

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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1 [PROCEEDINGS ON 30 JULY 2014]
 2 [09:04] CHAIRPERSON: The Commission resumes. Mr
 3 Botes, you're still under oath. Do you want to ask the
 4 questions now? Before the cross-examination continues
 5 Advocate Hemraj would like to ask a question or two.
 6 COMMISSIONER HEMRAJ: Mr Botes, there is
 7 a statement from a Mr Kellerman in a police docket CAS68 of
 8 8 of 2012. He talks about intimidation and preventing
 9 employees going to work on the 10th of August in the evening
 10 and it seems to be around 18h00 onwards. Now did I hear
 11 you say that you were present during that time at Rowland
 12 shaft?
 13 MR BOTES: Mr Chairman, yes at that stage
 14 that was at Rowland shaft when I was called out by Graham
 15 and that was around about 20h00 where directly after that
 16 the dispersal took place where we fired rubber shots to the
 17 guys.
 18 COMMISSIONER HEMRAJ: Yes I'd be
 19 interested in hearing what your observations were about
 20 these reports of intimidation that was –
 21 MR BOTES: Mr Chairman, there were people
 22 on their on a walkway from the hostel complex towards the
 23 shaft, towards the crossing and as they approached I saw
 24 the people dancing, intimidating, they turn back and go
 25 back to the hostel.

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1 COMMISSIONER HEMRAJ: What were you
 2 characterising as intimidating?
 3 MR BOTES: Mr Chairman, from all the
 4 other strike, previous incidents we experienced any threat
 5 because of the intimidation that took place or actions took
 6 place during the day at the people, forced the people to
 7 join them for a march, going back to the hostel and then
 8 preventing the people going to work. Their presence
 9 dancing there with knobkerries and sticks, their presence
 10 intimidate the people from going back to work. I did not
 11 see where a person directly was approached by the
 12 protestors where they're dancing and intimidating people,
 13 but the people who were on their way to work turned back
 14 and go back to the hostel.
 15 CHAIRPERSON: The people who approached
 16 them were dancing. They were workers I take it, they were
 17 striking workers.
 18 MR BOTES: The striking workers.
 19 CHAIRPERSON: Striking workers they were
 20 dancing and you say they also had weapons including
 21 knobkerries.
 22 MR BOTES: That's correct, Mr Chairman.
 23 CHAIRPERSON: Did they have other weapons
 24 as well?
 25 MR BOTES: I could not see other weapons.

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1 At that stage there was no pangas that I could see, I only
 2 see knobkerries and sticks.
 3 CHAIRPERSON: Thank you.
 4 COMMISSIONER HEMRAJ: Now Mr Kellerman
 5 says in his statement that he shot 16 rubber bullets. Now
 6 did you observe any incident which might have precipitated
 7 such a shooting?
 8 MR BOTES: Mr Chairman, there was various
 9 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 restricting the guys coming from work. So as soon as they
 12 started throwing us with stones then they engaged with the
 13 rubber bullets to the crowd, to the three groups dancing in
 14 front of us.
 15 CHAIRPERSON: What did you say about
 16 stones?
 17 MR BOTES: We warned them to disperse and
 18 as we approached them to warn and to disperse they start
 19 throwing us with stones.
 20 CHAIRPERSON: They started throwing
 21 stones at you people.
 22 MR BOTES: And that is what activate the
 23 engagement with rubber bullets to the –
 24 CHAIRPERSON: Rubber bullets followed on
 25 –

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1 MR BOTES: That's correct, Mr Chair.
 2 CHAIRPERSON: - throwing by the strikers
 3 of stones at you people.
 4 MR BOTES: That's correct, Mr Chairman.
 5 CHAIRPERSON: Is that what you're saying?
 6 MR BOTES: That's correct, Mr Chairman.
 7 CHAIRPERSON: I see, thank you.
 8 COMMISSIONER HEMRAJ: I asked Mr Wesley
 9 to assist me with having that statement put up on the
 10 screen, thank you very much.
 11 CHAIRPERSON: It's not an exhibit is it?
 12 COMMISSIONER HEMRAJ: It's not an
 13 exhibit.
 14 CHAIRPERSON: We'll have to make it an
 15 exhibit. It's not an exhibit we'll have to make it an
 16 exhibit. It's EEEE29 I think. It's a statement by whom?
 17 COMMISSIONER HEMRAJ: Kellerman.
 18 CHAIRPERSON: Statement –
 19 COMMISSIONER HEMRAJ: By Gean Kellerman.
 20 CHAIRPERSON: Gean, I think it's G-E-A-N
 21 Kellerman, rather unusual spelling, but never mind. K-E-L-
 22 L-E-R-M-A-N. That statement is now before us, it's now
 23 EEEE29, it's got numbered paragraphs. What was the
 24 numbered paragraph that you dealt with.
 25 COMMISSIONER HEMRAJ: Have you had sight

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1 of this statement previously, Mr Botes?

2 MR BOTES: Mr Chairman, no.

3 COMMISSIONER HEMRAJ: Well perhaps if we
4 could go earlier up in the statement - just a second.

5 CHAIRPERSON: Someone's marked 4.12. Oh
6 I see it starts at 4.19. "Upon my arrival at the Rowland
7 Crossing" no, no, 4.19 that's what I was reading. "Upon my
8 arrival at the Rowland Crossing, I was some 100 metres away
9 from the striking employees. I could, however, clearly see
10 that some of the striking employees were brandishing
11 traditional weapons consisting of mostly pangas, spears and
12 knobkerries. During the course of the evening the striking
13 employees were singing and dancing. Some groups consisting
14 of some 20 to 30 striking employees would regularly break
15 away from the main group and move around the Wonderkop
16 hostel area, intimidating those employees who wanted to
17 work and effectively preventing them from going to work."
18 Then the next paragraph please 4.11. "These groups of
19 striking employees would also jeer, taunt, threaten and
20 swear at us as we were from Lonmin security we were
21 observing the situation. At approximately 18:45 I noticed
22 that some of the non striking employees had come off shifts
23 and were walking towards the Wonderkop hostel via the
24 delegated walkway next to the Rowland Crossing and taxi
25 roads. This walkway is often used by the occupants and

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1 visitors at the Wonderkop hostel as a thoroughfare between
2 the hostel and the place where they report for duty." This
3 taxi road is this the one that we called Rowland Street
4 yesterday?

5 MR BOTES: Rowland Crossing.

6 CHAIRPERSON: Yes and then it goes from
7 west to east from Rowland Crossing.

8 MR BOTES: It goes from there skew north-
9 east to the hostel complex.

10 CHAIRPERSON: I see. All right. I can't
11 remember if I read the last sentence at 4:12. I'll re-read
12 it just in case. "This walkway is often used by the
13 occupants and visitors at the Wonderkop hostel as a
14 thoroughfare between the hostel and the place where they
15 report for duty. Botha and I approached the returning
16 between Rowland shaft and the Rowland Crossing and
17 suggested that they rather walk on the opposite of the road
18 as they were about to approach the striking employees.
19 Some of the workers," I take it it should be "listened to
20 Botha and moved over to the opposite side of the road,
21 however, some six employees carried on walking in the
22 direction of the striking employees. A group consisting of
23 some 30 striking employees also noticed the six or seven
24 workers who carried on walking on the walkway towards the
25 Rowland Crossing. This group promptly started wielding

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1 their traditional weapons and charged at the returning
2 workers while shouting at them. At this stage I was
3 standing some 50 metres from the walkway, opposite from the
4 Rowland Crossing, observing the impending charge from the
5 striking employees towards the six returning workers. When
6 the six returning workers saw the oncoming attack they
7 turned around and attempted to flee the area towards the
8 Rowland shaft territory. At this stage the group of
9 striking employees were running towards the fleeing workers
10 whilst wielding their weapons and shouting. In this moment
11 it appeared to me that the group of striking employees
12 might catch up and head off the fleeing workers. I was
13 armed at the time with a Mossberg 12 gauge shotgun with
14 serial number K765244 which I had loaded with low grade,
15 low density rubber bullets." Would that be AAA, Mr Botes?

16 MR BOTES: No that is rubber bullets.

17 CHAIRPERSON: Rubber bullets, oh I see.

18 All right. "Botha and I shouted at the charging group and
19 striking employees to stop. However, they did not respond.
20 At the time I had no other measures save the use of rubber
21 bullets by which I could attempt to bring the situation
22 under control. I determined that it was, under the
23 circumstances, safe to fire rubber bullets as there were
24 other pedestrians, onlookers, obscuring my view or the
25 distance between myself and the charging, striking

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1 employees. I could clearly see the surrounding area and I
2 was satisfied that by firing off a rubber bullet no
3 innocent party would be injured. I had time to fire one
4 warning shot with a rubber bullet into the ground, however,
5 this did not have any effect on the charging group of
6 striking employees who persisted with their pursuit of the
7 fleeing workers. As a last resort effort to stop the
8 charging of striking employees from attacking the fleeing
9 workers I had no choice but to fire two rubber bullets at
10 the charging group of striking employees. At this juncture
11 it's important to mention that I ensured to aim low and
12 towards the legs of the charging, striking employees. It's
13 also important to mention I only utilised low grade, low
14 density rubber bullets which are commonly used for crowd
15 control and is non-lethal. There were no other pedestrians
16 walking around in the area where the striking employees
17 were chasing the fleeing workers. By firing the rubber
18 bullets it had the desired effect as the charging group of
19 striking employees ceased with their pursuit. The group
20 then returned to and rejoined the main group of striking
21 employees." Is that the passage that's relevant?

22 COMMISSIONER HEMRAJ: Yes.

23 CHAIRPERSON: That's through to 4.24 of
24 the statement.

25 COMMISSIONER HEMRAJ: Is that consistent

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1 with your recollection of the events as well?

2 MR BOTES: Ekskuus –

3 COMMISSIONER HEMRAJ: Is that consistent

4 with the events of that evening?

5 MR BOTES: Mr Chairman, that portion

6 happened before I arrived there and after that we engaged

7 another session with the dancing group where they did not

8 disperse and after I asked the police to intervene they did

9 not. And we went ourselves to warn the people to go out

10 and then they start throwing us with stones.

11 COMMISSIONER HEMRAJ: Mr Kellerman does

12 say in his statement later on that there were similar

13 incidents of chasing and threatening workers later in the

14 evening and it was continued until 22h30. If you'll just

15 scroll down please 4.30.

16 CHAIRPERSON: I'll read 4.30. "Similar

17 events occurred during" – sorry perhaps I should start at

18 4.29. "Shortly before the Lonmin security backup arrived

19 Captain Govender and his two police officials withdrew and

20 left the area. Similar events occurred during the course

21 of the night until approximately 22:30. Groups of armed,

22 striking employees would start charging at returning

23 workers or other employees who had not participated in the

24 unprotected strike actions. As a means to contain the

25 striking employees and protect those employees who were not

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1 participating in the unprotected strike it was necessary to

2 fire rubber bullets at groups of striking employees who

3 were chasing and threatening the non-striking employees and

4 returning workers. I estimate that I had discharged some

5 16 rubber bullets during the course of the evening. At no

6 point did I attempt to kill or seriously injure any

7 person." That's the end of the passage I'm reading. Of

8 course, it's interesting to note that though the sections

9 of the occurrence book which weren't originally put before

10 us talk about the discharge of rubber bullets, the total

11 number mentioned is not as high as 16. Can you tell us how

12 many bullets were discharged in your presence?

13 MR BOTES: Mr Chairman, I cannot recall.

14 I did not have a record of those afterwards that we

15 reconciled all the right numbers of shots fired by each

16 person, but I know that it was a number of shots. It could

17 be if Gean fired 16 I guess around about 30 rounds fired in

18 my presence.

19 COMMISSIONER HEMRAJ: There were rubber

20 bullets fired by Mr Botha as well.

21 MR BOTES: By Mr Botha as well, that's

22 correct.

23 CHAIRPERSON: Strictly speaking all those

24 bullets, the fact that they discharged all those bullets

25 should have been mentioned in the occurrence book.

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1 MR BOTES: It should be –

2 CHAIRPERSON: At least in the complete

3 form that wasn't shown to us.

4 MR BOTES: It should be reported into the

5 occurrence book and also in the discharge shooting reports.

6 We have a specific register that we log all discharges of

7 rounds and fill in discharge report and all those were

8 filled in afterwards.

9 COMMISSIONER HEMRAJ: Mr Chaskalson, can

10 you help with an entry that relates to the – on the

11 electronic –

12 MR CHASKALSON SC: The only entries are

13 the ones – the only entries relating to shooting are the

14 ones that we've already discussed and the ones that were

15 removed.

16 COMMISSIONER HEMRAJ: And I couldn't find

17 anything that related to anywhere near 30, even 16 rubber

18 bullets having been shot. Where am I to find that?

19 MR CHASKALSON SC: No if you bear with me

20 for a minute. I think there are three separate reports and

21 if they're dealing with separate incidents we get to quite

22 a number that may account for something close to 30, but

23 I'll call up the document and –

24 COMMISSIONER HEMRAJ: Thank you.

25 CHAIRPERSON: That's in the document we

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1 were looking at yesterday. There were entries which I

2 think you've covered, Mr Chaskalson. The first is at 18:59

3 PW shot 15 rounds of rubber bullets at them, that's

4 commuters. The full entry reads, "GK reported that

5 commuters intimidate workers to go work, they are using

6 pangas and knobkerries. PW shot 15 rounds of rubber

7 bullets at them." And then at 20:10 we have an entry GK

8 reported they shot 10 to 15 rounds of rubber bullets to

9 commuters. So if 15 is the right number and it's not a

10 duplication of the previous, I think the witness told us it

11 wasn't, 15 plus 15 is 30. So you actually have got 30

12 then. I was wrong when I said it wasn't – it doesn't

13 appear to be in the complete OB book that wasn't originally

14 shown to us.,

15 MR CHASKALSON SC: There's also an 18:35

16 entry for another 10, so the total could be between 35 and

17 40.

18 CHAIRPERSON: The thing that puzzles why

19 did people against – at whom the rubber bullets were fired,

20 why were they called commuters? A commuter is normally

21 someone that travels by train or bus, public transport to

22 and from work isn't it?

