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 266

30 JULY 2014 PAGES 33593 TO 33813



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Page 3359	2	Page 33595
1 [PROCEEDINGS ON 30 JULY 2014]	' 1	At that stage there was no pangas that I could see, I only
2 [09:04] CHAIRPERSON: The Commission resumes. M	2	see knobkerries and sticks.
3 Botes, you're still under oath. Do you want to ask the	3	CHAIRPERSON: Thank you.
4 questions now? Before the cross-examination continues	4	COMMISSIONER HEMRAJ: Now Mr Kellerman
5 Advocate Hemraj would like to ask a question or two.	5	says in his statement that he shot 16 rubber bullets. Now
6 COMMISSIONER HEMRAJ: Mr Botes, there is	6	did you observe any incident which might have precipitated
7 a statement from a Mr Kellerman in a police docket CAS68 of	7	such a shooting?
8 8 of 2012. He talks about intimidation and preventing	8	MR BOTES: Mr Chairman, there was various
 9 employees going to work on the 10th of August in the evening 	_	groups, I think two or three groups from 15 to 20 people in
	10	different groups in front of us where they danced and also
11 you say that you were present during that time at Rowland	11	restricting the guys coming from work. So as soon as they
12 shaft?	12	started throwing us with stones then they engaged with the
13 MR BOTES: Mr Chairman, yes at that stage	13	rubber bullets to the crowd, to the three groups dancing in
14 that was at Rowland shaft when I was called out by Graham	14	front of us.
15 and that was around about 20h00 where directly after that	15	CHAIRPERSON: What did you say about
16 the dispersal took place where we fired rubber shots to the	16	stones?
17 guys.	17	MR BOTES: We warned them to disperse and
18 COMMISSIONER HEMRAJ: Yes I'd be	18	as we approached them to warn and to disperse they start
19 interested in hearing what your observations were about	19	throwing us with stones.
20 these reports of intimidation that was –	20	CHAIRPERSON: They started throwing
21 MR BOTES: Mr Chairman, there were people	21	stones at you people.
22 on their on a walkway from the hostel complex towards the	22	MR BOTES: And that is what activate the
23 shaft, towards the crossing and as they approached I saw	23	engagement with rubber bullets to the –
24 the people dancing, intimidating, they turn back and go	24	CHAIRPERSON: Rubber bullets followed on
25 back to the hostel.	25	-
		D 00504
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1 COMMISSIONER HEMRAJ: What were you	1	MR BOTES: That's correct, Mr Chair.
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		1	
1	Page 33597	1	Page 33599
1 2	of this statement previously, Mr Botes? MR BOTES: Mr Chairman, no.	2	their traditional weapons and charged at the returning workers while shouting at them. At this stage I was
2	COMMISSIONER HEMRAJ: Well perhaps if we	2	standing some 50 metres from the walkway, opposite from the
4	could go earlier up in the statement - just a second.	4	Rowland Crossing, observing the impending charge from the
4 5	CHAIRPERSON: Someone's marked 4.12. Oh	5	striking employees towards the six returning workers. When
6	I see it starts at 4.19. "Upon my arrival at the Rowland	6	the six returning workers saw the oncoming attack they
7	Crossing" no, no, 4.19 that's what I was reading. "Upon my	7	turned around and attempted to flee the area towards the
	arrival at the Rowland Crossing, I was some 100 metres away	8	Rowland shaft territory. At this stage the group of
8	from the striking employees. I could, however, clearly see	9	
9		10	striking employees were running towards the fleeing workers whilst wielding their weapons and shouting. In this moment
10 11	that some of the striking employees were brandishing traditional weapons consisting of mostly pangas, spears and	11	it appeared to me that the group of striking employees
12	knobkerries. During the course of the evening the striking	12	might catch up and head off the fleeing workers. I was
12	employees were singing and dancing. Some groups consisting	13	armed at the time with a Mossberg 12 gauge shotgun with
	of some 20 to 30 striking employees would regularly break		serial number K765244 which I had loaded with low grade,
14		14	-
15	away from the main group and move around the Wonderkop hostel area, intimidating those employees who wanted to	15 16	low density rubber bullets." Would that be AAA, Mr Botes? MR BOTES: No that is rubber bullets.
16	work and effectively preventing them from going to work."	17	CHAIRPERSON: Rubber bullets, oh I see.
17 18	Then the next paragraph please 4.11. "These groups of	18	All right. "Botha and I shouted at the charging group and
19	striking employees would also jeer, taunt, threaten and	19	striking employees to stop. However, they did not respond.
20	swear at us as we were from Lonmin security we were	20	At the time I had no other measures save the use of rubber
20	observing the situation. At approximately 18:45 I noticed	20	bullets by which I could attempt to bring the situation
22	that some of the non striking employees had come off shifts	22	under control. I determined that it was, under the
23	and were walking towards the Wonderkop hostel via the	23	circumstances, safe to fire rubber bullets as there were
24	delegated walkway next to the Rowland Crossing and taxi	24	other pedestrians, onlookers, obscuring my view or the
25	roads. This walkway is often used by the occupants and	25	distance between myself and the charging, striking
20	Todus. This waikway is often asea by the occupants and	20	
	Page 33598		Page 33600
1	Page 33598 visitors at the Wonderkop hostel as a thoroughfare between	1	Page 33600 employees. I could clearly see the surrounding area and I
1 2		1 2	•
	visitors at the Wonderkop hostel as a thoroughfare between		employees. I could clearly see the surrounding area and I
2	visitors at the Wonderkop hostel as a thoroughfare between the hostel and the place where they report for duty." This	2	employees. I could clearly see the surrounding area and I was satisfied that by firing off a rubber bullet no
2 3	visitors at the Wonderkop hostel as a thoroughfare between the hostel and the place where they report for duty." This taxi road is this the one that we called Rowland Street	2 3	employees. I could clearly see the surrounding area and I was satisfied that by firing off a rubber bullet no innocent party would be injured. I had time to fire one
2 3 4	visitors at the Wonderkop hostel as a thoroughfare between the hostel and the place where they report for duty." This taxi road is this the one that we called Rowland Street yesterday?	2 3 4	employees. I could clearly see the surrounding area and I was satisfied that by firing off a rubber bullet no innocent party would be injured. I had time to fire one warning shot with a rubber bullet into the ground, however,
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	Dama 22/04		D 22/02
1	Page 33601 with your recollection of the events as well?	1	Page 33603 MR BOTES: It should be –
2	MR BOTES: Ekskuus –	2	CHAIRPERSON: At least in the complete
3	COMMISSIONER HEMRAJ: Is that consistent	3	form that wasn't shown to us.
4	with the events of that evening?	4	MR BOTES: It should be reported into the
5	MR BOTES: Mr Chairman, that portion	5	occurrence book and also in the discharge shooting reports.
6	happened before I arrived there and after that we engaged	6	We have a specific register that we log all discharges of
7	another session with the dancing group where they did not	7	rounds and fill in discharge report and all those were
8	disperse and after I asked the police to intervene they did	8	filled in afterwards.
9	not. And we went ourselves to warn the people to go out	9	COMMISSIONER HEMRAJ: Mr Chaskalson, can
10	and then they start throwing us with stones.	10	you help with an entry that relates to the – on the
11	COMMISSIONER HEMRAJ: Mr Kellerman does	11	electronic –
12	say in his statement later on that there were similar	12	MR CHASKALSON SC: The only entries are
13	incidents of chasing and threatening workers later in the	13	the ones – the only entries relating to shooting are the
14	evening and it was continued until 22h30. If you'll just	14	ones that we've already discussed and the ones that were
15	scroll down please 4.30.	15	removed.
16	CHAIRPERSON: I'll read 4.30. "Similar	16	COMMISSIONER HEMRAJ: And I couldn't find
17	events occurred during" - sorry perhaps I should start at	17	anything that related to anywhere near 30, even 16 rubber
18	4.29. "Shortly before the Lonmin security backup arrived	18	bullets having been shot. Where am I to find that?
19	Captain Govender and his two police officials withdrew and	19	MR CHASKALSON SC: No if you bear with me
20	left the area. Similar events occurred during the course	20	for a minute. I think there are three separate reports and
21	of the night until approximately 22:30. Groups of armed,	21	if they're dealing with separate incidents we get to quite
22	striking employees would start charging at returning	22	a number that may account for something close to 30, but
23	workers or other employees who had not participated in the	23	I'll call up the document and –
24	unprotected strike actions. As a means to contain the	24	COMMISSIONER HEMRAJ: Thank you.
25	striking employees and protect those employees who were not	25	CHAIRPERSON: That's in the document we
	Page 33602		Page 33604
1	participating in the unprotected strike it was necessary to	1	were looking at yesterday. There were entries which I
1 2	fire rubber bullets at groups of striking employees who	1 2	were looking at yesterday. There were entries which I think you've covered, Mr Chaskalson. The first is at 18:59
	fire rubber bullets at groups of striking employees who were chasing and threatening the non-striking employees and		were looking at yesterday. There were entries which I think you've covered, Mr Chaskalson. The first is at 18:59 PW shot 15 rounds of rubber bullets at them, that's
2 3 4	fire rubber bullets at groups of striking employees who were chasing and threatening the non-striking employees and returning workers. I estimate that I had discharged some	2 3 4	were looking at yesterday. There were entries which I think you've covered, Mr Chaskalson. The first is at 18:59 PW shot 15 rounds of rubber bullets at them, that's commuters. The full entry reads, "GK reported that
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	Page 33605		Page 33607
1	vehicles to transport the people.	1	to say "From discussions I overheard, I'd gathered that
2	COMMISSIONER HEMRAJ: Just on another	2	SAPS had formulated a plan to proceed with disarming the
3	topic. Do all security Lonmin officials, are all of them	3	group at the koppie." Can I ask you first of all when you
4	in possession of a 9 millimetre firearm?	4	were making this comment or this observation what time of
5	MR BOTES: Mr Chairman, not all of them,	5	the morning is this?
6	only those that are found competent and has a license to	6	MR BOTES: Mr Chairman, I think I was
7	possess that firearm. So we issued the firearms to them	7	there before 6 o'clock.
8	and not all of them.	8	MR GOTZ: When you overheard these
9	COMMISSIONER HEMRAJ: So would these two	9	discussions are you not in fact talking about the
10	gentlemen that were killed on the 12th –	10	discussion that occurred at the 6am JOC meeting at which
11	MR BOTES: Mr Kellerman and Botha.	11	you were present?
12	COMMISSIONER HEMRAJ: No, no, no the two	12	MR BOTES: Mr Chairman, yes after that we
13	gentlemen that were killed, Mr Fundi and Mr Mabelane were	13	had discussions with the people talking there and then
14	they –	14	there was a 6 o'clock normal JOCCOM meeting at 6 o'clock
15	MR BOTES: I wasn't aware they had 9	15	where it was discussed. So it was discussed in my presence
16	millimetre pistols with them. I know that there was a	16	that they're going to disarm the people on that specific
17	shotgun with them.	17	day.
18	COMMISSIONER HEMRAJ: Thank you very	18	MR GOTZ: But just so that we're clear,
19	much.	19	Mr Botes, you're saying that you arrived before the JOCCOM
20	CHAIRPERSON: Ms Motloenya, I hope we	20	meeting and you overheard the discussions or perhaps
21	haven't used up any of your material in the questions we	21	participated in the discussions where you gathered that
22	asked.	22	SAPS had formulated a plan to proceed with disarming the
23	MS MOTLOENYA: No Chair, you haven't.	23	group. Is that correct, before the JOCCOM meeting?
24 25	CHAIRPERSON: You may now continue in	24 25	MR BOTES: Mr Chairman, yes as the people
25	your cross-examination.	23	sit there, the senior people sit there they have
_	Page 33606		Page 33608
1	MS MOTLOENYA: Chair, we've considered	1	discussions and obviously when there's discussions taking
2	the last topic overnight and it seems to have fallen away,	2	place I can hear what they discuss and that was the plan
3	so that concludes our cross-examination for the families.	3	that they're going to disarm the people. And that they
4	CHAIRPERSON: I see thank you. Mr Gotz,	4	have the plan and they want to execute the plan today. MR GOTZ: And you did participate in the
5	have you also done some reconsideration overnight or what	5	
6			5 1 1
	is your position?	6	6am JOCCOM meeting, correct?
7	MR GOTZ: I have cut some of my topics,	6 7	6am JOCCOM meeting, correct? MR BOTES: That's correct, Mr Chair.
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	D 00/00		5 00/44
1	Page 33609 MS PILLAY: Chair, it's JJJ168.	1	Page 33611 hours and that was obviously during the night, referring to
2	CHAIRPERSON: There you are, that's the	2	what was experienced and ensued during the night and that
3	information you need.	3	is probably what I meant to give feedback, because General
4	MR GOTZ: Chair, if it can be put up on	4	Annandale would ask what happened through the night, what
5	screen, but I just simply want, I don't want –	5	incidents happened through the night and then we would
6	CHAIRPERSON: Well, let's put it up on	6	normally explain if any criminal activities took place or
7	screen and you know, if you don't put it up on the screen	7	any strike related incidents took place, and that should be
8	and you put something there will be arguments about whether	8	my feedback in the morning meeting. When we have the
9	it's accurate, we waste time. This is what we need, yes.	9	briefing session in the evenings we would then give an
10	Now what particular passage do you want to put?	10	update of the previous 12 hours that happened through the
11	MR GOTZ: Well Chair, I'm afraid I'm	11	day. So my feedback on the JOCCOM meetings is on all
12	unfamiliar with this and I wasn't prepared for this in	12	operation issues from the security side, emergency side,
13	terms of cross-examination. Mr Botes, is it correct that	13	things that we have to give an update to the police that
14	you were asked during the course of that JOCCOM meeting for	14	they are fully aware of the incidents and the threats.
15	your comments on the state of readiness as it were of the	15	With this is also the intelligence that we also ran on our
16	Lonmin Security? Because there is a note that says, well	16	own network and that was also given through in the JOCCOM
17	in the minutes at least, that "Mr Dirk Botes indicated that	17	meetings if there's threats from out the striker groups
18	no serious challenges are being experienced in relation to	18	where they're going to attack or whatever the cause of
19	Lonmin Security."	19	intelligence is.
20	CHAIRPERSON: Sorry, Mr Gotz, before we	20	MR GOTZ: When you say that no serious
21	carry on, I imagine if there is such an entry in the	21	challenges are being experienced, were you not aware of any
22	redacted minutes there's probably no reason to think it's	22	incidents for some 48 hours before you giving this
23	inaccurate. What's the exhibit number of the – sorry, TT4.	23	information? Are there incidents that you are aware of, of
24	Yes, I know it was TT something. Could we have a look at	24	violence, intimidation, prior to this in the evening?
25	TT4, please? TT4, here we go. We're getting TT4 now.	25	MR BOTES: Mr Chair, I don't think that
-			
	Page 33610		Page 33612
1	Page 33610 Right, that's TT4. Now can you find it there, Mr Gotz,	1	Page 33612 that note that was put there was my words. I think I gave
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1	Page 33617 way the matter was being approached, there was phase 2 and	1	Page 33619 I may say so, behaving badly towards Mr Gotz. We must give
2	then phase 3, you see, and phase 3, the so-called tactical	2	him a chance. Carry on, Mr Gotz.
3	option which you've now described, was as I understand it	3	MR GOTZ: Thank you, Chair. Finally on
			y , y
4	first given in any detail at the 1:30 meeting, and	4	this note, and perhaps we can do this with reference to
5	certainly that's Lieutenant-Colonel Scott's evidence. But	5	your witness statement again, can we look again at AAAA39,
6	there certainly were detailed instructions relating to	6	page 81, or rather paragraph 49, and the second sentence
7	phase 2, which is what they were going to do before they	7	you say, "As I understood it," and here you are talking
8	moved over to the so-called tactical option, and that	8	either just prior to the JOC meeting or the discussion at
9	certainly was set out in some detail at the 6 o'clock	9	the JOC meeting. "As I understood it SAPS had taken the
10	meeting. That's the evidence before us. If your evidence	10	view that discussions with the unions directed towards
11	is different and you are convinced that you're right and	11	disarming the crowd at the koppie were not achieving any
12	what we were told before is wrong then you must say so, but	12	results," and then you put in brackets "(which happened on
13	I think it's only fair that I should tell you what we've	13	Wednesday 15 August 2012) and that SAPS needed to proceed
14	heard up to now so you can comment.	14	with an alternative plan." Mr Botes, do you stand by that
15	MR BOTES: Thank you, Mr Chairman. The	15	evidence? Is that your impression?
16	comment where he might have do a verbal plan or without in	16	MR BOTES: That's correct, Mr Chairman.
17	writing at 1 o'clock meeting, I wasn't at that meeting, so	17	MR GOTZ: Following the JOCCOM meeting it
18	I was excused from that meeting and maybe I wasn't informed	18	seems to us that you were tasked with doing a variety of
19	of that alternative plan which was not in writing. I know	19	things by SAPS. One of the things that you were asked to
20	about the plan which I saw on the different phases and	20	do was to arrange water cars and medics to be on standby to
21	that's the plan that I know of.	21	assist SAPS and mining security if necessary. Do you
22	MR MPOFU: Chairperson, I think in	22	recall that?
23	fairness if we're going to be putting what we call the	23	MR BOTES: Mr Chairman, yes, it was
24	evidence before us on that point to this witness we should	24	requested through me, which I relayed to Graeme because he
25	also indicate that it was seriously disputed, not least by	25	was in and out of the JOC. I was permanently in the JOC
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	Page 33618		Page 33620
1	Page 33618 the D-day note that was later discovered.	1	Page 33620 and Graeme was outside, responsible for emergency services.
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Page 3821 Page 3821 1 OHAIRPERSON: And so the pepelve who were 2 at forward holding area 1 under the command of , under the 4 suport/sito of whore (11 k. Genard Naidou, be) 5 they? 6 MR BOTES: 7 tyus, by Graeme and myself. 7 tyus, by Graeme and myself. 8 MR BOTES: 10 water carning, correct, Mr 5 bhasy? 10 water carning and myself. 10 water carning water carning water or are we taking 10 water carning water carning water or are we taking 11 MR BOTES: Mr Chairman, It is for 12 orther and the same there solic base of the water 14 for them and the same in the same and water water and the same and water water and the same and water water and the same and water many refers to 15 whole day and mining security? 16 areas whith Wanderkog is area of Wastern Plats mines in that 16 base and and mining security? 17 operation, and the same and the same of the same and the same?	CHAIRPERSON:And so the people who were1notifiat forward holding area 1 under the command of, under the supervision of whoever it is, of General Naidoo, the paramedics and so forth, they were provided by you, were2wereparamedics and so forth, they were provided by you, were they?3were4MR BOTES:That were, they were provided by us, by Graeme and myself.6partrMR GOTZ:What were the water cars, Mr8operaBotes?Were those for drinking water or are we talking water cannon here?10	ified on that JOC board also were the vehicles that they re driving, as well as the arms and ammunition that they re carrying, correct? MR BOTES: That's 100% correct, Mr irman, and that is why I said yesterday a JOC means a thership between all different parties that they can ectively understand everybody's role into any rration, and that they should also know what is the loyment from security, vehicles, armoury, etcetera. MR GOTZ: Can we look at a picture of t JOC board? Chair, it's exhibit HHH60. And, Mr Botes,
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24 the reason why there was a JOC board which set out the, of 24 and when we do product escons, we use those out product		when we do product escorts, we use those our product
25 identified the security personnel who were on duty, 25 and to protect our cash.		to protect our cash.
ADONING COD INSTICC	ARCHIVE FOR JUSTICE	

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1	Page 33625 CHAIRPERSON: Cash escorts or product	1	Page 33627 management and it was known to Graham and leaders from
2	escorts were not going to happen on the 16th, were they?	2	security.
2	MR BOTES: No, Mr Chairman –	3	MR GOTZ: When you refer to senior
4	CHAIRPERSON: There hadn't been much	4	management there, are you talking about Mr Kwadi, Mr
5	product produced for some days, and no one was going to be	5	Mokwena, Mr Jameson, all whom were present at various times
6	paid, because a lot of people were on strike, is it not?	6	during the morning of –
7	MR BOTES: That's correct, Mr Chairman.	7	MR BOTES: Mr Chairman, I assume they
8	CHAIRPERSON: So what was he doing with	8	were aware of the plan, not the plan, they were aware that
9	an LM5 on that day?	9	the police are going to execute the plan on the 16th, I
10	MR BOTES: Mr Chairman, that firearms	10	assume so, but the person I'm referring to is the senior
11	were issued to them from the beginning of the strike. If	11	manager who was with me in the JOC. I think at the time it
12	any person life is threatened and there's a serious attack	12	was Christo Horn, in the morning, and in the afternoon it
13	on the people, and that is specifically to defend	13	was Etienne Hamman.
14	themselves.	14	CHAIRPERSON: In the afternoon, Etienne?
