orders from Naidoo after approach to koppie," which is J,
 19 then it will be easy to follow on the record.

20 MS LE ROUX: Yes, Chair, when the
 21 document is printed those, the letters and the numbers
 22 don't appear, but yes –

23 CHAIRPERSON: Yes, that's right.

24 MS LE ROUX: If we start with the column
 25 second from the right, we analysed the statements looking

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1 for an answer to the question did these members hear orders
 2 from Major General Naidoo after the approach to the koppie,
 3 and not a single member records that in their statement, so
 4 not a single member noted in their statement that they
 5 receive a command given by you at koppie 3.

6 Now in your evidence – for the record it's day
 7 191, page 23177, you testified that the tactical deployment
 8 of the K9 to support the NIU in penetrating that particular
 9 bush would have been Colonel Mopedi, so I just wanted to
 10 confirm that your evidence is that Colonel Mopedi was in
 11 charge of the K9 forces at scene 2 and not you. Is that
 12 your evidence?

13 GENERAL NAIDOO: Chair, no, maybe we
 14 should clarify it. What I testified was when we stopped
 15 and I looked left, obviously the convoy was coming around
 16 the power station, I could not see Colonel Mopedi. I
 17 testified to that fact. I also indicated that there was a
 18 captain, his statement is here, a captain from the
 19 Stilfontein K9, he's a unit commander and I indicated him
 20 to hold the one group and I indicated to the other group to
 21 move forward. So the question that was asked about Colonel
 22 Mopedi was would he have not, who was in charge of the K9.
 23 He was in charge of the K9, but at that particular time I
 24 clearly indicated I was, he was unsighted, I could not see
 25 him because the convoy was still organising itself behind,

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1 and that's why I tried to get two groups.
 2 COMMISSIONER HEMRAJ: General, the NIU
 3 statements that you said a short while ago you had
 4 reference to, are those exhibits?
 5 GENERAL NAIDOO: Chair, I'm not sure. I
 6 can, we can ascertain that.
 7 CHAIRPERSON: They weren't part of the
 8 statements we were given by the Human Rights Commission.
 9 At least I hope that's correct. I see Mr Fischer is not
 10 listening. Mr Fischer, the NIU statements to which the
 11 witness referred, the question Adv Hemraj asks is are they
 12 exhibits. I said I understand if they're not and they
 13 weren't given to us by the Human Rights Commission, I
 14 assume the reason is the Human Rights Commission didn't
 15 have them either.
 16 MS LE ROUX: Yes, Chair, I'll have to
 17 confirm the status of the NIU statements. They're not
 18 included in this summary. I'll have to confirm if they are
 19 exhibits or not. But Major General, when you moved forward
 20 to the koppie with your K9 members, who was in command of
 21 them?
 22 GENERAL NAIDOO: Chair, I testified I
 23 think already that I indicated to – maybe I should get his
 24 name so we have it.
 25 CHAIRPERSON: I went through the list of

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1 K9 people looking for a captain and there's a Captain Arlow
 2 whose statement apparently hasn't been made available, I
 3 don't know if he made one, and there's another constable, I
 4 think his name was Mohabe, if I can find – oh, there's a
 5 Captain Motswaneng –
 6 GENERAL NAIDOO: I think that's –
 7 CHAIRPERSON: - and there's also, there's
 8 another captain as well I saw.
 9 MS LE ROUX: Major General, I'm not sure
 10 if you –
 11 CHAIRPERSON: I think Mr Mohabe is
 12 Captain Mohabe.
 13 GENERAL NAIDOO: Chair –
 14 CHAIRPERSON: Now which was the one you
 15 spoke to?
 16 GENERAL NAIDOO: Chair, well I, at the
 17 previous cross-examination I went and established; it was
 18 Captain Motswaneng, he's the unit commander. I knew him as
 19 the unit commander at Stilfontein. I could not remember
 20 his name. I indicated to him that he should hold at that
 21 place and he did, as far as I remember.
 22 CHAIRPERSON: Yes, judging by the summary
 23 of his statement, if it is an accurate summary, he throws
 24 no light on any of the matters dealt with in any of the
 25 columns.

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1 GENERAL NAIDOO: Chair, once again we'll
 2 come back to the real purpose of the statements that was
 3 obtained by IPID was whether they shot or they didn't
 4 shoot, and I think we must look at it in that light as
 5 well.
 6 MS LE ROUX: Major General, our
 7 difficulty of course is we don't have other statements and
 8 even in providing evidence to IPID about the circumstances
 9 of things one would think that a member would include
 10 important things in their statements, such as whether they
 11 received a command. But I think you may have misunderstood
 12 my question. I understand that you separated at some point
 13 from the remainder of your contingent that was with you at
 14 forward holding area 1. With respect to the K9 members
 15 that moved forward with you, who was in command of them?
 16 GENERAL NAIDOO: Chair, I was with them.
 17 At that stage, as I indicated, I could not find Colonel
 18 Mopedi because the people were still organising themselves,
 19 so I indicated to the first five vehicles let's go forward.
 20 As I indicated, my intention was to get to the point where
 21 I could see the NIU approaching and ascertain, because if
 22 you looked at the road we were going to eventually go in
 23 that direction.
 24 MS LE ROUX: And then who would have been
 25 in command of the K9 members that remained?