23 MR BOTES: By vehicles also. From the

24 hostel because the buses, I said yesterday the buses

25 stopped transporting people and they used taxis and other

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1 vehicles to transport the people.
 2 COMMISSIONER HEMRAJ: Just on another
 3 topic. Do all security Lonmin officials, are all of them
 4 in possession of a 9 millimetre firearm?
 5 MR BOTES: Mr Chairman, not all of them,
 6 only those that are found competent and has a license to
 7 possess that firearm. So we issued the firearms to them
 8 and not all of them.
 9 COMMISSIONER HEMRAJ: So would these two
 10 gentlemen that were killed on the 12th –
 11 MR BOTES: Mr Kellerman and Botha.
 12 COMMISSIONER HEMRAJ: No, no, no the two
 13 gentlemen that were killed, Mr Fundi and Mr Mabelane were
 14 they –
 15 MR BOTES: I wasn't aware they had 9
 16 millimetre pistols with them. I know that there was a
 17 shotgun with them.
 18 COMMISSIONER HEMRAJ: Thank you very
 19 much.
 20 CHAIRPERSON: Ms Motloenya, I hope we
 21 haven't used up any of your material in the questions we
 22 asked.
 23 MS MOTLOENYA: No Chair, you haven't.
 24 CHAIRPERSON: You may now continue in
 25 your cross-examination.

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1 MS MOTLOENYA: Chair, we've considered
 2 the last topic overnight and it seems to have fallen away,
 3 so that concludes our cross-examination for the families.
 4 CHAIRPERSON: I see thank you. Mr Gotz,
 5 have you also done some reconsideration overnight or what
 6 is your position?
 7 MR GOTZ: I have cut some of my topics,
 8 Chair. Good morning to you and members of the Commission
 9 and good morning to you, Mr Botes.
 10 MR BOTES: Morning, Sir.
 11 MR GOTZ: I'm going to be asking you a
 12 few questions on behalf of AMCU.
 13 MR BOTES: Sure.
 14 CROSS-EXAMINATION BY MR GOTZ: Can we
 15 start, Mr Botes, with one of your affidavits or witness
 16 statements? I'd like to use the version that appears as an
 17 exhibit with the number AAAA39. If you have your bundle,
 18 the page I'm going to be referring you to is at page 81 of
 19 the bundle and for the people on screen it will be – Craig
 20 it will be paragraph 49.
 21 CHAIRPERSON: This part of the narrative
 22 relating to the events of Thursday the 16th.
 23 MR GOTZ: Yes indeed. Mr Botes, in the
 24 first sentence of that paragraph you say that you'd arrived
 25 at the SAPS JOC fairly early in the morning and you go on

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1 to say "From discussions I overheard, I'd gathered that
 2 SAPS had formulated a plan to proceed with disarming the
 3 group at the koppie." Can I ask you first of all when you
 4 were making this comment or this observation what time of
 5 the morning is this?
 6 MR BOTES: Mr Chairman, I think I was
 7 there before 6 o'clock.
 8 MR GOTZ: When you overheard these
 9 discussions are you not in fact talking about the
 10 discussion that occurred at the 6am JOC meeting at which
 11 you were present?
 12 MR BOTES: Mr Chairman, yes after that we
 13 had discussions with the people talking there and then
 14 there was a 6 o'clock normal JOCCOM meeting at 6 o'clock
 15 where it was discussed. So it was discussed in my presence
 16 that they're going to disarm the people on that specific
 17 day.
 18 MR GOTZ: But just so that we're clear,
 19 Mr Botes, you're saying that you arrived before the JOCCOM
 20 meeting and you overheard the discussions or perhaps
 21 participated in the discussions where you gathered that
 22 SAPS had formulated a plan to proceed with disarming the
 23 group. Is that correct, before the JOCCOM meeting?
 24 MR BOTES: Mr Chairman, yes as the people
 25 sit there, the senior people sit there they have

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1 discussions and obviously when there's discussions taking
 2 place I can hear what they discuss and that was the plan
 3 that they're going to disarm the people. And that they
 4 have the plan and they want to execute the plan today.
 5 MR GOTZ: And you did participate in the
 6 6am JOCCOM meeting, correct?
 7 MR BOTES: That's correct, Mr Chair.
 8 MR GOTZ: Chair, I don't need to take the
 9 witness to this, but the minute and although we do that the
 10 minute is somewhat –
 11 CHAIRPERSON: When we're dealing with the
 12 6 o'clock meeting on the 16th –
 13 MR GOTZ: Yes.
 14 CHAIRPERSON: - it's always best, I can't
 15 remember the exhibit number, is to look at the notes rather
 16 than the minutes which was reproduced at Roots afterwards
 17 because the closer we get to the original time which is the
 18 draft notes taken at the meeting the safer we are I would
 19 have thought. I don't know which minutes you are going to
 20 use.
 21 MR GOTZ: Yes, Chair, unfortunately I
 22 don't have the reference to the note and I simply want to
 23 put one proposition.
 24 [09:23] CHAIRPERSON: Ms Pillay, with her
 25 customary efficiency be able to help you.

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1 MS PILLAY: Chair, it's JJJ168.
 2 CHAIRPERSON: There you are, that's the
 3 information you need.
 4 MR GOTZ: Chair, if it can be put up on
 5 screen, but I just simply want, I don't want –
 6 CHAIRPERSON: Well, let's put it up on
 7 screen and you know, if you don't put it up on the screen
 8 and you put something there will be arguments about whether
 9 it's accurate, we waste time. This is what we need, yes.
 10 Now what particular passage do you want to put?
 11 MR GOTZ: Well Chair, I'm afraid I'm
 12 unfamiliar with this and I wasn't prepared for this in
 13 terms of cross-examination. Mr Botes, is it correct that
 14 you were asked during the course of that JOCCOM meeting for
 15 your comments on the state of readiness as it were of the
 16 Lonmin Security? Because there is a note that says, well
 17 in the minutes at least, that "Mr Dirk Botes indicated that
 18 no serious challenges are being experienced in relation to
 19 Lonmin Security."
 20 CHAIRPERSON: Sorry, Mr Gotz, before we
 21 carry on, I imagine if there is such an entry in the
 22 redacted minutes there's probably no reason to think it's
 23 inaccurate. What's the exhibit number of the – sorry, TT4.
 24 Yes, I know it was TT something. Could we have a look at
 25 TT4, please? TT4, here we go. We're getting TT4 now.

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1 Right, that's TT4. Now can you find it there, Mr Gotz,
 2 quickly?
 3 MR GOTZ: Yes, I have the reference on
 4 page 3 at 3.4.11 –
 5 CHAIRPERSON: Alright, let's look at 3.4
 6 point?
 7 MR GOTZ: 3.4.11.
 8 CHAIRPERSON: 3.4.11?
 9 MR GOTZ: Sorry, just –
 10 VOORSITTER: Nee, daar's 'n fout hierdie,
 11 ouens. 3.3.11? There we are, Mr Dirk, "The mine
 12 security," it reads –
 13 MR GOTZ: Yes.
 14 CHAIRPERSON: - "Mr Dirk Botes indicated
 15 that no serious challenges are being experienced." Is that
 16 the passage you were referring to?
 17 MR GOTZ: Yes, indeed.
 18 CHAIRPERSON: It doesn't quite say what
 19 you put to us before. Anyway, never mind. Carry on with
 20 your cross-examination.
 21 MR GOTZ: Do you confirm that you were
 22 asked and you indicated that no serious challenges are
 23 being experienced in relation to mine security, Mr Botes?
 24 MR BOTES: Mr Chair, when we go into a
 25 JOCCOM meeting I normally give a report of the previous 12

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1 hours and that was obviously during the night, referring to
 2 what was experienced and ensued during the night and that
 3 is probably what I meant to give feedback, because General
 4 Annandale would ask what happened through the night, what
 5 incidents happened through the night and then we would
 6 normally explain if any criminal activities took place or
 7 any strike related incidents took place, and that should be
 8 my feedback in the morning meeting. When we have the
 9 briefing session in the evenings we would then give an
 10 update of the previous 12 hours that happened through the
 11 day. So my feedback on the JOCCOM meetings is on all
 12 operation issues from the security side, emergency side,
 13 things that we have to give an update to the police that
 14 they are fully aware of the incidents and the threats.
 15 With this is also the intelligence that we also ran on our
 16 own network and that was also given through in the JOCCOM
 17 meetings if there's threats from out the striker groups
 18 where they're going to attack or whatever the cause of
 19 intelligence is.
 20 MR GOTZ: When you say that no serious
 21 challenges are being experienced, were you not aware of any
 22 incidents for some 48 hours before you giving this
 23 information? Are there incidents that you are aware of, of
 24 violence, intimidation, prior to this in the evening?
 25 MR BOTES: Mr Chair, I don't think that

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1 that note that was put there was my words. I think I gave
 2 a generalised feedback in a JOCCOM meeting and I cannot
 3 think that I said those, but anyway, I cannot think – to
 4 answer your question, I cannot think apart from the murder
 5 of Mr Twala which happened on I think the Tuesday, after
 6 that we did not have another killing or serious incidents
 7 that happened until the 16th, the morning.
 8 MR GOTZ: The main purpose of the meeting
 9 appears both from the notes and this minute, was to discuss
 10 the plan that SAPS had formulated to proceed with disarming
 11 the group at the koppie. Was that your impression?
 12 MR BOTES: Mr Chair, yes, that was
 13 discussed and that is why I said I saw the plan on the
 14 proxy and I wasn't just sure was it the morning meeting or
 15 was it the afternoon meeting where I was excluded, but the
 16 plan was discussed in my presence where I saw what was the
 17 plan. Normally General Annandale gives security a chance
 18 to give feedback to everybody there and then we sit on the
 19 side and then they have their conversations and then their
 20 briefing sessions without our interventions. If there's
 21 any questions he would ask that, but normally he handled
 22 security first that we give an update on security first
 23 before he starts with his police briefing.
 24 MR GOTZ: Your impression, and certainly
 25 the impression conveyed in paragraph 49 of AAAA39 seems to

1 us to have been that SAPS had decided to proceed on that
2 day notwithstanding any efforts that were being made by the
3 unions directed towards disarming the crowd at the koppie.
4 Can I ask you to look at – or can I ask you first; would
5 that be a correct assessment?

6 MR BOTES: Mr Chairman, yes, the police
7 felt that they have engaged with the unions. They allow
8 opportunity for the unions to engage, both AMCU and NUM.
9 They felt that despite the efforts made by the unions it
10 didn't have any effect on the strikers groups, that they're
11 not going to surrender, they're not going to put down their
12 arms, and they have to go in and to, with the plan to
13 disarm the crowd at the koppie.

14 MR GOTZ: Following the JOCCOM meeting –
15 CHAIRPERSON: [Microphone off, inaudible]
16 question, if you've dealt with, finished with that topic.
17 I must tell you that's not the evidence of Brigadier Calitz
18 or for that matter some of the other witnesses, but let's
19 concentrate on Brigadier Calitz for the moment. What
20 Brigadier Calitz said was this; that at that meeting, the 6
21 o'clock meeting, there was a – and this is supported by
22 other evidence – there was information before them that
23 there was a possibility that the strikers would voluntarily
24 lay down their arms. This had been communicated to General
25 Mpembe and General Annandale and some of the others the

1 only essentially communicated verbally, or orally actually
2 at the meeting at 1:30 and then he then went out, as we've
3 heard, with Brigadier Pretorius to speak to the unit
4 commanders in the field about 2:30, giving them the details
5 of the plan which was accepted by the JOCCOM, and he had
6 his laptop with him, an image on the laptop but without any
7 supporting writing he then communicated to the unit
8 commanders what the plan was. So it was obviously
9 something knocked together at the last minute because he
10 said that it would have been better to have it in writing,
11 it would have taken 20 minutes to have it printed, but
12 there obviously wasn't time for that, which tells its own
13 story.

14 Anyway, but the point I'm putting to you is that
15 what the main thrust of the police evidence is, is that
16 there was this "promise/undertaking" from Mr Mathunjwa that
17 the strikers would lay down their weapons, but that was not
18 absolutely supported by a copper-bottom guarantee. There
19 was a fear that it mightn't be implemented, as in fact was
20 the case, hence this decision for an alternative plan to be
21 drafted in case that didn't happen, and that plan was then
22 finally presented for the first time actually in any detail
23 at the JOCCOM meeting at 1:30.

24 Now anyway, that's the evidence we've had so far,
25 but your evidence isn't quite the same, but I put to you

1 previous evening by Mr Mathunjwa of AMCU.
2 He was quite optimistic about it but there were
3 possibly reasons for thinking his optimism wasn't well-
4 founded, but what he said was he arranged to go back at 9
5 o'clock that morning to speak further to the strikers on
6 the matter. There was information according to the
7 evidence from the CI people, the Criminal Intelligence
8 people, to the effect that that wasn't going to happen,
9 that the strikers were going to, wanted to hang on to their
10 weapons and were going to fight to preserve their position
11 on the koppie.

12 Brigadier Calitz said that what was then decided
13 – and it's supported to some extent by that minute – that
14 an alternative plan should be prepared in case the strikers
15 didn't lay down their arms and he said that the person to
16 do that was Lieutenant-Colonel Scott. He was the planner,
17 you see, and he was effectively given the mandate to
18 prepare a plan to be used if the strikers didn't lay down
19 their arms. That was Brigadier Calitz's evidence.

20 It's not quite what you say, but it may well be
21 and I must put it to you that now that I've put to you what
22 Brigadier Calitz said that you will, may jog your memory.

23 Colonel Scott then told us that he was supposed
24 to – well, he couldn't remember what he did on the Thursday
25 morning, but he then came up with a plan not in writing,

1 what we've had before to get your comment on it. Could
2 that be correct what was said, or are you firm in your
3 evidence you've given us already?

4 MR BOTES: Mr Chairman, what I understood
5 from the plan what I saw is to have different phases of the
6 execution of the plan and because the group was so big they
7 could not disarm the whole group at once. They had to
8 approach in different phases and what I have understood
9 from the plan was to implement the phases and to basically
10 break the group up because the whole western side of the
11 koppie was open for them to fled after they apply then
12 teargas and all the water cannon and all those kind of
13 things, and when they split into smaller groups then your
14 risk is lower approaching these guys. Then chasing them
15 with the vehicles afterwards, going into the veld and
16 disarm them whilst they're in smaller groups, that is what
17 I understood from the plan.

18 CHAIRPERSON: Well, the evidence
19 certainly of Colonel Scott was that that was what was
20 communicated at the 1:30 meeting and the manuscript notes
21 of the meeting at 6 o'clock, which are obviously closer to
22 the real events than these later notes that were produced a
23 substantial time later after substantial revisions at the
24 Roots conference aren't quite as trustworthy perhaps. But
25 the manuscript notes certainly sets out the phases but the

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1 way the matter was being approached, there was phase 2 and
 2 then phase 3, you see, and phase 3, the so-called tactical
 3 option which you've now described, was as I understand it
 4 first given in any detail at the 1:30 meeting, and
 5 certainly that's Lieutenant-Colonel Scott's evidence. But
 6 there certainly were detailed instructions relating to
 7 phase 2, which is what they were going to do before they
 8 moved over to the so-called tactical option, and that
 9 certainly was set out in some detail at the 6 o'clock
 10 meeting. That's the evidence before us. If your evidence
 11 is different and you are convinced that you're right and
 12 what we were told before is wrong then you must say so, but
 13 I think it's only fair that I should tell you what we've
 14 heard up to now so you can comment.

