

RealTime Transcriptions

TRANSCRIPTION OF THE

COMMISSION OF INQUIRY

MARIKANA

BEFORE TRIBUNAL

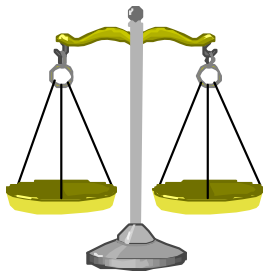
THE HONOURABLE MR JUSTICE FARLAM (RETIRED) - CHAIRPERSON
MR TOKOTA SC
MS HEMRAJ SC

HELD ON

DAY 194

28 FEBRUARY 2014

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<p style="text-align: right;">Page 23657</p> <p>1 [PROCEEDINGS ON 28 FEBRUARY 2014] 2 [09:48] CHAIRPERSON: The Commission resumes. 3 You're still under oath, Major-General. I'm sorry we're 4 starting late but we had some housekeeping matters to 5 attend to which we have done and we will now proceed. Mr 6 Chaskalson? 7 GENERAL NAIDOO: s.u.o. 8 CROSS-EXAMINATION BY MR CHASKALSON SC (CONTD.): 9 Thank you, Chairperson. Major-General, when we broke 10 yesterday we'd been dealing with the NMF and would you 11 agree that a lot of the work of the NMF has to do with 12 resources, training, HR issues, matters of that nature? 13 GENERAL NAIDOO: Chair, that's correct, 14 the NMF is our decision-making body for policy. 15 MR CHASKALSON SC: And so it addresses 16 that fall within your portfolio as deputy commissioner in 17 the province? 18 GENERAL NAIDOO: Well, yes. In fact all 19 policy issues are decided by the NMF. When I say policy I 20 mean operational policy, national policy obviously is a 21 ministerial prerogative. 22 MR CHASKALSON SC: Now what role do you 23 play in preparing with the Provincial Commissioner for NMF 24 meetings and assisting her to prepare for NMF meetings? 25 GENERAL NAIDOO: Chair, all deputy</p>	<p style="text-align: right;">Page 23659</p> <p>1 normally of deputy Provincial Commissioners, cluster 2 commanders and provincial heads and we have feedback. 3 Normally we try and make these feedback sessions coincide 4 with our monthly operational meetings so that we don't have 5 to call people too many times. 6 MR CHASKALSON SC: And in the course of 7 that feedback do you actually see the minutes of the NMF? 8 GENERAL NAIDOO: No, the minutes are not 9 distributed to the meeting. The Provincial Commissioner 10 communicates the information to us, what is required. 11 MR CHASKALSON SC: So you've never seen 12 any minutes of the NMF? 13 GENERAL NAIDOO: Chair, I have seen 14 minutes of NMF. 15 MR CHASKALSON SC: Which minutes have you 16 seen of the NMF? 17 GENERAL NAIDOO: Chair, at the various 18 times that I was acting as Provincial Commissioner I had to 19 deal with those minutes, so I can check when, the times 20 that I was acting and I received these minutes so I had to 21 deal with them. 22 MR CHASKALSON SC: And as an acting 23 Provincial Commissioner would you represent the province at 24 the NMF if the Provincial Commissioner – well, with you 25 acting because the Provincial Commissioner wasn't present?</p>
<p style="text-align: right;">Page 23658</p> <p>1 Provincial Commissioners are responsible to ensure that 2 relevant information pertaining to our province, as far as 3 our responsibilities are concerned, are submitted to her, 4 dependent – there are some generic issues which have to be 5 brought, have to be made available at each meeting or then 6 others, there might be gender specific items, so we are 7 normally informed by the office of the Provincial 8 Commissioner on if there's specific information required if 9 it's in our various portfolios and we submit it to her 10 office, which is consolidated and that's the information 11 she goes off to the meeting with. 12 MR CHASKALSON SC: And would you get to 13 see the agenda of an NMF meeting? 14 GENERAL NAIDOO: Chair, normally we would 15 receive – not necessarily. Normally we would receive the 16 parts or information relevant to us, our particular task 17 team. They would not normally just circulate the entire 18 agenda. It is also a classified document, sir. 19 MR CHASKALSON SC: And when decisions are 20 taken at the NMF, do you then get minutes of those 21 decisions where you have prepared for them, sent that to 22 you? 23 GENERAL NAIDOO: Chair, no. The minutes 24 of the National Management Forum are sent back to the 25 Provincial Commissioner who then convenes a meeting</p>	<p style="text-align: right;">Page 23660</p> <p>1 GENERAL NAIDOO: That's implied, yes. 2 MR CHASKALSON SC: We know that the 3 Provincial Commissioner was not present at the October 2012 4 NMF meeting. Were you acting in her place? 5 GENERAL NAIDOO: Chair, I – what I can 6 remember is I have not attended an NMF at any time whilst I 7 was acting, so I can say with certainty I did not attend 8 that one. Maybe the NMF just didn't coincide with my 9 acting but at any time whilst I was acting I have not 10 attended NMF. I know that some of my colleagues have when 11 they were acting, I'm not the only person that acts as 12 Provincial Commissioner. 13 MR CHASKALSON SC: And when you act as 14 Provincial Commissioner and you need to attend to NMF 15 business even if you're not going to a meeting, you have 16 access to minutes of the NMF or to whatever minutes of the 17 NMF you need. 18 GENERAL NAIDOO: Chair, yes. Whether the 19 Provincial Commissioner is in office or not, the minutes 20 normally will arrive before the meeting and one would have 21 to give the taskings out to the various offices so that the 22 information could come back and be consolidated and be 23 available so that the person that attends, be it the 24 Provincial Commissioner herself or the person that's 25 acting, goes with this information.</p>

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1 MR CHASKALSON SC: When was the first
 2 time you saw the minutes of the meeting of the 15th August?
 3 GENERAL NAIDOO: Chair, are you talking
 4 about the NMF?
 5 MR CHASKALSON SC: The NMF meeting, yes.
 6 GENERAL NAIDOO: Chair, I can't remember
 7 specifically but I can go and check when.
 8 MR CHASKALSON SC: Would it have been
 9 when those minutes were circulated to the province in
 10 advance of the next meeting?
 11 GENERAL NAIDOO: Possibly. One would
 12 reasonably expect, yes, about that time.
 13 MR CHASKALSON SC: Because we can
 14 pinpoint what that time was. I wonder if, I mean if you
 15 could check over the weekend when you first saw those
 16 minutes.
 17 GENERAL NAIDOO: Yes, I could do that,
 18 Chair.
 19 MR CHASKALSON SC: While we're dealing
 20 with sort of police finance and administration matters and
 21 organisation matters and before we get back to Marikana
 22 proper, there's been evidence before this Commission of an
 23 instruction to deliver 4 000 rounds of R5 to Marikana on
 24 the 16th of August. Were you aware of any such instruction
 25 at the time?

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1 GENERAL NAIDOO: At the time, no. Yes,
 2 during the process of this Commission I did find that out,
 3 yes.
 4 MR CHASKALSON SC: Now what sort of
 5 administrative requirements would need to be performed for
 6 an order of this nature?
 7 GENERAL NAIDOO: Chair, what it – it
 8 would depend on the nature of the order and the source.
 9 Currently as we operate the different police stations and
 10 units have stock levels that are intended to resource their
 11 existing operations and it is the responsibility of those
 12 units and stations, when their stock levels become
 13 depleted, to inform the provincial supply chain so that we
 14 can replenish. So dependent on the request and the
 15 available stock in a particular unit or station, that would
 16 direct how you would requisition. So in the instance, what
 17 you are referring to now, if the unit has sufficient then
 18 the unit will deal with the request and then the
 19 supplemented stock level from a provincial or national
 20 store, depending on the nature of the resource required.
 21 MR CHASKALSON SC: I'm fairly innocent or
 22 naive in relation to these sorts of matters but I would've
 23 thought that 4 000 rounds is a massive amount of ammunition
 24 for a single operation. Does it strike you as a very large
 25 number?

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1 GENERAL NAIDOO: Chair, it would – I
 2 think the number of rounds should be seen in proportion to
 3 the number of firearms that are being utilised in a
 4 particular operation. If reference is made to 4 500 R5
 5 rounds, an R5 magazine takes 30 rounds. We normally issue
 6 a member with two magazines for 30 rounds. So if you take
 7 the number of R5s that were utilised and you divide that by
 8 30 it would give you an indication basically whether it's
 9 reasonable or not - just to indicate on the scale and to
 10 respond to the question about what is reasonable.
 11 MR CHASKALSON SC: But presumably members
 12 are issued with R5s and their magazines at their departure
 13 points, or not?
 14 GENERAL NAIDOO: Chair, yes. With the
 15 exception of the people at crowd management, the standard
 16 procedure is when you book out a firearm, sharp point, you
 17 book out the firearm with ammunition so if it's a 9
 18 millimetre you will take the requisite number of rounds and
 19 if it's an R5 you will take the requisite. I think it's
 20 only in crowd management that the member books out a
 21 firearm only, not the rounds, because of their standard
 22 operating procedures.
 23 MR CHASKALSON SC: And Major-General,
 24 where did the members at Marikana book out their firearms?
 25 Did they book them out before they, when they left to come

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1 to Marikana or at Marikana itself?
 2 GENERAL NAIDOO: Chair, as far as I could
 3 remember, members were deployed from their various units
 4 all over the country with their equipment, as far as I can
 5 remember. There may have been members who may have
 6 required certain supplementary equipment. We can establish
 7 that but the deployment was done on the basis that the
 8 member arrived with vehicles and his equipment for
 9 deployment.
 10 MR CHASKALSON SC: So saving those
 11 exceptional cases or cases that didn't match the ordinary
 12 rule, these 4 000 would be in addition to the two magazines
 13 that the members already had?
 14 GENERAL NAIDOO: Possibly.
 15 MR CHASKALSON SC: Well, no, save in
 16 respect of the exceptional cases where members hadn't been
 17 booked out, members ought to have arrived with a firearm
 18 and two magazines already.
 19 GENERAL NAIDOO: That was the
 20 expectation, yes.
 21 MR CHASKALSON SC: I'm still struggling
 22 with the numbers, particularly numbers of weapons that go
 23 into assault rifles, do you know how many rounds of
 24 ammunition the North-West Province as a whole procures on
 25 an annual basis? Do you have a sense?

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1 GENERAL NAIDOO: Chair, no, I don't have
2 it offhand. Supply chain does not fall directly under my
3 responsibility but I think it's in proportion to the number
4 of firearms we have in the province. We have a policy of
5 not stockpiling ammunition for purposes of ageing, et
6 cetera, so these is a threshold so that we don't have stock
7 that becomes redundant and obsolete which becomes
8 fruitless. So there is a process of using up of old stock
9 and getting in new stock but I mean we can establish that
10 information.
11 MR CHASKALSON SC: Well, can I –
12 MR SEMENYA SC: Chair, if this line of
13 cross-examination holds a risk of eliciting information
14 that may compromise the security of the province, we
15 undertake to make this information available in writing to
16 the evidence leaders.
17 MR CHASKALSON SC: Maybe that's the best
18 way of ending this –
19 CHAIRPERSON: I think that's –
20 MR CHASKALSON SC: - this cross-
21 examination, so let me maybe indicate what we'd like to
22 know, which is – let's go back to 2012 which is the year
23 we're talking about. What was the annual procurement, in
24 the year leading up to August 2012 how many rounds of R5
25 were procured by the province?