15	MR GOTZ: An LM5 is effectively the same	15	MR BOTES: Etienne Hamman.
16	as an R5, correct?	16	CHAIRPERSON: H-A-M-M-A-N?
17	MR BOTES: That's correct.	17	MR BOTES: That's correct, Mr Chair.
18	MR GOTZ: It uses the same ammunition?	18	CHAIRPERSON: His name is on that –
19	MR BOTES: That's correct, Mr Chair,	19	MR BOTES: His name is on that memo.
20	except from the difference, you cannot fire automatically	20	CHAIRPERSON: That roster?
21	it only fire rapid rounds.	21	MR BOTES: That's correct, Mr Chair.
22	COMMISSIONER HEMRAJ: Do you think that	22	MR GOTZ: Can we then we move on quickly
23	there was some Lonmin security who were in possession of	23	to the events of the afternoon of the 16th, and for that
24	automatic rifles from the period, the 9th to the 16th, and	24	purpose can we look a couple of pages down in your witness
25	perhaps thereafter continued there?	25	statement, which is AAA39, to paragraph 55? Actually just
	Page 33626		Page 33628
1	MR BOTES: Yes, there were some guys who	1	to set the context, if we can look at paragraph 54? Now,
1 2	•	1 2	5
	MR BOTES: Yes, there were some guys who were issued and carrying those firearms with them, apart from the normal handgun and shotgun.		to set the context, if we can look at paragraph 54? Now, Mr Botes, here you're talking about the actual implementation of the, or execution of the plan, and you
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	MR BOTES: Yes, there were some guys who were issued and carrying those firearms with them, apart from the normal handgun and shotgun. COMMISSIONER HEMRAJ: And these are not firearms that are booked out when they come on duty, they have them in their possession all the time? MR BOTES: They have them in their possession and as they go home, they book it back, it goes back into the safe, and the following morning when coming on duty, get out of the safe again. COMMISSIONER HEMRAJ: Thank you. MR GOTZ: Just finally on the subject I raised earlier, before we proceed to other issues. The impression that you got, we confirmed earlier that SAPS had taken the view that discussions with the unions or discussions with unions directed towards disarming the strikers were not achieving any results and they had then decided to proceed with disarming the group at the koppie. Did you convey that impression to other people within Lonmin, inter alia Mr Graham Sinclair? MR BOTES: Mr Chairman, Graham was fully aware what's going to happen, because he was in and out of the JOC, as well as it was also the Lonmin senior manager who was present, he also knew that they're going to	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	to set the context, if we can look at paragraph 54? Now, Mr Botes, here you're talking about the actual implementation of the, or execution of the plan, and you say in paragraph 54, Brigadier Calitz commanded the SAPS at the koppie. You presumably knew Brigadier Calitz, he'd been at the JOC on various occasions, correct? MR BOTES: That's correct, Mr Chair. MR GOTZ: And you say you heard him from time to time on the SAPS radio communication system giving instructions. One of those instruction, in fact, probably the first instruction he would have given would have been the instruction for the rollout of the barbed wire, correct? MR BOTES: That's correct, Mr Chair. MR GOTZ: And while you were listening to these communications on the SAPS radio system, you could also see these events unfolding, to a certain extent, on the surveillance equipment before you? MR BOTES: That's correct, Mr Chair. MR GOTZ: There were other people who were similarly monitoring the CCTV surveillance cameras, and were listening to the radio at the same time, correct? MR BOTES: That's correct, Mr Chair. MR GOTZ: They must have been standing

1 MR BOTES. MC Dair, yes, the operators, andle for camers. I was standing. 2 guideline operators handle for camers. I was standing. 2 camard recal cacetly at the fourth Kyala, bocause at that 3 bishind them looking at the monitors. The same with all the 3 stage 1 think there were already teargas discharged and the 4 mother people in the IOC had access to a view of the 4 Image 3 is not very good at that stage. So it was cleare in 6 MR GOTZ: And people standing not to you 6 so clear and what happened aftewards is also not clear one 7 would have included – 1 forget his title, but Calonel 9 and three cars, the people start moving with them. 10 General Anonable was there. 10 MR GOTZ: MR BOTS. Image 3 is about. The earliest time that was see any teargas being fired on the 11 whow as there. 10 MR GOTZ: Image 3 is about. The earliest time that was see any teargas being Image 3 is about. The earliest time that was see any teargas tearge 12 MR GOTZ: Image 3 is about. The earliest time that was see any teargas and is about. The earliest time that was seening 100 is about. The earliest time that was seening 100 is about. The earliest time that was seening 100 is about. The earliest time that was seening 100 is about. The earliest time t		Page 33629		Page 33631
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1	Page 33633 direction of the camera? In other words, towards the	1	Page 33635 been there, that you heard him give the instruction for the
2	camera?	2	rollout of the barbed wire. Now, that would have been the
3	MR BOTES: Mr Chairman, as the people	3	first instruction that you heard him give, correct?
4	come off from the koppie, as they start rolling out the	4	MR BOTES: That's correct, Mr Chair.
5	barbed wire, I saw people moving with the barbed wires and	5	MR GOTZ: Then in paragraph 56, you say
6	I saw a lot of people, who were on top of the koppie,	6	that at some point you heard an instruction from Brigadier
7	heading out to western side, getting away from the whole	7	Calitz for the use of teargas and water cannons against the
8	scene. I cannot recall that from the koppie, they moved	8	crowd. Can I ask you whether those were separate
0 9	straight towards the wires, but the general direction of	0 9	· ·
	0		instructions or whether they, as it were, came in the same
10	where they ran to was in the same direction of the extraction of the trailers.	10	breath? Did Brigadier Calitz issue two instructions
11		11 12	consecutively or was that one instruction?
12	MR GOTZ: In a northerly – perhaps north		MR BOTES: With regards to the rubber bullets and water cannons?
13	easterly direction?	13	
14	MR BOTES: That's correct, Mr Chair.	14	MR GOTZ: No, no, the use of teargas and
15	MR GOTZ: Can I ask you then just to look	15	water cannons against the crowd. So what I am asking you
16	briefly at paragraph 57 of your witness statement? In the	16	is, when you say in the first sentence of paragraph 56,
17	first line of that you say – or first sentence you say,	17	Brigadier Calitz, you heard an instruction from Brigadier
18	"From my observation, this group was heading from the	18	Calitz for the use of teargas and water cannons against the
19	koppie in the direction of the kraal," and then you say,	19	crowd, was that one instruction or two separate
20	"where a group of police officers, including members of the	20	instructions?
21	task team, had moved to." Now, Mr Botes, I just went to put	21	MR BOTES: Mr Chairman, I cannot recall
22	it to you that, in fact, the objective evidence reveals	22	exactly if it was one breath, one instruction, but I can
23	that the group of police officers, including members of the	23	remember that he mentioned both teargas, water cannons and
24	task team, moved to the kraal after the strikers had headed	24	rubber bullets. I cannot remember how long between each
25	in that direction. So it's in fact the reverse of what	25	other. I can only remember particularly that he used those
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1	Page 33634 you're suggesting in this sentence. Would you agree with	1	Page 33636
1	you're suggesting in this sentence. Would you agree with	1	instructions to convey that to his police officers.
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2 3	you're suggesting in this sentence. Would you agree with that? MR BOTES: Mr Chair, yes, I saw the	2 3	instructions to convey that to his police officers. MR GOTZ: The third or possibly fourth instruction was then the instruction for the use of rubber
2 3 4	you're suggesting in this sentence. Would you agree with that? MR BOTES: Mr Chair, yes, I saw the vehicles, because all the vehicles were basically lined out	2 3 4	instructions to convey that to his police officers. MR GOTZ: The third or possibly fourth instruction was then the instruction for the use of rubber bullets, correct?
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	Page 33637		Page 33639
1	would have –	1	from Brigadier Calitz "engage, engage, engage," around the
2	MR BOTES: That means -	2	same time that the water cannon started to spray or
3	CHAIRPERSON: - meant rubber balls, if	3	immediately thereafter.
4	the police only had rubber balls, and you not knowing that,	4	MR BOTES: That was after that. After
5	might have thought he meant rubber bullets.	5	that, I said I saw spray and after that I heard, "engage,"
6	MR BOTES: That's correct, Mr Chair.	6	and I saw the water cannon moving and there was more spray
7	MR GOTZ: And then what follows then, if	7	to the area. I think there was two water cannons at a
8	I understand you correctly, Mr Botes, is that you hear the	8	time. I cannot remember if both were spraying but there
9	words on the radio, on the SAPS radio communication system	9	was water spraying and, but the visuals were very, very
10	"engage, engage, engage." Is that correct?	10	bad. So we could not clearly see that part of the
11	MR BOTES: That's correct, Mr Chair.	11	exercise. The previous extraction of the barbed wire
12	MR GOTZ: That followed the instruction	12	trailers number 1, 2 and 3 were very clear but then it
13	for the use of rubber bullets, correct?	13	becomes dusty and you could not see clearly.
14	MR BOTES: That is correct, Mr Chair.	14	MR GOTZ: You suggest in paragraph 59 of
15	MR GOTZ: Who issued that instruction?	15	your witnesses statements, you say, "other than for hearing
16	You don't say who said that in paragraph 57, you simply say	16	the word 'engage' which was repeated a few times
17	"I just heard the words on the SAPS radio communication	17	immediately before the shooting started, I did not hear any
18	system 'engage, engage, engage.'"	18	specific instruction for the use of live ammunition." Now
19	MR BOTES: That was Brigadier Calitz,	19	there are two things that are in that, but what I wanted to
20	MR GOTZ: That was Brigadier Calitz.	20	ask you first, is you understood in the context and from
21	Now, it seems to us from what you say in the remainder of	21	what you were witnessing and hearing, that the words
22	paragraph 57 that at the time you hear the words "engage,	22	"engage, engage, engage" were a specific instruction for
23	engage, engage" the water cannon had already started to	23	the use of live ammunition, correct?
24	spray its water or at least it was around the same time as	24	MR BOTES: Mr Chairman, no, before the
25	the water cannon had started to spray, correct?	25	people went out to the koppie, it was explicitly said by
	Page 33638		Page 33640
1	Page 33638 MR BOTES: That is correct, Mr Chair. I	1	Page 33640 General Annandale, no live ammunition will be used unless
1 2		1 2	
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1	Page 33641 could hear.	1	Page 3364 CHAIRPERSON: There was quite a lot.
2	CHAIRPERSON: Immediately, you mean a	2	MR BOTES: Ja, definitely.
3	couple of seconds?	3	CHAIRPERSON: It has been described as a
4	MR BOTES: I would say -	4	fusillade of volleying, various words like that, it sounds
5	CHAIRPERSON: Immediately, seconds.	5	to me that's more or less what you heard.
6	MR BOTES: Seconds, yes.	6	MR BOTES: Correct.
7	CHAIRPERSON: Tell me, so you could	7	CHAIRPERSON: Obviously not for the full
8	clearly hear the volley, what we call the volley, I think	8	eight seconds but you did hear it.
9	the evidence is about eight seconds, you could clearly hear	9	MR BOTES: It was a burst of shots. So
10	a volley of a lot of shooting for eight seconds on the	10	it wasn't one person.
11	radio, you could hear that?	11	CHAIRPERSON: So it must have been
12	MR BOTES: Mr Chairman, no, I could only	12	obvious to everybody in the JOC that something quite
13	hear when a police radio in the vicinity was close by and	13	serious had happened.
14	they were busy communicating with –	14	MR BOTES: That's correct, Mr Chair.
15	CHAIRPERSON: I know that, we are talking	15	CHAIRPERSON: Now tell me, can remember
16	about the actual shooting that happened at just before four	16	who exactly was in the JOC at that stage?
17	o'clock on the Thursday afternoon. You heard Brigadier	17	MR BOTES: Who?
18	Calitz whose radio was on, and he was saying "engage,	18	CHAIRPERSON: Who exactly was in the –
19	engage, engage," and seconds after that, you heard	19	you were in the JOC obviously.
20	shooting. So you heard the shooting. Now what I want to	20	MR BOTES: Mr Chair, I remember it was
21	say to you, could you hear the shooting went on for about	21	myself and I think it was Etienne Hamman, the two
22	eight seconds?	22	surveillance operators, Brigadier Pretorius was there, the
23	MR BOTES: No, Mr Chair.	23	police radio operators were there, General Annandale I
24	CHAIRPERSON: How long did it go on for,	24	think was there, Colonel Scott was there. There was a few
25	that you heard?	25	other guys -
1	Page 33642 MR BOTES: I could not hear that because	1	Page 3364 CHAIRPERSON: Lieutenant-General Mbombo,
2	when he speak on the radio, he doesn't keep his key in for	2	was she there?
3	the whole time after he have spoken, after he's given	3	MR BOTES: I cannot recall that.
4	instructions, so as soon as he leaves the radio, there's no	4	CHAIRPERSON: Tell me, while we are
5	communication with the JOC.	5	talking about the radio traffic that you heard, was there a
6	CHAIRPERSON: Oh, I see, so that means,	6	tape recorder in the JOC? That was recording the, all the
7	that really makes the shooting following on the last	7	radio traffic, it was obviously quite important later to
8	"engage" almost instantaneous, doesn't it?	8	know what was said over the radio.
9	MR BOTES: It makes it immediately,	9	MR BOTES: Mr Chairman, I cannot recall
10	that's why I said immediately as he give instruction, I	10	that there was any tape recorder in the JOC to record any
11	could hear –	11	radio conversations or telephone conversations.
12	CHAIRPERSON: Hear the shooting, for how	12	CHAIRPERSON: There wouldn't have been
13	long could you hear the shooting? For what you told me,	13	any difficulty, I mean, I presume if they had asked you for
	obviously you couldn't the eight seconds, for the reasons	14	one, you would have been able to provide it.
14	obviously you couldn't the eight seconds, for the reasons		-
	you have given, but for how long did you hear the shooting?	15	MR BOTES: Mr Chairman, yes, we would
15		15 16	MR BOTES: Mr Chairman, yes, we would have been provided, but our system ourselves, if they said
15 16	you have given, but for how long did you hear the shooting?		5
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1	Page 33645	1	Page 33647
1	happened, and I queried this log sheet myself and said, get	1	was obviously that something, I don't want to use too
2	the conversations and update this as accurate as possible,	2	strong a word, but the word that comes to mind is
3	and then I was told that the radio, our radio communication	3	catechistic, I mean something very, very serious had
4	is not recorded, there was a fault on the system.	4 5	happened. MR BOTES: It was.
5	CHAIRPERSON: This includes the	5 6	CHAIRPERSON: It was so serious that it
6 7	conversation between the police people. MR BOTES: That is excluding that.	0 7	obviously shocked you and it must have shocked everybody
8	CHAIRPERSON: I am interested in the	7 8	else in the JOC.
9	radio traffic involving the police, you see? When	9	MR BOTES: Definitely.
10	Brigadier Calitz said "engage, engage, engage."	10	CHAIRPERSON: Thank you.
11	MR BOTES: No.	11	COMMISSIONER HEMRAJ: And you are able to
12	CHAIRPERSON: Was, as far as you could	12	distinguish between sound of automatic fire and shotgun
13	see, was any attempt being made by the police to record the	13	fire and rubber?
14	radio traffic, the traffic on their radios?	14	MR BOTES: Yes, of course, Ma'am.
15	MR BOTES: Mr Chairman, no, not what I've	15	CHAIRPERSON: Forgive us, Mr Gotz, please
16	seen and I never received an instruction or a request if we	16	carry on with your cross-examination.
17	can assist.	17	MR GOTZ: You are forgiven Chair, but it
18	CHAIRPERSON: And if they had requested	18	took out probably about five or ten minutes of my cross-
19	it, you could have done so without any problem, I take it.	19	examination. There's only one further question that I
20	MR BOTES: Possibly we could have.	20	wanted to ask you and for that purpose, can we have Colonel
21	CHAIRPERSON: I mean, all you had to do	21	Scott's witness statement which is HHH20 up on the screen?
22	was, I mean, you could hear the stuff there, in the JOC,	22	And if we can look at, I think it's page 91 of the
23	couldn't you? All you needed was an ordinary little tape	23	statement, paragraph 18. Here Colonel Scott is describing,
24	recorder in the JOC, and it would have been there, and we	24	I must confess, in quite similar terms to what you are
25	would have spent substantially less time here at this	25	observing, his observations whilst standing in the JOC. He
1	Page 33646 Commission debating what was on the radio, if that had	1	Page 33648 says, although there were two CCTV monitors to provide
2	happened.	2	feeds in the JOC, from the Lonmin Mine cameras around the
3	MR BOTES: 100%, we could have.	3	mine, the camera at the BMR smelter was what showed the
4	CHAIRPERSON: You told us, sorry, there's	4	koppie area at a distance, possibly one kilometre or more
5	one other question I should have asked you, and I didn't	5	away, due to the late afternoon sun, the footage was barely
6	and I am sure Mr Gotz will forgive me for taking up his	6	visible due to the glare and the distance to the koppie.
7	time, if necessary, I will give him credit. You've told us	7	Over the page then he says, during the execution of what
8	how you heard the words "engage, engage, engage." And	8	now was stage 3, he was positioned next to the police radio
9	instantaneously thereafter you heard the beginnings of a	9	base, and I think you have already confirmed that he was
10	lot of firearms being fired, did it sound to you like	10	right there next to you. In paragraph 19.1, he says, and
11	automatic fire?	11	this is the part that I wanted to ask you about, "after
12	MR BOTES: Mr Chair, it sounds like	12	Brigadier Calitz had initiated the operations, some minutes
13	automatic fire, but it also sounds like a lot of people	13	later I heard the intensity increase in the radio
14	firing. If there is not one firearm that shoots	14	communication with Brigadier Calitz calling the Nyalas on
15	automatically, it sounds like a lot of firearms firing.	15	their Papa call signs into some formation and to engage.
16	CHAIRPERSON: Okay. So it must have been	16	He was repeatedly calling the water cannons to come forward
17	obvious to you that something quite serious had happened.	17	and engage." Now the one part that you don't mention is
18	MR BOTES: We were shocked, I was shocked	18	Brigadier Calitz giving instructions calling the Nyalas on
19	in the control room there, and expect that the police were	19	their Papa call signs into some formation. Do you have any
20	severely attacked and a number of people were killed both	20	recollection of Brigadier Calitz at this time calling the
21	ways, and I expected –	21 22	Nyalas by their call signs, into any form of formation?
22 23	CHAIRPERSON: Well we know a number were	22 23	MR BOTES: Mr Chairman, I cannot recall
23	killed, but only one was – MR BOTES: Yes, yes.	23 24	that, that he called at that specific time the units on their call signs, I think he called them specifically on
24	CHAIRPERSON: But you were shocked, it	24 25	their surnames, which is quicker and everybody knows who is
			the sumaries, when is queter and everybody knows who is
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		r	
1	Page 33649 where. What I can recall is that he called people directly	1	Page 33651 Chair.
2	on their names and those might have been when I said the	2	CHAIRPERSON: Mr Mpofu. He's not here.
3	using of the teargas and the water cannon and then the	3	Oh, he is. He's fraternising with, I won't say the enemy,
4	rubber bullets. So that must have been during that phases	4	but with the police. Mr Mpofu.
5	where I heard the using of the teargas, water cannons and	5	CROSS-EXAMINATION BY MR MPOFU: Thank you
6	the rubber bullets. So I cannot specifically say that is	6	very much, Chairperson. Friendly fire, it was. Good
7	specifically the same event what I've heard, but he became	7	morning, Mr Botes.
8	intensive as they go along further towards the kraal, very	8	MR BOTES: Good morning, Sir.
9	intensive and there was no call signs specifically at the	9	MR MPOFU: Alright, well I'm going to
10	kraal where the final engagement is, "engage, engage,	10	very briefly just give you a kind of context of what I'm
11	engage," there was just a pure instruction to engage, and	11	going to be asking you about. You might know that our case
12	not specifically to certain members.	12	is that the majority of the deaths in the period under
13	MR GOTZ: Sorry, Mr Botes, I am not quite	13	discussion, a total of which is 44, were caused by a toxic
14	with you, you say he was calling people on their names. Do	14	collusion between SAPS and Lonmin. You're aware of that,
15	you mean that he was saying T, or Mere or –	15	hey?
16	MR BOTES: That's correct, Mr Chair, what	16	MR BOTES: I'm aware of that, but not
17	I can recall is that as the intensity increases he called	17	because, against Lonmin, because the police acted on that
18	people on their names because it is easier to communicate	18	day, not Lonmin.
19	directly to a person instead of confusing the whole	19	CHAIRPERSON: No, no, no, what he's
20	operation by calling Papa6 and Papa12 or whatever the case	20	saying is their case is – whether you accept their case is
21	may be.	21	another matter, but their case is that the deaths were
22	MR GOTZ: But what was he saying to, for	22	caused by the toxic collusion between Lonmin and the police
23	instance, Mere in those communications? Was he calling	23	and I take it he's going to question you on the basis in
24	them as Colonel Scott says, into some formation. In other	24 25	order to bring out facts which confirm their contention
25	words was he saying to Mere, "move up, move left, move	20	that there was this toxic collusion, and then of course the
	Page 33650		Page 33652
1	right?"	1	further point will be a causal connection between such
2	[10:23] MR BOTES: Mr Chairman, I cannot recall	2	collusion as there was and the actual deaths.