15 MR BOTES: Thank you, Mr Chairman. The
 16 comment where he might have do a verbal plan or without in
 17 writing at 1 o'clock meeting, I wasn't at that meeting, so
 18 I was excused from that meeting and maybe I wasn't informed
 19 of that alternative plan which was not in writing. I know
 20 about the plan which I saw on the different phases and
 21 that's the plan that I know of.

22 MR MPOFU: Chairperson, I think in
 23 fairness if we're going to be putting what we call the
 24 evidence before us on that point to this witness we should
 25 also indicate that it was seriously disputed, not least by

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1 the D-day note that was later discovered.

2 CHAIRPERSON: Yes, yes, Mr Mpofo, you'll
 3 get a chance to cross-examine in a minute. Yesterday – I
 4 don't know if you were listening – yesterday he said that
 5 at the very beginning of the 6 o'clock meeting it was said
 6 – he didn't use the word "D-day" but he said it was said
 7 that "Today is the day when we're going to dispose the
 8 matter." So he knows –

9 MR MPOFU: I know. I was here.

10 CHAIRPERSON: I thought you were. I saw
 11 you here, but so the words –

12 MR MPOFU: It's not just the evidence
 13 before us.

14 CHAIRPERSON: No, no, no –

15 MR MPOFU: That's all I'm saying.
 16 There's counterevidence which shows that D-day was declared
 17 at 6. That's what I'm saying, despite what Calitz may or
 18 may not have said.

19 CHAIRPERSON: No, what this witness said
 20 yesterday was at 6 o'clock it was said "Today is the day
 21 the matter is going to be dealt with, it's going to be
 22 disposed of." He didn't use the phrase "D-day," but the
 23 content of that he communicated. So I don't have to tell
 24 him that now. But anyway, you'll get a chance to cross-
 25 examine later. Let's not – you and I are both actually, if

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1 I may say so, behaving badly towards Mr Gotz. We must give
 2 him a chance. Carry on, Mr Gotz.

3 MR GOTZ: Thank you, Chair. Finally on
 4 this note, and perhaps we can do this with reference to
 5 your witness statement again, can we look again at AAAA39,
 6 page 81, or rather paragraph 49, and the second sentence
 7 you say, "As I understood it," and here you are talking
 8 either just prior to the JOC meeting or the discussion at
 9 the JOC meeting. "As I understood it SAPS had taken the
 10 view that discussions with the unions directed towards
 11 disarming the crowd at the koppie were not achieving any
 12 results," and then you put in brackets "(which happened on
 13 Wednesday 15 August 2012) and that SAPS needed to proceed
 14 with an alternative plan." Mr Botes, do you stand by that
 15 evidence? Is that your impression?

16 MR BOTES: That's correct, Mr Chairman.

17 MR GOTZ: Following the JOCCOM meeting it
 18 seems to us that you were tasked with doing a variety of
 19 things by SAPS. One of the things that you were asked to
 20 do was to arrange water cars and medics to be on standby to
 21 assist SAPS and mining security if necessary. Do you
 22 recall that?

23 MR BOTES: Mr Chairman, yes, it was
 24 requested through me, which I relayed to Graeme because he
 25 was in and out of the JOC. I was permanently in the JOC

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1 and Graeme was outside, responsible for emergency services.
 2 So that request I would put to Graeme and he would organise
 3 that from outside.

4 MR GOTZ: Perhaps we can just have a look
 5 at the reference. I know there have been issues raised
 6 with the validity of, or reliability of the logbook, but
 7 the relevant entry appears at 7:48 on exhibit EEEE18, if we
 8 can, Craig, if you can put that up. Now if you can go down
 9 to the entries for the 16th and find the reference to 07:48,
 10 in other words 12 minutes to 8 o'clock on the 16th, you see
 11 that it says, "Dirk Botes requested that the water cars and
 12 the medics be on standby to assist the SAPS and mining
 13 security if necessary." Who asked you to arrange water
 14 cars and medics from the SAPS?

15 MR BOTES: If there's any request made to
 16 me it would have been General Annandale or Brigadier
 17 Pretorius.

18 CHAIRPERSON: I take it the note is
 19 unnecessarily abbreviated. It says "Dirk Botes requested,"
 20 it must be "was requested" or "is requested." It's
 21 passive. You didn't make the request, it was addressed to
 22 you. Is that right?

23 MR BOTES: It was addressed to me in the
 24 JOC and then I conveyed the message either to emergency JOC
 25 and Graeme that he organise it.

<p style="text-align: right;">Page 33621</p> <p>1 CHAIRPERSON: And so the people who were 2 at forward holding area 1 under the command of, under the 3 supervision of whoever it is, of General Naidoo, the 4 paramedics and so forth, they were provided by you, were 5 they? 6 MR BOTES: That were, they were provided 7 by us, by Graeme and myself. 8 MR GOTZ: What were the water cars, Mr 9 Botes? Were those for drinking water or are we talking 10 water cannon here? 11 MR BOTES: Mr Chairman, it is for 12 drinking because the police spent the previous day also the 13 whole day at the area in the sun and we provide the water 14 for them and the same request was requested on the 16th that 15 we have water available for the members who remains in that 16 area for the whole day. 17 MR GOTZ: I see that the entry refers to 18 the SAPS and mining security jointly. Would our impression 19 be correct that what was being considered was a joint 20 operation effectively between the SAPS and mining security? 21 [09:43] MR BOTES: Mr Chairman, all the security 22 personal were deployed at the different mines in different 23 areas, which Wonderkop is a area of Western Plats mine, so 24 our security personnel are deployed at Western Plats in 25 Wonderkop Hostel and at the Rowland Crossing, which is part</p>	<p style="text-align: right;">Page 33623</p> <p>1 notified on that JOC board also were the vehicles that they 2 were driving, as well as the arms and ammunition that they 3 were carrying, correct? 4 MR BOTES: That's 100% correct, Mr 5 Chairman, and that is why I said yesterday a JOC means a 6 partnership between all different parties that they can 7 collectively understand everybody's role into any 8 operation, and that they should also know what is the 9 deployment from security, vehicles, armoury, etcetera. 10 MR GOTZ: Can we look at a picture of 11 that JOC board? Chair, it's exhibit HHH60. And, Mr Botes, 12 you've got a black and white version at page 101 and 102 of 13 your bundle, but it may be useful to look at the colour 14 version. Now, Mr Botes, let's just see whether we can 15 understand this. We understand that the, after the numbers 16 on the left-hand side you've got S1, S2, 0, etcetera. My 17 eyesight is not that good. TR1, TR1, those are call signs, 18 as we understand? 19 MR BOTES: That's correct, Mr Chair. 20 MR GOTZ: And call signs are assigned to 21 those teams that then follow, correct? 22 MR BOTES: That's correct, Mr Chair. 23 MR GOTZ: And next to some of those teams 24 are vehicle registration numbers. Are those the vehicles 25 that those teams were driving?</p>
<p style="text-align: right;">Page 33622</p> <p>1 of our deal and part of our operation, but we did not take 2 part in the activity from Forward Holding 1, Forward 3 Holding 2, to the operation, when the police engage with 4 the people. 5 MR GOTZ: But nevertheless, Mr Botes, it 6 seems to us that certainly the Lonmin security were 7 available to the SAPS should they be required and the SAPS 8 knew that, and that is the reason, is it not – you're 9 nodding, is that correct? 10 MR BOTES: Mr Chairman, 100%, if the 11 police would require anything, we sent our security vehicle 12 to the Middle Kraal, collect what's required and take it 13 out for the guys where they're standing by, sitting there 14 from the whole day, the previous night, taking out anything 15 they need. The same what happened afterwards after the 16 shooting, they required generators. Our security guys 17 would come back from where they're posted, collect the 18 generators, and transport that generators to the area. So 19 security was available and assisted when required to do so, 20 but taking part into the activity, executing the plan, no, 21 we were not involved. 22 MR GOTZ: You were not ever called upon, 23 but in fact you were available to the SAPS, and is that not 24 the reason why there was a JOC board which set out the, or 25 identified the security personnel who were on duty,</p>	<p style="text-align: right;">Page 33624</p> <p>1 MR BOTES: That's correct, as well as the 2 area they were posted in. 3 MR GOTZ: And then, well, next to that, 4 EPL would be Eastern Platinum mine, etcetera, correct? 5 MR BOTES: That's correct. 6 MR BOTES: Now above each of these, we 7 see that in very fine print has been identified the arms 8 that they are carrying. I wanted to ask you simply about 9 one of them, and perhaps for this purpose we can look at 10 the following page of this exhibit, which is the last 11 entry, where you see that – if you just go down a bit, 12 you'll see that Mr Kellerman has the writing 9mm 1 times 13 SG, which is shotgun, and LM5, above his name. Do you see 14 that? 15 MR BOTES: That's correct, Mr Chair. 16 MR GOTZ: Is it correct that an LM5 there 17 designated the fact that Mr Kellerman was carrying an LM5 18 assault rifle? 19 MR BOTES: That's correct, Mr Chair 20 MR GOTZ: Is that standard issue for a 21 security personnel in Lonmin security? 22 MR BOTES: That's correct, Mr Chairman, 23 we have licensed firearms like that when we do cash escorts 24 and when we do product escorts, we use those our product 25 and to protect our cash.</p>

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1 CHAIRPERSON: Cash escorts or product
 2 escorts were not going to happen on the 16th, were they?
 3 MR BOTES: No, Mr Chairman –
 4 CHAIRPERSON: There hadn't been much
 5 product produced for some days, and no one was going to be
 6 paid, because a lot of people were on strike, is it not?
 7 MR BOTES: That's correct, Mr Chairman.
 8 CHAIRPERSON: So what was he doing with
 9 an LM5 on that day?
 10 MR BOTES: Mr Chairman, that firearms
 11 were issued to them from the beginning of the strike. If
 12 any person life is threatened and there's a serious attack
 13 on the people, and that is specifically to defend
 14 themselves.
 15 MR GOTZ: An LM5 is effectively the same
 16 as an R5, correct?
 17 MR BOTES: That's correct.
 18 MR GOTZ: It uses the same ammunition?
 19 MR BOTES: That's correct, Mr Chair,
 20 except from the difference, you cannot fire automatically
 21 it only fire rapid rounds.
 22 COMMISSIONER HEMRAJ: Do you think that
 23 there was some Lonmin security who were in possession of
 24 automatic rifles from the period, the 9th to the 16th, and
 25 perhaps thereafter continued there?

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1 MR BOTES: Yes, there were some guys who
 2 were issued and carrying those firearms with them, apart
 3 from the normal handgun and shotgun.
 4 COMMISSIONER HEMRAJ: And these are not
 5 firearms that are booked out when they come on duty, they
 6 have them in their possession all the time?
 7 MR BOTES: They have them in their
 8 possession and as they go home, they book it back, it goes
 9 back into the safe, and the following morning when coming
 10 on duty, get out of the safe again.
 11 COMMISSIONER HEMRAJ: Thank you.
 12 MR GOTZ: Just finally on the subject I
 13 raised earlier, before we proceed to other issues. The
 14 impression that you got, we confirmed earlier that SAPS had
 15 taken the view that discussions with the unions or
 16 discussions with unions directed towards disarming the
 17 strikers were not achieving any results and they had then
 18 decided to proceed with disarming the group at the koppie.
 19 Did you convey that impression to other people within
 20 Lonmin, inter alia Mr Graham Sinclair?
 21 MR BOTES: Mr Chairman, Graham was fully
 22 aware what's going to happen, because he was in and out of
 23 the JOC, as well as it was also the Lonmin senior manager
 24 who was present, he also knew that they're going to
 25 implement the plan on that day. So it was known to senior

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1 management and it was known to Graham and leaders from
 2 security.
 3 MR GOTZ: When you refer to senior
 4 management there, are you talking about Mr Kwadi, Mr
 5 Mokwena, Mr Jameson, all whom were present at various times
 6 during the morning of –
 7 MR BOTES: Mr Chairman, I assume they
 8 were aware of the plan, not the plan, they were aware that
 9 the police are going to execute the plan on the 16th, I
 10 assume so, but the person I'm referring to is the senior
 11 manager who was with me in the JOC. I think at the time it
 12 was Christo Horn, in the morning, and in the afternoon it
 13 was Etienne Hamman.
 14 CHAIRPERSON: In the afternoon, Etienne?
 15 MR BOTES: Etienne Hamman.
 16 CHAIRPERSON: H-A-M-M-A-N?
 17 MR BOTES: That's correct, Mr Chair.
 18 CHAIRPERSON: His name is on that –
 19 MR BOTES: His name is on that memo.
 20 CHAIRPERSON: That roster?
 21 MR BOTES: That's correct, Mr Chair.
 22 MR GOTZ: Can we then we move on quickly
 23 to the events of the afternoon of the 16th, and for that
 24 purpose can we look a couple of pages down in your witness
 25 statement, which is AAA39, to paragraph 55? Actually just

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1 to set the context, if we can look at paragraph 54? Now,
 2 Mr Botes, here you're talking about the actual
 3 implementation of the, or execution of the plan, and you
 4 say in paragraph 54, Brigadier Calitz commanded the SAPS at
 5 the koppie. You presumably knew Brigadier Calitz, he'd
 6 been at the JOC on various occasions, correct?
 7 MR BOTES: That's correct, Mr Chair.
 8 MR GOTZ: And you say you heard him from
 9 time to time on the SAPS radio communication system giving
 10 instructions. One of those instruction, in fact, probably
 11 the first instruction he would have given would have been
 12 the instruction for the rollout of the barbed wire,
 13 correct?
 14 MR BOTES: That's correct, Mr Chair.
 15 MR GOTZ: And while you were listening to
 16 these communications on the SAPS radio system, you could
 17 also see these events unfolding, to a certain extent, on
 18 the surveillance equipment before you?
 19 MR BOTES: That's correct, Mr Chair.
 20 MR GOTZ: There were other people who
 21 were similarly monitoring the CCTV surveillance cameras,
 22 and were listening to the radio at the same time, correct?
 23 MR BOTES: That's correct, Mr Chair.
 24 MR GOTZ: They must have been standing
 25 next to you in the JOC?