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1 GENERAL NAIDOO: Okay.
2 COMMISSIONER HEMRAJ: And perhaps you can
3 tell us whether there was any birdshot stockpiled and kept
4 in stores.
5 GENERAL NAIDOO: Yes.
6 CHAIRPERSON: I would like to know
7 actually, not so much how much you'd acquired in the months
8 of 2012 which concluded, for our purposes, on the 16th of
9 August but whether it's possible to say, generally speaking
10 on average, on any particular day how many rounds are
11 likely to have been available –
12 GENERAL NAIDOO: In circulation.
13 CHAIRPERSON: Sorry?
14 GENERAL NAIDOO: In circulation.
15 CHAIRPERSON: Yes, yes.
16 GENERAL NAIDOO: Not in store.
17 CHAIRPERSON: No, both.
18 GENERAL NAIDOO: Or both.
19 CHAIRPERSON: Total in circulation and
20 the total in store, available to be sent out to those –
21 GENERAL NAIDOO: I will try and establish
22 that, Chair.
23 CHAIRPERSON: Thank you. As I work,
24 according to my arithmetic, 4 000 rounds is 133 magazines,
25 each magazine contains 30 rounds.

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1 GENERAL NAIDOO: Ja, it is.
2 CHAIRPERSON: So, do we know – we should
3 know, we should be able to work it out but do we – if you
4 can't tell us off the top of your head we'll work it out
5 but do you know how many R5s were actually at Marikana on
6 the 16th August?
7 GENERAL NAIDOO: Chair –
8 CHAIRPERSON: I think we can probably get
9 it from L. I don't expect you to do that. If you know it,
10 tell me –
11 GENERAL NAIDOO: I would think it was in
12 excess of 200 but I think we can give you a figure, yes.
13 Chair, just for a point of clarity, how many rounds in
14 circulation, is it only pertaining to R5s?
15 CHAIRPERSON: Yes, well, the only ones
16 that were requested, there was a request for an additional
17 4 000 rounds, R5 rounds. If Mr Chaskalson wants more
18 information he must say so but I'm interested in R5s.
19 GENERAL NAIDOO: Okay.
20 CHAIRPERSON: At the moment.
21 MR CHASKALSON SC: I think flowing from
22 Commissioner Hemraj's question we should also ask in
23 relation to shotgun pellets, not rubber pellets.
24 GENERAL NAIDOO: Alright.
25 MR CHASKALSON SC: Whether they're

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1 birdshot or buckshot.
2 GENERAL NAIDOO: Okay.
3 CHAIRPERSON: I'm reminded by Adv Hemraj
4 that there was an undertaking, as I remember it, from the
5 police to give us information on affidavit with the
6 supporting documents relating to the requisition of these
7 4 000 rounds. That's not yet forthcoming, are you able to
8 tell us yet, tell us Mr Semenya, when that document is
9 likely to arrive?
10 MR SEMENYA SC: We'll file today the
11 statement indicating there was no requisition in respect of
12 these 4 000 rounds.
13 CHAIRPERSON: Oh, thank you.
14 MR CHASKALSON SC: Well, Major-General,
15 then if we are going to get a statement saying there was no
16 requisition I need to ask you on what basis would a member
17 be able to take 4 000 rounds of R5 ammunition out of stock
18 without a requisition?
19 GENERAL NAIDOO: Chair, as I've
20 indicated, we maintain a certain stock at each level and
21 each police station under the command of the station
22 commander or the unit commander. So that authority at
23 local level is responsible for his little stock which is
24 held in proportion to his firearms that are at his unit and
25 that is the person who then thereafter has to ensure that

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1 these things, he has to maintain a register where it's
 2 booked out and it comes in. So when they do the
 3 stocktaking, firearm – we do a biannual stock take which
 4 has to be certified and on the biannual stock take the
 5 amounts that have been issued and the amounts in stock have
 6 to balance. So the station or unit commander has to
 7 maintain a record of the stock that has been issued to him
 8 and appears on his government property account. So for
 9 instance if a member has expended five rounds there would
 10 be a report, there will be an IPID form now, previously it
 11 never was, and there would be possibly a case number.
 12 Those documents will be filed at the place where these
 13 things are stored so that they may be written off and the
 14 amount that's now missing can be reconciled by issuing new
 15 stock. So the record-keeping in terms of that is the unit
 16 or the station commander at local level.
 17 MR CHASKALSON SC: So the paper work is
 18 done at local level and – I mean obviously there'll be a
 19 reconciliation process going upwards, I would imagine, or
 20 let's take these one at a time. There's paper work done at
 21 local level, reconciliation going upwards, is that correct?
 22 GENERAL NAIDOO: I think let's be
 23 specific in terms of what are we – which paper work are
 24 talking about?
 25 MR CHASKALSON SC: Well, each time rounds

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1 are issued or taken out of stock and distributed there has
 2 to be some paper trail for it.
 3 GENERAL NAIDOO: Chair, yes. The paper
 4 trail with regard to stock issued is maintained at local
 5 level because the station commander – let us use an
 6 example. This particular unit has received 10 000 of a
 7 particular ammunition. As long as the rounds are still in
 8 use by that unit, the government property account will
 9 refer that there are 10 000 rounds there.
 10 [10:07] And that is what will be expected when there's a
 11 reconciliation, the bi-annual reconciliation, the
 12 expectation is that that station commander will account for
 13 10 000 rounds. However, the 10 000 rounds may not all be
 14 in his store. There might be 2000 rounds in circulation
 15 but he's still accountable because those firearms and
 16 ammunition was sought under his command. The time when you
 17 have a difference, where a balance adjustment has to be
 18 made is when some of those rounds are actually used,
 19 they're expended for whatever reason. Then he has to
 20 submit the documentation to the province to indicate I do
 21 not have 10 000 rounds anymore. I have 9 800 and whatever
 22 number and they've been written off on the following basis,
 23 shooting practise, there was a shooting incident, etcetera,
 24 with supporting case numbers and reference numbers. Then
 25 they refurbish and bring him back to 10 000. So when we

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1 talk about paperwork, the station will have the paperwork
 2 as far as the 10 000 rounds that are in circulation for it.
 3 CHAIRPERSON: Applying that to the facts
 4 of this case we understand that there was a request, it's a
 5 controversial matter as to who made the request and we
 6 understand that someone at commander level requested 4000
 7 rounds. We don't know to whom – because I don't know
 8 whether other people do, to whom the request was addressed.
 9 We also know that 4000 rounds arrived at the JOC. We also
 10 know that Brigadier Pretorius said we don't need them and
 11 sent them back. Now if they had been sent from the local
 12 police station the station commander would have been
 13 issuing them not just to people under his command because -
 14 it would have went to the JOC, so a whole lot of people all
 15 under different commands. So they would no longer have
 16 been part of his stock, whether in his store or in the
 17 hands of those under his command.
 18 GENERAL NAIDOO: That is correct.
 19 CHAIRPERSON: Right, now so I assume that
 20 he would have made some entry if it was a station
 21 commander, unit commander to say I've taken 4000 rounds and
 22 I've not given them to people under my command, but I've
 23 sent them to the JOC at Marikana or whatever. Now that
 24 would be some kind of book entry that would have been made,
 25 I assume. Is that right?

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1 GENERAL NAIDOO: Chair, yes.
 2 MR SEMENYA SC: Chair, if it may assist
 3 to save us time, that statement will tell us not only did
 4 the individual arrive with 4000 rounds of ammunition, he
 5 also arrived with a register for whoever was going to take
 6 possession of those and Brigadier Pretorius said I'm not
 7 completing any documents. That's how they went back.
 8 CHAIRPERSON: Will it be told from where
 9 the rounds came, who brought the register, whether it was a
 10 station commander or a unit commander or somebody else?
 11 MR SEMENYA SC: Those details –
 12 CHAIRPERSON: All that stuff will be
 13 there, in the affidavit, so we must just be patient. Yes,
 14 all right. Does the affidavit tell us who requested the
 15 rounds?
 16 MR SEMENYA SC: Yes, it does.
 17 CHAIRPERSON: All right well that's
 18 something we look forward to seeing. Yes, thank you.
 19 MR CHASKALSON SC: We can leave this
 20 topic then. Major-General if we can move then to Roots.
 21 You signed some of the call-ups to Roots.
 22 GENERAL NAIDOO: A call-up to Roots,
 23 that's correct, Chair.
 24 MR CHASKALSON SC: The first call-up to
 25 Roots.

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1 GENERAL NAIDOO: That's correct, Chair.
 2 MR CHASKALSON SC: Who instructed you to
 3 – well was it your decision to hold Roots or was it a
 4 decision that you were instructed to execute?
 5 GENERAL NAIDOO: I was instructed to
 6 write it, but we did have a discussion that on the 24th the
 7 people that were deployed at Marikana at the time of the
 8 incident would be changed and be returning to their
 9 different provinces and units. And there was a need for us
 10 to preserve the information. As I understand there was a
 11 commission of inquiry to be held. A SAPS legal team had
 12 been appointed to represent the SAPS and we knew that and
 13 even with that we still had so many difficulties in terms
 14 of this. We knew that if we did not first get whatever is
 15 available and preserve it we will have problems once the
 16 Commission sits. And once our legal team's appointed to
 17 actually present them with all the available information.
 18 So that discussion was at our senior level and then I was
 19 tasked to make an arrangement so that when the changeover
 20 of the groups at Marikana occurred on the 24th that we
 21 immediately go into this exercise of getting all the
 22 information and preserving it basically.
 23 MR CHASKALSON SC: Now Major-General
 24 you've spoken about we and at senior level, who are the
 25 individuals who were party to this decision?

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1 GENERAL NAIDOO: Chair, obviously I
 2 report to my Provincial Commissioner and she is the only
 3 person above me who can authorise such activity. So she
 4 definitely was. The other generals that were with us in
 5 the operation we did discuss the difficulty in terms of
 6 what would happen once people have bomb shelled into
 7 wherever they came from. So when I say we at senior level,
 8 primarily the generals, yes.
 9 MR CHASKALSON SC: But which generals
 10 because there were different generals that came to the
 11 scene after the 16th or additional generals that came to the
 12 scene after the 16th.
 13 GENERAL NAIDOO: Chair, in my engagement
 14 I remember just the generals, we who were involved in the
 15 operation. I did not personally, you know, engage with the
 16 generals separately who were not part of the operation at
 17 Marikana. So the three major generals that were in
 18 Marikana is quite widely known as myself, General
 19 Annandale, General Mpembe and then the Provincial
 20 Commissioner. Those were primarily the people we discussed
 21 because we were planning the dispersal of the group that
 22 was stationed there and that was part of our discussion.
 23 MR CHASKALSON SC: And did the National
 24 Commissioner play any part in this decision?
 25 GENERAL NAIDOO: Chair, I'm sure that she

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1 would have been consulted because the Provincial
 2 Commissioner would have not made such a decision because it
 3 affected people from other provinces and obviously the
 4 National Commissioner had to be sensitised. So it won't be
 5 a situation of just making a unilateral decision in our
 6 province when it affects other provinces. There has to be
 7 some transversal consultation in decision making.
 8 MR CHASKALSON SC: And General Mawela in
 9 relation to the Special Forces, he was also present at
 10 Marikana or he came in on the 16th. Would he have been part
 11 of the decision?
 12 GENERAL NAIDOO: Chair, I'm not sure if
 13 he was personally in charge but his representative
 14 obviously was General Annandale, who was part of the
 15 operation. And I'm sure General Annandale could not, on
 16 his own, decide that he was coming to take part in this
 17 exercise for as many days. He would have to consult his
 18 boss, being General Mawela. So there would have been
 19 consultation I'm sure.
 20 MR CHASKALSON SC: Was there a formal
 21 decision ever taken as to what this two week conference of
 22 70 police members was called for, a formal terms of
 23 reference for the conference or anything like that?
 24 GENERAL NAIDOO: Chair, no. Initially
 25 yes and you will see - my thought was maybe this was going

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1 to be some sort of debriefing session. That was my opinion
 2 when I listened to the whole thing and you'll see that I
 3 endorsed the call-up accordingly. But there were some
 4 other decisions that we made during these discussions was
 5 to, firstly the fact that we were involved in the incidents
 6 themselves, it was necessary to bring in a few other
 7 internal role players to act as facilitators. Because, you
 8 know, they would probably ask us questions and look at
 9 things maybe from a different perspective so that we can be
 10 as comprehensive as possible. So we did get a facilitator
 11 from our head office, a brigadier and then I have people
 12 from organisational development who were tasked with report
 13 writing, writing detailed reports. And under the command
 14 of Colonel Visser who also resorts under my command, we
 15 established a team who will compile. When we started off
 16 we tried to obviously find our feet. How are we going to
 17 go about this and then was a decision – first we decided we
 18 are going to be writing a report, but obviously a report
 19 would not necessarily convey to a larger audience. So then
 20 the concept of a report and a presentation came up and what
 21 we have now as exhibit L, I think is one of the products of
 22 Roots.
 23 MR CHASKALSON SC: You say one of the
 24 products. Was there any other product apart from the
 25 narrative that accompanies exhibit L?