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1 GENERAL NAIDOO: I already testified that
 2 Captain Motswaneng was the one I specifically tasked
 3 because he was alongside me, to stay, to remain, and he did
 4 remain there as far as I could remember.
 5 MS LE ROUX: And Major General, when you
 6 get to koppie 3 and move off to join the NIU, who was in
 7 command of the K9 members that had come with you, that did
 8 not follow you to the NIU?
 9 GENERAL NAIDOO: Chair, in terms of the
 10 briefing of the K9 members the understanding was – okay,
 11 firstly when I brought them to a halt, obviously we had
 12 problem with communication, so communication goes left and
 13 right verbally and I indicated them to hold and I asked the
 14 K9 member from the vehicle alongside mine, Sergeant Harmse,
 15 to accompany me. So in terms of them holding, the K9s
 16 typically function in twos, in buddy pairs, and what would
 17 occur is that until they get a further instruction they
 18 would hold and that was the last instruction given to them.
 19 So in terms of who was in charge when I moved from there, I
 20 don't think it would be relevant because at that stage and
 21 by way of their operation and training they do not work in
 22 formations of platoons; they work in teams of two, buddy
 23 pairs, and that's how they came forward.
 24 MS LE ROUX: So Major General, when you
 25 move off to join the NIU the K9 members that you instruct

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1 to hold and that are in their pairs, they're essentially
 2 without a commander; they're in charge of themselves?
 3 [12:55] GENERAL NAIDOO: Chair, no, it does not
 4 work like that. In terms of the deployment of officials,
 5 especially in teams, they are of different ranks and we do
 6 not have to then specifically say 'Sergeant, you will be in
 7 charge of this two, and Warrant Officer, you'll be,' it's
 8 implied that the authority then in terms of those groupings
 9 will go to the person who is the senior person. We –
 10 that's our procedure and that's how it works.

11 MS LE ROUX: And Major General, when you
 12 left those K9 members in their hold in their pairs, you
 13 didn't give them any other instructions as to what role
 14 they should perform in the operation?

15 GENERAL NAIDOO: Chair, at that stage - I
 16 think we had also discussed this at length – I had to
 17 assess the situation to see what was transpiring, the
 18 primary objective to see whether it was safe to bring in
 19 the rest of the convoy to our right along the road and
 20 after assessing that obviously that they would get further
 21 instructions, because in terms of the role of the K9, which
 22 we also discussed in previous testimony, there were
 23 possibilities of them supporting, if required, but at that
 24 stage I had not determined, so I could not give them any
 25 further instructions.

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1 discussed the issue of the tactical training of the K9
 2 people. They are tactically trained. They are utilised in
 3 the situation that they were utilised in. I've explained
 4 the reason why we brought some of the vehicles forward,
 5 because the fact it was a rural setting and the possibility
 6 of them having cover being an issue, and that in their
 7 daily task this is how they operate. So it was not
 8 necessary for me to go and retrain them before we get into
 9 a thing. I work on the assumption that I'm working with
 10 trained K9 handlers. They have certain training and when
 11 we give them an indication they would understand what it
 12 is. So taking them to a fire fight and terms like that is
 13 something that they have to do on a daily basis and they
 14 don't receive a specific briefing because obviously they
 15 get an assessment of the overall situation, which they did
 16 receive, and we can't then brief them on each and every
 17 specific thing that they may or may not – that's where
 18 training comes in.

19 MS LE ROUX: Chair, I note it's 1 o'clock
 20 and in any event what I need to move on to now uses the
 21 summary, so we should probably –

22 CHAIRPERSON: It sounds as if a whole lot
 23 of matters have coincided very conveniently, so we'll take
 24 the adjournment now until Monday morning 9 o'clock.
 25 [COMMISSION ADJOURNED]

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1 MS LE ROUX: Major General, to round up
 2 this point, in their briefing they weren't given any
 3 briefing or instructions or orders as to how to, what role
 4 they should perform in a fire fight at koppie 3. They
 5 weren't briefed in any way around that issue, were they?

6 GENERAL NAIDOO: Chair, I think if you
 7 look at the summary of statements, with the understanding
 8 that these statements were not made for that purpose, the,
 9 more than 19 members in that summary clearly indicate that
 10 their purpose was explained to them. In fact some of them
 11 go more specific to say after the dispersal, as well as
 12 saying that the TRT and the NIU would first sweep. So they
 13 were very clear in terms of how they would be utilised in
 14 terms of the resources they had at their disposal. So I
 15 had, in terms of that I don't think I was uncertain as to
 16 how they were going to be utilised and they also in their
 17 statements clearly outlined this.

18 MS LE ROUX: Yes, but the point, Major
 19 General, is that no part of that briefing or any
 20 description of their role set out in the statements that we
 21 have indicates an understanding of what they should do in
 22 the situation you took them to, which was a fire fight.

23 GENERAL NAIDOO: Chair, I do not agree.
 24 We have our training. We have our conditioning of people
 25 in terms of how to respond to tactical situations. We have

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