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1 MR BOTES: Mr Chair, yes, the operators,
2 surveillance operators handle the cameras. I was standing
3 behind them looking at the monitors. The same with all the
4 other people in the JOC had access to a view of the
5 monitors.
6 MR GOTZ: And people standing next to you
7 would have included – I forget his title, but Colonel
8 Scott?
9 MR BOTES: I think he was there and
10 General Annandale was there. I cannot remember everybody
11 who was there, but I think they were there.
12 MR GOTZ: Do you have a recollection of
13 Major-General Mbombo being present?
14 MR BOTES: At that stage, I don't think
15 she was there. I cannot say 100%, I cannot remember 100%
16 if she was there.
17 MR GOTZ: In paragraph 55 you say, "I
18 distinctly recall observing that as the barbed wire was
19 being rolled out, the large group from the crowd began
20 running parallel in the same direction that the barbed wire
21 was being rolled out." Now, Mr Botes, despite you saying
22 you distinctly recall, can we agree that they were not in
23 fact running at that stage, they might have been moving?
24 In fact, the objective evidence suggest that they were
25 moving very slowly, and not running at all at this stage.

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1 MR BOTES: Mr Chairman, what I saw is
2 that there were a lot of people on the koppie itself, and
3 if I refer to a group, there might be particular a group in
4 the front that was moving slowly, but generally most people
5 were running that, if you can look on the video recording,
6 they were moving with the barbed wire. Now, I don't think
7 if you would walk, you can over-walk the rollout of the
8 barbed wires, so they should have run to overrun the
9 rollout of the wires.
10 CHAIRPERSON: As the barbed wire got
11 closer to the kraal, what was suggested, in the end, as I
12 understand it, the barbed wire got to the kraal before the
13 strikers did, and so that's why the strikers appeared to
14 have gone round the kraal, some of them did anyway, but I
15 use the expression, there was a race between the Nyala
16 who's pulling, Nyala 4, that was pulling the wire trailer,
17 and eventually got the wire to the kraal, there was a race
18 between that Nyala and the strikers. That was obviously a
19 metaphor I was using, but can you tell us whether, as the
20 Nyala and the wire got closer to the kraal, can you tell us
21 anything about the speed of the strikers at that stage?
22 MR BOTES: Mr Chairman, I cannot recall
23 at that stage. It was clearer for me, if you look at the
24 footage, it was clearer for me in the beginning, the first
25 one, two and three trailers being pulled out, the people

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1 going with the Nyalas, with the trailers pulled out. I
2 cannot recall exactly at the fourth Nyala, because at that
3 stage I think there were already teargas discharged and the
4 image is not very good at that stage. So it was clearer in
5 the beginning when they pulled it out and later it is not
6 so clear and what happened afterwards is also not clear on
7 the video footage. So I cannot recall then what was the
8 speed, but I remember as they pull out the first one, two
9 and three cars, the people start moving with them.
10 MR GOTZ: Mr Botes, I must tell you that
11 we see no evidence of teargas being fired on the
12 surveillance equipment at the time that you're talking
13 about. The earliest time that we see any teargas on any of
14 the surveillance equipment is 20 seconds before the TRT
15 opens fire. Are you certain that you saw teargas being
16 fired as the Nyala approached the kraal, the barbed wire
17 Nyala?
18 MR BOTES: Mr Chairman –
19 MR GOTZ: We certainly don't see that –
20 MR BOTES: Mr Chairman, I cannot say when
21 the TRT, the TRU fired, because that's not visible on the
22 footage. I saw teargas and I saw the water cannon, that is
23 the sequence I saw. I saw the cars, trailers been brought
24 out, I saw teargas, I saw the water cannon, and then I see
25 all the spray and dust, which I could not identify and see

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1 what is happening there.
2 MR GOTZ: Can we just get back to the
3 direction in which the strikers were moving? You say in
4 paragraph 55, that they were moving parallel, in the same
5 direction that the barbed wire was being rolled out. Now
6 the barbed wire was being rolled out in a northerly
7 direction, at slightly northeast, from south, in effect, to
8 the northeast, correct?
9 MR BOTES: Mr Chair, ja, from south to
10 not true north, but in a northerly direction, yes.
11 MR GOTZ: And that is the direction that
12 you observed the strikers moving as the barbed wire was
13 being was rolled out, correct?
14 MR BOTES: Mr Chairman, yes, that is the
15 direction, but because of the placement, position of the
16 camera which I used, it's not directly square with the
17 direction the barbed wire was pulled out, so I cannot say
18 that when the people running with the barbed wire was
19 pulled out, they were absolutely parallel, and maybe that
20 term I used was wrong, but I would say they moved in the
21 same direction. So, because the camera is skew, I cannot
22 say they are a bit that way or that way, they moved in the
23 same direction.
24 MR GOTZ: You didn't see them move in the
25 direction, any large group of strikers move in the

<p style="text-align: right;">Page 33633</p> <p>1 direction of the camera? In other words, towards the 2 camera?</p> <p>3 MR BOTES: Mr Chairman, as the people 4 come off from the koppie, as they start rolling out the 5 barbed wire, I saw people moving with the barbed wires and 6 I saw a lot of people, who were on top of the koppie, 7 heading out to western side, getting away from the whole 8 scene. I cannot recall that from the koppie, they moved 9 straight towards the wires, but the general direction of 10 where they ran to was in the same direction of the 11 extraction of the trailers.</p> <p>12 MR GOTZ: In a northerly – perhaps north 13 easterly direction?</p> <p>14 MR BOTES: That's correct, Mr Chair.</p> <p>15 MR GOTZ: Can I ask you then just to look 16 briefly at paragraph 57 of your witness statement? In the 17 first line of that you say – or first sentence you say, 18 "From my observation, this group was heading from the 19 koppie in the direction of the kraal," and then you say, 20 "where a group of police officers, including members of the 21 task team, had moved to." Now, Mr Botes, I just went to put 22 it to you that, in fact, the objective evidence reveals 23 that the group of police officers, including members of the 24 task team, moved to the kraal after the strikers had headed 25 in that direction. So it's in fact the reverse of what</p>	<p style="text-align: right;">Page 33635</p> <p>1 been there, that you heard him give the instruction for the 2 rollout of the barbed wire. Now, that would have been the 3 first instruction that you heard him give, correct?</p> <p>4 MR BOTES: That's correct, Mr Chair.</p> <p>5 MR GOTZ: Then in paragraph 56, you say 6 that at some point you heard an instruction from Brigadier 7 Calitz for the use of teargas and water cannons against the 8 crowd. Can I ask you whether those were separate 9 instructions or whether they, as it were, came in the same 10 breath? Did Brigadier Calitz issue two instructions 11 consecutively or was that one instruction?</p> <p>12 MR BOTES: With regards to the rubber 13 bullets and water cannons?</p> <p>14 MR GOTZ: No, no, the use of teargas and 15 water cannons against the crowd. So what I am asking you 16 is, when you say in the first sentence of paragraph 56, 17 Brigadier Calitz, you heard an instruction from Brigadier 18 Calitz for the use of teargas and water cannons against the 19 crowd, was that one instruction or two separate 20 instructions?</p> <p>21 MR BOTES: Mr Chairman, I cannot recall 22 exactly if it was one breath, one instruction, but I can 23 remember that he mentioned both teargas, water cannons and 24 rubber bullets. I cannot remember how long between each 25 other. I can only remember particularly that he used those</p>
<p style="text-align: right;">Page 33634</p> <p>1 you're suggesting in this sentence. Would you agree with 2 that?</p> <p>3 MR BOTES: Mr Chair, yes, I saw the 4 vehicles, because all the vehicles were basically lined out 5 in the direction of the extraction of the barbed wires, 6 lined out in the same direction, evenly spread what I saw, 7 and as the people move along, these vehicles start going 8 upwards towards the kraal and they met basically, and I saw 9 a open Casspir going there, I saw Nyalas going there, I saw 10 different vehicles going up to where they met at the kraal. 11 So that was with the people, as they move along, these 12 vehicles also move upwards, upwards, upwards, and to stay 13 ahead of the group, going upwards.</p> <p>14 MR GOTZ: Yes, in other words, the 15 important point is that the group of strikers moved towards 16 the kraal in a northerly direction, before the SAPS, 17 including the task team, moved in that direction, correct?</p> <p>18 [10:03] MR BOTES: Mr Chairman, if you do 19 reviewing that is possible. But my observation was that 20 they tried to catch up and try to move up with them and to 21 be in position as they go along.</p> <p>22 MR GOTZ: I'd like to turn to the issue 23 of the instructions that you heard. It seems to me that 24 you heard a number of separate commands being given by 25 Brigadier Calitz. You say in paragraph 54, and we've just</p>	<p style="text-align: right;">Page 33636</p> <p>1 instructions to convey that to his police officers.</p> <p>2 MR GOTZ: The third or possibly fourth 3 instruction was then the instruction for the use of rubber 4 bullets, correct?</p> <p>5 MR BOTES: The, that was the fourth one 6 after the barbed wires were pulled out and the teargas was 7 engaged, and the water cannons is engaged.</p> <p>8 MR GOTZ: Yes, what I am saying that this 9 says, you heard – what I am trying to get at is whether you 10 heard a separate instruction from Brigadier Calitz for the 11 use of rubber bullets.</p> <p>12 MR BOTES: That's correct, Mr Chair.</p> <p>13 CHAIRPERSON: Do you say rubber bullets 14 or rubber balls? Because the evidence is that they 15 actually don't use rubber bullets anymore. They use rubber 16 balls. So if you heard an instruction, what words can you 17 remember his using?</p> <p>18 MR BOTES: Mr Chair, I cannot remember if 19 he said "use rubber," only the word "rubber," or use 20 rubber, obviously when you are given an instruction you 21 will not say "use rubber rounds," you will see "use 22 rubber," or "use teargas." That is the short and sweet 23 version that a person should give and not use rubber 24 rounds.</p> <p>25 CHAIRPERSON: You say "use rubber," that</p>

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1 would have –

2 MR BOTES: That means -

3 CHAIRPERSON: - meant rubber balls, if

4 the police only had rubber balls, and you not knowing that,

5 might have thought he meant rubber bullets.

6 MR BOTES: That's correct, Mr Chair.

7 MR GOTZ: And then what follows then, if

8 I understand you correctly, Mr Botes, is that you hear the

9 words on the radio, on the SAPS radio communication system

10 "engage, engage, engage." Is that correct?

11 MR BOTES: That's correct, Mr Chair.

12 MR GOTZ: That followed the instruction

13 for the use of rubber bullets, correct?

14 MR BOTES: That is correct, Mr Chair.

15 MR GOTZ: Who issued that instruction?

16 You don't say who said that in paragraph 57, you simply say

17 "I just heard the words on the SAPS radio communication

18 system 'engage, engage, engage.'"

19 MR BOTES: That was Brigadier Calitz ,

20 MR GOTZ: That was Brigadier Calitz.

21 Now, it seems to us from what you say in the remainder of

22 paragraph 57 that at the time you hear the words "engage,

23 engage, engage" the water cannon had already started to

24 spray its water or at least it was around the same time as

25 the water cannon had started to spray, correct?

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1 MR BOTES: That is correct, Mr Chair. I

2 think there was water sprayed before that as well, and then

3 the water canon moved up closer to the kraal, and then

4 there was another burst of water spraying happening at the

5 kraal. But there was also water spraying before they

6 reached the kraal, and then the water canon moved forward

7 and also engaged with a burst of spray.

8 MR GOTZ: I must say that that, we don't

9 see on the surveillance equipment either. The first time

10 that we see any water canon spraying on the surveillance

11 equipment is, it seems like Mr Chaskalson has departed, but

12 from my recollection –

13 CHAIRPERSON: He didn't know that he had

14 to function as your junior, perhaps if necessary we can get

15 him back.

16 MR GOTZ: It's approximately ten seconds

17 before the TRT opens fire that we see water cannon being,

18 the water cannon in use, and it seems that they start

19 spraying as the water cannon trucks reach the kraal.

20 MR BOTES: Mr Chairman, I cannot comment

21 on it because I do not know when the TRU engaged. I know

22 that the water cannons were engaged before the instruction

23 came, "engage, engage."

24 MR GOTZ: What I am really interested in,

25 and I think you confirmed it, is that you hear the words

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1 from Brigadier Calitz "engage, engage, engage," around the

2 same time that the water cannon started to spray or

3 immediately thereafter.

4 MR BOTES: That was after that. After

5 that, I said I saw spray and after that I heard, "engage,"

6 and I saw the water cannon moving and there was more spray

7 to the area. I think there was two water cannons at a

8 time. I cannot remember if both were spraying but there

9 was water spraying and, but the visuals were very, very

10 bad. So we could not clearly see that part of the

11 exercise. The previous extraction of the barbed wire

12 trailers number 1, 2 and 3 were very clear but then it

13 becomes dusty and you could not see clearly.

14 MR GOTZ: You suggest in paragraph 59 of

15 your witnesses statements, you say, "other than for hearing

16 the word 'engage' which was repeated a few times

17 immediately before the shooting started, I did not hear any

18 specific instruction for the use of live ammunition." Now

19 there are two things that are in that, but what I wanted to

20 ask you first, is you understood in the context and from

21 what you were witnessing and hearing, that the words

22 "engage, engage, engage" were a specific instruction for

23 the use of live ammunition, correct?

24 MR BOTES: Mr Chairman, no, before the

25 people went out to the koppie, it was explicitly said by

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1 General Annandale, no live ammunition will be used unless

2 your life is in danger. So whatever that "engage" means at

3 the time, I wasn't aware that TRU are going to engage with

4 live ammunition. So that wasn't shared to me or in my

5 presence that that is, that that will be the command for

6 live ammunition. That engagements would mean to me other

7 units, because there were various other units apart from

8 POPS so I expect that there's other methods being used,

9 other people behind them engaging because I could not see

10 at that stage what's happening, and where the people

11 exactly were standing and who's who.

12 CHAIRPERSON: Tell me, what was the time

13 lapse between the words "engage, engage, engage" and the

14 shooting? Because you say other than hearing the word

15 "engage" which was repeated a few times, immediately before

16 the shooting started, "I didn't hear any further

17 instruction." So you obviously heard the shooting, which I

18 will ask you about in a moment. But what was the time

19 lapse between the last "engage" that you heard and the

20 shooting.

21 MR BOTES: Mr Chairman, sometimes when

22 Brigadier Calitz spoke on the radio, after he said

23 "engage," you could hear on the radio, that there's

24 shooting taking place. So that was basically immediately

25 after he said "engage" that the shooting started, which we

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1 could hear.

2 CHAIRPERSON: Immediately, you mean a

3 couple of seconds?

4 MR BOTES: I would say -

5 CHAIRPERSON: Immediately, seconds.

6 MR BOTES: Seconds, yes.

7 CHAIRPERSON: Tell me, so you could

8 clearly hear the volley, what we call the volley, I think

9 the evidence is about eight seconds, you could clearly hear

10 a volley of a lot of shooting for eight seconds on the

11 radio, you could hear that?