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1 GENERAL NAIDOO: Chair, when I said one
 2 of the products I refer to exhibit L and the other one
 3 being the narrative. Those were our two primary products
 4 of Roots, yes.
 5 MR CHASKALSON SC: Were there any
 6 secondary products?
 7 GENERAL NAIDOO: Yes, Chair. At that
 8 stage we were asked for statements and we had engaged a
 9 legal firm to assist us in terms of interfacing with IPID.
 10 IPID needed reports or statements from all members who
 11 fired at the different incidents and so we used that
 12 opportunity because people were still available, so that we
 13 did not have to call them to secure statements. And most
 14 of the statements that we are currently using came out of
 15 that process where statements were taken for IPID.
 16 MR CHASKALSON SC: So bringing in the
 17 legal team, was that in the first instance to represent the
 18 individual policeman who may be subjected to IPID
 19 investigation?
 20 GENERAL NAIDOO: Chair, when we appointed
 21 the legal team there was no commission as far as I could
 22 remember. When we appointed the legal team or the
 23 attorneys it was purely to assist with the request from
 24 IPID for the taking of statements. IPID themselves had a
 25 limited capacity we could have said okay come and take our

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1 statements and we had more than 500 members. It was a
 2 mammoth task. We have a very good relationship with IPID.
 3 You know we resolve issues and one of the issues we
 4 resolved was we would engage because our members requested
 5 representation. So we indicated we'll engage a legal team
 6 who will assist them in obtaining all these statements and
 7 that was what transpired.
 8 MR CHASKALSON SC: But I just need to
 9 clarify this because it goes to how we look at the
 10 statements that were prepared and then submitted to us
 11 because those statements, were they prepared on a brief to
 12 a legal firm to represent SAPS as an institution or to
 13 represent the individual officers who had asked for
 14 representation?
 15 GENERAL NAIDOO: Chair, I think each of
 16 the members that had requested legal representation did
 17 sign those – well there's a particular document that they
 18 have to sign because those requests have to be submitted to
 19 the State Attorney and that's how we get legal
 20 representation for our members.
 21 MR CHASKALSON SC: I'm still not clear, I
 22 mean maybe it's something that we can clarify with the
 23 legal representatives themselves. But it does seem to be
 24 quite an important issue because it goes to the question
 25 whether those statements are really prepared with a view to

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1 protecting the rights and interests of the individual
 2 signatory to the statement. Or with a view to protecting
 3 only the interests of SAPS. If it's the former then they
 4 are treated – then we can possibly understand why they
 5 don't say certain things or they don't address certain
 6 things. Stay quiet, stay silent on certain issues. If
 7 it's in relation to the interests only of SAPS well then a
 8 failure to address an issue would have different
 9 implications. Are you - well look we can – this is an
 10 issue I suppose we can clarify with the legal
 11 representatives, who will, I would imagine, know who they
 12 were briefed to represent. But from your perspective,
 13 before there was any Commission, you understood that
 14 individual policemen were being represented by the firm of
 15 Mr Pretorius. Is that correct?
 16 GENERAL NAIDOO: Chair, as I indicated,
 17 the day after this incident the IPID team that arrived
 18 required statements and members were reluctant just to
 19 write their own statements and give – obviously and there
 20 were requests for legal representation. So that is when we
 21 had to interact with the State Attorney's office to secure
 22 them legal representation. And yes the urgency factor was
 23 that most of the members, a lot of the members that were
 24 involved in the incident did not come from the North West
 25 Province and there would be, at some stage, attorneys. So

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1 we wanted to address the request from IPID before people
 2 dispersed. So as far as my knowledge goes around the legal
 3 representation that's how we got to appointing, via the
 4 State Attorney, a firm to represent our members.
 5 COMMISSIONER HEMRAJ: The policemen were
 6 suspects -
 7 GENERAL NAIDOO: In the IPID
 8 investigation.
 9 COMMISSIONER HEMRAJ: - in the shooting
 10 incident.
 11 GENERAL NAIDOO: That's correct.
 12 COMMISSIONER HEMRAJ: And these were
 13 warning statements that they made.
 14 GENERAL NAIDOO: That's what you'll find,
 15 yes. They generally are those who fired shots, they're all
 16 warning statements, yes.
 17 COMMISSIONER HEMRAJ: Yes.
 18 CHAIRPERSON: Were the statements drafted
 19 by members of a firm of attorneys who were acting not only
 20 for the individual suspects, but also for the police
 21 services as a whole?
 22 GENERAL NAIDOO: No, no Chair, at that
 23 stage, as I said, the Commission had not yet been
 24 announced. It was the next day and the request, as I
 25 indicated, came from the individual members, initially

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1 saying we are not going to make a statement. We would say
 2 we will refrain until, you know, people orientated
 3 themselves and we wanted this process to go as quickly as
 4 possible because of the dispersion of the people back to
 5 their units.
 6 CHAIRPERSON: You've answered my
 7 question, thank you.
 8 GENERAL NAIDOO: Thank you.
 9 COMMISSIONER HEMRAJ: I must say what I
 10 have not seen in any of these warning statements is all
 11 those documents that contain the warnings, before warning
 12 statements were taken. I don't know if evidence leaders
 13 are in possession of any of those.
 14 MR CHASKALSON SC: In the IPID files you
 15 see a lot of the warning statements that are submitted to
 16 the Commission are the retyped copies. In some of the
 17 original IPID files that we've seen there are the pro forma
 18 documents which have all of those warnings and are filled
 19 out in handwriting on top of the document that we see or on
 20 top of the hand-written version of the document that we
 21 see. We haven't done a reconciliation to see which ones
 22 have the warning and which ones don't. Then the added
 23 complication that some of the warning statements are
 24 deposed to as affidavits, but that needn't detain us while
 25 Major-General Naidoo is under cross-examination.

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1 CHAIRPERSON: Well to take an example,
 2 we've been handed a pile of documents prepared by the Human
 3 Rights Commission. A number of statements by individual
 4 members of the police service. I'm just taking one at
 5 random. It's a statement by I think he's a Constable
 6 Mutsi. Now there is a Mutsi statement before the
 7 Commission already as an exhibit, MMM7. But three
 8 statements, I think, of Constable Mutsi have been presented
 9 by the Human Rights Commission. So it's in the bundle and
 10 they're alphabetical. They're listed under units from
 11 which the people came and Mutsi is a dog handler, so he's
 12 part of K9 section. He was actually under your command at
 13 forward holding area 1. And his statements are covered by
 14 the letter Y in this bundle and I see the first one has as,
 15 or the front sheet what looks an IPID form. The reference
 16 in fact, the police reference is, police reference is
 17 OO1896 and it's headed Statement Regarding Interview With
 18 Suspect. And all the formal stuff is there including the
 19 warning of his rights to remain silent, have a legal
 20 practitioner and so on. So are you saying that in each
 21 case and then the form continues with other formal
 22 information of the same kind on the next page. Are you
 23 saying that each one of these interviews, as far as you
 24 know, which was a warning statement was preceded by, the
 25 actual statement was preceded by the filling in of this

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1 form and the giving, ostensible the giving of the warnings
 2 contained in the form? Would that be correct?
 3 GENERAL NAIDOO: Chair, what I'm saying,
 4 as far as my knowledge goes, these member's statements,
 5 most of these statements, if not all, ja almost all the
 6 statements that we have been using here are the statements
 7 made by members in response to the request from IPID with
 8 regard to the shooting incidents. Initially there were
 9 only members who fired made statements, but obviously the
 10 position was even members who did not fire should give
 11 statements because they would have probably witnessed the
 12 shootings. But I think that's where we get the affidavit
 13 versus the warning statements.
 14 [10:27] But yes, the premise is that the statements where
 15 members fired were supplied to IPID as part of the
 16 investigation.
 17 CHAIRPERSON: Do I understand you to be
 18 saying that the shottist, I'm not sure if shottist is the
 19 right word –
 20 GENERAL NAIDOO: That's correct, sir.
 21 CHAIRPERSON: I think shottist may only
 22 apply to people shooting at a Bisley but anyway, the
 23 shottists, the people who shot – it doesn't sound right,
 24 shottist – they're the ones who got warnings because they
 25 were suspects.

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1 GENERAL NAIDOO: That's correct.
 2 CHAIRPERSON: The ones who were with them
 3 who didn't fire, they weren't suspects and they just made
 4 affidavits in the normal course. Do I understand you
 5 correctly? That's your understanding?
 6 GENERAL NAIDOO: That's my understanding
 7 –
 8 CHAIRPERSON: Alright.
 9 GENERAL NAIDOO: Because the, one or two
 10 affidavits are members who never fired a shot.
 11 CHAIRPERSON: It is now half past 10. I
 12 think it's appropriate to take a comfort break at this
 13 stage.
 14 [COMMISSION ADJOURNS COMMISSION RESUMES]
 15 [10:57] CHAIRPERSON: The Commission resumes.
 16 You're still under oath, Major-General. Mr Chaskalson?
 17 GENERAL NAIDOO: Still under oath, Chair.
 18 GENERAL NAIDOO: s.u.o.
 19 CROSS-EXAMINATION BY MR CHASKALSON SC (CONTD.):
 20 Now maybe if we could put the call-up for Roots up on the
 21 screen, just so that we could see its terms. It's GGG3 and
 22 that was the call-up that you issued, your signature
 23 appears on the next page, if we can just go down the page.
 24 You recall the document, Major-General?
 25 GENERAL NAIDOO: Yes, that's correct.