3	that a certain formation, all I saw and I heard this	3	MR BOTES: Thank you for clarity, Mr
4	conversations was that the vehicles move upwards, up north,	4	Chair.
5	and that might be the formation Colonel Scott is referring	5	CHAIRPERSON: I think that's the way – am
6	to here, but I saw, because the vehicles were not deployed	6	I interpreting it –
7	at the kraal, they were deployed evenly across and as the	7	MR MPOFU: That's correct, Chair.
8	people move along and instructions coming in, instructing	8	CHAIRPERSON: When you say you understand
9	people to move up and also I saw the vehicles, whether it's	9	you simply mean, I presume that you understand that's his
10	calling Papa, but as they increased the intensity he called	10	case.
11	the people specific on their names to react, and then	11	MR MPOFU: Yes.
12	that's the use of the water, rubber, and then the water cannon – teargas as well.	12	MR BOTES: Thank you, Mr Chair.
10	California – Teatras as well.	13	MR MPOFU: Not that you agree – MR BOTES: Thank you.
13 14	-	11	
14	MR GOTZ: Thank you, Chair, those are our	14 15	5
14 15	MR GOTZ: Thank you, Chair, those are our questions.	15	MR MPOFU: - but you understand. Ja,
14 15 16	MR GOTZ: Thank you, Chair, those are our questions. CHAIRPERSON: Thank you. Mr Mpofu, I	15 16	MR MPOFU: - but you understand. Ja, fair enough. In that context we're going to argue that the
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	Dogo 22/52		Dogo 22/EE
1	Page 33653 MR BOTES: Thank you, Mr Chair.	1	Page 33655 meant literally or in some fuzzy way that General Mbombo
2	MR MPOFU: And one of those variations of	2	explained is another matter.
3	the theme of why we say, we will say for example that	3	CHAIRPERSON: But "pressure" is a word
4	Lonmin should be held responsible for the 41 deaths that	4	that means nothing in the police jargon –
5	started with the deaths of the security policemen is that	5	MR MPOFU: Yes.
		6	CHAIRPERSON: Yes.
6	we're going to be talking about what I would call	_	
7	ineptitude and wrong decision making on the part	7	
8	specifically of Lonmin Security, of which you're a part and	8	I've said I'll then, the first broad topic that I'll deal
9	so I'll deal with that aspect of it with you. You	9	with you is this issue of what I call Lonmin Security
10	understand?	10	ineptitude.
11	MR BOTES: I understand, Mr Chair.	11	The second broad area which involves you, where
12	MR MPOFU: Yes, because you cannot be	12	I'll "blame" you will be your role that you might have
13	held responsible for the hard-line stance, what we call the	13	played in being the, for lack of a better word, the agent
14	hard-line stance of management not to speak to the	14	between the SAPS and Lonmin in respect of the alleged toxic
15	strikers. You had no role to play in fashioning that hard-	15	collusion. You understand that?
16	line stance. Is that correct?	16	MR BOTES: I understand that, Mr Chair.
17	MR BOTES: That's correct, Mr Chair.	17	MR MPOFU: Ja, thank you. Okay. Right,
18	MR MPOFU: Ja, nor can you be held	18	and fortunately I also will not question you – the first
19	responsible for the political pressure which induced the	19	area that I was going to question you on, which I will also
20	police brutality which resulted in the 39 deaths. You had	20	not question you on, is the whole question of CCTVs,
21	no part in the political pressure. Correct?	21	surveillance equipment and the alleged, what I will call
22	MR BOTES: That's correct, Mr Chair.	22	the manipulation of the discrepancies between XX2 and
23	MR SEMENYA SC: Chair, that question	23	EEEE19, and the reason for that is because Mr Chaskalson
24	should not assume a fact which is not in evidence. There's	24	dealt with that extensively and to some extent my learned
25	no political pressure that has been demonstrated. There's	25	friend also, Mr Tip.
20	no political pressure that has been demonstrated. There's	20	
	Page 33654		Page 33656
1	Page 33654 the contention for it which Mr Mpofu insists on repeating.	1	Page 33656 MR BOTES: I understand that, Mr Chair.
1 2	5	1	-
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1	Page 33657 relevant to what you're asking the witness about. So	1	Page 33659 MR MPOFU: - as a person.
2	that's the first point.	2	CHAIRPERSON: Mr Mpofu, please, let's
3	The second point is when you say you were a	2	just lower the temperature and concentrate on the issue.
4	party, you misled, or did whatever to mislead the	4	
		-	. 5
5	Commission, are you saying "you" in the sense of Mr Botes	5	raising the temperature, Chairperson.
6	or are you saying "you" in the sense of Lonmin?	6	CHAIRPERSON: Give me –
7	MR MPOFU: Fair enough. Yes, thanks,	7	MR MPOFU: How can you say that? How can
8	Chairperson. Okay, look Mr Botes, in fairness to you I'll	8	you say that? How can –
9	be saying "you" in the sense of Lonmin, which does not mean	9	CHAIRPERSON: Give me –
10	you were not involved. It's just that this Commission is	10	MR MPOFU: - you when I'm questioning a
11	not about apportioning blame to you as an individual. I'm	11	witness, want to involve issues about the media?
12	questioning you as a representative of Lonmin. It's	12	CHAIRPERSON: Give me an opportunity to
13	something that I think gets lost a lot of times in this	13	put –
14	Commission. So whether you as Botes were involved or not	14	MR MPOFU: This is not a game,
15	is neither here nor there. The point I'm going to make is	15	Chairperson.
16	that Lonmin, like SAPS, was involved in -	16	CHAIRPERSON: No, I know, I'm fully aware
17	CHAIRPERSON: Mr Mpofu, you don't have to	17	of that.
18	say – you're not questioning this witness about what SAPS	18	MR MPOFU: Ja.
19	were doing. What was –	19	CHAIRPERSON: And I understand what I –
20	MR MPOFU: I am. I told him about the	20	MR MPOFU: It's not a game, Mr
21	collusion between the two.	21	Chairperson –
22	CHAIRPERSON: No, no, I understand, but	22	CHAIRPERSON: Please [inaudible, speaking
23	whether, I know there will be a contention that SAPS	23	simultaneously] –
24	endeavoured to mislead us in certain respects. Whether	24	MR MPOFU: - or a television story –
25	they succeeded will be another matter, but whether that's	25	CHAIRPERSON: I'm perfectly aware of
	Page 33658		Page 33660
1	correct or not is not presently under discussion. You will	1	that, thank you. You don't have to remind me.
2	argue it later. There's a lot of cross-examination on	2	MR MPOFU: People died here.
3	which your argument will be based, but you don't have to	3	CHAIRPERSON: I'm aware of that too.
4	traverse with this witness, and you don't have to make sort	4	MR MPOFU: Ja, alright.
5	of statements as you go along which are picked up by the	5	CHAIRPERSON: And I'm determined to find
6	media, you know, that the police were guilty of	6	out the truth with my colleagues as to how they died and
7	misleading –	7	why.
8	MR MPOFU: No, Chairperson –	8	MR MPOFU: Well, if you can do that
9	CHAIRPERSON: If they –	9	without making unwarranted remarks and personal –
10	MR MPOFU: No, Chairperson, I think	10	CHAIRPERSON: The remarks I had –
11	that's –	11	MR MPOFU: - ad hominem attacks against
12	CHAIRPERSON: If they are then that's a	12	anyone, then you will succeed.
13	matter that will be dealt with later-	13	CHAIRPERSON: If you'd understood what I
14	MR MPOFU: - grossly unfair. That's a	14	was saying you wouldn't have said what you said. What you
15	grossly unfair accusation you're making against me and I	15	allege is that the police were guilty of misleading the
16	would like it to be withdrawn. I've just -	16	Commission. I don't understand your case to be that Lonmin
17	CHAIRPERSON: It won't be withdrawn	17	collaborated with the police in misleading the Commission,
17		1	that you say is –
17 18	because it's perfectly fair.	18	that you say is
	because it's perfectly fair.	18 19	
18	because it's perfectly fair. MR MPOFU: Well, then Chairperson, I'll	19	MR MPOFU: That's not what I'm saying.
18 19 20	because it's perfectly fair. MR MPOFU: Well, then Chairperson, I'll take it up, you know, at a higher level, because you	19 20	MR MPOFU: That's not what I'm saying. CHAIRPERSON: No, but well, that's
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1	Page 33661	1	Page 3366
1	CHAIRPERSON: He turned his light on. He	1	MR BOTES: I understand your concern.
	vas going to object.	2	MR MPOFU: Thank you. So that is the
3	MR MPOFU: Oh, but now you're saying what	3	charge that I'm going to make in relation to both of the
	is objection, why he turned his light? He hasn't said a	4	parties that I say are the parties to that collusion, in
5 W	ord, Mr Semenya. The record will show that.	5	suggesting that they are guilty. If they were not, they
6	CHAIRPERSON: Mr Semenya, what was your	6	would not be hiding evidence. Understand that?
7 ok	bjection going to be?	7	MR BOTES: I understand that, Mr Chair.
8	MR SEMENYA SC: Precisely that, Chair,	8	MR MPOFU: Thank you. Thank you for
9 th	nat 1, he may very well argue ultimately that there is	9	understanding it. Alright, now let's then go to the first
10 el	lements of evidence by the police that was misleading with	10	topic, which is what I call the Lonmin Security, alleged
11 ar	n intention that he describes, but it's not a fact that he	11	Lonmin Security ineptitude. Again in order to truncate, or
12 ca	an put to this witness at this stage.	12	to abbreviate my cross-examination I'm not going to go
13	CHAIRPERSON: That was the basis of what	13	through all the cross-examination that I went through with
14 I s	said to you. Anyway, I suggest that we carry on with	14	Messrs Louw and Motlogeloa, but I will put to you some of
15 th	ne –	15	the conclusions that I've put to them for you to comment,
16	MR MPOFU: I will carry on.	16	otherwise we have to go through - what I've just done nov
17	CHAIRPERSON: - and the time that you've	17	was to cut away a whole lot of questions which I'm glad yo
18 go	ot I suggest you use in cross-examining the witness, not	18	are cooperating with me.
-	haking comments of the kind that Mr Semenya objected to.	19	MR BOTES: No problem.
20	MR MPOFU: Ja, okay. Mr Botes, you	20	MR MPOFU: Thank you very much. Now I'm
	emember I referred you to a collusion between the South	21	going to cut the cross-examination short, I'm going to put
	frican Police Services and Lonmin, which I accept you	22	this to you. You would agree with me that – I'm now
	on't agree with but which I said I was going to argue.	23	talking about the 11th – if, well according to your records
	ou remember that?	24	EEEE19 Lonmin Security became aware of the threat to but
24 ft 25	MR BOTES: That's correct.	24 25	NUM offices at about 20 to 9, I think it's 8:33. You would
20	Wik DOTES. Mats correct.	25	
	Page 33662		Page 3366
1	MR MPOFU: Ja, now the simple point I'm	1	accept that?
	naking, which is being grossly misunderstood probably for	2	MR BOTES: Mr Chair, I wasn't on the mine
	easons that I will deal with in argument, is this; the	3	at the time so I cannot give the specific times that –
	neaning of that collusion in simple terms would be that	4	MR MPOFU: Okay, fair enough, then I'll
5 bo	oth of those parties are guilty of the deaths that I have	5	refer you to it, and again, please Mr Botes, forgive me;
6 οι	utlined to you, that I've given you the numbers. You	6	when I use the word "you" now and again, I might not be
7 ur	nderstand that?	7	meaning you personally but some, if the context is vague
8	MR BOTES: I understand, Mr Chair.	8	I'll clarify whether I'm accusing you as a person or as a
9	MR MPOFU: Yes, now I'm making a very	9	leader in Lonmin Security.
10 si	mple point that if both of those parties are guilty, as	10	MR BOTES: I accept that.
11 l'r	m suggesting, I'm going to suggest at the end, one of the	11	MR MPOFU: If you go to the 11th in EEEE19
12 th	nings that I'm going to suggest is that both of those	12	- it's 8:39. Sorry, I was wrong here. Against 8:39, it
13 gi	uilty parties are responsible for concealing evidence. Do	13	says, "A mob of at least 300 gather around Wonderkop,
-	ou understand that?	14	threat to burn down the NUM office." This is, let's say 20
15	MR BOTES: I understand that, Mr Chair.	15	to 9.
16	MR MPOFU: Yes, and the point I'm going	16	MR BOTES: I see that, Mr Chair.
	b make in respect of both of those parties is that it	17	MR MPOFU: Yes, now I'm saying if you
		18	read that in conjunction with the report of Mr Dibakoane,
	ould be, if you are innocent you don't conceal evidence		
18 w	rould be, if you are innocent you don't conceal evidence.	10	which is 1 think it's 7/3 if you can just put it up
18 w 19 De	o you understand that?	19 20	which is, I think it's ZZ3, if you can just put it up.
18 w 19 D 20	o you understand that? MR BOTES: I understand that, Mr Chair.	20	It's 2.7. The relevant portion of Mr Dibakoane's statement
18 w 19 Do 20 21	o you understand that? MR BOTES: I understand that, Mr Chair. MR MPOFU: And I'm going to therefore	20 21	It's 2.7. The relevant portion of Mr Dibakoane's statement I think was confirmed by him during cross-examination by m
 18 w 19 Do 20 21 22 SL 	o you understand that? MR BOTES: I understand that, Mr Chair. MR MPOFU: And I'm going to therefore uggest that the concealment of evidence on the part of any	20 21 22	It's 2.7. The relevant portion of Mr Dibakoane's statement I think was confirmed by him during cross-examination by m learned friend Mr Tip. 2.7, okay, don't worry too much
 18 w 19 Do 20 21 22 SL 23 pa 	o you understand that? MR BOTES: I understand that, Mr Chair. MR MPOFU: And I'm going to therefore uggest that the concealment of evidence on the part of any arty that is accused of wrongdoing is an admission of	20 21 22 23	It's 2.7. The relevant portion of Mr Dibakoane's statement I think was confirmed by him during cross-examination by m learned friend Mr Tip. 2.7, okay, don't worry too much about the content, just look at the time.
 18 19 D0 20 21 22 su 23 pa 24 gu 	o you understand that? MR BOTES: I understand that, Mr Chair. MR MPOFU: And I'm going to therefore uggest that the concealment of evidence on the part of any	20 21 22	It's 2.7. The relevant portion of Mr Dibakoane's statement I think was confirmed by him during cross-examination by m learned friend Mr Tip. 2.7, okay, don't worry too much

3approximately 9:30 the gathered crowd started singing and 4 chanting," and so on, and then 2.10, "At approximately 9:403that was omitted f 44made available to	Page 33667 SON: Around 20 to 9, 8:40, same
2at Wonderkop Stadium." I'll jump again. 2.8, "At2time. Then the new3approximately 9:30 the gathered crowd started singing and3that was omitted f4chanting," and so on, and then 2.10, "At approximately 9:404made available to	
3approximately 9:30 the gathered crowd started singing and 4 chanting," and so on, and then 2.10, "At approximately 9:403that was omitted f 44made available to	ext relevant entry appears to be the one
4 chanting," and so on, and then 2.10, "At approximately 9:40 4 made available to	rom the Lonmin OB that was originally
	3 3
	•
	ight rubber rounds shot to disperse a mob
	ffices. Two SAPS constables available to
	b was opposite the NUM offices, in other
	NUM offices, and that's when eight
	e shot and the witness conceded yesterday
	an that the rubber rounds were shot by
	staff of NUM, and various questions
	of course. But the point is the time
	etween 20 to 9 and just after 9 o'clock,
14 crowd was coming closer and I observed NUM members," and so 14 or am I missing so	
15 on and so on. You see that part? 15 MR MPOFU	: No, you're missing a lot,
16[11:08]MR BOTES:That's correct.16Chairperson.	
17 MR MPOFU: Yes, now what I'm saying is 17 CHAIRPERS	, ₀ ,
	rry. I expressed myself badly. What the
	rday was these eight rubber rounds that
	rse the mob were shot by – did I say NUM?
	bviously Lonmin staff at the scene. The
	appened just around about 9 o'clock.
	you're talking about doesn't – that's
	stand. It looks as if they got the
25 the control room and the imminence of the attack as it 25 report round abou	t 20 to 9, the control office who passed
Page 33666	Page 33668
-	e who recorded it in the occurrence book,
2 MR BOTES: That's correct, Mr Chair. 2 and by 9 o'clock s	omething had happened. The Lonmin
	omething had happened. The Lonmin t the NUM office fired eight rubber rounds
3 MR MPOFU: Yes, and that, one of the fact 3 Security people a	
3MR MPOFU:Yes, and that, one of the fact3Security people a4issues that I'm going to use to criticise, to say if there4to disperse the m	the NUM office fired eight rubber rounds
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	Page 33669		Page 3367
1	MR MPOFU: 8:40 to 9:40.	1	level best to get the police there -
2	CHAIRPERSON: - the one entry plus 2.10	2	MR MPOFU: Fair enough.
3	of Mr Dibakoane.	3	MR BOTES: - in time to protect whatever
4	MR MPOFU: Yes.	4	people are in danger.
5	CHAIRPERSON: I said I had a problem with	5	MR MPOFU: Aha. Okay, very good. So –
6	another entry, but you obviously challenged that entry, the	6	MR BOTES: Thank you, Mr Chair.
7	accuracy of that entry.	7	MR MPOFU: Ja, assuming in your favour
8	MR MPOFU: Yes, that is where I get the	8	that what PW was phoning about was there was that repor-
9	hour, ja.	9	it makes sense because it's almost a minute after that.
10	CHAIRPERSON: That's the explanation.	10	MR BOTES: That's correct, Mr Chair.
11	MR MPOFU: That's why I'm saying it's a	11	MR MPOFU: Ja, so therefore maybe then we
12	minimum of an hour. It's obviously more because at this	12	should blame that delay of more than an hour on the failure
13	stage they were just getting the –	13	of SAPS to respond to Lonmin Security. Is that correct?
14	CHAIRPERSON: So you are going to argue	14	MR BOTES: That's correct, Mr Chair, and
15	at the end of the day that we can't find, or shouldn't find	15	you can note at the - there's another entry, 9:02 where PW
16	that any Lonmin employees fired rubber bullets in the	16	reported to Colonel Merafe and Captain Sefike, asked for
17	vicinity of the NUM office to disperse the mob at about 9	17	assistance and that's for the third time.
18	o'clock? That's what you're going to argue?	18	MR MPOFU: Yes, alright. Well again we
19	MR MPOFU: Yes.	19	go back to that rowdy argument. The point for me is that
20	CHAIRPERSON: Alright.	20	for the purposes of what I call the collusion it doesn't
21	MR MPOFU: And this is evidence that was	21	matter which of the parties to the collusion is to blame at
22	confirm in the cross-examination of Mr Tip with Mr	22	a particular point, but at this point you are saying Lonmin
23	Motlogeloa.	23	Security did what it could?
24	CHAIRPERSON: Yes, yes, you're going to	24	MR BOTES: What is expected from them.
25	say that we must accept Mr Dibakoane's evidence in that	25	MR MPOFU: Fair enough.
	Page 33670		Page 3367
1	regard.	1	MR BOTES: That is correct, Mr Chair.
2	MR MPOFU: That's correct. Thank you.	2	MR MPOFU: Thank you. Right, now then I
3	CHAIRPERSON: Yes, and it slipped his	3	think that's a fair answer to the proposition I was putting
4	mind to think of asking, speaking for the mob and	4	to you. The next proposition – again you'll forgive me,
5	suggesting they turn around, he rather went to the NUM	5	I'll jump all the evidence and go to the conclusion so that
6	office. You're going to argue all that. I understand.	6	you can comment and maybe assist the Commission, as you
7	MR MPOFU: Okay, well you understood it	7	have done now.
	5 5		
ŏ	the first time. The hour we're saving it would have been	8	MR BOTES: Sure, Mr Chair.
8 9	the first time. The hour we're saying it would have been reasonably expected to do something, to call the police or	8 9	MR BOTES: Sure, Mr Chair. MR MPOFU: Would you agree – this is what
9	reasonably expected to do something, to call the police or		MR MPOFU: Would you agree – this is what
9 10	reasonably expected to do something, to call the police or reinforcement. Correct?	9 10	MR MPOFU: Would you agree – this is what I put to Mr Motlogeloa and I'd like you to comment as a
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		1	
1	Page 33673 anything where employees are involved, that security always	1	Page 33675 MR BOTES: That's correct, Mr Chair.