12 MR BOTES: Mr Chairman, no, I could only

13 hear when a police radio in the vicinity was close by and

14 they were busy communicating with -

15 CHAIRPERSON: I know that, we are talking

16 about the actual shooting that happened at just before four

17 o'clock on the Thursday afternoon. You heard Brigadier

18 Calitz whose radio was on, and he was saying "engage,

19 engage, engage," and seconds after that, you heard

20 shooting. So you heard the shooting. Now what I want to

21 say to you, could you hear the shooting went on for about

22 eight seconds?

23 MR BOTES: No, Mr Chair.

24 CHAIRPERSON: How long did it go on for,

25 that you heard?

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1 MR BOTES: I could not hear that because

2 when he speak on the radio, he doesn't keep his key in for

3 the whole time after he have spoken, after he's given

4 instructions, so as soon as he leaves the radio, there's no

5 communication with the JOC.

6 CHAIRPERSON: Oh, I see, so that means,

7 that really makes the shooting following on the last

8 "engage" almost instantaneous, doesn't it?

9 MR BOTES: It makes it immediately,

10 that's why I said immediately as he give instruction, I

11 could hear -

12 CHAIRPERSON: Hear the shooting, for how

13 long could you hear the shooting? For what you told me,

14 obviously you couldn't the eight seconds, for the reasons

15 you have given, but for how long did you hear the shooting?

16 MR BOTES: Mr Chair, I cannot recall,

17 maybe a second or two, or three seconds, I cannot recall

18 but I could hear shooting is taking place, while somebody

19 was talking on a radio which is close by, whether it was

20 his radio or another radio, when there's a radio keyed in,

21 I could hear directly after "engage" that the shooting is

22 taking place.

23 CHAIRPERSON: It sounds from what you

24 say, it wasn't just one firearm being fired.

25 MR BOTES: No, there -

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1 CHAIRPERSON: There was quite a lot.

2 MR BOTES: Ja, definitely.

3 CHAIRPERSON: It has been described as a

4 fusillade of volleying, various words like that, it sounds

5 to me that's more or less what you heard.

6 MR BOTES: Correct.

7 CHAIRPERSON: Obviously not for the full

8 eight seconds but you did hear it.

9 MR BOTES: It was a burst of shots. So

10 it wasn't one person.

11 CHAIRPERSON: So it must have been

12 obvious to everybody in the JOC that something quite

13 serious had happened.

14 MR BOTES: That's correct, Mr Chair.

15 CHAIRPERSON: Now tell me, can remember

16 who exactly was in the JOC at that stage?

17 MR BOTES: Who?

18 CHAIRPERSON: Who exactly was in the -

19 you were in the JOC obviously.

20 MR BOTES: Mr Chair, I remember it was

21 myself and I think it was Etienne Hamman, the two

22 surveillance operators, Brigadier Pretorius was there, the

23 police radio operators were there, General Annandale I

24 think was there, Colonel Scott was there. There was a few

25 other guys -

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1 CHAIRPERSON: Lieutenant-General Mbombo,

2 was she there?

3 MR BOTES: I cannot recall that.

4 CHAIRPERSON: Tell me, while we are

5 talking about the radio traffic that you heard, was there a

6 tape recorder in the JOC? That was recording the, all the

7 radio traffic, it was obviously quite important later to

8 know what was said over the radio.

9 MR BOTES: Mr Chairman, I cannot recall

10 that there was any tape recorder in the JOC to record any

11 radio conversations or telephone conversations.

12 CHAIRPERSON: There wouldn't have been

13 any difficulty, I mean, I presume if they had asked you for

14 one, you would have been able to provide it.

15 MR BOTES: Mr Chairman, yes, we would

16 have been provided, but our system ourselves, if they said

17 to me that don't worry, all our radio communication, the

18 security radio communication is recorded because we have

19 analogue and omnilog system that records our telephones, so

20 I assume the radio was also recorded, but after that it was

21 not the case.

22 CHAIRPERSON: What do you mean by after

23 that it was not the case?

24 MR BOTES: After that, when I enquired

25 about it, because I had queries about the incidents that

<p style="text-align: right;">Page 33645</p> <p>1 happened, and I queried this log sheet myself and said, get 2 the conversations and update this as accurate as possible, 3 and then I was told that the radio, our radio communication 4 is not recorded, there was a fault on the system.</p> <p>5 CHAIRPERSON: This includes the 6 conversation between the police people.</p> <p>7 MR BOTES: That is excluding that.</p> <p>8 CHAIRPERSON: I am interested in the 9 radio traffic involving the police, you see? When 10 Brigadier Calitz said "engage, engage, engage."</p> <p>11 MR BOTES: No.</p> <p>12 CHAIRPERSON: Was, as far as you could 13 see, was any attempt being made by the police to record the 14 radio traffic, the traffic on their radios?</p> <p>15 MR BOTES: Mr Chairman, no, not what I've 16 seen and I never received an instruction or a request if we 17 can assist.</p> <p>18 CHAIRPERSON: And if they had requested 19 it, you could have done so without any problem, I take it.</p> <p>20 MR BOTES: Possibly we could have.</p> <p>21 CHAIRPERSON: I mean, all you had to do 22 was, I mean, you could hear the stuff there, in the JOC, 23 couldn't you? All you needed was an ordinary little tape 24 recorder in the JOC, and it would have been there, and we 25 would have spent substantially less time here at this</p>	<p style="text-align: right;">Page 33647</p> <p>1 was obviously that something, I don't want to use too 2 strong a word, but the word that comes to mind is 3 catechistic, I mean something very, very serious had 4 happened.</p> <p>5 MR BOTES: It was.</p> <p>6 CHAIRPERSON: It was so serious that it 7 obviously shocked you and it must have shocked everybody 8 else in the JOC.</p> <p>9 MR BOTES: Definitely.</p> <p>10 CHAIRPERSON: Thank you.</p> <p>11 COMMISSIONER HEMRAJ: And you are able to 12 distinguish between sound of automatic fire and shotgun 13 fire and rubber?</p> <p>14 MR BOTES: Yes, of course, Ma'am.</p> <p>15 CHAIRPERSON: Forgive us, Mr Gotz, please 16 carry on with your cross-examination.</p> <p>17 MR GOTZ: You are forgiven Chair, but it 18 took out probably about five or ten minutes of my cross- 19 examination. There's only one further question that I 20 wanted to ask you and for that purpose, can we have Colonel 21 Scott's witness statement which is HHH20 up on the screen? 22 And if we can look at, I think it's page 91 of the 23 statement, paragraph 18. Here Colonel Scott is describing, 24 I must confess, in quite similar terms to what you are 25 observing, his observations whilst standing in the JOC. He</p>
<p style="text-align: right;">Page 33646</p> <p>1 Commission debating what was on the radio, if that had 2 happened.</p> <p>3 MR BOTES: 100%, we could have.</p> <p>4 CHAIRPERSON: You told us, sorry, there's 5 one other question I should have asked you, and I didn't 6 and I am sure Mr Gotz will forgive me for taking up his 7 time, if necessary, I will give him credit. You've told us 8 how you heard the words "engage, engage, engage." And 9 instantaneously thereafter you heard the beginnings of a 10 lot of firearms being fired, did it sound to you like 11 automatic fire?</p> <p>12 MR BOTES: Mr Chair, it sounds like 13 automatic fire, but it also sounds like a lot of people 14 firing. If there is not one firearm that shoots 15 automatically, it sounds like a lot of firearms firing.</p> <p>16 CHAIRPERSON: Okay. So it must have been 17 obvious to you that something quite serious had happened.</p> <p>18 MR BOTES: We were shocked, I was shocked 19 in the control room there, and expect that the police were 20 severely attacked and a number of people were killed both 21 ways, and I expected –</p> <p>22 CHAIRPERSON: Well we know a number were 23 killed, but only one was –</p> <p>24 MR BOTES: Yes, yes.</p> <p>25 CHAIRPERSON: But you were shocked, it</p>	<p style="text-align: right;">Page 33648</p> <p>1 says, although there were two CCTV monitors to provide 2 feeds in the JOC, from the Lonmin Mine cameras around the 3 mine, the camera at the BMR smelter was what showed the 4 koppie area at a distance, possibly one kilometre or more 5 away, due to the late afternoon sun, the footage was barely 6 visible due to the glare and the distance to the koppie. 7 Over the page then he says, during the execution of what 8 now was stage 3, he was positioned next to the police radio 9 base, and I think you have already confirmed that he was 10 right there next to you. In paragraph 19.1, he says, and 11 this is the part that I wanted to ask you about, "after 12 Brigadier Calitz had initiated the operations, some minutes 13 later I heard the intensity increase in the radio 14 communication with Brigadier Calitz calling the Nyalas on 15 their Papa call signs into some formation and to engage. 16 He was repeatedly calling the water cannons to come forward 17 and engage." Now the one part that you don't mention is 18 Brigadier Calitz giving instructions calling the Nyalas on 19 their Papa call signs into some formation. Do you have any 20 recollection of Brigadier Calitz at this time calling the 21 Nyalas by their call signs, into any form of formation?</p> <p>22 MR BOTES: Mr Chairman, I cannot recall 23 that, that he called at that specific time the units on 24 their call signs, I think he called them specifically on 25 their surnames, which is quicker and everybody knows who is</p>

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1 where. What I can recall is that he called people directly
 2 on their names and those might have been when I said the
 3 using of the teargas and the water cannon and then the
 4 rubber bullets. So that must have been during that phases
 5 where I heard the using of the teargas, water cannons and
 6 the rubber bullets. So I cannot specifically say that is
 7 specifically the same event what I've heard, but he became
 8 intensive as they go along further towards the kraal, very
 9 intensive and there was no call signs specifically at the
 10 kraal where the final engagement is, "engage, engage,
 11 engage," there was just a pure instruction to engage, and
 12 not specifically to certain members.

13 MR GOTZ: Sorry, Mr Botes, I am not quite
 14 with you, you say he was calling people on their names. Do
 15 you mean that he was saying T, or Mere or –

16 MR BOTES: That's correct, Mr Chair, what
 17 I can recall is that as the intensity increases he called
 18 people on their names because it is easier to communicate
 19 directly to a person instead of confusing the whole
 20 operation by calling Papa6 and Papa12 or whatever the case
 21 may be.

22 MR GOTZ: But what was he saying to, for
 23 instance, Mere in those communications? Was he calling
 24 them as Colonel Scott says, into some formation. In other
 25 words was he saying to Mere, "move up, move left, move

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1 right?"

2 [10:23] MR BOTES: Mr Chairman, I cannot recall
 3 that a certain formation, all I saw and I heard this
 4 conversations was that the vehicles move upwards, up north,
 5 and that might be the formation Colonel Scott is referring
 6 to here, but I saw, because the vehicles were not deployed
 7 at the kraal, they were deployed evenly across and as the
 8 people move along and instructions coming in, instructing
 9 people to move up and also I saw the vehicles, whether it's
 10 calling Papa, but as they increased the intensity he called
 11 the people specific on their names to react, and then
 12 that's the use of the water, rubber, and then the water
 13 cannon – teargas as well.

14 MR GOTZ: Thank you, Chair, those are our
 15 questions.

16 CHAIRPERSON: Thank you. Mr Mpofu, I
 17 think you're next. Actually I intended to take the first
 18 comfort break at quarter past 10, but I didn't want to
 19 interrupt Mr Gotz. Perhaps we can take it now, resume in
 20 quarter of an hour.

21 MR MPOFU: Yes, thanks.

22 [COMMISSION ADJOURNS COMMISSION RESUMES]

23 [10:48] CHAIRPERSON: The Commission resumes. Mr
 24 Botes, you're still under oath.

25 DIRK CORNELIUS BOTES: Thank you, Mr

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1 Chair.

2 CHAIRPERSON: Mr Mpofu. He's not here.

3 Oh, he is. He's fraternising with, I won't say the enemy,
 4 but with the police. Mr Mpofu.

5 CROSS-EXAMINATION BY MR MPOFU: Thank you
 6 very much, Chairperson. Friendly fire, it was. Good
 7 morning, Mr Botes.

8 MR BOTES: Good morning, Sir.

9 MR MPOFU: Alright, well I'm going to
 10 very briefly just give you a kind of context of what I'm
 11 going to be asking you about. You might know that our case
 12 is that the majority of the deaths in the period under
 13 discussion, a total of which is 44, were caused by a toxic
 14 collusion between SAPS and Lonmin. You're aware of that,
 15 hey?

16 MR BOTES: I'm aware of that, but not
 17 because, against Lonmin, because the police acted on that
 18 day, not Lonmin.

19 CHAIRPERSON: No, no, no, no, what he's
 20 saying is their case is – whether you accept their case is
 21 another matter, but their case is that the deaths were
 22 caused by the toxic collusion between Lonmin and the police
 23 and I take it he's going to question you on the basis in
 24 order to bring out facts which confirm their contention
 25 that there was this toxic collusion, and then of course the

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1 further point will be a causal connection between such
 2 collusion as there was and the actual deaths.

3 MR BOTES: Thank you for clarity, Mr
 4 Chair.

5 CHAIRPERSON: I think that's the way – am
 6 I interpreting it –

7 MR MPOFU: That's correct, Chair.

8 CHAIRPERSON: When you say you understand
 9 you simply mean, I presume that you understand that's his
 10 case.

11 MR MPOFU: Yes.

12 MR BOTES: Thank you, Mr Chair.

13 MR MPOFU: Not that you agree –

14 MR BOTES: Thank you.

15 MR MPOFU: - but you understand. Ja,
 16 fair enough. In that context we're going to argue that the
 17 Lonmin policy of refusing to speak to the workers was
 18 responsible for 41 of those 44 deaths and that the toxic
 19 collusion between SAPS and Lonmin was responsible for about
 20 39 of the deaths. Now in that context there are many
 21 various themes and sub-themes, so I'm not going to – I'm
 22 trying to show you, I'm not going to include you in things
 23 that don't involve you, as it were. But I'll zoom into the
 24 areas of that broad submission that concern you. You
 25 understand?