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1 MR CHASKALSON SC: If we can go back up
 2 to the top of the document – sorry, it possibly went too
 3 soon, you can take it on trust that the date of your
 4 signature is 25 August. As you indicated, when you sent
 5 out the call-outs, the call-up, it was for a debriefing and
 6 preparation for the judicial Commission of Inquiry. So on
 7 25 August you were intending, inter alia, to conduct a
 8 debriefing at Roots, is that correct?
 9 GENERAL NAIDOO: Chair, when I indicated
 10 debriefing, yes, that was my word usage, yes.
 11 MR CHASKALSON SC: But would this not be
 12 the debriefing that is required in terms of the standing
 13 orders after an operation of the nature of Marikana?
 14 GENERAL NAIDOO: Chair, as I indicated,
 15 when we decided or when we discussed the issue of having
 16 this process at Roots my understanding was yes, possibly
 17 it's going to be a process, a logical process to get this
 18 information together so that, firstly, the information is
 19 preserved and secondly, when our legal team – now I'm
 20 talking about the team that would represent us at the
 21 Commission – is appointed, that we would, through some
 22 process, have this information assimilated and available.
 23 So that's, for me, a debriefing, yes.
 24 CHAIRPERSON: You said possibly. I don't
 25 think you meant possibly because the heading is "Debriefing

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1 and preparation," so as far as you were concerned –
 2 GENERAL NAIDOO: That was a debriefing.
 3 CHAIRPERSON: That was your intention at
 4 the time, your understanding at the time and your intention
 5 at the time, is that right?
 6 GENERAL NAIDOO: That's my understanding
 7 of the process that we'll be following, yes.
 8 MR CHASKALSON SC: But was this going to
 9 be the debriefing that the standing orders contemplate
 10 because that hadn't yet taken place?
 11 GENERAL NAIDOO: Chair, no. As far as
 12 our discussion was concerned in terms of planning this, we
 13 did not talk about the process that normally follows a
 14 critical incident as there were several things that were
 15 occurring at the same time. I think the primary objective
 16 was not to lose sight of where everybody and everything was
 17 and hence I call it a debrief because for me a debrief is
 18 going over who was there, what did they do, how did they do
 19 it. So I think I have indicated it was my usage of the
 20 word "debriefing."
 21 CHAIRPERSON: But certainly if the
 22 exercise that you envisaged would take place had taken
 23 place, then a debriefing in terms of the standing orders
 24 wouldn't have been necessary because it would in effect
 25 have been done, is that right?

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1 GENERAL NAIDOO: That's possible.
 2 CHAIRPERSON: Is it possible or is it so?
 3 GENERAL NAIDOO: Well, if – when I say
 4 possible I mean then if we had complied with all the
 5 requirements, yes, okay.
 6 MR CHASKALSON SC: What are the
 7 additional requirements in the standing order that would go
 8 beyond what you had in mind for your debriefing?
 9 GENERAL NAIDOO: Chair, my understanding,
 10 if we wanted to comply with everything we would have then
 11 conducted some sort of SWOT analysis and put in some place,
 12 some remedial plan, et cetera, those kinds of things. As I
 13 said, there were several parallel processes that were
 14 running which, as far as I'm concerned, did not allow us to
 15 do these things, yes.
 16 CHAIRPERSON: In the preparation for the
 17 Commission –
 18 GENERAL NAIDOO: Yes.
 19 CHAIRPERSON: - it would have been
 20 sensible for the SAPS to have come to the Commission and
 21 said, look here, we've looked at it now, gathered all the
 22 information we can about what happened, we've come to the
 23 conclusion that certain lessons have been learnt, these are
 24 the lessons we've learnt and this will help the Commission
 25 in approaching the matter. So the exercise you're talking

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1 about would have been a useful exercise to perform for the
 2 benefit of the Commission, do you agree with that?
 3 GENERAL NAIDOO: No, true, Chair. That
 4 is true but I think the mindset at that stage – I'm now
 5 just generalising, I'm not indicating a specific individual
 6 but the mindset at that stage I think was that there's a
 7 Commission appointed which would probably give us a more
 8 objective view of what we have done and it's lifespan was –
 9 remember at that stage it was indicated within four months
 10 we'll be finished. So it did not seem unreasonable when
 11 they indicated but you know what, let us rather focus on
 12 having everything available because I think a more
 13 objective process will guide us in terms of these things.
 14 So yes, what you're saying is also a possibility but what
 15 I'm communicating is the thinking at that time.
 16 MR CHASKALSON SC: Major –
 17 CHAIRPERSON: When you say the thinking
 18 at that time do you mean the thinking on the 25th of August
 19 or do you mean the thinking as the conference progressed?
 20 GENERAL NAIDOO: Chair, I think the
 21 problem or the issue that, where we evolved to where we
 22 are, was when we arrived at Roots. Remember we did ask
 23 everybody to come, bring everything that you have so that
 24 we could start a process of preserving the evidence. We
 25 appointed a person who, the only thing that he heard about

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1 the incident at Marikana was what he saw on the news, to
 2 come and chair and facilitate the process and we then gave
 3 him a team of people who could write, Colonel Visser and
 4 his work study officers, to assist to write the narrative
 5 and the report but at that stage we didn't call it a
 6 narrative and a presentation. So these are the things that
 7 obviously, before we decided okay, there's going to be a
 8 presentation and narrative, I think this is how we arrived
 9 at it, through a process of how do we go forward, what is
 10 it we want to do.

11 MR CHASKALSON SC: But Major-General, it
 12 seems to me that the presentation and the narrative were
 13 always contemplated as assisting the Commission,
 14 preparation for the Commission. This is what you were
 15 going to present to the Commission to tell the Commission
 16 what had happened at Marikana, is that not correct?

17 GENERAL NAIDOO: The presentation at
 18 Roots, yes.

19 MR CHASKALSON SC: So the presentation
 20 was always about preparation for the Commission.

21 GENERAL NAIDOO: Or the presentation and
 22 the narrative was about –

23 MR CHASKALSON SC: And the narrative.

24 GENERAL NAIDOO: Correct.

25 MR CHASKALSON SC: I'm not distinguishing

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1 between the two in these regards, but the call-up
 2 contemplated more than just preparation for the Commission,
 3 it contemplated two separate things. The one was
 4 preparation for the Commission, the other was debriefing.
 5 Now, I understand that you say over time a certain view was
 6 formed about how best to use the Roots opportunity but I'm
 7 interested now in what you had in mind when you sent out
 8 the call-up, not what ultimately turned out to be the
 9 agreed best way to use Roots but when you sent out the
 10 call-up what did you have in mind?

11 GENERAL NAIDOO: Chair, as I indicated,
 12 the reason that we had the, or we decided to have the time
 13 at Roots, was to – before the people that were involved in
 14 the incident at Marikana dispersed, to have everybody and
 15 ensure that we consolidate everything that's available.
 16 For me, as I indicated, not in terms of the standing orders
 17 and the procedures, for me, I regarded that as a debriefing
 18 saying who was where, what did you do, how many shots did
 19 you fire, did you arrest, who did you arrest, et cetera. I
 20 considered that as a form of debriefing as well, so I
 21 already testified when I indicated to the person assisting
 22 me that we're calling them up because we have this
 23 debriefing to do to prepare for the Commission, the person
 24 who assisted me put the thing as I told her to because I
 25 refer, I regard that as a debriefing – not in a sense of

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1 the standing orders.

2 MR CHASKALSON SC: But Major-General, it
 3 wasn't just you because if we go down GGG3 we see a
 4 separate call-up at a later stage with the same heading
 5 from Major-General Mpembe. Can we just go down? Keep
 6 going down. That's your call-up. Can we go lower down?
 7 Now this will be Major-General Mpembe's call-up and that
 8 too is a debriefing and preparation for the judicial
 9 Commission of Inquiry. Go further down and we'll see – so
 10 there's Major-General Mpembe issuing that call-up as late
 11 as the 29th, which is in fact a day after Roots has started.
 12 Now he still seems to be talking about a debriefing.
 13 Obviously you can't speak to what he would have had in mind
 14 in terms of a debriefing because –

15 GENERAL NAIDOO: Chair, maybe I can help.
 16 You'll see and maybe we should check the third document
 17 before I respond –

18 MR CHASKALSON SC: The third is General
 19 Mbombo and that's –

20 GENERAL NAIDOO: And you will see a
 21 commonality is, the person that I tasked to arrange the
 22 facilities is the same person in all three. So I spoke to
 23 him when we did the first call-up and I indicated, look, we
 24 want to have this session to debrief and prepare for the
 25 Commission. So the fact that the others were signatories

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1 does not indicate that they had the same state of mind as
 2 me. All it means is the person that I tasked to draw up
 3 the letters and who he took the letters to be signed by,
 4 signed it. There's no discrepancy because it's an
 5 extension of exactly what we originally called up people.
 6 Whilst we were at the session it was realised that we have
 7 maybe excluded certain people and they may have information
 8 and they were called up. that's my understanding of what
 9 we have before us.

10 MR CHASKALSON SC: So you're saying that
 11 if we go down again to Lieutenant-General Mbombo's
 12 signature, I forget the date, 30th of August, that you're
 13 essentially saying that Lieutenant-General Mbombo and
 14 Major-General Mpembe essentially signed a pro forma
 15 document almost, which had the old heading on it even
 16 though the purpose had possibly changed.

17 GENERAL NAIDOO: Chair, the second two
 18 call-ups are mainly extensions or additions to the original
 19 call-up so I don't foresee the person who typed the
 20 document for us would have thought of changing anything
 21 from the original call-up. For him essentially as an
 22 administrator, nothing had changed. The reasons that I had
 23 given him had not changed. He was not a participant in the
 24 activities at Roots, as a person who had been at Marikana.
 25 He was simply arranging the logistics of it.

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1 MR CHASKALSON SC: I'm not talking about
2 the person who typed it, I'm talking about the person who
3 signed it but you can't speak to that.
4 GENERAL NAIDOO: I can't speak to their
5 state of mind, I can only indicate how I arrived at that
6 heading.
7 MR CHASKALSON SC: Now, when did the
8 debriefing component of Roots fall away, as it were?
9 GENERAL NAIDOO: Chair, I testified when
10 we started that morning when everybody came in and they
11 were welcomed, it was then that we were now or we
12 introduced a facilitator who I had also for the first time
13 met, a Brigadier from head office, and we basically
14 indicated what our situation was and what we were looking
15 at. So we tried to find in our orientation there, how we
16 would go about it and that's eventually how we arrived at
17 having a presentation and a narrative.
18 MR CHASKALSON SC: But what did you
19 indicate to Colonel Visser and I take it Colonel Visser is
20 the facilitator to whom you refer.
21 GENERAL NAIDOO: No, no.
22 CHAIRPERSON: He talked about a Brigadier
23 from head office. He said Colonel Visser comes from the
24 North-West Province, am I right?
25 MR CHASKALSON SC: Sorry –

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1 CHAIRPERSON: Who was the Brigadier?
2 GENERAL NAIDOO: Brigadier Van Graan, I
3 think, he acted as facilitator. So he had no knowledge of
4 what our situation was, et cetera. We had to, in that
5 meeting, indicate to him that this is where we were and
6 this is why we have met.
7 MR CHASKALSON SC: But what did you say,
8 this is why we have met? What did he understand the
9 purpose that he was going to facilitate?
10 GENERAL NAIDOO: Chair, we indicated to
11 him that we had a Commission of Inquiry that's been
12 announced to look into the incident at Marikana on that
13 period and as the SAPS we needed to consolidate and prepare
14 our information – excuse me - so that both, firstly our,
15 the teams that will be appointed to represent the SAPS can
16 be brought up to speed as soon as they approach or come to
17 us and, secondly, that we will preserve the information
18 because this Commission will require that information.
19 MR CHASKALSON SC: So the Brigadier by
20 that stage was facilitating a purpose that was directed
21 only towards the Commission and your legal representatives.
22 GENERAL NAIDOO: That was essentially,
23 that was – ja, the thing that he focused on.
24 MR CHASKALSON SC: And that departed
25 slightly from your original intention to have a debriefing