2	interacted with the groups, always stopped in front of	2	MR MPOFU: And during that break you made
3	them, two or three vehicles, four people, six people, and	3	a U-turn, there's some evidence I think in your statement,
4	then normally they would send a representative out of the	4	you made a U-turn and so on and so on. Correct?
5	group to tell the security what is the problem, and then we	5	MR BOTES: That's correct, Mr Chair.
6	would normally call on management, call on Human Capital to	6	MR MPOFU: Ja, and it was only after that
7	interact and to engage with them that we start a process	7	break, how long was that break, between that break and you
8	instead of ignoring their grievances.	8	seeing the burning cars?
9	MR MPOFU: Yes. No, no, no, I appreciate	9	MR BOTES: Mr Chair, after –
10	that. All I'm saying, Mr Botes, is this –	10	MR MPOFU: I'm sorry. Sorry, to be fair,
11	MR BOTES: I understand.	11	obviously you won't know the break from when they were
12	MR MPOFU: From where I'm sitting if you	12	actually attacked. I'm just saying the break from when you
13	say to me here's the same group of people, the same Lonmin	13	heard and when the burning cars had occurred.
14	Security establishment, or whatever you call it, on the 11th	14	MR BOTES: Mr Chair, when I arrived there
15	takes a decision, which I assume was correct, by the way,	15	the first car, the Volkswagen was already on fire, but the
16	to say look, these people are too many, they are about	16	Livina was not set alight. Frans and Hassan were lying
17			
17	2 000 or 3 000, the wise thing to do is to get those ones at NUM to vacate when the threat, the so-called threat of	17 18	outside the doors. When I drove past, we drove past them in the tar road at the bus terminal I could see the
19	burning is made.	19	striking group at the end of the road, a small group,
20	MR BOTES: That's correct.	20	heavily armed. I did not engage with them for any reason.
20	MR MPOFU: And then the same group of	20	My purpose was to get to the injured people. So I also
22	people within 24 hours, the same threat of burning is made,	22	drove, turned around and parked behind the Livina that,
22	the same crowd, except that this time it's looking more	22	because I knew, they told me already that they had problems
23	dangerous and more angry and so on, takes the exact	23	with the gears of that Mamba, so I said to them turn around
24	opposite decision, which is not to go and vacate but to	24	that if we need to escape we can do that. So stopping
20	opposite decision, which is not to go and vacate but to	20	that if we need to escape we can do that. So stopping
	Page 33674		
1		1	Page 33676 behind the Livina that we can disembark from the vehicle to
1 2	confront the mob. You see my problem?	1 2	behind the Livina that we can disembark from the vehicle to
1 2 3	confront the mob. You see my problem? MR BOTES: Mr Chairman, I understand the		behind the Livina that we can disembark from the vehicle to go and check on the injured people, we were attacked by the
2	confront the mob. You see my problem?	2	behind the Livina that we can disembark from the vehicle to go and check on the injured people, we were attacked by the same group who were standing there and we did not engage
2 3	confront the mob. You see my problem? MR BOTES: Mr Chairman, I understand the concern and I also would say that it was strange.	2 3	behind the Livina that we can disembark from the vehicle to go and check on the injured people, we were attacked by the
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1	I'm going to raise in that same context is that the	1	earlier, it was a motherless child, nobody owned up to even
2	deployment of the two gentlemen – I know they were not	2	owning SSG. We have now moved from that to a situation
3	alone at the time – in the area of the hostel was also	3	where SSG was used by the police at the beginning of this
4	senseless and unwise. What should have happened is that as	4	year in a different operation and to a situation where you
5	has happened on the 11th, the security people should have	5	I think yesterday said that yes, you did store SSG in your
6	gone to the NUM office either to secure it or to warn	6	warehouses, for lack of a better word. Is that correct?
7	people or whatever, rather than some hostile position where	7	MR BOTES: Lonmin has SSGs in stock, yes.
8	they were trapped eventually.	8	MR MPOFU: Yes, so I think we're getting
9	MR BOTES: Mr Chairman, I think the	9	there. Now have you – whether because the issue was raised
10	deployment was hundred percent. I think their engagement	10	in the Commission or whether you might have been aware that
11	with the group was inappropriate.	11	there were SSG cartridges there, or for whatever reason,
12	MR MPOFU: Okay, thank you. Alright, so	12	have you taken any steps to ascertain whether any Lonmin
13	those are the reasons in respect of which I will say that	13	personnel used SSG pellets on that day, on the 16th
14	those deaths should be laid at the door of Lonmin. Do you	14	specifically?
15	understand that?	15	MR BOTES: Mr Chairman, since we became
16	MR BOTES: Mr Chair, no. It is, the	16	aware that SSGs were used and people were shot with SSGs we
17	striking group had a part to play on that.	17	have done investigations on our own stock in hand, also on
18	MR MPOFU: Ja.	18	the control and audit trail of issuing SSGs to the
19	MR BOTES: That's correct.	19	personnel and all those records are available to the
20	MR MPOFU: No, no, I understand, Mr	20	Commission.
21	Botes. I think I have to make this point again. I made it	21	MR MPOFU: Yes.
22	to Mr Motlogeloa as well. When I say these things please	22	COMMISSIONER HEMRAJ: And like you, Mr
23	understand me, I do not excuse the conduct of the people	23	Botes, do some of them have private ammunition available as
24	who killed those people. Those people, if they are	24	well?
25	properly identified they must be charged and if they're	25	[11:28] MR BOTES: At the time of the incident 9
	Page 33678		Page 33680
1	Page 33678 found guilty they must go to jail, so let's put that aside.	1	Page 33680 to 16th of August the only ammunition that were available
1 2		1 2	0
	found guilty they must go to jail, so let's put that aside.		to 16th of August the only ammunition that were available
2	found guilty they must go to jail, so let's put that aside. You understand that?	2	to 16th of August the only ammunition that were available with 75 rounds with the Tactical Response Unit security and
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	Page 33681		Page 33683
1	watertight, the denial isn't watertight because of the	1	MR MPOFU: The first wave of police build
2	possibility, isn't that right?	2	up you don't know what sparked it.
3	MR BOTES: It is a possibility, Mr	3	MR BOTES: Mr Chair, it happened on
4	Chairman, but that possibility also exists with the police	4	Monday when the first wave of policemen arrived.
5	members. They can also buy their own rounds –	5	MR MPOFU: That's the 13th ja.
6	MR MPOFU: My case exactly. Thank you,	6	MR BOTES: That's the 13th, the Monday and
7	but you're not allowed to talk about the police. Okay the	7	that was before they went out to intervene with the
8	next quick fight which I want to cover in the same way and	8	striking group marching to K3.
9	thank you again for your assistance, is you referred – well	9	MR MPOFU: Yes you were not aware that
10	let me put it this way, you hold the view that in respect	10	there had been some kind of political pressure or telephone
11	of the first wave let's say 11th and 12th one of the fingers	11	calls in high places which happened on the 12th.
12	that must pointed must be about inadequate SAPS presence in	12	MR BOTES: Mr Chair, no.
13	relation to those events of the 11th and 12th correct?	13	MR MPOFU: You were not aware.
14	MR BOTES: That's correct, Mr Chair.	14	MR BOTES: I was aware that Henry and
15	MR MPOFU: Yes. Did you raise with	15	Graham tried to go through our representatives Human
16	management?	16	capital, Barnard Mokwena and Abe tried to get more
17	MR BOTES: Mr Chair, on that same	17	influence from top level to get the police out at the site.
18	document of the log sheets on the 11th after the clash took	18	I do not know who they spoke to, but I assume Abie Kgotle
19	place between NUM and the –	19	and Barnard Mokwena was requested to assist to get more
20	MR MPOFU: The strikers.	20	policemen here because the intervention from Graham and
21	MR BOTES: - and the striking group 9:43	21	Henry to General Mbombo did not help and they tried to get
22	the last line on entry 9:43 "Henry Blaauw to contact SAPS,	22	more pressure on them to get the police out.
23	PC Mbombo and General Naidoo to report no support from SAPS and the two shootings already reported." So there was	23 24	MR MPOFU: Yes, no fine. Who was trying
24 25	continuously efforts made from the Saturday, Sunday until	24 25	to get more pressure to get the police? Or who was able to put on that pressure?
23	continuously enorts made norm the Saturday, Sunday until	23	
	Page 33682		Page 33684
1	Page 33682 the police eventually arrived there on Monday after the	1	Page 33684 MR BOTES: Henry Blaauw and Graham
1 2	5	1 2	
	the police eventually arrived there on Monday after the		MR BOTES: Henry Blaauw and Graham
2	the police eventually arrived there on Monday after the security guards were killed.	2	MR BOTES: Henry Blaauw and Graham Sinclair they spoke to Abie Kgotle and Barnard Mokwena.
2 3	the police eventually arrived there on Monday after the security guards were killed. MR MPOFU: Yes.	2 3	MR BOTES: Henry Blaauw and Graham Sinclair they spoke to Abie Kgotle and Barnard Mokwena. MR MPOFU: Okay and you don't know high
2 3 4	the police eventually arrived there on Monday after the security guards were killed. MR MPOFU: Yes. MR BOTES: And if I was given a operation plan yesterday by the evidence leader and according to me that plan wasn't executed as described in that document as	2 3 4	MR BOTES: Henry Blaauw and Graham Sinclair they spoke to Abie Kgotle and Barnard Mokwena. MR MPOFU: Okay and you don't know high those people escalated that pressure - MR BOTES: No, Mr Chair. MR MPOFU: - in order to result in a wave
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1	Page 33685	1	Page 33687
1	gathered at the end of the road before I arrived there and	1	MR BOTES: Mr Chairman, I can just add to
2	how they hide the bigger group behind the wall that I	2	it. I think the reason why that striking group did not
3	cannot see them. So they were very, very organised, they	3	continue towards K3 shaft area, their intention where they
4	had leadership in them. They were militant, you can see	4	want to go, I think the security had an advantage being
5	there's militant experience in them, how they reacted, so	5	standing on top of the bridge and there were much more
6	how the people moved away with heavily armed to K3 we	6	people armed with shotguns and stopper guns which is
7	expected problems. Although they turned around from	7	visible to the striking group. And I think the security
8	security I was very uncomfortable with the group.	8	had the vantage point of being on top and that if the
9	MR MPOFU: No that I accept, Mr Botes. I	9	striking group would have gone further they would have
10	accept and that's why you brought it to the attention of	10	climbed uphill which makes it very difficult for attack and
11	the police. All I'm saying is that after all that you then	11	that would have slowed them down. So I think they decided
12	got into the helicopter and you flew there with Vermaak,	12	they're not going to challenge that and that's the reason
13	correct?	13	why turned around. That's my personal opinion.
14	MR BOTES: That's correct, Mr Chair.	14	MR MPOFU: No it's an opinion that has
15	MR MPOFU: Ja, and then you saw that the	15	been bandied about here, but the point I'm making is that
16	group had been successfully turned around by Lonmin	16	for whatever reason the few security officers successfully
17	security, correct?	17	convinced the group to turn around to an extent where they
18	MR BOTES: By the time I withdrew with	18	thought they were no longer a threat. That you cannot
19	the helicopter they were sitting close to the bridge where	19	dispute.
20	the security was parked –	20	MR BOTES: No I cannot dispute that, Mr
21	MR MPOFU: Engaging with them.	21	Chair.
22	MR BOTES: So I had to return with the	22	MR MPOFU: And you also cannot dispute
23	helicopter back to Middle Kraal.	23	that Mr Motlogeloa actually said he applauded them for
24	MR MPOFU: Yes that's the point I'm	24	being very co-operative and being very respectful and
25	making. Your return to base as it were was because you	25	listening to what he had to say. You can't dispute that.
	Page 33686		Page 33688
1	Page 33686 were satisfied that your initial fears which were	1	Page 33688 MR BOTES: I cannot dispute it, I wasn't
1 2			=
	were satisfied that your initial fears which were		MR BOTES: I cannot dispute it, I wasn't
2	were satisfied that your initial fears which were legitimate were dissipated. There was no longer an eminent	2	MR BOTES: I cannot dispute it, I wasn't there.
2 3	were satisfied that your initial fears which were legitimate were dissipated. There was no longer an eminent risk or threat, correct?	2	MR BOTES: I cannot dispute it, I wasn't there. MR MPOFU: Yes so that's the kind of
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	Page 33689		Page 33691
1	their arms, they said they will give their arms at the	1	place for that violence if you had not spotted that group
2	mountain. Do you remember that part?	2	in the surveillance equipment.
3	MR BOTES: Mr Chair, yes and nobody can	3	MR BOTES: That's correct, Mr Chair, but
4	have said that they will give it at the mountain, so that's	4	we had to do it because it was a illegal march and there
5	why I say they refused at that point because that posed a	5	was a threat posed to our operations where they can attack
6	danger as they were chanting their weapons against each	6	another shaft where they attacked the K4 shaft the previous
7	other.	7	night.
8	MR MPOFU: Okay let's assume then that	8	MR MPOFU: Well okay would it be fair
9	their offer being escorted was unreasonable, but	9	therefore to say that in your estimation the group at the
10	unreasonable as it was are you aware that Mr Mpembe,	10	koppie was less of a danger than the group that you
11	General Mpembe accepted their offer and escorted them to	11	activated the police to go and intercept?
12	the koppie as they had requested?	12	MR BOTES: Mr Chairman, at that stage we
13	MR BOTES: I understood so, Mr Chair.	13	could have monitored the people at the koppie, but we could
14	CHAIRPERSON: I'm sorry to interrupt. He	14	not monitor the group that broke away so they posed at that
15	was in the process of escorting them to the koppie.	15	stage more serious risk than the people we could monitor at
16	MR MPOFU: Yes well he didn't arrive,	16	the koppie.
17	towards, towards yes.	17	MR MPOFU: Very good, so the people at
18	CHAIRPERSON: He accepted the situation,	18	the koppie at that stage were posing less of a danger.
19	he didn't try to disarm them although he had asked them to	19	MR BOTES: That's correct, Mr Chair.
20	hand over the weapons and they declined shall we say, but	20	MR MPOFU: Yes and the people at the
21	he was prepared to escort them. And he was afraid that if	21	koppie, when they were massacred later were posing the same
22	he didn't something more serious would happen and then the	22	amount of danger as they were on the 13th correct?
23	points that Mr Mpofu is now going to put to you took place.	23	MR BOTES: Mr Chairman, the group on the
24	But certainly they don't appear as they were walking	24	13th was the militant group that was always separated when
25	towards the koppie to have been aggressive towards the	25	they marched to any place from the bigger group. They
	D 00/00		D 00/00
1	Page 33690	1	Page 33692 always have a distance, they kept a distance between
1	police at that stage.	1	always have a distance, they kept a distance between
2	police at that stage. MR MPOFU: Thank you.	1 2 3	always have a distance, they kept a distance between themselves, the militant group who was heavily armed, they
	police at that stage. MR MPOFU: Thank you. CHAIRPERSON: I think that's the point –	2	always have a distance, they kept a distance between themselves, the militant group who was heavily armed, they always kept a distance between themselves and the bigger
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1	Page 3369: the mass of people who were at the koppie?	1	Page 33695 understood, due to a lot of intimidation cases that came
2	MR BOTES: We just saw a group moving	2	out, reported to us, that, and people, the marching group
3	away. Because of the distance, we could not clearly saw	3	going through the hostels, the hawkers on the street
4	which part of the group broke away, we just saw a group	4	disappeared, everything just become abnormal, nobody has to
5	broke away, but when we saw them with the helicopter and	5	go where he wants to go, they must join the koppie.
6	also the video footage later, you could see.	6	MR MPOFU: I see. Well, isn't that even
7	MR MPOFU: That's exactly the point I'm	7	more reason why should not have been massacred? If 80% of
8	making, Mr Botes.	8	that group were people who were innocent citizens, who were
9	MR BOTES: Ja.	9	hoodwinked or intimidated and were there unwillingly, isn't
10	MR MPOFU: When you panicked about this	10	that even more reason for circumspection so that they
11	group that had broken away, at that stage you did not know	11	cannot be killed with R5 gunfire?
12	whether it was a group of the so-called militant group or	12	MR BOTES: Mr Chairman, I cannot comment
13	the non-militant group?	13	on a massacre on people and who those people were, I cannot
14	MR BOTES: No, we were not aware which	14	identify those people that were killed were part of the
15	group was it.	15	militant group or the innocent at the back, I cannot
16	MR MPOFU: Ja, that's the point I'm	16	identify that, but my view is that the police had a plan to
17	making.	17	progressively disperse them into a smaller group and to
18	MR BOTES: Thank you, Sir.	18	disarm them. So –
19	MR MPOFU: Therefore that small group	19	MR MPOFU: Let's say they were the so-
20	potentially posed a much smaller danger than the groups	20	called militant group for the sake of progress, the point
21	that was left behind?	21	I'm making is isn't it a more reason to be
22	MR BOTES: That's correct, Mr Chair,	22	circumspect if, according to you, 120 of a crowd of more
23	because we could not identify if those persons were armed,	23	than 3 000, the only real troublemakers are 120, the rest
24	and because of the previous night's attack, we expected	24	are just there from intimidation. Isn't that the more
25	another attack, and that is why any group that broke away	25	reason to be circumspect, so that you eliminate the chances
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	Page 33694		Page 33696
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		I	
1	Page 33697	1	Page 33699
1	deal with the situation, you must bear in mind that 80% of	1	same direction of the barbed wires, but I also mentioned a
2	the people you're dealing with, trying to disperse, are	2	lot of people went away from the koppie to the west.
3	people who are only there because they intimidated, and	3	MR MPOFU: Yes, but the evidence is that
4	therefore you must limit, as far as you can, the forceful	4	that group that you described as having then going
5	dealing with the group. I think that's Mr –	5	alongside the Nyalas, which was disallowed from escaping,
6	MR MPOFU: Thank you, Chairperson.	6	was moving in the direction of Nkaneng?
7	MR BOTES: Thank you for clarity. I	7	MR BOTES: That's correct, Mr Chair.
8	think that was also taken into the plan from SAPS and that	8	MR MPOFU: Thank you. And I know you
9	is the reason why did not enclose the whole area with	9	said you didn't – by the time Nyala 4 blocked them at the -
10	barbed wire around the koppie, to enclose everybody, that's	10	or whatever, you couldn't see properly?
11	my opinion. And I think they allowed people who don't want	11 12	MR BOTES: That's correct, Mr Chair. MR MPOFU: Yes, alright.
12	to be there to escape freely from the engagement. CHAIRPERSON: You're not really answering		. 5
13		13	CHAIRPERSON: If you're going to move on
14	the question, you're giving us your theory, which may or	14	to another point, it might be a convenient time to take the
15	may not be right, I am not concerned with that, as to what the peace plan involved and how they were going to go about	15 16	tea adjournment. MR MPOFU: Thanks, Chair.
16			
17 18	it, but that's not what Mr Mpofu wants, all he wants to know is, as I understand him, is whether you agree that	17 18	CHAIRPERSON: But if you agree if you agree with that, we'll take the tea adjournment?
19	there was a need for considerable circumspection, as would	19	MR MPOFU: Yes, I agree, Chairperson.
20	normally be the case, regard being had to the fact that 80%	20	CHAIRPERSON: Alright, we'll take the tea
20	of the people who were gathered on the koppie, were people	20	adjournment. Let's try very hard to be back in a quarter
22	who were there, even though their hearts weren't exactly in	22	of an hour.
23	it. I think that's Mr Mpofu –	23	[COMMISSION ADJOURNS COMMISSION RESUMES]
24	MR MPOFU: That is it.	24	[12:22] CHAIRPERSON: The Commission will resume.
25	CHAIRPERSON: I take, I mean, implicit in	25	You are still under oath, Mr Botes. Mr Wesley, just for
			······································
	Page 33698		Page 33700
1	Page 33698 what you said about the police is that you actually agree	1	Page 33700 good order, can you remind us, or not remind us, you can
1 2	0	1 2	5
	what you said about the police is that you actually agree		good order, can you remind us, or not remind us, you can
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1	Page 33701 various groups that we talk about, one of the 12th, one of	1	Page 33703 killings of the police. Do you have any comment?
2	the 13th, and so on and so on. And I am going to base that	2	MR BOTES: No, Sir.
3	mainly on the fact that you know, what you've said, you	3	MR MPOFU: All you can say is that the
		4	second wave happened after the police were killed whether
4	were monitoring these people, the media was there, you	4 5	
5	know, some members if the public were there, but more		there was a relationship between the two, you can't
6	importantly of the ten deaths that preceded the tragedy,	6	comment.
7	with the possible exception of Mr Twala, all of them had	7	MR BOTES: I cannot comment, I wasn't
8	happened far away from the koppie, would you agree?	8	aware that the politicians were involved.