<p style="text-align: right;">Page 33653</p> <p>1 MR BOTES: Thank you, Mr Chair.</p> <p>2 MR MPOFU: And one of those variations of</p> <p>3 the theme of why we say, we will say for example that</p> <p>4 Lonmin should be held responsible for the 41 deaths that</p> <p>5 started with the deaths of the security policemen is that</p> <p>6 we're going to be talking about what I would call</p> <p>7 ineptitude and wrong decision making on the part</p> <p>8 specifically of Lonmin Security, of which you're a part and</p> <p>9 so I'll deal with that aspect of it with you. You</p> <p>10 understand?</p> <p>11 MR BOTES: I understand, Mr Chair.</p> <p>12 MR MPOFU: Yes, because you cannot be</p> <p>13 held responsible for the hard-line stance, what we call the</p> <p>14 hard-line stance of management not to speak to the</p> <p>15 strikers. You had no role to play in fashioning that hard-</p> <p>16 line stance. Is that correct?</p> <p>17 MR BOTES: That's correct, Mr Chair.</p> <p>18 MR MPOFU: Ja, nor can you be held</p> <p>19 responsible for the political pressure which induced the</p> <p>20 police brutality which resulted in the 39 deaths. You had</p> <p>21 no part in the political pressure. Correct?</p> <p>22 MR BOTES: That's correct, Mr Chair.</p> <p>23 MR SEMENYA SC: Chair, that question</p> <p>24 should not assume a fact which is not in evidence. There's</p> <p>25 no political pressure that has been demonstrated. There's</p>	<p style="text-align: right;">Page 33655</p> <p>1 meant literally or in some fuzzy way that General Mbombo</p> <p>2 explained is another matter.</p> <p>3 CHAIRPERSON: But "pressure" is a word</p> <p>4 that means nothing in the police jargon –</p> <p>5 MR MPOFU: Yes.</p> <p>6 CHAIRPERSON: Yes.</p> <p>7 MR MPOFU: Thank you, Chairperson. So</p> <p>8 I've said I'll then, the first broad topic that I'll deal</p> <p>9 with you is this issue of what I call Lonmin Security</p> <p>10 ineptitude.</p> <p>11 The second broad area which involves you, where</p> <p>12 I'll "blame" you will be your role that you might have</p> <p>13 played in being the, for lack of a better word, the agent</p> <p>14 between the SAPS and Lonmin in respect of the alleged toxic</p> <p>15 collusion. You understand that?</p> <p>16 MR BOTES: I understand that, Mr Chair.</p> <p>17 MR MPOFU: Ja, thank you. Okay. Right,</p> <p>18 and fortunately I also will not question you – the first</p> <p>19 area that I was going to question you on, which I will also</p> <p>20 not question you on, is the whole question of CCTVs,</p> <p>21 surveillance equipment and the alleged, what I will call</p> <p>22 the manipulation of the discrepancies between XX2 and</p> <p>23 EEEE19, and the reason for that is because Mr Chaskalson</p> <p>24 dealt with that extensively and to some extent my learned</p> <p>25 friend also, Mr Tip.</p>
<p style="text-align: right;">Page 33654</p> <p>1 the contention for it which Mr Mpofo insists on repeating.</p> <p>2 MR MPOFU: No. Well, I thought that's</p> <p>3 exactly what Mr Semenya's witness General Mbombo said, but</p> <p>4 maybe I'm wrong. But the point I'm making is that this</p> <p>5 witness is not involved in the political pressure referred</p> <p>6 to in JJJ192 by General Mbombo, involving Malema and all</p> <p>7 sorts of people like that. You were not involved in those</p> <p>8 things. Correct?</p> <p>9 MR BOTES: That's correct, Mr Chair.</p> <p>10 MR MPOFU: Yes.</p> <p>11 CHAIRPERSON: So the point Mr Semenya is</p> <p>12 making is you shouldn't put it on the basis of established</p> <p>13 fact. Certainly you can put it on the basis of a</p> <p>14 contention that's been raised, contention in respect of</p> <p>15 which there is some evidence which you will argue later</p> <p>16 establishes what you, that your contention is correct. But</p> <p>17 anyway, it's just a preliminary point because your point</p> <p>18 very fairly is this witness can't throw any light on that.</p> <p>19 MR MPOFU: That's it –</p> <p>20 CHAIRPERSON: And you're not going to ask</p> <p>21 him about that, you're going to ask him about other</p> <p>22 matters.</p> <p>23 MR MPOFU: Yes, Chairperson, and I insist</p> <p>24 it's not a contention, it is contained in JJJ192. As to</p> <p>25 whether I will convince the Commission later that it was</p>	<p style="text-align: right;">Page 33656</p> <p>1 MR BOTES: I understand that, Mr Chair.</p> <p>2 MR MPOFU: Ja. In fairness to you I</p> <p>3 should say that relying on that cross-examination, which</p> <p>4 I'm not going to repeat, the contention that I'm going to</p> <p>5 put is much higher than what Mr Chaskalson and the Chair</p> <p>6 put as being strange. I think that's the lowest that you</p> <p>7 can put it. I'm going to argue that those discrepancies</p> <p>8 between, in the logbooks are as a result of a deliberate,</p> <p>9 of doctoring those records deliberately to mislead the</p> <p>10 Commission. Would you like to comment about that?</p> <p>11 MR BOTES: Mr Chair, I cannot comment on</p> <p>12 it because I also agree that the documents is not accurate.</p> <p>13 MR MPOFU: Yes. No, fair enough, on that</p> <p>14 we both agree. What I'm saying is that I'm going to put it</p> <p>15 higher than just the mere fact that they are incorrect.</p> <p>16 I'm going to argue that just as in the case of the South</p> <p>17 African Police Services, you were deliberately concealing</p> <p>18 or altering evidence with the intention to mislead the</p> <p>19 Commission, or to conceal certain facts from the</p> <p>20 Commission. That's the point I'm making.</p> <p>21 CHAIRPERSON: Mr Mpofo, there are two</p> <p>22 points. Mr Semenya has got his light on. It's not</p> <p>23 necessary to put to this witness what was the case with the</p> <p>24 South African Police. You're going to argue certain points</p> <p>25 later, but you're just making a statement which is not</p>

<p style="text-align: right;">Page 33657</p> <p>1 relevant to what you're asking the witness about. So 2 that's the first point. 3 The second point is when you say you were a 4 party, you misled, or did whatever to mislead the 5 Commission, are you saying "you" in the sense of Mr Botes 6 or are you saying "you" in the sense of Lonmin? 7 MR MPOFU: Fair enough. Yes, thanks, 8 Chairperson. Okay, look Mr Botes, in fairness to you I'll 9 be saying "you" in the sense of Lonmin, which does not mean 10 you were not involved. It's just that this Commission is 11 not about apportioning blame to you as an individual. I'm 12 questioning you as a representative of Lonmin. It's 13 something that I think gets lost a lot of times in this 14 Commission. So whether you as Botes were involved or not 15 is neither here nor there. The point I'm going to make is 16 that Lonmin, like SAPS, was involved in – 17 CHAIRPERSON: Mr Mpofu, you don't have to 18 say – you're not questioning this witness about what SAPS 19 were doing. What was – 20 MR MPOFU: I am. I told him about the 21 collusion between the two. 22 CHAIRPERSON: No, no, I understand, but 23 whether, I know there will be a contention that SAPS 24 endeavoured to mislead us in certain respects. Whether 25 they succeeded will be another matter, but whether that's</p>	<p style="text-align: right;">Page 33659</p> <p>1 MR MPOFU: - as a person. 2 CHAIRPERSON: Mr Mpofu, please, let's 3 just lower the temperature and concentrate on the issue. 4 MR MPOFU: No, you are the one who's 5 raising the temperature, Chairperson. 6 CHAIRPERSON: Give me – 7 MR MPOFU: How can you say that? How can 8 you say that? How can – 9 CHAIRPERSON: Give me – 10 MR MPOFU: - you when I'm questioning a 11 witness, want to involve issues about the media? 12 CHAIRPERSON: Give me an opportunity to 13 put – 14 MR MPOFU: This is not a game, 15 Chairperson. 16 CHAIRPERSON: No, I know, I'm fully aware 17 of that. 18 MR MPOFU: Ja. 19 CHAIRPERSON: And I understand what I – 20 MR MPOFU: It's not a game, Mr 21 Chairperson – 22 CHAIRPERSON: Please [inaudible, speaking 23 simultaneously] – 24 MR MPOFU: - or a television story – 25 CHAIRPERSON: I'm perfectly aware of</p>
<p style="text-align: right;">Page 33658</p> <p>1 correct or not is not presently under discussion. You will 2 argue it later. There's a lot of cross-examination on 3 which your argument will be based, but you don't have to 4 traverse with this witness, and you don't have to make sort 5 of statements as you go along which are picked up by the 6 media, you know, that the police were guilty of 7 misleading – 8 MR MPOFU: No, Chairperson – 9 CHAIRPERSON: If they – 10 MR MPOFU: No, Chairperson, I think 11 that's – 12 CHAIRPERSON: If they are then that's a 13 matter that will be dealt with later- 14 MR MPOFU: - grossly unfair. That's a 15 grossly unfair accusation you're making against me and I 16 would like it to be withdrawn. I've just – 17 CHAIRPERSON: It won't be withdrawn 18 because it's perfectly fair. 19 MR MPOFU: Well, then Chairperson, I'll 20 take it up, you know, at a higher level, because you 21 cannot, when I've laid the basis for a collusion between 22 two parties, when I'm still using those two parties in 23 unison then come and make outrageous accusations against 24 me – 25 CHAIRPERSON: Mr Mpofu –</p>	<p style="text-align: right;">Page 33660</p> <p>1 that, thank you. You don't have to remind me. 2 MR MPOFU: People died here. 3 CHAIRPERSON: I'm aware of that too. 4 MR MPOFU: Ja, alright. 5 CHAIRPERSON: And I'm determined to find 6 out the truth with my colleagues as to how they died and 7 why. 8 MR MPOFU: Well, if you can do that 9 without making unwarranted remarks and personal – 10 CHAIRPERSON: The remarks I had – 11 MR MPOFU: - ad hominem attacks against 12 anyone, then you will succeed. 13 CHAIRPERSON: If you'd understood what I 14 was saying you wouldn't have said what you said. What you 15 allege is that the police were guilty of misleading the 16 Commission. I don't understand your case to be that Lonmin 17 collaborated with the police in misleading the Commission, 18 that you say is – 19 MR MPOFU: That's not what I'm saying. 20 CHAIRPERSON: No, but well, that's 21 effectively how you put it. Mr Semenya objected. It's not 22 necessary for purposes of your cross-examination to put to 23 this witness that the police misled the Commission. I know 24 that's going to be your contention – 25 MR MPOFU: Mr Semenya has not objected.</p>

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1 CHAIRPERSON: He turned his light on. He
2 was going to object.
3 MR MPOFU: Oh, but now you're saying what
4 his objection, why he turned his light? He hasn't said a
5 word, Mr Semenya. The record will show that.
6 CHAIRPERSON: Mr Semenya, what was your
7 objection going to be?
8 MR SEMENYA SC: Precisely that, Chair,
9 that 1, he may very well argue ultimately that there is
10 elements of evidence by the police that was misleading with
11 an intention that he describes, but it's not a fact that he
12 can put to this witness at this stage.
13 CHAIRPERSON: That was the basis of what
14 I said to you. Anyway, I suggest that we carry on with
15 the –
16 MR MPOFU: I will carry on.
17 CHAIRPERSON: - and the time that you've
18 got I suggest you use in cross-examining the witness, not
19 making comments of the kind that Mr Semenya objected to.
20 MR MPOFU: Ja, okay. Mr Botes, you
21 remember I referred you to a collusion between the South
22 African Police Services and Lonmin, which I accept you
23 don't agree with but which I said I was going to argue.
24 You remember that?
25 MR BOTES: That's correct.

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1 MR MPOFU: Ja, now the simple point I'm
2 making, which is being grossly misunderstood probably for
3 reasons that I will deal with in argument, is this; the
4 meaning of that collusion in simple terms would be that
5 both of those parties are guilty of the deaths that I have
6 outlined to you, that I've given you the numbers. You
7 understand that?
8 MR BOTES: I understand, Mr Chair.
9 MR MPOFU: Yes, now I'm making a very
10 simple point that if both of those parties are guilty, as
11 I'm suggesting, I'm going to suggest at the end, one of the
12 things that I'm going to suggest is that both of those
13 guilty parties are responsible for concealing evidence. Do
14 you understand that?
15 MR BOTES: I understand that, Mr Chair.
16 MR MPOFU: Yes, and the point I'm going
17 to make in respect of both of those parties is that it
18 would be, if you are innocent you don't conceal evidence.
19 Do you understand that?
20 MR BOTES: I understand that, Mr Chair.
21 MR MPOFU: And I'm going to therefore
22 suggest that the concealment of evidence on the part of any
23 party that is accused of wrongdoing is an admission of
24 guilt in a way, in the context, you know what I'm trying to
25 say?

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1 MR BOTES: I understand your concern.
2 MR MPOFU: Thank you. So that is the
3 charge that I'm going to make in relation to both of the
4 parties that I say are the parties to that collusion, in
5 suggesting that they are guilty. If they were not, they
6 would not be hiding evidence. Understand that?
7 MR BOTES: I understand that, Mr Chair.
8 MR MPOFU: Thank you. Thank you for
9 understanding it. Alright, now let's then go to the first
10 topic, which is what I call the Lonmin Security, alleged
11 Lonmin Security ineptitude. Again in order to truncate, or
12 to abbreviate my cross-examination I'm not going to go
13 through all the cross-examination that I went through with
14 Messrs Louw and Motlogeloa, but I will put to you some of
15 the conclusions that I've put to them for you to comment,
16 otherwise we have to go through – what I've just done now
17 was to cut away a whole lot of questions which I'm glad you
18 are cooperating with me.
19 MR BOTES: No problem.
20 MR MPOFU: Thank you very much. Now I'm
21 going to cut the cross-examination short, I'm going to put
22 this to you. You would agree with me that – I'm now
23 talking about the 11th – if, well according to your records
24 EEEE19 Lonmin Security became aware of the threat to burn
25 NUM offices at about 20 to 9, I think it's 8:33. You would

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1 accept that?
2 MR BOTES: Mr Chair, I wasn't on the mine
3 at the time so I cannot give the specific times that –
4 MR MPOFU: Okay, fair enough, then I'll
5 refer you to it, and again, please Mr Botes, forgive me;
6 when I use the word "you" now and again, I might not be
7 meaning you personally but some, if the context is vague
8 I'll clarify whether I'm accusing you as a person or as a
9 leader in Lonmin Security.
10 MR BOTES: I accept that.
11 MR MPOFU: If you go to the 11th in EEEE19
12 – it's 8:39. Sorry, I was wrong here. Against 8:39, it
13 says, "A mob of at least 300 gather around Wonderkop,
14 threat to burn down the NUM office." This is, let's say 20
15 to 9.
16 MR BOTES: I see that, Mr Chair.
17 MR MPOFU: Yes, now I'm saying if you
18 read that in conjunction with the report of Mr Dibakoane,
19 which is, I think it's ZZ3, if you can just put it up.
20 It's 2.7. The relevant portion of Mr Dibakoane's statement
21 I think was confirmed by him during cross-examination by my
22 learned friend Mr Tip. 2.7, okay, don't worry too much
23 about the content, just look at the time.
24 MR BOTES: No problem.
25 MR MPOFU: It says, "On the morning of

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1 Saturday 11th at approximately 9 the mass meeting commenced
 2 at Wonderkop Stadium." I'll jump again. 2.8, "At
 3 approximately 9:30 the gathered crowd started singing and
 4 chanting," and so on, and then 2.10, "At approximately 9:40
 5 both Mr Julius Motlogeloa and I were informed by an
 6 informant that there's an intention for the crowd to burn
 7 down the NUM offices." Mr Motlogeloa said in his
 8 examination that report had come from the control room. So
 9 we can accept that that's what happened, or both things
 10 happened, there was an informant and control room, it
 11 doesn't really matter.