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1 element as well?
2 GENERAL NAIDOO: Chair, as I indicated,
3 the word, the use of the word “debrief” was mine and based
4 on my presumption of what we were doing there, it sounded
5 like we were going to have a debrief.
6 MR CHASKALSON SC: So – I'm slightly
7 confused, Major-General. Are you saying that that brief
8 that you gave to Brigadier Van Graan included within it
9 what you had contemplated as your debrief?
10 GENERAL NAIDOO: No, nowhere did I
11 suggest that, Chair. What I said was when compiling the
12 call-up instruction I indicated to the official that was
13 assisting me, look, that we need to call these people up
14 and we need to arrange the logistics of people that will be
15 coming to Potchefstroom to conduct a debriefing to prepare
16 for the Commission. So he took it as I said it and that's
17 the document that we have before us.
18 CHAIRPERSON: I take it the major respect
19 in which what happened at Roots differed from an exercise
20 which included a debriefing –
21 GENERAL NAIDOO: Chair –
22 CHAIRPERSON: Let me finish. The major
23 respect in which what happened at Roots differed from an
24 exercise incorporating a debriefing in the ordinary sense,
25 was that no attempt was made to present the lessons that

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1 the SAPS themselves had learnt from the exercise. Is that
2 right?
3 GENERAL NAIDOO: Chair, yes. And as I
4 indicated there were so many parallel processes. We did
5 not want to also confuse ourselves. At that stage when we
6 got to Roots we were also informed that a policy review
7 team had been appointed and would also be requesting us to
8 provide certain information to them. So you understand we
9 wanted, our primary objective, to preserve this evidence
10 and get it, then we have a policy review team, so when we
11 adopted the position on that Monday when we started we said
12 let us preserve this thing into a presentation, a date base
13 of information and the narrative and that's what we did.
14 CHAIRPERSON: So it was in effect decided
15 that the exercise of working out the lessons that the SAPS
16 had learnt would not be undertaken at Roots, is that what
17 you say?
18 GENERAL NAIDOO: Chair, yes, because as I
19 indicated, parallel to this we learnt on that Monday that
20 there's a policy review task team that would be requiring
21 us to also come and be interviewed by them and that
22 happened concurrently with Roots as well.
23 CHAIRPERSON: And they would, one of
24 their tasks, as I understand it from the evidence we've
25 had, was to see to what extent the SAPS policy and standing

<p style="text-align: right;">Page 23697</p> <p>1 orders and that kind of thing had not been complied with, 2 is that right?</p> <p>3 GENERAL NAIDOO: Well, yes. It was 4 broadly at that stage we were just told it was a policy 5 review team. We had no clear understanding of their 6 mandate.</p> <p>7 CHAIRPERSON: Yes, but was it, was there 8 any discussion on the question of, along the lines, the 9 following lines – what are we going to say to the 10 Commission? The Commission, if we ask the Commission to 11 tell us the lessons that it thinks we should have learnt, 12 aren't we going to have to have some input from our side as 13 to what lessons we have actually learnt ourselves as far as 14 we can see the situation? Was that not discussed?</p> <p>15 GENERAL NAIDOO: Chair, no. As I 16 indicated, at some stage the discussion even went as far as 17 saying this Commission will definitely assist in terms of 18 giving us an independent review of our current situation 19 but as I told you, my understanding, if we had conducted a 20 debrief we would have done a SWOT analysis but we did not.</p> <p>21 CHAIRPERSON: But wasn't there, to use 22 rather harsh words, but wasn't it in retrospect perhaps a 23 little bit fatuous to think that this Commission would give 24 the answers, give the lessons without the benefit of input 25 from the police as to what lessons they think they've</p>	<p style="text-align: right;">Page 23699</p> <p>1 what we should have done. It's also a from of lessons 2 learnt. I'm not in any way defending the fact that we 3 could have and we should have, but I'm saying we did not.</p> <p>4 CHAIRPERSON: No, I understand and of 5 course we only got to learn of this parallel process at a 6 fairly late stage in the Commission and we only got the 7 report that that body prepared after we asked for it. And 8 as far as I can recall it's not very clear or detailed in 9 respect of the lessons that the eminent persons that too 10 part in that exercise thought the SAPS has learnt. Would 11 you agree with that? Have you not seen their report?</p> <p>12 GENERAL NAIDOO: Chair, I don't know if 13 I've seen their final report, but I think a member of that 14 committee testified very early on in this Commission and –</p> <p>15 CHAIRPERSON: And he didn't tell us that 16 he'd taken part in the process –</p> <p>17 GENERAL NAIDOO: I understand.</p> <p>18 CHAIRPERSON: That fact he didn't mention 19 at all and he certainly didn't tell us the results of his 20 exercise.</p> <p>21 MR CHASKALSON SC: Major-General, did you 22 expect that police review to look critically at what may 23 have gone wrong at Marikana?</p> <p>24 GENERAL NAIDOO: Chair, no I expected 25 that we as the SAPS and then also this Commission would</p>
<p style="text-align: right;">Page 23698</p> <p>1 learnt?</p> <p>2 GENERAL NAIDOO: Chair, that is true. It 3 would and I think currently we are conducting some exercise 4 to have a look at that as well.</p> <p>5 CHAIRPERSON: Yes, I understand that but 6 if you thought we were going to finish our job in four 7 months, which was a thought which, as it turned out, was 8 totally unrealistic regard being had to the nature of the 9 inquiry involved in the terms of reference but I'm not 10 being critical, I understand how these things happen but at 11 the time it was thought that we would come up, after four 12 months, with a report. It was thought that after four 13 months we would be able to say what the lessons are that 14 the SAPS should have learnt. Now regard being had to that 15 time frame, wasn't it – again to use that harsh word which 16 I think you will agree with me.</p> <p>17 [11:16] Wasn't it a bit fatuous in retrospect to think 18 that without the benefit of input from the police as to 19 what lessons they think they have learned for us to come 20 along and say what lessons they should have learnt?</p> <p>21 GENERAL NAIDOO: Chair, that's why I 22 indicated the parallel processes perhaps added to this 23 confusion because we were informed there's a policy review 24 team and you know review in terms of that is also 25 indicative of look this is what the policy says and this is</p>	<p style="text-align: right;">Page 23700</p> <p>1 look critically. As I indicated, this Commission would 2 provide us with an independent view of what happened and 3 yes we are bound to do some introspection. And that's the 4 fact.</p> <p>5 CHAIRPERSON: We asked for lessons the 6 SAPS learnt, we still haven't got them a year and a half 7 after the 16th of August and we've now been told the 8 document's been prepared, not internally the police but by 9 their expert, Mr De Rover, so I don't quite understand 10 that, but I don't think I can expect you to answer, I have 11 to put that to counsel at a later stage. Unless you have 12 some comment to make on – a reaction to what I've said.</p> <p>13 GENERAL NAIDOO: Chair, no. I think 14 we'll leave that to our counsel.</p> <p>15 MR CHASKALSON SC: Now, Major-General, 16 the brief that was ultimately given to Colonel Visser, was 17 it a brief to tell the whole story about – or to present 18 all of the facts, all of the relevant facts that SAPS knew 19 about Marikana so that the Commission could have access to 20 those facts and that information. Or was it a brief to 21 present the case that the SAPS would try to advance in 22 Marikana before this Commission?</p> <p>23 Do you understand the distinction between the 24 two? The one is a purely objective exercise, the other is 25 a partisan exercise designed to protect the interests of</p>

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1 the SAPS.

2 GENERAL NAIDOO: Chair, as I indicated to

3 you, one of the primary objectives of this exercise was to

4 conserve the information as it was, or preserve the

5 information as it was. At the time when we started with

6 the presentation or even up to the time we completed the

7 presentation we had not yet briefed our legal team. So we

8 finished the presentation and so if the inference is that

9 we were preparing a partisan one it was only partisan in

10 the fact that it was compiled by people that were involved

11 in the incident, based on the accounts of the people that

12 were involved in the incident and not some investigation as

13 such. But otherwise it was intended to put together all

14 the information that we had assimilated in a fashion that

15 could be explained, that's all.

16 MR CHASKALSON SC: So Colonel Visser was

17 given a brief essentially to package together all relevant

18 information that had been made available to him in the form

19 that he thought would best convey the facts to the

20 Commission.

21 GENERAL NAIDOO: That was his mandate and

22 by way of training and skills that's the way he was

23 supposed to operate.

24 MR CHASKALSON SC: And the SAPS members

25 at the commission from generals down to constables knew

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1 that all relevant information, whether good or bad for SAPS

2 ought to be made available to Colonel Visser so that he

3 could perform his function.

4 GENERAL NAIDOO: That is correct, Chair.

5 MR CHASKALSON SC: Now, Major-General, I

6 have a great deal of questions to ask you about Roots, but

7 many of them flow from the statement of Brigadier Pretorius

8 that was given to us yesterday and if we were going to

9 finish today I would, if we had the possibility of

10 finishing my cross-examination of you today I would try to

11 deal with it nonetheless. But in view of the fact that

12 we've had a shortened day and we're only going to – well my

13 cross-examination's only going to finish on Monday now –

14 CHAIRPERSON: If you're cross-examining

15 on Monday you'll be cross-examining to an empty chamber.

16 But I take it –

17 MR CHASKALSON SC: That's how I like it

18 most –

19 CHAIRPERSON: - the TV people will come

20 and record it we won't.

21 MR CHASKALSON SC: Even better,

22 Chairperson. On Tuesday, so I'm going to leave Roots at

23 this point. You'll have an opportunity to have a look at

24 Brigadier Pretorius's statement, the parties will get it,

25 the commissioners will get and I'll come back to the issues

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1 on Tuesday. If we can now go back to what was going on at

2 scene 2, when you arrived at scene 2 which will be a

3 separate chapter of this cross-examination. Now the first

4 issue I want to canvas with you is your – is one the issues

5 flowing from your decision to move in to scene 2? The

6 operational commander for the operation was Brigadier

7 Calitz, that's common cause. You're of a higher rank than

8 Brigadier Calitz, does it not pose operational difficulties

9 if someone of a higher rank moves into an operation where

10 his movements and actions are supposed to be co-ordinated

11 and to a certain extent directed by the operational

12 commander of a lower rank?

13 GENERAL NAIDOO: Chair, two things. I

14 think one of the issues that we need to remember is there

15 are – in certain circumstances that the issue of rank is

16 not the main determining criteria to say who would be the

17 correct person to do this. One of them being in the issues

18 where crowd management activities would be taken. The

19 other one for instance the conducting of particular

20 activities at a crime scene. For instance in an incident

21 where there's an explosion you will very well get a

22 sergeant arriving and taking charge of the scene and the

23 station commander could be a brigadier. By virtue of the

24 skills that required to do a particular thing, that's

25 speaking in terms of our policies. And practically I was

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1 not on the terrain of Brigadier Calitz, I was in reserve to

2 provide any support that was required by the main

3 operation. So I do not see a conflict, I have had many

4 instances myself and as well in the broader police we have

5 issues that need to be addressed. The public order police

6 commander comes in, he's a lieutenant-colonel, the cluster

7 commander who's operationally responsible for a particular

8 area has to then step back and give space to the public

9 order police commander to take and do his job. And he has

10 to support that person. So this is not something that's

11 unique to the Operation Marikana, it's happening every day

12 where have particular situations and a particular expert

13 has to handle that situation.

14 MR CHASKALSON SC: And Brigadier Calitz

15 's expertise is obviously public order policing?

16 GENERAL NAIDOO: That's correct, Chair.

17 MR CHASKALSON SC: So when you moved into

18 scene 2 did you see it still as essentially a public order

19 policing situation?