9	MR BOTES: That's correct, Mr Chairman,	9	MR MPOFU: Yes, yes, that's the first
10	and I believe it is from the militant group that went out	10	wave, but never mind, that's fine. Right, now let's get to
11	to Eastern Plats, went out to the other places where the	11	the – is it correct that the – what you call the
12	people were murdered.	12	amalgamation of the Lonmin JOC and the SAPS JOC happened at
13	MR MPOFU: Yes. And therefore, again, as	13	the suggestion of Sinclair, correct?
14	I said, one of the things we are going to argue is that to	14	MR BOTES: Mr Chair, the reason for
15	then have this kind of military operation almost against	15	establish the police JOC is that the facility of the Lonmin
16	the group which is at the place of the least possible	16	JOC is a small boardroom, and to accommodate everybody in
17	danger, is absurd, it just doesn't make sense.	17	there was just impossible, and that is why we established a
18	MR BOTES: Mr Chair, I understand your	18	second JOC which is about 150 metres from the Lonmin JOC
19	comment.	19	where everybody can be placed, accommodated, where there's
20	MR MPOFU: Thank you. Alright, fine,	20	a boardroom table. There's enough, display soft boards to
21	that's enough, you don't have to agree on that one. Well,	21	put up maps and so forth.
22	it's something we will argue. Alright, then very quickly,	22	MR MPOFU: Yes, I think that may well be
23	you referred to meetings which were happening twice a day,	23	the reason, but that was brought about by Mr Sinclair.
24	a morning one and an afternoon one, over the duration of	24	MR BOTES: That's correct, as I
25	the troubled time. Correct.	25	understood it, that's correct.
	Page 33702		Page 33704
1	MR BOTES: That's correct, Mr Chair.	1	MR MPOFU: So at his suggestion then and
2	MR MPOFU: Those meetings were taking	2	because of the reasons you've mentioned there was a
3	place at the JOC, correct?	3	consolidation of the two JOCs.
4	MR BOTES: That's correct, Mr Chair.	4	MR BOTES: That's correct, Mr Chair.
5	MR MPOFU: And were those meetings that	5	MR MPOFU: And you have said, when you
6	were attended by you as management and SAPS as well as NUM?	6	were being questioned yesterday by Ms Motloenya, you
7	MR BOTES: No, Mr Chair, only SAPS and	7	practically were saying that your presence at the JOC, you
8	Lonmin.	8	were the liaison person.
9	MR MPOFU: Did you attend the other	9	MR BOTES: That's correct.
10	meetings, there were also twice a day meetings, that's why	10	MR MPOFU: Between the two organisations,
11	I am wanting clarity, which were apparently attended by	11	between SAPS and Lonmin.
12	management and the Lonmin and the NUM, would those have	12	MR BOTES: That's correct, Sir.
13	been separate meetings or the same ones? Well, you've	13	MR MPOFU: So you were at the heart of
14	already said they were not the same ones you are referring	14	the partnership, there was a partnership between the two,
15		110	correct?
	to at the JOC, would those have taken place elsewhere?	15	
16	to at the JOC, would those have taken place elsewhere? MR BOTES: Mr Chair, I assume so, I	15 16	MR BOTES: There is always a partnership
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	Page 33705		Page 33707
1	quoting you directly.	1	MR BOTES: That's correct, Mr Chair.
2	MR BOTES: That's correct, Mr Chair.	2	MR MPOFU: Yes. And therefore, the role
3	MR MPOFU: So you saw your involvement as	3	played by Lonmin in both the planning and the execution of
4	being part of the – of being a representative of this	4	the plan that we know, which resulted in the 34 deaths on
5	partnership between Lonmin and SAPS as essential.	5	the 15th at about four o'clock, was inseparable, correct?
6	MR BOTES: That's correct, Mr Chair, and	6	MR BOTES: Was?
7	I was also requested by Brigadier Pretorius to move the	7	MR MPOFU: Was inseparable. You couldn't
8	surveillance equipment over there and join the Lonmin JOC.	8	say this is, only this part or – it was your input and
9	MR MPOFU: No, that's fair, but – and one	9	their input, put together, correct?
10	can say that the surveillance equipment was the heart of	10	MR BOTES: That's correct, Mr Chair.
11	the JOC. Correct?	11	MR MPOFU: Surely the – you said, and I
12	MR BOTES: That is correct, Mr Chair.	12	am sure you are quite correct, one of the essential
13	MR MPOFU: So it follows that if the	13	contributions which you made was to explain the layout, the
14	heart of the JOC was being consolidated next door you had	14	geographical layout. Correct?
15	to move there. That I understand. But what I am really	15	MR BOTES: That is correct, Mr Chair.
16	busy inspecting is, the fact that from that answer it would	16	MR MPOFU: In fact we know that, I think
17	seem that you would accept therefore that but for your	17	from Colonel Scott, that in the evening of the 13th or the
18	involvement without you being there, the operation might	18	14th, he flew over the area with one of your people, it
19	have been, or even the planning of the operation might not	19	might not have been you but he flew over the area at night.
20	have happened as smoothly as it did. Correct?	20	Remember that?
21	MR BOTES: Mr Chairman, yes, my	21	MR BOTES: I cannot remember that.
22	contribution played a part in the planning of the police	22	MR MPOFU: You can't remember, okay,
23	because of the information I submitted to them, about the	23	that's fine. You see, you were questioned by Mr Chaskalson
24	layout of the area submitted to them, access routes,	24	I understand about the fact that you formed the impression
25	etcetera. All other information they needed they had to	25	that General Annandale was overall in charge of the
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	Page 33706		Page 33708
1	consider those to plan an operational plan.	1	Page 33708 operation. Correct?
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1	MR BOTES: I understand, Mr Chair.	1	Page 33715 MR MPOFU: The -
2	MR MPOFU: So for now if you forgive me	2	MR BOTES: - multiple gunfire, automatics
3	for jumping away from that, I want to deal with the, what I	3	-
4	call the shooting instruction or the order to shoot and	4	MR MPOFU: Yes, multiple automatic
5	kill the people. The history of this matter is that when	5	gunfire.
6	we were still in Rustenburg I raised this issue of the	6	MR BOTES: Ja.
7	instruction to shoot in relation to your statement. That's	7	MR MPOFU: Now this occurrence for a
8	why your statement is called GGG something because it	8	group of a people who are gathered at the JOC for the sole
9	happened during the cross-examination of General Annandale	9	purpose of monitoring the operation must've created some
10	and I was attacked from all sorts of quarters. I think the	10	sort of pandemonium to say the least or reaction or
11	chairperson was the only person who understood the	11	exclamation. I mean I cannot even imagine what must've
12	connection between those words engage, the possible	12	been said there, some words which are unprintable. There
13	connection and the actual shooting. And my point was	13	must've been - what's happening now, oh my lord or what the
14	simply this, it is your evidence that the words engage	14	dot, dot, dot. Whatever.
15	which you heard were was when the commotion was happening	15	CHAIRPERSON: It's probably something a
16	in the vicinity of the kraal. Correct?	16	bit stronger than that.
17	MR BOTES: That's correct, Mr Chair.	17	MR MPOFU: Yes, I think yes which I'm not
18	MR MPOFU: And it's also your evidence	18	allowed to repeat at the moment, but you get what the
19	that the word engage was said directly or immediately	19	chairperson and I are saying –
20	before the big volley of shots from automatic gunfire.	20	MR BOTES: I understand fully what you're
21	MR BOTES: That's correct, Mr Chair.	21	trying to say and there was a lot of questions, there was a
22	MR MPOFU: And the issue here is this,	22	lot of guessing what's happening.
23	surely, and I think Mr Gotz touched on this, the purpose,	23 24	MR MPOFU: Ja.
24 25	the main purpose of the people who were at the JOC at that time was to monitor the operation. Correct?	24 25	MR BOTES: Who was attacked, who was shot, we could not understand what was happening.
25	time was to monitor the operation. Conject?	20	shot, we could not understand what was happening.
	Page 33714		Page 33716
1	MR BOTES: That's correct, Mr Chair.	1	MR MPOFU: Yes. But of all those
2	MR BOTES:That's correct, Mr Chair.MR MPOFU:It was already clear that the	2	MR MPOFU: Yes. But of all those possibilities what was clear that people must've died. It
2 3	MR BOTES: That's correct, Mr Chair. MR MPOFU: It was already clear that the operation was, from the teargas and all that, that it was	2 3	MR MPOFU: Yes. But of all those possibilities what was clear that people must've died. It might've even been the police but this was now the real, a
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	Page 33717		Page 33719
1	firing must've been done from the police side?	1	in a different world.
2	MR BOTES: Mr Chairman, from my personal	2	MR BOTES: That's correct.
3	point of view I thought that that was coming from the	3	MR MPOFU: And in your favour the – your
4	police, that they were shooting but the number of people	4	evidence is consistent with what the descriptions which are
5	when they said there's bodies laying down, there wasn't a	5	given by Colonel Vermaak because he says effectively that
6	distinction between striking bodies and police bodies	6	he heard Brigadier Calitz giving an order. He says it in
7	laying down. So we were scared in the control room, in the	7	Afrikaans and then there was the shortly thereafter he saw
8	JOC, that who was shot, who was killed because apart from	8	the people down and he communicated that and you heard that
9	just people being shot, people could've been stabbed. So	9	- at least you heard the report about bodies down or
10	we did not know who, which bodies was referred to.	10	something to that effect.
11	CHAIRPERSON: When you say we, are you	11	MR BOTES: That's correct, Mr Chair.
12	referring to –	12	MR MPOFU: Ja. Alright. And when you
13	MR BOTES: To the people –	13	saw obviously now, when you went home and then saw and
14	CHAIRPERSON: - things that were said in	14	heard the volley of fire on television like all of us, it
15	the JOCCOM?	15	was clear that that is what you heard at that time.
16	MR BOTES: In JOC, to the people in the	16	MR BOTES: That's correct, Mr Chair.
17	JOC.	17	MR MPOFU: Okay. And okay now let's move
18	CHAIRPERSON: Yes. Now who were among	18	to the last portion which I said I was going to cover about
19	the people who raised these kind of queries?	19	the post massacre collusion or post tragedy collusion.
20	MR BOTES: Mr Chairman, basically all of	20	There is correspondence which is contained in, I don't know
21	us were talking to each other and trying to find out what	21	what to call it, Mr Chaskalson's bundle which occurred
22	happened and tried to establish what happened.	22	between – I'm sorry, Chairperson, I'm just assisting –
23	CHAIRPERSON: You told us before when I	23	CHAIRPERSON: My take –
24	asked you some at least of the people, you couldn't	24 25	MR MPOFU: - Mr Botes' bundle.
25	remember if General Mbombo was there, but you said General	25	CHAIRPERSON: Page 71, Mr Botes' bundle.
	Page 33718		Page 33720
1	Annandale was there, Colonel Scott was there –	1	MR MPOFU: Yes.
2	MR BOTES: Colonel Scott was there,	2	CHAIRPERSON: It's the evidence leaders'
3	Brigadier Pretorius was there –	3	starts at 71 –
4	CHAIRPERSON: - Brigadier Pretorius, was	4	MR MPOFU: Yes.
5	there anybody else that you can remember now?	5	CHAIRPERSON: - but I think the way these
6	MR BOTES: Now that they mentioned	6	– ja there's – but it's 71 and 72 I think.
7	Colonel Moolman, she was also there and there might be	7	MR MPOFU: And 72, yes, Chairperson.
8	other people like the intelligence Brigadier Van Zyl, he	8	CHAIRPERSON: Yes and –
9	could be there. I cannot specifically remember but they	9	MR MPOFU: This bundle, Mr Botes which
10	were normally in the JOC.	10	was prepared by Mr Chaskalson, remember? It was given to
		11	you –
11	CHAIRPERSON: All these people you've		
12	talked about were they taking part in this discussion that	12	CHAIRPERSON: Do you have a copy?
12 13	talked about were they taking part in this discussion that you just summarised for us?	12 13	MR BOTES: Yes.
12 13 14	talked about were they taking part in this discussion that you just summarised for us? MR BOTES: They were trying to establish	12 13 14	MR BOTES: Yes. CHAIRPERSON: Mr Mpofu is going to ask
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1	Page 33721 MR MPOFU: I'm post – immediately post	1	Page 33723 MR BOTES: Mr Chairman, there's
2	and a few days thereafter.	2	accusations but we work around a common goal to get to
3	MR BOTES: That's correct, Mr Chairman,	3	fighting crime and syndicates and criminals.
4	and that was purely because of a subpoena that was served	4	MR MPOFU: No, I understand. I'm just
5	on me, that I have to give all evidence and all information	5	saying to you are you aware that dating back from the 80s,
6	over to the police.	6	particularly the National Union of Mine Workers, has been
7	MR MPOFU: When was that subpoena given?	7	complaining about collusion between mine security and the
8	MR BOTES: I think that was just after	8	State agencies?
9	the shooting, around about the 21st, 22nd of August.	9	MR BOTES: Ja, I wasn't aware of that
10	MR MPOFU: Yes. But apart from that you	10	since that time.
11	were, to put it mildly, comparing notes with people like	11	MR MPOFU: Ja. Of the date, ja. But you
12	General or Brigadier Engelbrecht and General Van Zyl.	12	are aware of the accusations? You think they are unfounded
13	MR BOTES: That's correct, Mr Chairman.	13	or you are just aware of them?
14	MR MPOFU: Yes.	14	MR BOTES: I'm aware of them.
14	MR BOTES: My role as a security	15	MR MPOFU: Thanks. Now one of the
16	professional on a mine and any security professional on any	16	emails, there are many of these emails which were
17	industry like the bigger mining industry is exactly the	17	exchanging hands between you and the senior police
18	same purpose and functions as the police.	18	officials I'm talking about, but the ones that strike my
19	MR MPOFU: Yes.	19	attention was where you, page 72, where you say a
20	MR BOTES: The only difference is on a	20	commission –
20	mining environment. So I have to work with the police very	20	CHAIRPERSON: Sorry, the one sent by
22	closely to get to details and information that we can	22	Colonel Visser –
23	investigate any crime activities, share intelligence and	23	MR MPOFU: Yes.
24	that we can serve one purpose and that is to bring the	24	CHAIRPERSON: - to the witness –
25	perpetrators to book.	25	MR MPOFU: To the witness, that's it.
	L . L		
	Page 33722		Page 33724
1	MR MPOFU: Yes.	1	CHAIRPERSON: - at 16:19pm on the 29th of
2	MR BOTES: And whoever it is, it is	2	August.
3	happened within the police, within the secure sources,	2	
		3	MR MPOFU: That's correct, Chairperson.
4	outside the secure sources, that is our obligation to look	4	CHAIRPERSON: And you presumably are
5	and find the truth.	4 5	CHAIRPERSON: And you presumably are going to refer to the third paragraph.
5 6	and find the truth. MR MPOFU: Yes. To, in your language to	4 5 6	CHAIRPERSON: And you presumably are going to refer to the third paragraph. MR MPOFU: Third paragraph, yes. Well
5 6 7	and find the truth. MR MPOFU: Yes. To, in your language to form those partnerships, in my language to collude,	4 5 6 7	CHAIRPERSON: And you presumably are going to refer to the third paragraph. MR MPOFU: Third paragraph, yes. Well I'll start at the beginning. A commission of –
5 6 7 8	and find the truth. MR MPOFU: Yes. To, in your language to form those partnerships, in my language to collude, correct?	4 5 6 7 8	CHAIRPERSON:And you presumably aregoing to refer to the third paragraph.MR MPOFU:Third paragraph, yes. WellI'll start at the beginning.A commission of –CHAIRPERSON:Commission of inquiry is
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1	Page 33725 CHAIRPERSON: - 30.2.	1	Page 33727 MR MPOFU: Let's make it 9 and 10.
2	MR MPOFU: Thank you, Chairperson. And	2	CHAIRPERSON: 9 and 10.
3	then it goes on, sorry, you'll forgive me. If you just -	3	MR MPOFU: 9 and 10.
4	MR BOTES: Yes.	4	CHAIRPERSON: 9 and 10, so that will be
5	MR MPOFU: - read from the document	5	30.5 and 30.6.
6	itself. I don't think it can be put up here. "We are	6	MR MPOFU: And 6, thank you, Chairperson.
7	currently in the process of preparing for the commission	7	CHAIRPERSON: Alright, I've entered that
8	and need to gather all facts of incidents in question.	8	in my book.
9	Certain aspects were reported and handled by mine security	9	MR MPOFU: Thank you.
10	and investigated as such". And then it says "We just need	10	CHAIRPERSON: Sorry, may I interrupt you?
11	to verify that we present all the available facts to the	11	You've put these documents to him. How much longer do you
12	commission and not serious contradictions with the fact	12	have to be?
13	that you will be presenting to the commission". In other	13	MR MPOFU: Chairperson, I think
14	words the purpose of this email was to align, again to put	14	[microphone off, inaudible] I'll wrap up when we get -
15	in a neutral way, to align the versions of Lonmin and the	15	CHAIRPERSON: Alright, okay.
16	police on certain aspects, if one can put it as mildly as	16	MR MPOFU: It might be even shorter.
17	that. Is that correct?	17	CHAIRPERSON: Alright, yes, one can only
18	MR BOTES: If you read it like that, yes,	18	hope.
19	you can see it that like that, Sir.	19	MR WESLEY: Sorry, Chair, there's only 10
20	MR MPOFU: Yes. And you know what's	20	minutes left.
21	going to follow. In my language that is that it's further	21	CHAIRPERSON: No, but wait –
22	collusion even after the event.	22	MR MPOFU: Of the original time?
23	MR BOTES: Mr Chairman, that is why I	23	CHAIRPERSON: I allowed him to take
24	referred this request from Colonel Visser to our Lonmin	24	transfer of some AMCU time, remember.
25	legal advisor, Dan Mokwena, that he can look at the request	25	MR MPOFU: Yes –
	Page 33726		Page 33728
1	and also to furnish me with the right information that I	1	MR WESLEY: It's including that
2	can, what I can furnish to the police subsequent to the 205	2	transferred time, Chair.
3	I received that I have to give all evidence and incidents,	3	CHAIRPERSON: I see, alright. So you've
4	everything we have, I have to give that over to the police.	4	only got – you're in AMCU time now, Mr Mpofu. Shall we
5	MR MPOFU: And also in that same vein,	5	take the adjournment now -
6	okay, fine. I won't come back on that evidence because	6	MR MPOFU: Yes.
7	it's now an exhibit, so I'll lead some of it in evidence,	7	CHAIRPERSON: - and you can do your 10
8	in argument. If you go to pages 16 and 17 of the same	8	minutes –
9	document, Chairperson, we can just proceed maybe make that	9	MR MPOFU: Yes, Chairperson.
10	30 point – page 16 and 17, 30.3.	10	CHAIRPERSON: The witness can read the
11	CHAIRPERSON: Yes.	11	documents over the lunch hour.
12	MR MPOFU: 16 and 17, Chairperson.	12	MR MPOFU: Yes, thanks.
	CHAIRPERSON: I see, yes. This is the,	13	CHAIRPERSON: Sorry, lunch is three-
13		14	quarters of an hour, and then you can ask the questions,
13 14	ja, 30.3, this is the page 16 of the evidence leaders	14	
	ja, 30.3, this is the page 16 of the evidence leaders Botes' bundle. And page 17 is – it's 17 and 18 is it?	15	use your last 10 minutes then.
14			use your last 10 minutes then. MR MPOFU: Thank you, Chairperson.
14 15	Botes' bundle. And page 17 is – it's 17 and 18 is it?	15	
14 15 16	Botes' bundle. And page 17 is – it's 17 and 18 is it? MR MPOFU: Yes.	15 16	MR MPOFU: Thank you, Chairperson.
14 15 16 17	Botes' bundle. And page 17 is – it's 17 and 18 is it? MR MPOFU: Yes. CHAIRPERSON: No, it's only –	15 16 17	MR MPOFU:Thank you, Chairperson.CHAIRPERSON:We'll adjourn now till
14 15 16 17 18	Botes' bundle.And page 17 is – it's 17 and 18 is it?MR MPOFU:Yes.CHAIRPERSON:No, it's only –MR MPOFU:Just 17.	15 16 17 18	MR MPOFU: Thank you, Chairperson. CHAIRPERSON: We'll adjourn now till quarter to 2.
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Marikana Commission of Inquiry

1	Page 33729 Thank you, Chairperson. Mr Botes, the good news is that	1	Page 33731 isn't it, Mr Botes?
2	I've been given an extra two hours, so –	2	MR BOTES: Mr Chairman, no, there was
2	MR BOTES: Excellent.	2	clearly a case against him of intimidation at K3 Shaft
4	MR MPOFU: Okay.	4	after the shooting incident –
4 5	CHAIRPERSON: [Microphone off, inaudible]	5	MR MPOFU: Okay.
6	MR MPOFU: The witness said it's	6	MR BOTES: And the investigation was
7	excellent.	7	directed to him that he intimidated Mr Jan Thirion and I
, 8	CHAIRPERSON: Some people have got a	8	went there to follow our internal disciplinary process and
8 9	sense of humour.	9	that is to suspend him whilst we conduct further
9 10	MR MPOFU: Yes, Chairperson, including	9 10	investigations for a disciplinary hearing.