12 Then go to 2.20. After a few things that have
 13 happened he says, "At this stage I could hear the marching
 14 crowd was coming closer and I observed NUM members," and so
 15 on and so on. You see that part?

16 [11:08] MR BOTES: That's correct.

17 MR MPOFU: Yes, now what I'm saying is
 18 that when he observed the crowd coming it was clearly after
 19 9:40 that he spoke about earlier.

20 MR BOTES: That's correct, Mr Chair.

21 MR MPOFU: Okay, so from this we can
 22 deduce that there was more than an hour - it could have
 23 been two hours but let's not put it higher than that -
 24 there was more than an hour between the report coming to
 25 the control room and the imminence of the attack as it

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1 were.

2 MR BOTES: That's correct, Mr Chair.

3 MR MPOFU: Yes, and that, one of the fact
 4 issues that I'm going to use to criticise, to say if there
 5 was this long period of more than an hour with such a
 6 serious report about possible arson, which might even
 7 involve threats to life according to Mr Motlogeloa, then at
 8 the very least Lonmin Security should have ensured that
 9 those offices are properly secured either by themselves or
 10 by the police, possibly more by the police. Would you
 11 agree with that?

12 MR BOTES: I would agree to that, Mr
 13 Chairman.

14 MR MPOFU: Thank you -

15 CHAIRPERSON: I'm sorry, Mr Mpofo, I'm
 16 sorry, I don't understand the point you're putting and let
 17 me tell you why. I may be wrong, I'm just putting it to
 18 you so you can help me -

19 MR MPOFU: The witness understands.

20 CHAIRPERSON: You refer firstly to the
 21 entry at 8:39, "A mob of at least 300 gather around
 22 Wonderkop, threat to burn down the NUM office." In other
 23 words they got the message round about 20 to 9, okay.
 24 Now -

25 MR MPOFU: 8:40.

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1 CHAIRPERSON: Around 20 to 9, 8:40, same
 2 time. Then the next relevant entry appears to be the one
 3 that was omitted from the Lonmin OB that was originally
 4 made available to the Commission. It's an entry at 3
 5 minutes past 9, "Eight rubber rounds shot to disperse a mob
 6 outside the NUM offices. Two SAPS constables available to
 7 assist." So the mob was opposite the NUM offices, in other
 8 words close to the NUM offices, and that's when eight
 9 rubber rounds were shot and the witness conceded yesterday
 10 that that must mean that the rubber rounds were shot by
 11 members of NUM, staff of NUM, and various questions
 12 followed from that of course. But the point is the time
 13 difference that's between 20 to 9 and just after 9 o'clock,
 14 or am I missing something?

15 MR MPOFU: No, you're missing a lot,
 16 Chairperson.

17 CHAIRPERSON: I'm sorry, I beg your
 18 pardon - sorry, sorry. I expressed myself badly. What the
 19 witness said yesterday was these eight rubber rounds that
 20 were shot to disperse the mob were shot by - did I say NUM?
 21 I meant Lonmin, obviously Lonmin staff at the scene. The
 22 point is that that happened just around about 9 o'clock.
 23 So your hour that you're talking about doesn't - that's
 24 what I don't understand. It looks as if they got the
 25 report round about 20 to 9, the control office who passed

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1 it on to the people who recorded it in the occurrence book,
 2 and by 9 o'clock something had happened. The Lonmin
 3 Security people at the NUM office fired eight rubber rounds
 4 to disperse the mob. So the period, the critical period
 5 appears to be 20 minutes, but I may be misunderstanding,
 6 that's why I'm saying to you -

7 MR MPOFU: No, you are grossly
 8 misunderstanding, Chairperson. Firstly there is no, that
 9 account, Mr Motlogeloa was one of the people at the scene,
 10 distinctly said that they never - I told him what Mr X had
 11 said and he distinctly said that they never fired anything.

12 CHAIRPERSON: Yes, yes.

13 MR MPOFU: Ja, the second thing is the
 14 hour, where I get the hour is the following, Chairperson.
 15 If you look at the 8:40 that you and I have agreed upon,
 16 then you look at 9:40, which is exactly 60 seconds - 60
 17 minutes, which is an hour, that's at 2.10, that is referred
 18 to at 2.10 by Mr Dibakoane, the statement that's on the
 19 board now. 2.10, please. Just roll back. In other words
 20 that message about the possible burning was repeated at
 21 exactly an hour to Mr Motlogeloa -

22 CHAIRPERSON: I understand. You get -

23 MR MPOFU: - either by -

24 CHAIRPERSON: You get your hour based on
 25 the one reading -

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1 MR MPOFU: 8:40 to 9:40.
 2 CHAIRPERSON: - the one entry plus 2.10
 3 of Mr Dibakoane.
 4 MR MPOFU: Yes.
 5 CHAIRPERSON: I said I had a problem with
 6 another entry, but you obviously challenged that entry, the
 7 accuracy of that entry.
 8 MR MPOFU: Yes, that is where I get the
 9 hour, ja.
 10 CHAIRPERSON: That's the explanation.
 11 MR MPOFU: That's why I'm saying it's a
 12 minimum of an hour. It's obviously more because at this
 13 stage they were just getting the –
 14 CHAIRPERSON: So you are going to argue
 15 at the end of the day that we can't find, or shouldn't find
 16 that any Lonmin employees fired rubber bullets in the
 17 vicinity of the NUM office to disperse the mob at about 9
 18 o'clock? That's what you're going to argue?
 19 MR MPOFU: Yes.
 20 CHAIRPERSON: Alright.
 21 MR MPOFU: And this is evidence that was
 22 confirm in the cross-examination of Mr Tip with Mr
 23 Motlogeloa.
 24 CHAIRPERSON: Yes, yes, you're going to
 25 say that we must accept Mr Dibakoane's evidence in that

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1 regard.
 2 MR MPOFU: That's correct. Thank you.
 3 CHAIRPERSON: Yes, and it slipped his
 4 mind to think of asking, speaking for the mob and
 5 suggesting they turn around, he rather went to the NUM
 6 office. You're going to argue all that. I understand.
 7 MR MPOFU: Okay, well you understood it
 8 the first time. The hour we're saying it would have been
 9 reasonably expected to do something, to call the police or
 10 reinforcement. Correct?
 11 MR BOTES: Mr Chairman, that's correct,
 12 but I also wish to point out on that same log sheet that
 13 you mentioned –
 14 MR MPOFU: Yes.
 15 MR BOTES: - at 8:40 –
 16 MR MPOFU: 44?
 17 MR BOTES: 8:40.
 18 MR MPOFU: Four-zero, ja.
 19 MR BOTES: The next entry from the
 20 previous one which you mentioned, 8:39 –
 21 MR MPOFU: Ja.
 22 MR BOTES: - "PW phoned for the second
 23 time to Marikana Police and asked for assistance." So that
 24 means he already contacted police and this is the second
 25 time we requested the police, so Lonmin Security did their

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1 level best to get the police there –
 2 MR MPOFU: Fair enough.
 3 MR BOTES: - in time to protect whatever
 4 people are in danger.
 5 MR MPOFU: Aha. Okay, very good. So –
 6 MR BOTES: Thank you, Mr Chair.
 7 MR MPOFU: Ja, assuming in your favour
 8 that what PW was phoning about was there was that report,
 9 it makes sense because it's almost a minute after that.
 10 MR BOTES: That's correct, Mr Chair.
 11 MR MPOFU: Ja, so therefore maybe then we
 12 should blame that delay of more than an hour on the failure
 13 of SAPS to respond to Lonmin Security. Is that correct?
 14 MR BOTES: That's correct, Mr Chair, and
 15 you can note at the – there's another entry, 9:02 where PW
 16 reported to Colonel Merafe and Captain Sefike, asked for
 17 assistance and that's for the third time.
 18 MR MPOFU: Yes, alright. Well again we
 19 go back to that rowdy argument. The point for me is that
 20 for the purposes of what I call the collusion it doesn't
 21 matter which of the parties to the collusion is to blame at
 22 a particular point, but at this point you are saying Lonmin
 23 Security did what it could?
 24 MR BOTES: What is expected from them.
 25 MR MPOFU: Fair enough.

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1 MR BOTES: That is correct, Mr Chair.
 2 MR MPOFU: Thank you. Right, now then I
 3 think that's a fair answer to the proposition I was putting
 4 to you. The next proposition – again you'll forgive me,
 5 I'll jump all the evidence and go to the conclusion so that
 6 you can comment and maybe assist the Commission, as you
 7 have done now.
 8 MR BOTES: Sure, Mr Chair.
 9 MR MPOFU: Would you agree – this is what
 10 I put to Mr Motlogeloa and I'd like you to comment as a
 11 more senior person. Would you agree that to a neutral
 12 observer, which hopefully includes the Commission, it would
 13 be strange, or if not completely absurd for the same
 14 agency, the same group of people, Lonmin Security, to have
 15 taken a decision to confront a group of armed strikers, a
 16 mob that looks angry and all that on the 12th, when that
 17 very same agency, Lonmin Security, had taken a decision the
 18 previous day not to confront the same mob when it was
 19 unarmed and it was less threatening, at least at face
 20 value? There might be reasons, but would you agree that
 21 that's just plainly absurd?
 22 MR BOTES: Mr Chairman, I said yesterday
 23 it is strange, but I also mentioned that in all the
 24 previous marches which we had many on the mines on the
 25 previous strikes and dissatisfaction, unemployment marches,

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1 anything where employees are involved, that security always
 2 interacted with the groups, always stopped in front of
 3 them, two or three vehicles, four people, six people, and
 4 then normally they would send a representative out of the
 5 group to tell the security what is the problem, and then we
 6 would normally call on management, call on Human Capital to
 7 interact and to engage with them that we start a process
 8 instead of ignoring their grievances.

9 MR MPOFU: Yes. No, no, no, I appreciate
 10 that. All I'm saying, Mr Botes, is this –

11 MR BOTES: I understand.

12 MR MPOFU: From where I'm sitting if you
 13 say to me here's the same group of people, the same Lonmin
 14 Security establishment, or whatever you call it, on the 11th
 15 takes a decision, which I assume was correct, by the way,
 16 to say look, these people are too many, they are about
 17 2 000 or 3 000, the wise thing to do is to get those ones
 18 at NUM to vacate when the threat, the so-called threat of
 19 burning is made.

20 MR BOTES: That's correct.

21 MR MPOFU: And then the same group of
 22 people within 24 hours, the same threat of burning is made,
 23 the same crowd, except that this time it's looking more
 24 dangerous and more angry and so on, takes the exact
 25 opposite decision, which is not to go and vacate but to

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1 confront the mob. You see my problem?

2 MR BOTES: Mr Chairman, I understand the
 3 concern and I also would say that it was strange.

4 MR MPOFU: Yes.

5 MR BOTES: Although I cannot answer for
 6 the decision taken by the security –

7 MR MPOFU: Because you were not there,
 8 yes.

9 MR BOTES: That's correct, Mr Chairman.

10 MR MPOFU: That's why I was saying at
 11 face value.

12 MR BOTES: That's correct.

13 MR MPOFU: Thank you, Chairperson - Mr
 14 Botes. I'm thanking the wrong person. Sorry. Now the
 15 next issue which I want to canvass with you is whether or
 16 not you – I'm now including you as a person – whether your
 17 group could not have saved Mr Fundi and Mr Mabelane, and
 18 please clarify me, there's some vagueness which I need your
 19 assistance on. Your evidence is that these two gentlemen
 20 were attacked and injured, severely injured and left there.
 21 Let's call that stage 1.

22 MR BOTES: That's correct, Mr Chair.

23 MR MPOFU: Yes, then there was a break
 24 where you were called and you came to the scene and then
 25 you observed them in that state. Correct?

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1 MR BOTES: That's correct, Mr Chair.

2 MR MPOFU: And during that break you made
 3 a U-turn, there's some evidence I think in your statement,
 4 you made a U-turn and so on and so on. Correct?

5 MR BOTES: That's correct, Mr Chair.

6 MR MPOFU: Ja, and it was only after that
 7 break, how long was that break, between that break and you
 8 seeing the burning cars?

9 MR BOTES: Mr Chair, after –

10 MR MPOFU: I'm sorry. Sorry, to be fair,
 11 obviously you won't know the break from when they were
 12 actually attacked. I'm just saying the break from when you
 13 heard and when the burning cars had occurred.

14 MR BOTES: Mr Chair, when I arrived there
 15 the first car, the Volkswagen was already on fire, but the
 16 Livina was not set alight. Frans and Hassan were lying
 17 outside the doors. When I drove past, we drove past them
 18 in the tar road at the bus terminal I could see the
 19 striking group at the end of the road, a small group,
 20 heavily armed. I did not engage with them for any reason.
 21 My purpose was to get to the injured people. So I also
 22 drove, turned around and parked behind the Livina that,
 23 because I knew, they told me already that they had problems
 24 with the gears of that Mamba, so I said to them turn around
 25 that if we need to escape we can do that. So stopping

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1 behind the Livina that we can disembark from the vehicle to
 2 go and check on the injured people, we were attacked by the
 3 same group who were standing there and we did not engage
 4 with them. We gave them no reason to attack us. We did
 5 not talk to them. We gave them no reason to attack us and
 6 they attacked us and we had to defend ourselves and we
 7 obviously had to retrieve and withdraw.

8 MR MPOFU: Okay. Okay, ja, can you
 9 estimate more or less – obviously this was all happening,
 10 dangerous stuff, but you can estimate more or less how long
 11 that period would have been? 15, 20 minutes? Half an
 12 hour?

13 MR BOTES: When I arrived there, turned
 14 around and leave?

15 MR MPOFU: No, from the time that you got
 16 the report that something is going badly there, your
 17 travelling to the scene, the events that you've just
 18 described and you seeing the Livina on fire, or smoke that
 19 must have come from it.

20 MR BOTES: Mr Chairman, that was, I was
 21 phoned about 10 o'clock and I was there about 20 past 10.

22 MR MPOFU: Okay, so more or less 20
 23 minutes then.

24 MR BOTES: Yes.

25 MR MPOFU: Okay. The next issue which

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1 I'm going to raise in that same context is that the
 2 deployment of the two gentlemen – I know they were not
 3 alone at the time – in the area of the hostel was also
 4 senseless and unwise. What should have happened is that as
 5 has happened on the 11th, the security people should have
 6 gone to the NUM office either to secure it or to warn
 7 people or whatever, rather than some hostile position where
 8 they were trapped eventually.