20 GENERAL NAIDOO: Chair, two things.

21 Number 2, I indicated the reason why I ended up where I

22 was. Number 2, I realised at that stage what we were

23 dealing with there was no longer purely crowd management,

24 we were now dealing with a tactical situation because there

25 were people. I already testified, the numbers I was not

<p style="text-align: right;">Page 23705</p> <p>1 aware that were entrenched in a particular place, that was 2 already contained in the planning for the use of tactical 3 units. 4 MR CHASKALSON SC: But wouldn't that 5 aggravate the awkwardness of Brigadier Calitz essentially 6 ordering you what to do or where to go if it now was 7 outside his area, the expertise? We're dealing with a 8 tactical situation and the operational commander is a 9 brigadier, a general's come in to assist the tactical 10 situation and the operational commander's expected to issue 11 orders to the general. 12 GENERAL NAIDOO: That situation did not 13 arise and in no way was Brigadier Calitz undermined in 14 terms of is responsibilities as it's indicated when we 15 eventually met at scene 2. We had assessed the situation 16 and he indicated look I should stay there make sure that 17 tel relevant units do what they had to do and hand over and 18 he took the prisoners off. So I don't see any conflict 19 there. I think one would have to be sufficiently aware of 20 what our policies say and what's required to do the job. 21 And if we let a little thing like that come in between our 22 effectiveness of functioning as an organisation then 23 obviously we're going to have problems. I can't say that 24 I'm a general, I should not sit at forward holding area 1, 25 I want to sit at an air-conditioned office at the JOC.</p>	<p style="text-align: right;">Page 23707</p> <p>1 in your evidence in chief you had in fact not expected to 2 find him at koppie 3 when you got here. Brigadier Calitz 3 "Korrek, Mnr Die Voorsitter." So Brigadier Calitz's 4 testimony was that he didn't expect you at koppie 3. He 5 arrived at koppie 3 and found you in command and that you 6 had taken control. Do you think you agree with this 7 evidence? 8 GENERAL NAIDOO: Chair, that's correct. 9 MR CHASKALSON SC: So you had taken 10 control as the senior officer at koppie 3. 11 GENERAL NAIDOO: Chair, I already 12 indicated when I arrived what I found. I also indicated 13 what I've instructed, so I don't think I'm disputing 14 anything. 15 MR CHASKALSON SC: And that meant 16 exercising command and control over the tactical troops 17 that were being employed at koppie 3 including the 18 specialist groups like the NIU and the STF. 19 GENERAL NAIDOO: That is correct, Chair. 20 MR CHASKALSON SC: So if there were 21 failures of command and control in the operation at koppie 22 3 those are failures which we should hold you responsible 23 for. 24 GENERAL NAIDOO: Chair, at that stage the 25 people that I linked up with and the people that I worked</p>
<p style="text-align: right;">Page 23706</p> <p>1 There was a decision that I was required to go to forward 2 holding area 1 as a major-general and I accepted that my 3 organisation needed me to work there and I complied. 4 MR CHASKALSON SC: Well can I take you to 5 Brigadier Calitz's evidence in this regard? It's at page 6 17877, 17877, I'm afraid I don't have the day to hand. 7 Thanks, if we can start at line 10. Mr Budlender says 8 "Then Brigadier, could we go to paragraph 13 of your first 9 statement GGG13?" My apologies not paragraph 13, paragraph 10 18. So he's reading from Brigadier Calitz's statement. 11 There you say "later I was informed that several of the 12 attacking men were killed. As we were advancing towards 13 the crowd and Nyala vehicles I instructed the members to 14 disembark the vehicles and to effect arrests on the men who 15 were part of the crowd. I later found the arrested 16 suspects at a nearby koppie where Major-General Naidoo was 17 in command." Now is that correct, was Major-General – now 18 is that correct that Major-General Naidoo was in command at 19 koppie 3? Sorry let me take a step back, I take it nearby 20 koppie is koppie 3. Brigadier Calitz "Ek het hier verwys 21 na koppie 3, dit is korrek." Was Major-General Naidoo in 22 command at koppie 3 and Brigadier Calitz "Nie volgens die 23 plan nie, Mnr Die Voorsitter, maar ek het hom aan getref 24 toe ek daar aankom en hy was die meer senior offisier wat 25 dan beheer gevat het by koppie 3." I think that you said</p>	<p style="text-align: right;">Page 23708</p> <p>1 with was the NIU from the position that I found them. So 2 in terms of what we did there after I linked up with them, 3 I would have to take that responsibility, yes. 4 MR CHASKALSON SC: But what about more 5 broadly? You had taken control and there was what appears 6 to be a completely unregulated fire fights with cross fire 7 from at least three sides at the koppie. Was it not 8 incumbent upon you once you had gone in and taken control 9 to exercise some control? 10 GENERAL NAIDOO: Chair, I think we 11 already went over this in terms of annexure L, I think it 12 was page 249 where we indicated the deployment of the 13 people from the different forwarding holding areas. And 14 who were the people that I interacted with whilst I was at 15 koppie 2 and the commanders of the different – the other 16 people. So in terms of people that acted yes, I indicated 17 yes. I take responsibility for their actions. 18 MR CHASKALSON SC: But you don't take 19 responsibility for failing to control the general situation 20 at scene 3. 21 GENERAL NAIDOO: Chair, if I had the 22 ability to command everything at scene 3 I would have. At 23 that stage I dealt with what I saw in front of me. And 24 that I testified to as well. 25 MR CHASKALSON SC: Let me take you to a</p>

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1 passage in Mr White's statement.
 2 CHAIRPERSON: Is it a lengthy passage
 3 because I've been asked to take the tea adjournment now.
 4 I'm in your hands.
 5 MR CHASKALSON SC: It's not a
 6 particularly lengthy statement. We can take the
 7 adjournment but –
 8 CHAIRPERSON: Well let's take the tea
 9 adjournment and then perhaps you can give him the passage
 10 to look at in the meanwhile so he can marshal his thoughts.
 11 MR CHASKALSON SC: It's JJJ178 on page
 12 119, towards the bottom of that page near little paragraph
 13 2. If we're going to take the tea break maybe we can just
 14 keep that up. Can we spill over to the next page because
 15 it's - no sorry drop down, it's just that paragraph that I
 16 would like the Brigadier to look at and maybe then we
 17 should take the tea break and reconvene to address this
 18 after the tea break.
 19 CHAIRPERSON: All right we'll now take
 20 the adjournment. I think we must try to get back within 15
 21 minutes please. That should not be impossible.
 22 [COMMISSION ADJOURNS COMMISSION RESUMES]
 23 [11:53] CHAIRPERSON: The Commission resumes. As
 24 I indicated, we have – I'm sorry about it because it means
 25 we've got another 35 minutes but for logistic reasons,

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1 there's nothing I can do about it, we have to stop at half
 2 past 12 but you're still under oath, Major-General.
 3 GENERAL NAIDOO: Still under oath, Chair.
 4 CHAIRPERSON: Mr Chaskalson, you're still
 5 cross-examining, I take it. You were looking at a passage
 6 in Mr White's report. You were looking at this passage in
 7 Mr White's report.
 8 GENERAL NAIDOO: s.u.o.
 9 CROSS-EXAMINATION BY MR CHASKALSON SC (CONTD.):
 10 Major-General, have you read the passage?
 11 GENERAL NAIDOO: Chair, yes, I'm just
 12 going back to it.
 13 MR CHASKALSON SC: Sorry, Major-General.
 14 Major-General, Gary White is a retired experienced public
 15 order police officer from Great Britain with experience in
 16 dealing with conflict in Northern Ireland. Here he says,
 17 "At 14:45 in the video Brigadier Calitz is heard saying,
 18 'live fire.' It appears to be a report of live fire rather
 19 than an order. I would have expected that such a report of
 20 live fire in an operation would have immediately been
 21 followed by asking 'all call signs take hard cover where
 22 possible' and then questions to clarify, 'did any call sign
 23 see where exactly the shooting came from? Are you able to
 24 see the gunman?' This is in order to be able to provide
 25 for the protection of officers but the radio communication

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1 moves swiftly onto directing Canters." Now I would suggest
 2 to you that implicit in Gary White's statement is that if a
 3 single episode of fire demands that the police take cover
 4 and assess where the fire is coming from so that steps can
 5 be taken to isolate the problem and deal with it, a free-
 6 for-all of the sort that we had at scene 2 calls for much
 7 more pressing command and control to stop the police
 8 shooting, direct the police to a position of cover and then
 9 isolate the problem.
 10 GENERAL NAIDOO: Chair, I don't
 11 necessarily agree with the proposition that's been put
 12 because we must remember that we have different schools of
 13 thought on how do we handle certain tactical situations and
 14 I'm going to give you a practical example so that maybe I
 15 will illustrate what I'm trying to say based on my
 16 experience in previous jobs. If you get to a situation, in
 17 some situations where there is live fire such as what we
 18 are saying – an example, the Israelis in terms of their
 19 methodology would urge everybody, down, down, down and the
 20 Cubans have another – I'm just using now a rough analogy –
 21 the Cubans have another approach to it, they go forward.
 22 So when we're looking, I don't know what's in Mr White's
 23 frame of mind and what's his background in terms of these
 24 things and tactical with regard to this, but when I
 25 indicated and when we were talking about the approach to

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1 scene 2 I indicated that we were moving forward in a
 2 tactical process, et cetera, based on how we were trained
 3 in terms of approaching scenes where there is shooting. So
 4 by saying Mr White suggests that everybody should take
 5 cover, I think it's situational appropriate and depending
 6 on the school of training, et cetera, that each particular
 7 unit or police service or police force utilises at time.
 8 So to say that Mr White has put this up and say it's the
 9 gospel, that's what the South African Police would do at
 10 most situations is not necessarily true. It may work maybe
 11 in an urban setting where the environment will allow such a
 12 thing, it may not. I can't speculate into that. I can
 13 input into what I experienced and how I responded.
 14 MR CHASKALSON SC: Major-General, do
 15 either Cuba or Israel conduct their policing operations
 16 subject to a bill of rights that makes the fundamental
 17 right to life paramount?
 18 GENERAL NAIDOO: Chair, what I would want
 19 to say is that at some stage or the other we have had
 20 interaction with these countries, this is how I picked up
 21 this knowledge, in terms of training police officials and I
 22 used it, I clearly indicated, as an illustration of why I
 23 would not want to say what is being put there as being the
 24 cast in stone approach to a particular incident. It has to
 25 be situational appropriate and it's affected by how the

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1 various different units are trained.
 2 MR CHASKALSON SC: Major-General, can you
 3 try to answer my question? To your knowledge, do either
 4 Israel or Cuba conduct their policing operations subject to
 5 a bill of rights that makes the fundamental right to life
 6 paramount?
 7 GENERAL NAIDOO: Chair, I am not aware of
 8 the legal framework of either country specifically so I
 9 won't be able to give that answer.
 10 MR CHASKALSON SC: Are you aware whether
 11 the South African Police Service conduct its policing
 12 operations subject to a constitution which makes the
 13 fundamental right to life paramount?
 14 GENERAL NAIDOO: I am aware of that.
 15 MR CHASKALSON SC: So although it would
 16 be a feasible way to sort out a problem at the koppie by
 17 throwing a few hand grenades into the koppie, you wouldn't
 18 do that, would you?
 19 GENERAL NAIDOO: And we did not.
 20 MR CHASKALSON SC: No, but you did kill
 21 17 people.
 22 GENERAL NAIDOO: As far as I can recall,
 23 Chair, there were 14 people that were recovered at koppie
 24 2.
 25 MR CHASKALSON SC: And another three who