10	the witness. Okay, Mr Botes, just also to clean up	10	MR MPOFU: Okay, so you agree with Mr Van
12	something that we covered earlier, yesterday you said that	12	As that the only reason was the intimidation?
12		12	-
	the words "joint operation centre" self-evidently means		
14 15	that it's a joint operation in justifying the involvement of Lonmin there. Correct?	14	correct, Mr Chairperson.
15 14		15	MR MPOFU: That was the only reason?
16	MR BOTES: That's correct, Mr Chair.	16	MR BOTES: That was relevant to the
17	MR MPOFU: So therefore one can conclude	17	incident.
18	from that that this was to that extent a joint operation.	18	MR MPOFU: I know it was relevant. Was
19	MR BOTES: That's correct, Mr Chair.	19	that the only reason?
20	MR MPOFU: Yes, okay, and what would you	20	MR BOTES: That's correct, Mr
21	say – okay, no, don't say anything. Let's move to where we	21	Chairperson.
22	were, which is the, what I call the post-tragedy collusion.	22	MR MPOFU: Then go to EEEE4.3, which is
23	In a nutshell the exhibits that we marked before lunch show	23	page 58, paginated 48 of the papers, of the Lonmin index.
24 25	very clearly that even after the 16th, and in fact one of	24 25	That's the notice of suspension for Mr Nzuza. Have you got it?
20	them is, I know specifically you were asked, I was busy	20	11 /
	Page 33730		Page 33732
1	doing a bail application for the people who had been	1	MR BOTES: Yes, I have.
2	arrested and so on from the 27th to the 29th and Brigadier	2	MR MPOFU: Can you read it out? What
3	Van Zyl was giving evidence there, as he was also	3	does it say as to the reason? "Alleged misconduct" -
4	corresponding to you, you were supplying them with the	4	MR BOTES: "Alleged case investigated
5	names and union affiliation and so on. Remember that?	5	that you were involved in an intimidation at K3 Shaft and
6	MR BOTES: That's correct, Mr Chair.	6	that you were identified as a leader during the strike."
7	MR MPOFU: Yes. On top of that you also,	7	MR MPOFU: Ja, so there were two reasons
8	after the event you effectively collaborated with the		
		8	then after the word "and," correct?
9	police in the arrest of Mr Nzuza. Correct?	9	MR BOTES: That is correct.
9 10	police in the arrest of Mr Nzuza. Correct? MR BOTES: Mr Chairman, that was very	9 10	MR BOTES: That is correct. MR MPOFU: Thank you. Okay, let's move
9 10 11	police in the arrest of Mr Nzuza. Correct? MR BOTES: Mr Chairman, that was very coincidence. I went to the shaft where Mr Nzuza was	9 10 11	MR BOTES: That is correct. MR MPOFU: Thank you. Okay, let's move on. And you accept that that's not an acceptable reason
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1	Page 33733 strike?	1	Page 33735 MR MPOFU: Thank you, Chairperson. And
2	CHAIRPERSON: No, but if there's a court	2	then you also participated in giving away, at EEEE7 you
3	order, if it's an unprotected strike, the point Mr Van As	3	provided the police with people's, names about 14 of them.
4	is making is if it's an unprotected strike, the point in values been	4	Correct?
5	an interdict against it –	5	CHAIRPERSON: What document is it, are
6	MR MPOFU: So?	6	you –
7	CHAIRPERSON: - then if you participate	7	MR BOTES: Which document are you
8	in action which constitutes contempt of court it could	, 8	referring to, Sir?
9	arguably be the kind of offence which leads to dismissal.	9	MR MPOFU: EEEE7. EEEE7, Mr Botes.
10	MR MPOFU: Okay, well we'll argue that –	10	MR BOTES: Mr Chairman, can I just get
11	CHAIRPERSON: But that's a –	11	the page number of my bundle?
12	MR MPOFU: - [inaudible] victimisation.	12	MR MPOFU: 64.
13	Thank you, we'll move on.	13	CHAIRPERSON: Page 64.
14	CHAIRPERSON: That's a legal point which	14	MR BOTES: Page 54?
15	you can argue at the end.	15	CHAIRPERSON: 60 –
16	MR MPOFU: Ja.	16	MR MPOFU: 64.
17	CHAIRPERSON: All the material facts I	17	CHAIRPERSON: Six-four.
18	think are before us.	18	MR BOTES: 64. That's correct, Mr
19	MR MPOFU: Ja, well I'll put to you that	19	Chairman, based, after being requested by the Captain Van
20	neither you nor Mr Van As would have denied that there was	20	der Merwe, Investigation Police Task Team. They supplied
21	a charge about being a leader of the strike if it was a	21	me with nicknames and possible names which we had to verify
22	valid charge. It's just victimisation.	22	for him as Lonmin employees and submit full details of
23	MR BOTES: Mr Chairman, this was purely a	23	those.
24	suspension to the investigation. It is not already a	24	MR MPOFU: Yes, and page, that's the –
25	charge to Mr Nzuza. That was purely a charge on the	25	CHAIRPERSON: What appears on page 64 –
	Page 33734		Page 33736
1	Page 33734 allegations of the suspension and the pending investigation	1	Page 33736 MR MPOFU: It starts on 62 actually,
1 2		1 2	-
	allegations of the suspension and the pending investigation that were followed up with disciplinary formulating any charges afterwards.		MR MPOFU: It starts on 62 actually, Chairperson. CHAIRPERSON: Alright, it appears that
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2 3 4 5 6	allegations of the suspension and the pending investigation that were followed up with disciplinary formulating any charges afterwards. MR MPOFU: Okay. Well okay, I'm sure one day Lonmin will make up its mind. You are now saying it was not a charge. Mr Van As says it was, but let's leave	2 3 4	MR MPOFU: It starts on 62 actually, Chairperson. CHAIRPERSON: Alright, it appears that you received a subpoena from the police in terms of section 205 of the Criminal Procedure Act. Now if you had declined to provide that information you would have had to appear
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	Page 33737		Page 33739
1	according to us really had no other involvement in these	1	request was reasonable for the police that we can provide
2	matters except that he was a witness here.	2	the facility where they can safely accommodate, where they
3	MR BOTES: Mr Chairman, I cannot say	3	cannot escape. No police stations could have handled that
4	where these people were involved. I was given the names by	4	volume of people and that is why they were kept there and
5	the police. This is the names they supplied me with and on	5	the police processed the people from there and take them
6	a next affidavit I added a table to this previous affidavit	6	out to the cells where they were detained.
7	with all the details of them. So those names came from the	7	MR MPOFU: Okay, I'll ask you a question
8	police, not for us, and they didn't tell me whether they're	8	which will cover both this and another aspect.
9	suspects or accused or complainants or witnesses, I don't	9	CHAIRPERSON: Two questions ago was
10	know. They gave it to me and say I must verify it.	10	finally, but –
11	MR MPOFU: Yes, okay. Well, Mr Phatsha	11	MR MPOFU: Yes, finally, Chairperson.
12	and Mr Magidiwana were witnesses here, but I accept what	12	CHAIRPERSON: This is lastly as in
13	you're saying. Finally you are aware that Lonmin on the	13	lastly.
14	16th when the people that I represent were arrested, that	14	MR MPOFU: And in conclusion, yes. So
15	they spent several hours at the Lonmin premises where they	15	yes, it's true that there were three police stations in the
16	were incarcerated?	16	surrounding areas that serve the mining area, broadly
17	MR BOTES: Mr Chairman, after the arrest	17	speaking. Correct?
18	we made a facility available, which is at the recruitment	18	MR BOTES: That's correct, Mr Chair.
19	hub. That was the only place which was nearby and	19	MR MPOFU: Mooinooi, Bethanie, and
20	controlled away from any threats. We made that available	20	Marikana.
21	where they were kept in the car park, which was surrounded	21	MR BOTES: That's correct, Mr Chair.
22	with a fence, and then they were taken inside the building	22	MR MPOFU: Ja, now firstly those
23	where the police prepare the dockets against them, the FIC	23	policemen who work there - or I have to do a job for Ms
24	against them, statement of arrest and open a case docket	24	Pillay. When at paragraph, I think it's 24, or when you
25	against them. From there they were transported to the	25	said you referred information to the commander, the station
	Page 33738		Page 33740
1	Page 33738 various police stations for detention.	1	Page 33740 commander, were you referring to Mr Govender?
1 2		1 2	
	various police stations for detention.		commander, were you referring to Mr Govender?
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1	Page 33741 MR MPOFU: Yes, that's the point I'm	1	Page 33743 We were all surprised to the outcome. What was planned in
1 2	making. If those people were there and they were familiar	2	the JOC was totally different from what happened. The
2	with the place then the role of showing the lie of the	2	whole plan was in a non-violence manner plan, applying the
4	land, as it were, was played by them. Your involvement was	4	minimum force until the people are dispersed where they can
4 5	merely to collude with the police because you could not be	4 5	be able to disarm smaller groups into the veld and not
6	performing the duties that was being performed by these	6 7	handle the bigger groups.
7	people who were familiar with the surroundings. That's the		[14:09] MR SEMENYA SC: And for that reason the
8 9	point I'm making.	8	people in the JOC including yourself were not paying
	MR BOTES: Mr Chairman –	9	particular attention even to the timelines when things were
10	CHAIRPERSON: What do you say to that?	10	happening at what point except those notes that were taken.
11	MR BOTES: Mr Chairman, I disagree	11	MR BOTES: Because of the chaos that
12	because the police cannot provide them big printed maps of	12	ensued after the rolling out of the barbed wire and
13	the areas because they do not have, firstly, that	13	everything that happened afterwards and all the intensity
14	information printed and they do not have facilities to	14	that happened and everybody screaming. There's commands
15	print all those information and assist with the detailed	15	given and there's chopper – Colonel Vermaak is on the
16	information of critical sites, exposure sites which can be	16	radio. There was chaos. We did not monitor any events and
17	targeted by the striker teams for a possible attack and to	17	note down those accurately that we were supposed to do.
18	have a business interruption of Lonmin.	18	I'm pretty sure that there's many things that we missed
19	CHAIRPERSON: I think that's it, Mr	19	out, but when you are in a group discussion and everybody
20	Mpofu.	20	talks then you realise gee whizz I forgot that, I forgot
21	MR MPOFU: Thanks, Chairperson. Well, if	21	that, I forgot that. But thinking back after two years and
22	I can just put this then to you for your comment. Given	22	trying to remember everything what happened is very
23	what you and I have discussed that, you know, you were part	23	difficult. And I realise that I cannot even remember the
24	of this joint operation, you assisted the police in	24	people in the JOC during that time. So it's positive what
25	effecting some of the arrests, you kept people in your	25	you say.
	Page 33742		Page 33744
1	premises and you were, as you call it, an essential part of	1	MR SEMENYA SC: In fact it was much later
2	premises and you were, as you call it, an essential part of the overall operation, then you cannot blame the employees	2	MR SEMENYA SC: In fact it was much later that it occurred to the people of the JOC that there were
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		1	
1	Page 33745	1	Page 33747
1	which it did. This was the stage the group of armed strikers were advancing towards the SAPS members in an	1 2	you call a two second, three second split I.E the engage and all of this happening inside two seconds.
2 3	attacking manner. Nyala 4 managed to cut in front of	2	MR BOTES: No, Mr Chairman, it could not.
4	them." Do you remember that episode, Mr Botes?	4	That takes much longer for the first engagement from the
5	MR BOTES: Mr Chairman, I could not see	5	dispersing group from the Nyalas, water canons, teargas, so
6	that because the people ran to the north.	6	that would take a few longer seconds.
7		7	MR SEMENYA SC: All right. I want to
			Ũ
8	in exhibit L, slide 168 and slide 171, that's what he says	8	show you also the statement of Colonel Vermaak which is
9	there. Then follows this paragraph. "The group then moved	9	LLL8, if we may start from paragraph 10, but in particular
10	back and in a horseshoe shape came back to the police line	10	paragraph 11. Chair, if I can exploit your bilingual
11	for the second time. When I noticed this approach of the	11	talents.
12	armed strikers I instructed the Papa Nyalas which is the	12	CHAIRPERSON: Where do you want me to
13	POP dispersion group to engage. The word in code engage is	13	start translating from? From om 15:39? Is that it or is
14	used to order the dispersal group to get involved. I gave	14	it further on after that? I think it's after that isn't
15	further instructions to the dispersal group to move forward	15	it? A bit later than that, it's –
16	and block the advancing strikers."	16	MR SEMENYA SC: Maybe if you can do
17	Could that be the engage that you heard over the	17	paragraph 11, I'll put the context to the witness. The top
18	radio?	18	part, yes Brigadier Calitz.
19	MR BOTES: Mr Chairman, I heard about	19	CHAIRPERSON: Yes all right. Paragraph
20	three or four engage, engage commands directly in one	20	11 begins "The group –
21	breath.	21	MR SEMENYA SC: Sorry, Chair, if you
22	MR SEMENYA SC: Correct.	22	start at the top of the page which would be paragraph 10,
23	MR BOTES: And like he's very excited at	23	at "Brigadier Calitz het opdrag gegee."
24	that he said engage, engage, engage. So I would assume	24	CHAIRPERSON: Yes, "Brigadier Calitz gave
25	that was at the kraal where the serious attack took place	25	instruction, that being an order that members must mount an
	Page 33746		Page 33748
1	Page 33746 because as I mentioned to Mr Chairman that in that	1	Page 33748 operation to protect themselves against the attack of the
1 2		1	0
	because as I mentioned to Mr Chairman that in that		operation to protect themselves against the attack of the
2	because as I mentioned to Mr Chairman that in that conversation I could hear the burst of shots.	2	operation to protect themselves against the attack of the mass." He refers to photograph 1515. "The members delayed
2 3	because as I mentioned to Mr Chairman that in that conversation I could hear the burst of shots. MR SEMENYA SC: But it is fair to say	2 3	operation to protect themselves against the attack of the mass." He refers to photograph 1515. "The members delayed or stopped or carried until the mass was practically on the
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		1	
1	Page 33749	1	Page 33751
1	number of persons were lying on the ground." Is that where	1	the left-hand side of the kraal as we can see it on the
2	I must stop?	2	photograph.
3	MR SEMENYA SC: That's where you can	3	MR MPOFU: Yes. Chairperson, sorry. I
4	stop. The reading of this statement and the evidence of	4	cross-examined Colonel Vermaak on this point and his
5	Colonel Vermaak seems to show a timeline far lower than	5	evidence was that – I said to him had he known that the
6	two, three seconds between the word engage and the people	6	people were facing – because he said since he was in the
7	lying on the ground. Do you agree?	7	air he couldn't tell which unit they were facing. Had he
8	MR BOTES: I know that, Mr Chair.	8	known that they were facing TRT would he have been
9	MR SEMENYA SC: And I want us to look	9	surprised and he said yes. He thought it was POP or
10	again at exhibit JJJ11, photo 1515.	10	something, so it's definitely after the around the kraal
11	CHAIRPERSON: This is one of the	11	situation.
12	photographs that Colonel Vermaak took from his helicopter	12	CHAIRPERSON: It sounds as if there's
13	and you can see at the top of the photograph is the koppie	13	objection being taken to your question, Mr Semenya.
14	and then as one moves in a – diagonally to the left one	14	MR SEMENYA SC: May I reply to it, Chair?
15	sees a group of police vehicles. One sees the kraal,	15	CHAIRPERSON: Yes, of course. I'm not
16	that's below those police vehicles and one sees to the	16	upholding it yet, I may not depending on what you say.
17	right of the kraal and going across to the centre of the	17	MR SEMENYA SC: If we go to the statement
18	photograph a number of people who I take it are strikers.	18	of Vermaak the very one that we started reading at LLL8,
19	You can also see a wire – if you look at the top left-hand	19	the bottom of paragraph 10 where it says "Brigadier Calitz
20	corner of the photograph you can see an Nyala, just below	20	het opdrag gegee that die lede, of lede moet loop om hulle
21	the word share actually on the frame of the three. Below	21	te beskerm teen die aanval van die massas foto 1515."
22	the top of the photograph, I suppose about an eighth of the	22	That's the photo I'm referring to. That is the photo that
23	way into the photograph, that's Nyala 1. And then as one	23	we have just seen.
24	moves down diagonally towards the right one comes across	24	CHAIRPERSON: Perhaps we could go just to
25	Nyala 2 and then further to the right Nyala 3 and you can	25	the foot of the previous page the section in paragraph 10
	Page 33750		Page 33752
1	actually see the wire being uncoiled between the two	1	which is immediately before the part that I translated.
1 2	actually see the wire being uncoiled between the two Nyalas. But wait a minute, I think the first one I said	1 2	which is immediately before the part that I translated. Can we have that please Mr Operator? Perhaps we should
	actually see the wire being uncoiled between the two Nyalas. But wait a minute, I think the first one I said was Nyala 1 may in fact be Nyala 2. I've got an idea Nyala		which is immediately before the part that I translated. Can we have that please Mr Operator? Perhaps we should start at Five lines in the footage. Instruction or an
2	actually see the wire being uncoiled between the two Nyalas. But wait a minute, I think the first one I said was Nyala 1 may in fact be Nyala 2. I've got an idea Nyala 1 may be off the screen. I think the one that's got the	2	which is immediately before the part that I translated. Can we have that please Mr Operator? Perhaps we should start at Five lines in the footage. Instruction or an order was given to the wire carts, vehicles to deploy
2 3	actually see the wire being uncoiled between the two Nyalas. But wait a minute, I think the first one I said was Nyala 1 may in fact be Nyala 2. I've got an idea Nyala 1 may be off the screen. I think the one that's got the wire behind it is probably Nyala 4, but anyway you can see	2 3	which is immediately before the part that I translated. Can we have that please Mr Operator? Perhaps we should start at Five lines in the footage. Instruction or an order was given to the wire carts, vehicles to deploy because the group was beginning to move up and down, photos
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		1	
1	Page 33753 CHAIRPERSON: No, no, no I think to be	1	Page 33755
1 2	CHAIRPERSON: No, no, no I think to be fair Mr Mpofu is saying that you've identified the wrong	1 2	basies bietjie nader op daardie stadium was, waar dit gebeur het. In die foto was net voor die gebeure was hy
2	photograph as 1515. That's what he's saying, whether he's	2	geneem en op daardie stadium het ek, ek het die Blackberry
4	right or wrong is a matter that we'll have to decide, but	4	hanteer en Pentax hanteer, ek die polisie radio terselfde
4 5	that's the point he's making.	5	tyd ook beman." So on your evidence, this picture, asked
6	MR CHASKALSON SC: Chairperson, can I	6	by Ms Pillay was taken immediately before the first attack
7	answer with reference to the evidence, oral evidence of	7	that you describe. And then does it go on after that? And
8	Lieutenant-Colonel Vermaak in the transcript because the	8	then – yes, and then he goes on, the first attack that you
9	confusion is that there were two instructions from	9	refer to is one on the second line paragraph – where is it?
9 10	Brigadier Calitz to engage. The first at photograph 1515	10	Oh, the second attack. "The first attack is one that you
11	and second at photograph 1516 and the relevant passage in	11	are referring towards the end of paragraph 10 in your
12	the evidence is at page 25343 on day – sorry I don't have	12	statement." "Dit is korrek." "Do I understand you to be
12	the day, but I will read the evidence of Lieutenant-Colonel	12	saying that took place on what one can call the right-hand
14	Vermaak.	14	side of the small kraal?" "Dit is korrek." "On the
15	CHAIRPERSON: Does the operator need the	15	photograph" "Dit is korrek." "Right, that was repelled in
16	day in order to find the page?	16	the sense that the group then left that spot, went around
17	MR CHASKALSON SC: If he searches on that	17	the kraal. I think around the kraal on the lower side of
18	number 25343 it should be –	18	the kraal, as we see in the photograph?" "Dit is korrek."
19	CHAIRPERSON: You've got it now on the	19	"To the position on the other side, the left-hand side,
20	screen?	20	that's the left-hand side as per the photograph." "Dit is
21	MR CHASKALSON SC: Yes and at line 11 –	21	korrek." So I say, "Now I say in that sense the attack was
22	thank you, Chair. "Now just for identification purposes,	22	repelled." Now what it means, what exactly caused that
23	Colonel, just to be clear, we know that the little line	23	repelling? Then he goes on about that. So what does all
24	that we see behind the line of Nyalas that's the TRT basic	24	that amount to then, Mr Semenya?