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1 subsequently died in hospital. Major-General, when you
 2 approached koppie 2 and joined up with Colonel Modiba, were
 3 you aware that in terms of your constitutional duty and in
 4 terms of standing order 252, 262, you were obliged to seek
 5 a solution which would minimise the risk of loss of life.
 6 GENERAL NAIDOO: That is correct, Chair.
 7 MR CHASKALSON SC: Now would you not
 8 agree that the solution suggested by Gary White is the most
 9 practical way of minimising the risk of loss of life?
 10 GENERAL NAIDOO: Chair, can I understand
 11 which solution we're talking about?
 12 MR CHASKALSON SC: When confronted with
 13 fire, to take cover or retreat until it can be established
 14 where exactly the fire is coming from, at which point a
 15 specific and focused attempt to deal with that fire can be
 16 organised.
 17 GENERAL NAIDOO: Chair, I think at this
 18 stage this is what we did, we contained the scene and then
 19 used the appropriate people to sweep the scene.
 20 MR CHASKALSON SC: Major-General, you
 21 fired close to 300 shots of live ammunition into the scene,
 22 killing 17 people. Let's not forget about that. Are you
 23 suggesting that what you did was an adequate solution to
 24 the problem?
 25 GENERAL NAIDOO: Chair, what I'm

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1 indicating is that when we arrived there a tactical
 2 situation existed and the relevant tactical units tried to
 3 address the issue.
 4 CHAIRPERSON: - *11:53-09/19 the relevant
 5 tactical units - the K9 people and they fired lots of shots
 6 from behind the special task force whose commander then
 7 told them to take cover. Are you suggesting that every one
 8 of the K9 people who fired the shots to which Colonel
 9 Gaffley refers was focusing his fire on some person whom he
 10 could see to be a gunman?
 11 GENERAL NAIDOO: Chair, I'm in no way
 12 suggesting that and I think we dealt with that in previous
 13 testimony when we dealt with individual statements but I
 14 think to say that the K9, on their arrival at the scene,
 15 contributed the most, I think the inference made, Chair,
 16 during, at that stage was that the K9 fired the most shots
 17 at the scene, was incorrect and I think at some stage it
 18 was also led that maybe I should have let public order
 19 police deal with that particular issue. So what I'm
 20 indicating is that based on the situation that I was faced
 21 with, I utilised the NIU and as well as the K9 to try and
 22 address the situation to the best with the resources I had.
 23 CHAIRPERSON: Well, the K9 people, you
 24 know I wasn't suggesting that they fired most of the shots
 25 but I was aware of what's in exhibit L slide 257 and what

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1 we see there is the following, that the K9 people who were
 2 under your command, I think, fired two warning shots, they
 3 fired 72 shots towards, 27 were 9 millimetre shots, 9
 4 millimetre - I take it they are pistols, are they - and 45
 5 were 5.56 millimetres. They fired substantially more 5.56
 6 millimetre bullets towards than the combined bullets fired,
 7 5.56 millimetre bullets fired towards, by the NIU, the TRT
 8 and the POP. So in fact they did fire the most but the
 9 fact of the matter is that 45 shots were fired towards,
 10 5.56 millimetre, 27 9 millimetre, by the K9 people.
 11 Colonel Gaffley has described the way in which a
 12 substantial number of those bullets were fired and that's
 13 why I asked you, are you suggesting that the K9 people did
 14 what is described here by Mr White as seeing where the
 15 shooting came from, whether the shortest was able to see
 16 the gunman and then shots were fired in a focused manner to
 17 endeavour to deal with the person who was responsible for
 18 firing? Is that what you're saying?
 19 GENERAL NAIDOO: Sorry, Chair, I think
 20 let's first deal with the issue of the number of rounds. I
 21 concede that there is a presentation there but the
 22 Commission is aware and it's one of the exhibits, that
 23 there is a discharge list where the information was
 24 purified and on the discharge list, according to the
 25 discharge list the K9 fired 39 R5 rounds whereas the public

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1 order police fired 12 R5 rounds and the TRT fired 44 R5
 2 rounds, the national intervention unit fired 103 R5 rounds.
 3 MR CHASKALSON SC: Major-General, if I
 4 can ask a follow-up question –
 5 CHAIRPERSON: Is that towards and
 6 warning?
 7 GENERAL NAIDOO: The total according to –
 8 CHAIRPERSON: I mentioned towards.
 9 GENERAL NAIDOO: Chair, I –
 10 CHAIRPERSON: I take it a warning shot is
 11 either in the ground or it's in the sky. A shot towards is
 12 a shot that's got a much greater chance of injuring or
 13 killing someone, is that right?
 14 GENERAL NAIDOO: Chair, yes, but if we –
 15 we looked at for instance the national intervention unit
 16 that shot when I got to them, it will be remembered they
 17 indicated that they fired warning shots and which probably
 18 ricocheted and all those explanations. So even in the
 19 instance of firing warning shots it's probable that, you
 20 know, you can cause injury or death.
 21 MR CHASKALSON SC: Doesn't that emphasise
 22 the point that when there is firing taking place the police
 23 should not go forward into a fire fight but should rather
 24 take cover, try to isolate the position from where the
 25 firing is coming and then deal with it in a very targeted

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1 and focused manner with their most expert personnel to deal
 2 with it, which in this case would have been the STF?
 3 GENERAL NAIDOO: Chair, I don't
 4 understand because it was alluded previously that we should
 5 have first used the public order police in this situation
 6 before talk of the STF came in and the public order police
 7 at scene 2 fired 12 R5 rounds and 46 9 millimetre rounds,
 8 more 9 millimetre rounds that anybody else and the NIU,
 9 which is also a tactical trained unit, fired 103 R5 rounds
 10 and 12 9 millimetre rounds. So is the suggestion that if
 11 the special task force went in that they would have fired
 12 less rounds with the same threat? I don't know whether we
 13 can make that assessment.
 14 MR CHASKALSON SC: Well, Major –
 15 GENERAL NAIDOO: Also the question that
 16 was asked previously is that, are the K9 people trained to
 17 avoid R5 bullets? I think the principle applies to any
 18 unit when faced with a threat.
 19 MR CHASKALSON SC: Which is why you take
 20 cover or retreat. Major-General, if you had let's say
 21 three shooters inside the koppie, we know you only found
 22 three firearms even though one appears not to have been
 23 used, let's assume there were three, who would you –
 24 CHAIRPERSON: I'm sorry, to be fair to
 25 the witness I don't think he's prepared to make that

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1 assumption and I can understand why, because remember there
 2 was a person with a rifle who was seen as well and he
 3 suggests that that person somehow got away, slipped past
 4 carrying his rifle with him. So I think if you ask, ask
 5 him to assume four, he'll more happily make the assumption.
 6 MR CHASKALSON SC: Let's then –
 7 GENERAL NAIDOO: Chair, I will only, I
 8 will be only able to indicate what we recovered. I mean I
 9 won't be able to project what could have been there. I
 10 said I based our action on what we encountered there but as
 11 to try and assume how many firearms were there and how
 12 many, versus what we recovered, I think I won't be able to
 13 do that.
 14 CHAIRPERSON: Well, must we assume that a
 15 whole batch of people managed to slip past the police who
 16 surrounded the koppie, with firearms and got away with them
 17 without being caught? I suppose that's theoretically
 18 possible but being realistic, it's not very high on the
 19 scale of probability, is it?
 20 GENERAL NAIDOO: Chair –
 21 CHAIRPERSON: I can understand one or two
 22 maybe.
 23 GENERAL NAIDOO: On the issue of the R5,
 24 I don't know, perhaps maybe on the issue of the R5, we've
 25 had a similar case in October of the same year during the

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1 same unrest which spread eventually to other mines and we
 2 had an incident where a member of the public order police
 3 was hacked on his arm, almost off, and his shotgun was
 4 taken. The area was secured before the people could get
 5 away and we could not find the shotgun for two weeks and
 6 after two weeks we found it concealed in the very same side
 7 of the location. We used the dogs, we did all that. So on
 8 the issue of what happened to the R5, as I indicated, I'm
 9 not the only person who saw it but what happened to the R5
 10 or whether there's a possibility of other firearms, I'm not
 11 going to speculate or theorise. I only can indicate what
 12 we found and how I responded to things.
 13 MR CHASKALSON SC: Well, even if you
 14 don't accept the assumption let's take our assumption that
 15 there are three firearms. If you were to order your men to
 16 retreat and to stop firing and to take cover, then all of
 17 the cross-fire that you may have perceived to be miners
 18 shooting at you, would have stopped. Do you accept that?
 19 GENERAL NAIDOO: Chair, there was no
 20 order for the members to shoot, number 1. The order for
 21 the members was to hold their positions, the K9, and most
 22 of the firing by the units such as the NIU had been done
 23 prior to our arrival at the scene. I think we need to
 24 clarify that aspect as well.
 25 MR CHASKALSON SC: So you're now

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1 disavowing responsibility for the shooting of the, or most
 2 of the shooting of the NIU?
 3 GENERAL NAIDOO: No, Chair. I in no way
 4 moved back from what I said originally. I indicated that
 5 when I got to the NIU I instructed them on a particular
 6 action. What I'm indicating is that there was an
 7 indication now that starting with the NIU, had contributed
 8 to some sort of cross-fire at the intervention that we did
 9 when we did it. What I'm indicating is before we even
 10 arrived at where the NIU was, they had already fired many
 11 rounds, there were already bodies lying there and I would
 12 want that to be clarified. I am not moving back from what
 13 we said and what we did.
 14 MR SEMENYA SC: Chair, can I for the
 15 record say, as I understand the – and I don't know where
 16 this line of cross-examination is going but as I understand
 17 the law, there is a litany of cases that tell us how
 18 insidious hindsight is. The inquiry is not whether or not
 19 –
 20 [12:13] MR CHASKALSON SC: Mr Chairperson, I
 21 don't want to interrupt my learned friend but this is not
 22 an appropriate objection. He can make this argument in
 23 argument. It is not to lend the witness some assistance at
 24 this point.
 25 CHAIRPERSON: [Microphone off, inaudible]

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1 - lend the witness some assistance. What you are doing is
 2 you're putting to him what Mr White says should have been
 3 done, that's what is being debated. Whether at the end of
 4 the day the law requires what Mr White says should be done
 5 to be done is a matter that can be debated at the end of
 6 the day –
 7 MR CHASKALSON SC: Indeed, which is why
 8 there should be no objection at this point, Chairperson.
 9 CHAIRPERSON: I can understand the
 10 objection perhaps can't be sustained but I don't think it's
 11 fair to say that he's trying to tell the witness what to
 12 say.
 13 MR SEMENYA SC: Can I articulate my
 14 objection, Chair? It might prove to be without merit. The
 15 inquiry is not to use a premise of known facts, i.e. there
 16 are three firearms, we know them now and scrutinise the
 17 conduct of the witness in the light of that fact. The
 18 question should be would a reasonable man approaching the
 19 environment like the General did, have known that there are
 20 three only firearms in the bush and move from that premise,
 21 not the other way.
 22 CHAIRPERSON: I think there's substance
 23 in that point.
 24 MR CHASKALSON SC: Well, let me –
 25 CHAIRPERSON: Mr Chaskalson, maybe you

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1 should reformulate your question to deal with it.
 2 MR CHASKALSON SC: Well, Major-General,
 3 if as you approach the scene and you hear shooting and you
 4 cannot identify where it is, you acted as Gary White says a
 5 responsible commander would have acted, you indicated that
 6 the police units must seek cover and you essentially shut
 7 down the shooting from the police side so that you can
 8 isolate where the hostile shooting is coming from, would
 9 that not have been the sensible way to approach the matter?
 10 GENERAL NAIDOO: Chair, I think that in
 11 terms of the evidence I've led, I think that's about very
 12 similar to the way we acted. I indicated that the line
 13 move forward to a particular point and then I asked the
 14 members to hold their line. We also discussed the issue
 15 about appropriate cover and I testified in terms of the use
 16 of vehicles for cover, in terms of the tactical training of
 17 the K9 members and yes, so I think in that aspect we did do
 18 that.
 19 MR CHASKALSON SC: But you intervened, it
 20 was the shooting to begin with that prompted you to
 21 intervene.
 22 GENERAL NAIDOO: I don't understand.
 23 MR CHASKALSON SC: You say that your
 24 diversion from your primary function of taking medics to
 25 where people were dying was prompted by hearing shooting at

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1 the koppie.
 2 GENERAL NAIDOO: That is correct, Chair.
 3 MR CHASKALSON SC: And you intervened as
 4 the most senior officer in the field at that stage.
 5 GENERAL NAIDOO: Chair, I think we're
 6 deviating from what I said. I said that there were two
 7 issues that I addressed when I diverted at that point. The
 8 first one is that I would probably have to pass between
 9 where I perceived the shooting to be and the other koppie
 10 to get to my destination and the other issue I said in
 11 terms of police requiring assistance, that that was one of
 12 the concerns, I think was the word I used, in terms of
 13 there was not supposed to be any shooting, leave alone
 14 shooting at that level. I think I've testified to that. I
 15 did not go and take over the thing as the most senior
 16 person, that was the premise that I went there whilst on my
 17 primary objective of trying to get to an indication that
 18 medics were required.
 19 MR CHASKALSON SC: Well, Major-General,
 20 let's look at the movement of your vehicle and for this
 21 MMM9A will give us some times again and if we can now zoom
 22 in around the koppie.
 23 CHAIRPERSON: Which –
 24 MR CHASKALSON SC: Koppie 3.
 25 CHAIRPERSON: 3.

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1 MR CHASKALSON SC: And zoom back a little
 2 bit so that we can get the starting time on the left of the
 3 screen. Your vehicle was in the position that I will mark
 4 now where it was idling, probably within 100 metres of the
 5 koppie, 150 metres of the koppie. Would you accept that as
 6 an accurate estimate, or I'll do a Google Earth measurement
 7 and we can –
 8 CHAIRPERSON: What you did was you
 9 pointed out on the screen a spot just below the letters G
 10 and N, in fact between the letters G and N in the line
 11 which reads "16:12:35 ignition off" and what you pointed
 12 was a spot between, effectively between the G and N in
 13 "ignition" just below the word, if I saw correctly on the
 14 screen.
 15 MR CHASKALSON SC: That's correct,
 16 Chairperson. Now you reached that position at 16:08:05 and
 17 your vehicle was idling in that position for three minutes.
 18 How soon after your vehicle arrived at the scene did you
 19 get out of the vehicle?
 20 GENERAL NAIDOO: Chair, as I indicated, I
 21 was not in the vehicle, I was walking alongside the
 22 vehicle. My driver was driving the vehicle. I have
 23 testified to that effect.
 24 MR CHASKALSON SC: At a certain point, at
 25 16:12:35 your driver switched the vehicle off. Did you

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1 give any instruction in this regard?
 2 GENERAL NAIDOO: No, Chair.
 3 MR CHASKALSON SC: Then we cannot use
 4 these to track your movements, for once.
 5 CHAIRPERSON: Well, in this sense,
 6 depending on the answer to this question, were you walking
 7 next to your vehicle?
 8 GENERAL NAIDOO: That's correct, Chair.
 9 We were, each of us were walking next to our vehicle.
 10 CHAIRPERSON: And were you using your
 11 vehicle as some kind of cover? I know it was a soft
 12 vehicle so the cover wouldn't have been entirely effective
 13 but were you using it as some kind of cover?
 14 GENERAL NAIDOO: Chair, yes, I have
 15 indicated that as well.
 16 MR CHASKALSON SC: We can use your – we
 17 can use these movements to indicate a time period in a
 18 different sense. You arrived at the scene by 16:08:05
 19 CTrack time, which is 16:08:25 roughly ETV time, or your
 20 vehicle had arrived at the scene. Would you have been
 21 alongside the vehicle when it finally stopped?
 22 GENERAL NAIDOO: That's correct, Chair.
 23 MR CHASKALSON SC: And we can work out
 24 when you finally came over the rocks because we know from
 25 other evidence which we'll get to in due course that papa11

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1 was already in its position on the other side of the rocks
 2 when you came over. Papa11 only reached that position at
 3 16:15:01, 16:15:01. So when you came over the rocks and
 4 when the NIU were shooting with you coming over the rocks,
 5 which was witnessed from the people inside papa11, that was
 6 after 16:15:01. So there were at least six and a half
 7 minutes between the point at which you arrived and the
 8 point at which you and the NIU shot, coming over the rocks
 9 – probably more because from the statements of people in
 10 papa11 it doesn't sound like the instant they arrived they
 11 saw you coming over the rocks, that was – it sounds like
 12 there was a gap but at least six and a half minutes. Now
 13 in that six and a half minutes, even before you started
 14 walking to the NIU you say gunshots or bullets kicked up
 15 dust at your feet.
 16 GENERAL NAIDOO: Chair, I think including
 17 some of the statements that we already dealt with confirms
 18 that, yes.
 19 MR CHASKALSON SC: Now, you didn't at
 20 that point think it would be a wise move to try to withdraw
 21 with everybody to a safe position, shut down the SAPS
 22 shooting so that you could identify where the hostile
 23 shooter, if indeed there was one, was positioned?
 24 GENERAL NAIDOO: Chair, I think that was
 25 precisely the reason why I went to the NIU because, as I

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1 already testified, the shooting was coming from where I
 2 could see they were. Hence my testimony earlier to say
 3 that a lot of the shooting of the NIU had already been
 4 finished when I got there.
 5 MR CHASKALSON SC: Sorry, the shooting
 6 was coming from where you could see?
 7 GENERAL NAIDOO: Chair, no. I think the
 8 question – okay, repeat the question?
 9 MR CHASKALSON SC: When you were walking
 10 on foot to get to the NIU, bullets kick up dust in front of
 11 you, you say.
 12 GENERAL NAIDOO: That's correct, Chair.
 13 MR CHASKALSON SC: Now surely at that
 14 point when you realise you are at risk, other SAPS members
 15 are also possibly at risk, the appropriate step to take as
 16 de facto commander is to get to a position of cover, shut
 17 down the SAPS shooting so there's no risk of cross-fire and
 18 so that you're then in a position to identify where the
 19 hostile fire, if there is any hostile fire, is coming from
 20 and to deal with it.
 21 GENERAL NAIDOO: Chair, as I indicated, I
 22 thought that was what I was doing because at that stage, I
 23 already testified that when I moved towards, the firing I
 24 heard which was discussed here at length, was coming from
 25 the area where I saw the NIU was. So getting to the NIU

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1 was, one of the things is we did not exclude the
2 possibility of the gunfire heard coming from them as well,
3 was to establish the reason for the fire and to establish
4 whether I could allow the convoy that was waiting for me to
5 move, to move on. I indicated already when I arrived there
6 that they were in a tactical position, they were under
7 cover and I observed the bodies that had been shot. I
8 think I have testified to all these things. So to answer
9 the question, that was the intention of going to the NIU
10 because at that stage they were the people that I perceived
11 to be doing the shooting as well.

12 MR CHASKALSON SC: And when you got to
13 the NIU was there still shooting all around you at the
14 koppie?

15 GENERAL NAIDOO: Chair, the shots that I
16 indicated that were around us was a couple of rounds that
17 struck the ground in front of us in the ground and when I
18 arrived at NIU there were still shots elsewhere, not
19 exactly where we were, further in the koppie in the
20 background but I could not say clearly at that stage
21 whether it was left or right.

22 MR CHASKALSON SC: And you didn't know
23 whether it was police or hostile strikers.

24 GENERAL NAIDOO: No, I could not say who
25 was shooting and I also did not at that stage perceive the

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1 shooting to be done in our, in the direction that I was in.

2 MR CHASKALSON SC: But you knew there
3 were a whole lot of policemen involved in this operation
4 who may be at risk because of those bullets.

5 GENERAL NAIDOO: Yes, I did.

6 MR CHASKALSON SC: So we get back to the
7 same point, why at that stage did you not take the route
8 suggested by Gary White, which is to shut down the police
9 fire or instruct everybody to take cover, shut down the
10 police fire and then put yourself in a position to identify
11 first of all whether there is any hostile fire and
12 secondly, if there is, to deal with it?

13 GENERAL NAIDOO: Chair, I think I've
14 already mentioned it that at that stage, that the two units
15 that I knew were there or I think – sorry, the two units
16 that I dealt with were the K9 who had taken up position and
17 utilised their vehicles as cover and the second one was the
18 NIU. I indicated I arrived there, they were not shooting
19 at that stage. So in terms of that, yes, the shooting had
20 come to a halt. We were assessing the situation from the
21 NIU side.

22 MR CHASKALSON SC: Well, Major-General,
23 there are two problems with that answer. The first is you
24 knew also that the most expert unit in the SAPS was there
25 too, the STF.

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1 GENERAL NAIDOO: We knew that, I
2 testified to that.

3 MR CHASKALSON SC: You had in fact walked
4 past their armoured vehicle en route to the NIU.

5 GENERAL NAIDOO: Chair, they were parked
6 in front of the line, yes.

7 MR CHASKALSON SC: The second is, a few
8 minutes ago you said that while you were at the NIU you
9 could still hear gunshots, they weren't in your immediate
10 vicinity but they were coming from somewhere around the
11 koppie and you conceded that there was a risk that other
12 police members may be at risk because of these gunshots.

13 GENERAL NAIDOO: Chair, I think we have
14 an interrupted narrative. I was still indicating where I
15 was, what the situation was when I arrived at the NIU. I
16 did not proceed further with the narrative to – but we will
17 get there but I'm indicating I arrived at the NIU and they
18 were not shooting at that stage.

19 CHAIRPERSON: I'd like to ask one
20 question. I think we may have to adjourn after that. The
21 NIU people you say weren't shooting. Were shots still
22 being fired from some other direction?

23 GENERAL NAIDOO: Chair, I have testified
24 that further on somewhere in the koppie I could hear a few
25 shots, yes.

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1 CHAIRPERSON: And I think you've already
2 said that you don't know, didn't know then whether those
3 shots were being fired by SAPS people or by strikers.

4 GENERAL NAIDOO: That is correct, Chair.

5 CHAIRPERSON: Is this perhaps a
6 convenient stage to take the adjournment till Tuesday
7 morning?

8 MR CHASKALSON SC: Yes, Chairperson, if I
9 can just ask the Major-General to, because we – to look at
10 the Brigadier Pretorius statement over the weekend and also
11 to come back with an indication of when he received the
12 National Management Forum minutes of the 15th.

13 GENERAL NAIDOO: I'll do that, Chair.

14 CHAIRPERSON: You also received some
15 documents from the Human Rights Commission.

16 GENERAL NAIDOO: I've done that, Chair.

17 CHAIRPERSON: There are some, there are
18 two things missing –

19 GENERAL NAIDOO: That's right.

20 CHAIRPERSON: - from my copy, but I
21 understand from Ms Le Roux they're likely to be available
22 today so obviously you must get hold of those as well.

23 GENERAL NAIDOO: Chair.

24 CHAIRPERSON: We will adjourn then until
25 9:30 on Tuesday morning.

1 GENERAL NAIDOO: Thank you, Chair.
2 [COMMISSION ADJOURNED]
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