25	line and the members forming up on the left of the kraal	25	MR SEMENYA SC: Well, may I just put some
	Page 33754		Page 33756
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2	would be the POP line. And now that attack you're describing at 15:55 with reference to those two lines can	2	series of questions and if the objection is still valid, I will see whether it is still valid, Chair, with the
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		1	
1	Page 33757	1	Page 33759 that he heard Calitz give the order "engage," sorry, I must
2	right, I mean give or take five in other direction. MR SEMENYA SC: Do you follow?	2	get it right. Vermaak's statement was that he heard Calitz
3	MR BOTES: I follow, Mr Chair.	3	give the command "engage." The members didn't react and he
4	MR SEMENYA SC: Now, if the water was	4	remembered what had happened on the 13th, and he was afraid
5	used subsequent to the words "engage, engage," and it was	5	there was going to be big trouble, so he repeated the order
	used approximately six seconds before the volley, it cannot	6	which Calitz had said. Now, is it possible that what you
6 7		7	
	be that the time line between you hearing the words		heard was, the last "engage" you heard, was Calitz
8	"engage," it was about two to three seconds that you heard	8 9	repeating – sorry, I will get it right eventually. Is it
9 10	the fire coming through. Would that be correct? MR BOTES: Mr Chairman, what I heard was		possible that the last "engage" you heard was Vermaak
11	MR BOTES: Mr Chairman, what I heard was that during the conversation of Colonel Vermaak, by	10	repeating what Calitz had said because he had seen the
12	-	11 12	members hesitating and not acting immediately. Is that a possibility?
	pressing in the key, holding the key of the radio engage, I	12	
13	heard the burst of shots. Before that, the water cannon		
14	was used and I also mentioned that teargas were used and	14	possibility, yes.
15	then it said, there's nothing on evidence on the photos,	15 16	MR SEMENYA SC: Well, it can't be a
16	but there's clearly on that picture, if you look on that	16	possibility, Mr Botes, because you are certain it was
17	picture, you can see smoke there and my assumption is that	17 18	Calitz you heard?
18	is teargas that has been used.		MR BOTES: I heard Calitz saying
19	MR SEMENYA SC: At the height of my	19	"engage," and to me, he repeated that three times or more,
20	question, Mr Botes, is that the time lines of which in this	20	and it wasn't a normal instruction, and during a key of a
21	instance are in seconds, you may be mistaken about them.	21	radio, I cannot 100% say it is Calitz's key of the radio
22	MR BOTES: Mr Chairman, the instructions	22	but continuous conversations took place after that, and
23	was that the people should use rubber bullets and they must	23	there was chaos. I heard the burst of –
24 25	use the water cannon and teargas. After that, my – what I	24 25	CHAIRPERSON: You heard the burst of
25	heard was the, when there was intense, when the engagements	25	gunfire. The question is, it may well be quite important,
	Page 33758		Page 33760
1	Page 33758 took place and in that conversation I heard the burst of	1	Page 33760 actually, is the last "engage" you heard, is it possible, I
1 2		1 2	5
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1	MR BOTES: That's correct, that is what I	1	must be forward holding area 1, please go there's something
2	assumed and that is what I put in my statement and I said	2	wrong happening somewhere.
3	it was Brigadier Calitz which I heard.	3	MR BOTES: Mr Chairman, we only got a
4	MR SEMENYA SC: Now let's explore the	4	request afterwards to send more ambulances because there
5	possibility that the Chair is referring to, if Colonel	5	was already ambulances at the sites with the police.
6	Vermaak is correct, there would have been quite some moment	6	MR SEMENYA SC: Okay, let me understand
7	lapsing between what Brigadier Calitz says "engaged," he	7	your evidence. In the JOC as and when the shots are fired
8	considers and looks at the group down, he realises they are	8	-
9	not responding to it, and he repeats it.	9	MR BOTES: Yes.
10	MR BOTES: I hear what you say, Mr Chair,	10	
			5
11	and if that was the case, I cannot deny it because there	11	picture in your mind there are people hurt, do you
12	was a lot of anxiety in the JOC about it.	12	verbalise that to General Annandale? Do you say there must
13	MR SEMENYA SC: Okay, you see, if I	13	be people who may be killed there or injured?
14	understood your evidence-in-chief, you had a graphic	14	MR BOTES: Everybody in the JOC guessed
15	impression of some people being injured and perhaps even	15	what was happening, and everybody talked and tried to
16	killed. Is that the picture you draw?	16	understand what was happening. I did not, I cannot
17	MR BOTES: That is correct, Mr Chair.	17	remember requesting or talking specifically to somebody
18	MR SEMENYA SC: Almost instantaneously as	18	about specific that I can remember.
19	the word was used by the Chair.	19	MR SEMENYA SC: Yes, because the evidence
20	MR BOTES: By the engagement?	20	of General Annandale is that it did not occur to him that
21	MR SEMENYA SC: Yes, you heard the rapid	21	at that time that there could be something as serious as
22	fire or the volley or that -	22	what you say you pictured in your mind.
23	MR BOTES: Yes.	23	MR BOTES: Mr Chairman, that is what I
24	MR SEMENYA SC: - and it - in your mind	24	experienced. I felt that something terribly went wrong and
25	that there may be people there who are seriously injured or	25	that is what I experienced and I felt that there's –
	Page 33762		Page 33764
1	Page 33762 hurt.	1	Page 33764 because I was frustrated not to see there, in the first
1 2		1 2	5
	hurt.	-	because I was frustrated not to see there, in the first
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	Page 33765		Page 33767
1	overall commander?	1	MR BOTES: I mean something else that you
2	MR BOTES: And because of the radio coms	2	will not send any ambulances no matter who has been shot.
3	that were very busy, I know that Brigadier Pretorius tried	3	MR SEMENYA SC: Mr Botes, I want to
4	to get information, everybody tried to get information but	4	suggest to you that what you describe now as your
5	we only get her request afterwards to send more ambulances.	5	observations of the 16th is quite significant, it paints a
6	CHAIRPERSON: Would it be necessary to	6	picture of everyone in the JOC more or less being shocked
7	have told General Naidoo unless he was engaged in some	7	by what you have immediately heard.
8	frolic of his own, that he must the ambulances from forward	8	MR BOTES: That is correct, Mr Chair.
9	holding area 1 to the scene, or would he have been able to	9	MR SEMENYA SC: And almost a déjà vu of
10	hear himself, who had been listening on the radio what had	10	the days gone past of the 13th.
11	happened?	11	MR BOTES: No, Mr Chair, I wouldn't say
12	MR BOTES: Mr Chairman, my view was that	12	SO.
13	hearing the events after, exactly what happened afterwards,	13	MR SEMENYA SC: Well, given the fact
14	my assumption is that they will not call the ambulances	14	since you got hyper-anxious about it.
15	immediately. They will first clear the scene, make the	15	MR BOTES: Well, your own people are
16	scene safe, before they call any ambulances in. So it is	16	killed, and then you also know what was the threat, you can
17	not that the burst is taking place and immediately there's	17	see what was the risks about the group, if there's a
18	instructions on the radio to call the ambulances. Of	18	possible attack on the police, and you do not know if the
19	course they must clear the scene first, they must make it	19	police are attacked and how many policemen are dead. So it
20	safe first before any ambulance personnel are allowed to go	20	is of course for us worrying in the JOC to establish and to
21	on site.	21	find out who has been shot and who has been injured, no
22	CHAIRPERSON: You haven't really answered	22	matter which side it is because there was a risk to both
23	my question. The question is you heard something on the	23	sides because the intention was not to shoot the striking
24	radio, which conveyed to you what you told us, and you say	24	group.
25	your impression was everybody else in the room. My	25	MR SEMENYA SC: Well, let's quickly run
	Page 33766		Page 33768
1	question is if General Naidoo had be listening to the	1	off.
2	radio, and not being engaged, well, unless he was engaged	2	CHAIRPERSON: Did you see Mr Wesley's
3	in a frolic of his own, would he have heard on the radio	3	sign?
4	what you heard, and been able to come to the same	4	[14:49] MR SEMENYA SC: 18th day of October 2012,
5	conclusion?	5	page 22, that's the statement you write first about these
6	MR BOTES: Mr Chairman, I am pretty sure	6	events, right? Is that right?
7	he did not hear it on the radio, because he was close	7	MR BOTES: Which page?
8	enough to hear the shots fired.	8	MR SEMENYA SC: Page 22 of that bundle of
9	MR CHASKALSON SC: In fact, Chairperson,	9	documents, that's the first statement you write, October
10	the evidence of General Naidoo was that he did hear the	10	2012.
11	shots fired.	11	CHAIRPERSON: Your statement of the 18th
12	MR BOTES: So he was close enough to hear	12	of October, two days after the event, and I think Mr Mpofu
13	the shots fired, so he could make a decision to take the	13	is referring you to paragraph 57. It's actually, it's
14	ambulances immediately in. But what's the use of taking	14	typed page 17 of the statement. It's page 22 of the
15	the ambulances in, if he's still not aware what really	15	bundle.
16	happened and who is shot, and who has been killed. My	16	MR BOTES: Of this bundle?
17	assumption is that he must get –	17	CHAIRPERSON: No, no, not the evidence
18	CHAIRPERSON: I am sorry, is that a good	18	leaders' bundle. Your own bundle, the Lonmin bundle.
19	point that you have to know who's been shot and who's been	19	You've got a bundle of documents relating to your evidence
20	killed. Are you suggesting that if you knew the police had	20	which Mr Van As handed us.
04	/ d / 2012 54 7 A		
21	been killed you would have got the ambulances there double	21	MR BOTES: Page 22.
22	been killed you would have got the ambulances there double quick time, and if you knew that it was the strikers who	22	CHAIRPERSON: Ja, it's page 22 of that
22 23	been killed you would have got the ambulances there double quick time, and if you knew that it was the strikers who were killed, he would gone in first gear all the way. I	22 23	CHAIRPERSON: Ja, it's page 22 of that bundle.
22 23 24	been killed you would have got the ambulances there double quick time, and if you knew that it was the strikers who were killed, he would gone in first gear all the way. I don't think you mean that, so to be fair. I think you mean	22 23 24	CHAIRPERSON: Ja, it's page 22 of that bundle. MR BOTES: Yes.
22 23 24 25	been killed you would have got the ambulances there double quick time, and if you knew that it was the strikers who were killed, he would gone in first gear all the way. I	22 23	CHAIRPERSON: Ja, it's page 22 of that bundle.

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	Page 33769		Page 33771
1	is referring you to paragraph 57. Is that right, Mr Mpofu?	1	MR BOTES: Mr Chairman, no –
2	Sorry, I beg your pardon, Mr Semenya. It's difficult to	2	CHAIRPERSON: [Microphone off, inaudible]
3	see how one can confuse the two of you, but I succeeded in	3	to ask the question, it's a negative, it's a question
4	doing the impossible. Paragraph 57.	4	designed I think to elicit a negative answer, so what –
5	MR SEMENYA SC: That's right, the date is	5	MR MPOFU: Chairperson, I'm sorry, that's
6	correct. Mr Botes?	6	not the point. The point is the question was asked as
7	MR BOTES: The date?	7	follows. "At 6:30 there was no intention to encircle the
8	MR SEMENYA SC: Yes.	8	entire 3 000 people there." I'm saying long after 6:30,
9	MR BOTES: 18th of October.	9	9:30 if the email is correct, this witness's evidence is
10	MR SEMENYA SC: Yes, is it correct?	10	that there were 300 people there. There. There.
11	MR BOTES: Can you repeat the question,	11	CHAIRPERSON: I know. It doesn't make
12	Sir?	12	the question objectionable. He can ask the question.
13	MR SEMENYA SC: The date appearing on	13	Carry on, Mr Semenya. Whether it will help him is another
14	your first statement, being the 18th of October 2012 is	14	matter, but I don't think I can stop him asking the
15	correct?	15	question.
16	MR BOTES: That's correct, Mr Chair.	16	MR SEMENYA SC: You were in the JOCCOM at
17	MR SEMENYA SC: Now let me touch quickly	17	6 o'clock. Was there any talk of encircling 3 000 people
18	on this. Lonmin have a network of intelligence gathering	18	at the koppie?
19	tools, including individuals.	19	MR BOTES: Mr Chairman, no, definitely
20	MR BOTES: That's correct, Mr Chair.	20	not. It was only planned to put razor wire out on the
21	MR SEMENYA SC: And yet you're not able	21	eastern side of the group of people striking to allow those
22	to infiltrate this small ring to collect as much	22	others to escape to the left into the veld.
23	intelligence as you could about them, right?	23	MR SEMENYA SC: Okay, the last aspect; Mr
24	MR BOTES: Mr Chairman, I do not exactly	23	Mpofu put it to you that the greater number of people on
25	know what you meant by that.	24	the koppie were allowed to escape to the west.
25	know what you mount by that.	20	the toppic were anowed to escape to the west.
	Page 33770		Page 33772
1	MR SEMENYA SC: It was difficult to	1	MR BOTES: That's correct, Mr Chair.
2	collect intelligence about what the motives of this group	2	MR SEMENYA SC: And the smaller tight
3	are, who are they going to kill next, how, what rituals are	3	group, could they also disperse to the west?
4	going to be performed next, etcetera, etcetera.	4	MR BOTES: They could also if they wanted
5	MR BOTES: Mr Chairman, yes, we did	5	to.
6	receive a lot of information from our sources and, but not		
7		6	MR MPOFU: No, Chairperson, I'm sorry, I
/	who was targeted next from the group.	6 7	MR MPOFU: No, Chairperson, I'm sorry, I mean this one I'm sure I'm entitled to object. It seems it
7 8		_	
	who was targeted next from the group.	7	mean this one I'm sure I'm entitled to object. It seems it
8	who was targeted next from the group. MR SEMENYA SC: In fact the intelligence	7 8	mean this one I'm sure I'm entitled to object. It seems it is its purpose to put words in my mouth.
8 9	who was targeted next from the group. MR SEMENYA SC: In fact the intelligence we have on record here is intelligence that you had as	7 8 9	mean this one I'm sure I'm entitled to object. It seems it is its purpose to put words in my mouth. CHAIRPERSON: We've already got the
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	Page 33773		Page 33775
1	just put the question in a manner that doesn't raise that	1	will not attend the alarm at Karee storm water dam level
2	kind of objection.	2	reported."
3	MR SEMENYA SC: After the break, Chair,	3	Now this seems to be a report from Sierra 1 and
4	I'll amuse Mr Mpofu by reading him the transcript, but I'll	4	Sierra 3 saying that they are not going to be in a position
5	withdraw the question if I'm wrong.	5	to respond to an alarm because they will be busy helping
6	MR MPOFU: You're wrong.	6	the police to chase the people at the koppie, and if I'm
7	CHAIRPERSON: Mr Mpofu, you know these	7	correct Sierra 1 was the vehicle that was occupied by Mr
8	interjections cause a bit of laughter but they don't really	8	Van Rooyen, Mr Mjungu and Mr Ximba, that's from HHH60, that
0 9	advance the cause, so I suggest –	9	photograph of the deployments, and Sierra 3 was Mr Ndwambe
			and Mr Malemela.
10	MR MPOFU: Well, Chairperson, then why	10	
11	didn't you say the same remark when Mr Semenya said he's	11	Now was it within the permission of Mr Van
12	going to amuse me? Why must I be censored and not him?	12	Rooyen, Mr Mjungu, Mr Ximba, Mr Ndwambe and Mr Malemela to
13	You should have then –	13	elect not to respond to a call and instead to help the
14	CHAIRPERSON: Alright, censure is	14	police chase people at the koppie?
15	extended to you as well, Mr Semenya. Would you like to	15	MR BOTES: Mr Chairman, this instruction
16	carry on with your cross-examination?	16	wasn't from me and clearly he, they were not allowed to
17	MR SEMENYA SC: No, I'm done, Chair.	17	assist the police. I think this was anxious by the people
18	CHAIRPERSON: Are you done, alright. Re-	18	just looking for excuses to be at the koppie and to observe
19	examination, Mr Van As, how long are you going to be?	19	what was going on. We never gave instructions for these
20	MR CHASKALSON SC: Chair, if I might be	20	people to assist the police and neither were they at the
21	permitted just to put one document –	21	koppie at 6 or 10 minutes past 4 in the afternoon. The, I
22	CHAIRPERSON: I beg your pardon, you did	22	think the first security vehicle arrived at the kraal at
23	tell me this morning that you were going to apply to deal	23	16:48. That was the first security vehicle that arrived
24	with one short matter once Mr Mpofu finished.	24	there and that is the security guys that I sent with the
25	MR CHASKALSON SC: Yes, we –	25	ambulances to help escort the ambulances in.
1	Page 33774	1	Page 33776
1	CHAIRPERSON: Alright, application is	1	MR CHASKALSON SC: Well, we know what
2	CHAIRPERSON: Alright, application is granted.	2	MR CHASKALSON SC: Well, we know what these two vehicles' registrations are. The one is HSC574NW
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Marikana Commission of Inquiry

	Page 33777		Page 33779
1	me.	1	Botha.
2	MR CHASKALSON SC: Thanks. If I can just	2	CHAIRPERSON: PW Botha?
3	clarify, the email referred only to these two vehicles, but	3	MR CHASKALSON SC: That's correct, and if
4	I think if the exercise has been done on all vehicles it	4	I can briefly summarise the volumes, Mr Botha reports
5	would be nice to put this matter to rest in respect of –	5	shooting 17 rubber rounds, Mr Kellerman 18 rubber rounds
6	MR BHAM SC: That would be preferable and	6	and five rubber stoppers.
7	we'll do it.	7	CHAIRPERSON: Thank you. I think this is
8	COMMISSIONER HEMRAJ: The entry at 6:25,	8	an appropriate stage for us to take the tea adjournment.
9	it's 700, there seems to be some reluctance on the part of	9	We'll come back at 20 past. Mr Van As, how long are you
10	this gentleman to attend to the alarm in the area.	10	likely to be?
11	MR BOTES: What time is that, Mr	11	MR VAN AS: 10, 15 minutes, Mr
12	Chairman?	12	Chairperson.
13	COMMISSIONER HEMRAJ: 6:25, page 62408,	13	CHAIRPERSON: Alright, well if you make
14	6:25, entry 700.	14	it 10 minutes then we've got half an hour for Mr Sinclair's
15	MR BOTES: Mr Chairman, yes, that is why	15	examination-in-chief can be given and concluded by 4
16	I say these people were not allowed in any operations.	16	o'clock.
17	They had to do their normal crime prevention functions.	17	MR VAN AS: Thank you, Mr Chairperson.
18	That is attending alarms, attending to complaints where	18	CHAIRPERSON: We now adjourn for quarter
19	people phone in and that were their normal job operations.	19	of an hour.
20	The people I dealt with is the strike first responders,	20	[COMMISSION ADJOURNS COMMISSION RESUMES]
21	which is not the crime prevent unit.	21	[15:18] CHAIRPERSON: The Commission resumes. Mr
22	MR CHASKALSON SC: Chair, I don't have	22	Botes, you are still under oath. Mr Van As.
23	any further questions but what Lonmin has also provided us	23	MR VAN AS: Thank you, Mr Chairperson.
24	is the shooting reports of the 10th of August and it may be	24	Mr Botes, you were asked about camera 218, you are familiar
25	a useful, or an appropriate time to hand them up as	25	with the camera I am referring to?
	Page 33778		Page 33780
1	exhibits.	1	MR BOTES: I think that's the one at the
2	exhibits. CHAIRPERSON: Alright, they will be	1 2	MR BOTES: I think that's the one at the taxi rank, Mr Chair.
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1	Page 33781	1	Page 33783
1	MR BOTES: No, Mr Chairman.	1	August 2012. If we could please perhaps have exhibit DDDD9 placed on the screen. You made reference to a discharge
2	MR VAN AS: - on that day. MR BOTES: Not aware of that.	2	register, and you made reference to shooting reports during
3 4		4	
	Ş		your evidence this morning, do you recall, Mr Botes? MR BOTES: That's correct, Mr Chairman.
5	you to exhibit XXX11, you recall that's the memorandum	5	
6	setting out the names of certain senior managers.	6	MR VAN AS: Is this a discharge register?
7	MR BOTES: I remember that, Mr Chair.	7	MR BOTES: This is a discharge register,
8	MR VAN AS: Where do these managers work?	8	and the person responsible for this book, register, is Gean
9	MR BOTES: Mr Chair, they were senior	9	Kellerman who is the appointed designated person for the
10	managers from the shaft operations at the mining division.	10	mining division handling all firearms and ammunition, the
11	MR VAN AS: And in exhibit XXX11 there's	11	control of that.
12	reference made to influencing decision making, what	12	MR VAN AS: If you look at, and I know
13	decision making was that? What does that mean?	13	it's a bit dull, but if you look at entries – entry number
14	MR BOTES: Mr Chairman, that was when	14	3, under "Botha" and you scroll across, you see it makes
15	security had certain requirements and we had to make	15	reference to 17 rubbers, can you see that?
16	certain decisions, that we can do it amicably and without	16	MR BOTES: I can see that, Mr Chair,
17	contacting other managers and wait, and have delays. So we	17	that's the third one from the September entry 2012.
18	can immediately make decisions and then if there's anything	18	MR VAN AS: And if you go one down,
19	we need to do, me and that person can make it and we can	19	there's Kellerman and it makes reference to 16 rubbers as
20	execute whatever we decided on.	20	well, do you see that?
21	MR VAN AS: What sort of decisions would	21	MR BOTES: That's correct, Mr Chair.
22	be made in those circumstances?	22	MR VAN AS: And the next one is again
23	MR BOTES: Mr Chairman, that could be	23	Kellerman and it's five rubbers.
24	anything, that could be from any threat to an operation and	24	MR BOTES: That is correct, Mr Chair.
25	we need to evacuate that can be, if we need to do, take a	25	MR VAN AS: And is that normal procedure
	Page 33782		Page 33784
1	Page 33782 scraper and scrape a road, we can do that, so the support	1	Page 33784 for a register of this nature to be collated in relation to
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	Page 33785		Page 33787
1	SAPS operation?	1	knew that operations, it was clear that the operation was
2	MR BOTES: No, Mr Chairman.	2	continuing or further operations were continuing.
3	MR VAN AS: The weapons to be used in the	3	MR BOTES: We thought that that portion
4	SAPS operation.	4	of that further instructions was part of the dispersement
5	MR BOTES: No, Mr Chairman.	5	of the people and arrests. We never anticipated that there
6	MR VAN AS: And the actual strategy to be	6	was people surrounded or –
7	implemented in the SAPS operation.	7	CHAIRPERSON: No, no –
8	MR BOTES: No, Mr Chairman.	8	MR BOTES: - attacks on people on the
9	MR VAN AS: And then finally, Mr Mpofu	9	koppie.
10	put it to you that police officers from local police	10	CHAIRPERSON: The point is that
11	stations would have been able to play the role in the JOC	11	operations were continuing.
12	that you played. My question to you is, would these police	12	MR BOTES: Yes.
13	officers have been aware where the Lonmin cameras were?	13	CHAIRPERSON: So if it had been thought
14	MR BOTES: No, Mr Chairman.	14	appropriate to stop operations continuing at that stage,
15	MR VAN AS: And would they have been able	15	that instruction could have been given.
16	to co-ordinate the Lonmin camera equipment and visual	16	MR BOTES: Yes, it could have been given.
17	surveillance equipment that was in the JOC?	17	CHAIRPERSON: From the JOC.
18	MR BOTES: No, Mr Chairman.	18	MR BOTES: That's correct, Mr Chair.
19	MR VAN AS: Those are my questions, thank	19	CHAIRPERSON: Okay. That's the first
20	you, Mr Chairperson.	20	question – the first topic. The second topic I want to
21	CHAIRPERSON: Thank you, Mr Van As. You	21	deal with you shortly is, you said everything came, this
22	were asked a number of questions by Mr Semenya and I would	22	whole thing came as a big surprise to everybody, no one
23	ask you two questions flowing from those. The first is,	23	ever envisaged for a moment that what actually happened was
24	after this volley of shots that you heard, you have	24	likely to happen. Is that correct?
25	described the reaction, did you continue to listen to the	25	MR BOTES: That's correct, Mr Chair.
	Page 33786		Page 33788
1	radio?	1	CHAIRPERSON: Now, did you know that
2	radio? MR VAN AS: Mr Chairman, we tried to, but	2	CHAIRPERSON: Now, did you know that someone, there's controversy as to who it was, but someone,
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		1	
1	Page 33789 evidence that somebody early in the morning, requested four	1	Page 33791 CHAIRPERSON: And they hadn't set foot
2	hearses to be made available, or kept available. They	2	outside the Nyala which after all is a fortified armoured
3	weren't as a result, but somebody, that's the evidence	3	vehicle, isn't it? It's not a soft skin vehicle. They
4	undisputed, police mortuary vans. Now that also indicates	4	would have been safe.
5	that somebody, a fairly senior official in the police	5	MR BOTES: I would, I agree fully with
6	service, foresaw serious problems and required, requested	6	you.
7	that mortuary vans should be made available. So it's not	7	CHAIRPERSON: Thank you. Was this
8	entirely correct to say that nobody in senior ranks of the	8	discussed with you at any stage at the time their refusals
9	police force foresaw shooting and deaths of the nature that	9	were made to go to the koppie?
10	took place. Would that be a fair comment?	10	MR BOTES: Mr Chairman, it wasn't
11	MR BOTES: I am surprised to hear that,	11	discussed directly with me but I've heard the conversations
12	Mr Chair. In my presence I was not aware that any	12	taking place and maybe because I know that they immediately
13	mortuary vans were ordered to be on standby.	13	feel threatened, in such a way that they requested for
14	CHAIRPERSON: I am not suggesting you	14	personal bodyguards that they feel threatened and maybe
15	were, I am just saying, you would agree –	15	that's the reasons why they refused to go to the koppie.
16	MR BOTES: Ja.	16	But my view was that Ii also personally had a conversation
17	CHAIRPERSON: - in the light of that	17	with one of the managers, and asked him why they can't go,
18	evidence the proposition that nobody foresaw any deaths on	18	and I said to him that the police can protect them. It
19	a major scale taking place, can't stand up.	19	will be safe for them to go, so if they want to go, it will
20	MR BOTES: No.	20	be safe. So I assured them personally to Joe Mokwadi that
21	CHAIRPERSON: Is that right? Okay.	21	if they want to go it will be safe by police escort.
22	Thank you very much. There is one other question I must	22	CHAIRPERSON: You said you assured them,
23	ask, there was an issue as to whether it was safe for	23	who were the people to whom you gave that assurance?
24	senior members of Lonmin management to go to the koppie to	24	MR BOTES: I spoke to Joe Mokwadi about
25	speak to the strikers. I think you were aware of that	25	it.
	Page 33790		Page 33792
1	issue.	1	CHAIRPERSON: I see. He was the only one
2	issue. MR BOTES: I am aware of that, Mr Chair.	2	CHAIRPERSON: I see. He was the only one but –
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1	CHAIRPERSON: It doesn't arise from my	1	security measure to take, in relation to the request for
2	question.	2	hearses, particularly when the evidence is that or with the
3	MR MPOFU: Well, it does, you are talking	3	death of Mr Twala the day before, I mean two days before
4	about management refusal to speak.	4	there was a struggle in obtaining a hearse for the removal
5	CHAIRPERSON: I asked about management	5	of that body. Would that be a reasonable security measure
6	going to the koppie and they could do so safely, that was	6	to take in relation to the operation of the 16th?
7	my question. The point you are making, I can understand	7	MR BOTES: There was a struggle to remove
8	what it is, it's a point you can argue without any	8	his body because the people were afraid.
9	difficulty.	9	[15:38] Firstly the message got through to the JOC by
10	MR MPOFU: No, Chairperson I am sorry -	10	means of journalists and the JOC did not believe it at
11	CHAIRPERSON: Yes, yes, Mr Mpofu. I am	11	first and because there was not much police members
12	disallowing your question.	12	deployed at the koppie at the time everybody thought it is
13	MR MPOFU: No, you can, but not on the	13	a trap, they want to entrap the policemen, and we did not
14	basis that it doesn't arise, because that's exactly what	14	send out police members immediately until we got sufficient
15	you were questioning about.	15	police members to go to the koppie and to go and look where
16	CHAIRPERSON: My question was about going	16	the –
17	to the koppie, being concerned about matters of safety,	17	CHAIRPERSON: That's not an answer to the
18 19	being able to speak to the people on the koppie, without	18 19	question. The question deals with the fact that there was a delay in getting the hearse, getting the mortuary
20	being afraid – MR MPOFU: Yes. And my question shows	20	vehicle, you see, and the question you're asked is was it
20	MR MPOFU: Yes. And my question shows that that is nonsense, if that refusal was done on the 10th,	20	appropriate, regard being had to the delay on the Tuesday
22	when the people were not hostile, it's exactly the same	22	to get a mortuary vehicle, was it sensible and appropriate,
23	point.	23	reasonable and so on, to request four on the Thursday
24	CHAIRPERSON: It's a point you can argue	24	morning. That's your question, Mr Semenya?
25	on the facts that are common cause. Question disallowed.	25	MR BOTES: No, he wasn't –
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1	Thank you, Mr Botes, you are - thank you for your evidence,	1	CHAIRPERSON: Wasn't, alright.
2	you are excused on the basis that – Mr Semenya your light	2	MR BOTES: No.
3	is on.	3	CHAIRPERSON: The further question that
4	MR SEMENYA SC: There is something that	4	flows from that of course is I asked the question for a
5	arises from your question, Mr Chair, in relation to the –	5	totally different reason, not only if it was appropriate to
6	CHAIRPERSON: What question? Sorry?	6	get hearses but whether the fact that hearses were asked
7	MR SEMENYA SC: In relation to the	7	for indicated foresight on the part of some senior member
8	hearses the Chair asked about.	8	of the police service that there might be a need for at
9	CHAIRPERSON: What's the question you	9	least four mortuary vehicles on that day, and I understood
10	want to ask? If you want to ask a question you have to run	10	you to answer that question in the affirmative. You said
11	the question past me, so I can decide whether I allow you	11	yes.
12	to put it.	12	MR BOTES: Yes, I said yes.
13	MR SEMENYA SC: I will do so, Chair. Mr	13	CHAIRPERSON: The application for
	water I was doing to say that in relation to the request	14	questions arising are getting out of hand. Adv Hemraj
14	Botes, I was going to say that in relation to the request	4 -	
15	for hearses, the evidence is also that that was because of	15	wants to ask one too. I don't know what it is, but I'll
15 16	for hearses, the evidence is also that that was because of the delays in obtaining hearses on time for the removal of	16	allow her to ask it.
15 16 17	for hearses, the evidence is also that that was because of the delays in obtaining hearses on time for the removal of Twala. Would that be a proper preparation for security to	16 17	allow her to ask it. COMMISSIONER HEMRAJ: Mr Botes, the
15 16 17 18	for hearses, the evidence is also that that was because of the delays in obtaining hearses on time for the removal of Twala. Would that be a proper preparation for security to arrange those hearses to avoid the delays they have	16 17 18	allow her to ask it. COMMISSIONER HEMRAJ: Mr Botes, the conversation between you and Mr Kwadi –
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Marikana Commission of Inquiry

1	Page 33797 or the Wednesday, not on the Thursday the 16th.	1	Page 33799 MR SINCLAIR: Sir, it's Graeme Miller
2	COMMISSIONER HEMRAJ: Thank you, Mr	2	Sinclair.
3	Botes.	3	CHAIRPERSON: M-I-L-L-E-R?
4	CHAIRPERSON: Thank you very much. On	4	MR SINCLAIR: M-I-L-L-E-R, and the Graeme
5	condition that you agree to come back without our having to	5	is –
6	serve a subpoena on you if it's necessary for you to come	6	CHAIRPERSON: The Graeme as in Graeme
7	back, I don't know that it will be but if it is necessary	7	Pollock?
8	that you'll agree to come back –	, 8	MR SINCLAIR: No, G-R-A-E-M-E, yes, in
9	MR BOTES: Of course. Of course, Mr	9	Graeme Pollock.
10	Chairman.	10	CHAIRPERSON: As in Graeme Pollock, ja.
11	CHAIRPERSON: On that basis you're	11	MR SINCLAIR: That's right.
12	excused. Thank you.	12	CHAIRPERSON: Alright, Mr Bham.
13	[NO FURTHER QUESTIONS – WITNESS EXCUSED]	13	EXAMINATION BY MR BHAM SC: Thank you.
14	CHAIRPERSON: Mr Bham, you're going to	14	Mr Chairman, I understand the annexure, exhibit number for
15	call the next witness?	15	Mr Sinclair's witness statement is FFFF1. Mr Sinclair, you
16	MR BHAM SC: Thank you. The next witness	16	have in front of you your witness statement. Do you see
17	is Mr Sinclair. Before he comes in, Mr Chairman, may I	17	that?
18	just address a couple of housekeeping matters. At the	18	MR SINCLAIR: Yes, Mr Chairman.
19	adjournment I placed on your tables a bundle of documents.	19	MR BHAM SC: And if you turn to the last
20	That bundle contains documents which different parties have	20	page of that witness statement on page 12 there's a
20	suggested will be referred to in Mr Sinclair's evidence and	20	signature there. Is that your signature?
22	in order to facilitate that we've incorporated it into a	22	MR SINCLAIR: That is my signature, Mr
23	single bundle. There are a few documents still to be	23	Chair.
24	added, they will be added at the end of the bundle and Ms	24	MR BHAM SC: Mr Sinclair, may I ask you
25	Pillay is going to attend to that, so by tomorrow there	25	to turn to paragraph 15 of your witness statement, one-
20		20	
	Page 33798		Page 33800
1	will be a complete single bundle of all documents to be		5
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2	referred to in Mr Sinclair's evidence.	1 2	five? MR SINCLAIR: I am there, Sir.
2	referred to in Mr Sinclair's evidence.	2 3	MR SINCLAIR: I am there, Sir.
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	Page 33801		Page 33803
1	CHAIRPERSON: I'm sorry, Mr Tokota and I	1	MR BHAM SC: And could you briefly
2	have got a problem in respect of the earlier correction.	2	explain to the Commission what those responsibilities
3	Do I understand that page 93, para 15, line 3, the last –	3	entail?
4	MR BHAM SC: Should be the words "I	4	MR SINCLAIR: Mr Chair, on the mining, on
5	also" –	5	the emergency side I run every, I was - let me clarify
6	CHAIRPERSON: Should be "was informed	6	that. I was responsible to manage all the emergency
7	of"?	7	operations, be it medical trauma, ambulance transport,
8	MR BHAM SC: "I was informed of".	8	first-aid training, fire training and fire precautions.
9	CHAIRPERSON: Alright, thank you. That's	9	Those were my duties and there is a comprehensive list of
10	what I had. Mr Tokota is now up to speed with us. What's	10	what it entails on the emergency. On the security side –
11	the next point you're dealing with?	11	and I had an emergency manager who was actually responsible
12	MR BHAM SC: On the first page of the	12	for that, reporting in to me.
13	statement you'll see on the top left-hand corner in very	13	I then on the security side had a security
14	small print the words "Affidavit" followed by "09102012."	14	manager reporting in to me and I, my main functions were to
15	The date is 9 October 2012. I'm just asking Mr Sinclair,	15	ensure that he dealt with operational issues and the day-
16	having regard to the date on which he signed the statement,	16	to-day running of the security. Mine was budget related,
17	to explain that and his testimony was that was the initial	17	dealing with if there were HR issues that involved
18	draft into the process.	18	discussions with issues of security, if there were issues
19	Mr Sinclair, in paragraph 1 you state, "I was	19	relating to a new, for instance a type of fencing that the
20	previously employed by Lonmin as the Group Mining Emergency	20	engineering people wanted, those were my communications.
21	& Security Manager." During 2012, and in particular August	21	I also was responsible for attending the Chamber
22	2012, what was your position at Lonmin?	22	of Mines security meetings with the other security managers
23	MR SINCLAIR: Sorry, during?	23	and that type of thing, as well as security liaison with
24	MR BHAM SC: 2012, and in particular	24	the various police levels that were appropriate for me to
25	August 2012.	25	deal with.
1	Page 33802	1	Page 33804
1	MR SINCLAIR: I was the Lonmin Group	1	On the emergency side I also attended meetings
2	MR SINCLAIR: I was the Lonmin Group Mining Emergency & Security Manager.	2	On the emergency side I also attended meetings for instance like the Mines Rescue and those type of
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		1	
1	Page 33805 and the people below him were the registered people in that	1	Page 33807 they weren't in a good state in my opinion we contributed
2	area. Is that the question you asked me, Sir?	2	to going there and we developed a relationship, because my
3	MR BHAM SC: Thank you. And the 49	3	view was where there was crime we needed the police, and to
4	fulltime registered mining security officials and the 420	4	have that we needed to have a relationship with them so
5	contract security employees, what were they essentially	5	that if something went on in our property we were able to
6	geared towards dealing with?	6	communicate correctly with the right people, doing the
7	MR SINCLAIR: The mining officials were	7	right things to prevent crime, and for our communities
8	broken into various, into several categories, for instance	8	around us, the community forums, we insisted that those be
9	crime prevention response, tactical security response,	9	motivated. So that was the relationship that we built up
10	investigations, and the contract people were primarily on	10	over a period of time.
11	guarding across the – sorry, Sir, primarily on guarding	11	I had people at different levels attending
12	across the property and yes, there was a specific task that	12	different forums and they had to go there and report back
13	we had them to do, for instance searching at the mine	13	in that development to focus on what our task was and the
14	crushers, searching, going into the mines and coming out	14	assistance that we would need from the law if there was
15	the mines, or on roadblocks or whatever, but primarily they	15	something criminal or that type of thing taking place. Or
16	were deployed on guarding access control, perimeter	16	for instance if there was a road accident, because we have
17	guarding, etcetera.	17	the N4, we would deal with that, Mr Chairman, and that was
18	MR BHAM SC: Thank you. Mr Sinclair, in	18	the things that we built up.
19	paragraph 9 where you talk about your efforts to develop	19	They knew our – they would visit, they knew our
20	systems to combat crime, in that context on the fourth line	20	operations, where our hostels were, where the mineshafts
21	you talk about the existing liaison between the security	21	were, where the roads were. We also knew their structures
22	section and the local SAPS, and on the next page in	22	and how we must communicate, and that was the relationship
23	paragraph 13 on the fourth line you make reference to the	23	that we developed.
24	good working relationships between mining security at	24	CHAIRPERSON: I take it you had their
25	Lonmin and senior police officers in the North West	25	mobile phone numbers and they had yours?
	Page 33806		Page 33808
1	province, and in the last sentence of paragraph 13 you make	1	MR SINCLAIR: Just say that again.
2	province, and in the last sentence of paragraph 13 you make reference to attendance at cluster commander meetings with	2	MR SINCLAIR: Just say that again. Sorry, Sir?
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		1	
	Page 33809		Page 33811
1	we could control these, and those were done so that the law	1	where there was a concern, either violence or an
2	was complied with.	2	unprotected march as an example that we didn't know where
3	However, if that process of the Gatherings Act,	3	it was going and we felt this needed additional management.
4	the requirements for the Gatherings Act was not done I	4	And then we would go into a red mode where there were
5	would term that – and what are the words I used? – I would	5	additional requirements. There would be very careful logs
6	view it as an unprotected gathering or an unprotected event	6	kept, very careful deployment issues done, there would have
7	if it was in contravention of that. That is what I'm	7	been a max it then goes out of the normal operations. So
8	meaning by that, Mr Chair.	8	that was our way, are we in green mode, are we in red mode,
9	CHAIRPERSON: [Microphone off, inaudible]	9	are we in orange mode and that I would – and I did through
10	no notification, because notifications had to be given –	10	to my management team. So that they also knew the level of
11	MR SINCLAIR: No - and permission.	11	our operation, it was our way of managing. Mine together
12	CHAIRPERSON: If that hadn't happened,	12	with my team.
13	permission and so on, approved routes and that kind of	13	MR BHAM SC: Thank you, Mr Chairman, it's
14	thing, if that hadn't happened that's what you call an	14	now 4 o'clock.
15	unprotected –	15	CHAIRPERSON: How much longer do you
16	MR SINCLAIR: That's what I would refer	16	need?
17	to as an unprotected, or illegal.	17	MR BHAM SC: I still need a bit of time.
18	MR BHAM SC: Thank you, Mr Sinclair. Mr	18	CHAIRPERSON: I know you do, how much
19	Sinclair, if you could turn to the next page, you'll see at	19	longer? You originally asked for half an hour, you've had
20	the top of that page you make reference to orange mode,	20	20 minutes so far.
21	green mode and later in your statement you talk of red	21	MR BHAM SC: I've used 15 minutes.
22	mode. Could you very briefly explain to the Commission the	22	CHAIRPERSON: No on my calculation you
23	different modes by colour coordination which existed in	23	used 20, but never mind. I was prepared to sit until ten
24	your security department and what they referred to?	24	past –
25	MR SINCLAIR: Mr Chairman, to get	25	MR BHAM SC: I'm not going to finish and
	· 5		5 5
	Page 33810		Page 33812
1	Page 33810 operations into a more effective system we have sat down	1	Page 33812 there's an important aspect that's going to come towards
1 2		1 2	
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2	operations into a more effective system we have sat down and defined what is our requirements. If something from	2	there's an important aspect that's going to come towards the tail end, so -
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Page 33813 1 CHAIRPERSON: Contact Mr Mpofu. He's 2 been left – 3 MS PILLAY: We've given him an additional 4 bundle of all the documents. 5 CHAIRPERSON: I see and how many other	
 people are going to need it? MR MPOFU: Chairperson, I've already passed it onto NUM and AMCU and the families. It's being copied right now and SAPS has indicated – CHAIRPERSON: So the matter is being looked after. Thank you. All right, Mr Bham 9 o'clock 	
 12 tomorrow. 13 [COMMISSION ADJOURNED] 14 . 15 . 16 . 17 . 	
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