9 MR BOTES: Mr Chairman, I think the
 10 deployment was hundred percent. I think their engagement
 11 with the group was inappropriate.

12 MR MPOFU: Okay, thank you. Alright, so
 13 those are the reasons in respect of which I will say that
 14 those deaths should be laid at the door of Lonmin. Do you
 15 understand that?

16 MR BOTES: Mr Chair, no. It is, the
 17 striking group had a part to play on that.

18 MR MPOFU: Ja.

19 MR BOTES: That's correct.

20 MR MPOFU: No, no, I understand, Mr
 21 Botes. I think I have to make this point again. I made it
 22 to Mr Motlogeloa as well. When I say these things please
 23 understand me, I do not excuse the conduct of the people
 24 who killed those people. Those people, if they are
 25 properly identified they must be charged and if they're

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1 found guilty they must go to jail, so let's put that aside.
 2 You understand that?

3 MR BOTES: I understand, Mr Chair.

4 MR MPOFU: Yes, all I'm saying is that
 5 that would be the work of other forums, not this
 6 Commission. I'm saying in terms of the reasons that I've
 7 put, putting aside the criminal liability of those people,
 8 those are the reasons that I will use to argue that those
 9 deaths should be also laid at the door of Lonmin for those
 10 failures that you and I have just discussed. Correct?

11 MR BOTES: Mr Chair, I –

12 MR MPOFU: I mean do you understand? Not
 13 that you agree; do you understand?

14 MR BOTES: Mr Chair, I, that is why I
 15 agreed with the failures of the ICAM I pointed out, I agree
 16 to those because those controls were not in place. So in
 17 principle I would agree that there's a part on Lonmin to
 18 the death of the colleagues.

19 MR MPOFU: Thank you. Alright, now let's
 20 move to the issue of SSGs very quickly. I just again want
 21 you to assist us as a Commission. You see this is another
 22 very important issue which is still a bit of a mystery.
 23 The evolution of this is that at the beginning when people
 24 were identified, you were shown the pictures of people who
 25 were injured or died as a result of SSG. As I called it

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1 earlier, it was a motherless child, nobody owned up to even
 2 owning SSG. We have now moved from that to a situation
 3 where SSG was used by the police at the beginning of this
 4 year in a different operation and to a situation where you
 5 I think yesterday said that yes, you did store SSG in your
 6 warehouses, for lack of a better word. Is that correct?

7 MR BOTES: Lonmin has SSGs in stock, yes.

8 MR MPOFU: Yes, so I think we're getting
 9 there. Now have you – whether because the issue was raised
 10 in the Commission or whether you might have been aware that
 11 there were SSG cartridges there, or for whatever reason,
 12 have you taken any steps to ascertain whether any Lonmin
 13 personnel used SSG pellets on that day, on the 16th
 14 specifically?

15 MR BOTES: Mr Chairman, since we became
 16 aware that SSGs were used and people were shot with SSGs we
 17 have done investigations on our own stock in hand, also on
 18 the control and audit trail of issuing SSGs to the
 19 personnel and all those records are available to the
 20 Commission.

21 MR MPOFU: Yes.

22 COMMISSIONER HEMRAJ: And like you, Mr
 23 Botes, do some of them have private ammunition available as
 24 well?

25 [11:28] MR BOTES: At the time of the incident 9

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1 to 16th of August the only ammunition that were available
 2 with 75 rounds with the Tactical Response Unit security and
 3 the Crime Prevention Unit 25 rounds security. The 25
 4 rounds were withdrawn from that Crime Prevention Unit as
 5 mentioned yesterday round about November 2012 and the 75
 6 rounds is still in possession of the TRU in their safe. So
 7 those evidence and those records are available for the
 8 Commission.

9 MR MPOFU: Yes, okay. I don't want to
 10 push this to the centre fold, but you also would not be able
 11 to exclude the possibility some of those SSGs having been
 12 replaced by whoever might have used them incorrectly. Your
 13 report would not be able – it would simply say if there
 14 were 40 there are still 40, is that correct?

15 MR BOTES: Mr Chairman, if there's any
 16 rounds used then there would not be 40 returned, then the
 17 records will not show 40.

18 CHAIRPERSON: The point made is that
 19 surely someone who is the license holder of a shotgun from
 20 which such pellets can be fired would be able to buy some.
 21 If he used and he shouldn't have used them and he's got to
 22 give them back or admittedly fire them then he can buy –
 23 say he fired three, he buys three, replaces the ones he
 24 fired, hands them back. According to your records, as far
 25 you can see Lonmin SSGs were never used, but the case isn't

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1 watertight, the denial isn't watertight because of the
2 possibility, isn't that right?
3 MR BOTES: It is a possibility, Mr
4 Chairman, but that possibility also exists with the police
5 members. They can also buy their own rounds –
6 MR MPOFU: My case exactly. Thank you,
7 but you're not allowed to talk about the police. Okay the
8 next quick fight which I want to cover in the same way and
9 thank you again for your assistance, is you referred – well
10 let me put it this way, you hold the view that in respect
11 of the first wave let's say 11th and 12th one of the fingers
12 that must pointed must be about inadequate SAPS presence in
13 relation to those events of the 11th and 12th correct?
14 MR BOTES: That's correct, Mr Chair.
15 MR MPOFU: Yes. Did you raise with
16 management?
17 MR BOTES: Mr Chair, on that same
18 document of the log sheets on the 11th after the clash took
19 place between NUM and the –
20 MR MPOFU: The strikers.
21 MR BOTES: - and the striking group 9:43
22 the last line on entry 9:43 "Henry Blaauw to contact SAPS,
23 PC Mbombo and General Naidoo to report no support from SAPS
24 and the two shootings already reported." So there was
25 continuously efforts made from the Saturday, Sunday until

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1 the police eventually arrived there on Monday after the
2 security guards were killed.
3 MR MPOFU: Yes.
4 MR BOTES: And if I was given a operation
5 plan yesterday by the evidence leader and according to me
6 that plan wasn't executed as described in that document as
7 from the Friday as it was supposed to be.
8 MR MPOFU: Right. Thank you, thank you
9 for that. The next small issue which I want to just get
10 out of the way is your evidence is that it's like there
11 were two waves of police build up but you first noticed the
12 first wave on the 13th. Is that correct?
13 MR BOTES: That's correct, Mr Chair.
14 MR MPOFU: And then after the killing of
15 the policemen there was another big wave.
16 MR BOTES: That's correct then more
17 police members arrived. That's correct, Mr Chair.
18 MR MPOFU: Okay so we can understand -
19 the second wave might be understandable in the sense that
20 something serious had happened, five people had died.
21 MR BOTES: At that stage more, Mr Chair.
22 MR MPOFU: Yes. No, no I'm just saying
23 on the 13th itself there was that encounter which you and I
24 will discuss now.
25 MR BOTES: That's correct, Mr Chair.

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1 MR MPOFU: The first wave of police build
2 up you don't know what sparked it.
3 MR BOTES: Mr Chair, it happened on
4 Monday when the first wave of policemen arrived.
5 MR MPOFU: That's the 13th ja.
6 MR BOTES: That's the 13th, the Monday and
7 that was before they went out to intervene with the
8 striking group marching to K3.
9 MR MPOFU: Yes you were not aware that
10 there had been some kind of political pressure or telephone
11 calls in high places which happened on the 12th.
12 MR BOTES: Mr Chair, no.
13 MR MPOFU: You were not aware.
14 MR BOTES: I was aware that Henry and
15 Graham tried to go through our representatives Human
16 capital, Barnard Mokwena and Abe tried to get more
17 influence from top level to get the police out at the site.
18 I do not know who they spoke to, but I assume Abie Kgotle
19 and Barnard Mokwena was requested to assist to get more
20 policemen here because the intervention from Graham and
21 Henry to General Mbombo did not help and they tried to get
22 more pressure on them to get the police out.
23 MR MPOFU: Yes, no fine. Who was trying
24 to get more pressure to get the police? Or who was able to
25 put on that pressure?

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1 MR BOTES: Henry Blaauw and Graham
2 Sinclair they spoke to Abie Kgotle and Barnard Mokwena.
3 MR MPOFU: Okay and you don't know high
4 those people escalated that pressure -
5 MR BOTES: No, Mr Chair.
6 MR MPOFU: - in order to result in a wave
7 of deployment on the 13th.
8 MR BOTES: No, Mr Chair
9 MR MPOFU: Thanks. Now again I'm going
10 to ask you a similar question about – from a neutral
11 bystander. At least for now I will assume. Will you agree
12 also that's a little bit strange that having had a group on
13 the 12th that was more than 1000 at the very least
14 estimation, apparently angry and so on and so on and at
15 some stage appeared to be faced by poor Mr Vorster and Mr
16 Louw on their own and yet on the 13th you have a group of
17 100 plus which by the account of Mr Motlogeloa was very
18 respectful, was very co-operative and then you have what I
19 can only describe as overkill. You have helicopters, 70
20 policemen, upsized Nyalas, the works? Would that from a
21 neutral bystander strike you as strange?
22 MR BOTES: Mr Chairman, I do not think it
23 was strange. I considered that group as very, very
24 militant and organised. After doing the reviewing on the
25 killing from Frans how they organised the group, how they

<p style="text-align: right;">Page 33685</p> <p>1 gathered at the end of the road before I arrived there and 2 how they hide the bigger group behind the wall that I 3 cannot see them. So they were very, very organised, they 4 had leadership in them. They were militant, you can see 5 there's militant experience in them, how they reacted, so 6 how the people moved away with heavily armed to K3 we 7 expected problems. Although they turned around from 8 security I was very uncomfortable with the group. 9 MR MPOFU: No that I accept, Mr Botes. I 10 accept and that's why you brought it to the attention of 11 the police. All I'm saying is that after all that you then 12 got into the helicopter and you flew there with Vermaak, 13 correct? 14 MR BOTES: That's correct, Mr Chair. 15 MR MPOFU: Ja, and then you saw that the 16 group had been successfully turned around by Lonmin 17 security, correct? 18 MR BOTES: By the time I withdrew with 19 the helicopter they were sitting close to the bridge where 20 the security was parked – 21 MR MPOFU: Engaging with them. 22 MR BOTES: So I had to return with the 23 helicopter back to Middle Kraal. 24 MR MPOFU: Yes that's the point I'm 25 making. Your return to base as it were was because you</p>	<p style="text-align: right;">Page 33687</p> <p>1 MR BOTES: Mr Chairman, I can just add to 2 it. I think the reason why that striking group did not 3 continue towards K3 shaft area, their intention where they 4 want to go, I think the security had an advantage being 5 standing on top of the bridge and there were much more 6 people armed with shotguns and stopper guns which is 7 visible to the striking group. And I think the security 8 had the vantage point of being on top and that if the 9 striking group would have gone further they would have 10 climbed uphill which makes it very difficult for attack and 11 that would have slowed them down. So I think they decided 12 they're not going to challenge that and that's the reason 13 why turned around. That's my personal opinion. 14 MR MPOFU: No it's an opinion that has 15 been bandied about here, but the point I'm making is that 16 for whatever reason the few security officers successfully 17 convinced the group to turn around to an extent where they 18 thought they were no longer a threat. That you cannot 19 dispute. 20 MR BOTES: No I cannot dispute that, Mr 21 Chair. 22 MR MPOFU: And you also cannot dispute 23 that Mr Motlogeloa actually said he applauded them for 24 being very co-operative and being very respectful and 25 listening to what he had to say. You can't dispute that.</p>
<p style="text-align: right;">Page 33686</p> <p>1 were satisfied that your initial fears which were 2 legitimate were dissipated. There was no longer an eminent 3 risk or threat, correct? 4 MR BOTES: No, Mr Chair, we had to go 5 back because the chopper had to refuel. 6 MR MPOFU: But you didn't come back. 7 MR BOTES: Well it went back after they 8 refuelled, but that was later, but I remained in the JOC. 9 MR MPOFU: Yes but also in any event Mr 10 Motlogeloa's evidence was that after his discussions with 11 his people he was satisfied that there was no risk and he 12 went to do his other duties. Would you accept at least his 13 evidence as a person who was directly involved? 14 MR BOTES: Mr Chair, I cannot comment on 15 it. 16 MR MPOFU: No well I'm just saying, well 17 can you accept that that's what he said. 18 MR BOTES: I understand. 19 MR MPOFU: And therefore what we had 20 objectively is a group that had been basically labelled as 21 not a risk by at least a member of your security group. As 22 I say being confronted by this, all this state machinery as 23 opposed to the group of 1000 on the day before which had 24 been only confronted, if we can even call it that, by Mr 25 Louw and Mr Voster. That is a threat isn't it?</p>	<p style="text-align: right;">Page 33688</p> <p>1 MR BOTES: I cannot dispute it, I wasn't 2 there. 3 MR MPOFU: Yes so that's the kind of 4 crowd we're talking about. I'm saying compare that kind of 5 crowd with what Mr Louw explained he was confronted with on 6 the 12th you would see that there's a discrepancy, correct? 7 MR BOTES: I understand what you say, 8 Sir. 9 MR MPOFU: And in any event even if all 10 that I was saying was wrong the evidence, the hard evidence 11 is that these people when the police interacted with them, 12 interacting with them, said more than 10 or maybe 20 times 13 that they were not fighting and they just wanted to go back 14 to the mountain and to be escorted by the police in doing 15 so. You are aware of that? 16 MR BOTES: I'm aware of that, Mr Chair 17 and I also looked at the transcript that was made from 18 General Mpembe the discussion took place and what worries 19 me was that if they are very co-operative they still 20 refused to lay down their arms which is threatening, a 21 direct indicator to say these guys are not going to 22 surrender. That was the indicator for me. 23 MR MPOFU: Yes that's fair, but if you 24 read the transcript properly you'll see that actually what 25 you're saying is not true. They did not refuse to lay down</p>

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1 their arms, they said they will give their arms at the
2 mountain. Do you remember that part?
3 MR BOTES: Mr Chair, yes and nobody can
4 have said that they will give it at the mountain, so that's
5 why I say they refused at that point because that posed a
6 danger as they were chanting their weapons against each
7 other.
8 MR MPOFU: Okay let's assume then that
9 their offer being escorted was unreasonable, but
10 unreasonable as it was are you aware that Mr Mpembe,
11 General Mpembe accepted their offer and escorted them to
12 the koppie as they had requested?
13 MR BOTES: I understood so, Mr Chair.
14 CHAIRPERSON: I'm sorry to interrupt. He
15 was in the process of escorting them to the koppie.
16 MR MPOFU: Yes well he didn't arrive,
17 towards, towards yes.
18 CHAIRPERSON: He accepted the situation,
19 he didn't try to disarm them although he had asked them to
20 hand over the weapons and they declined shall we say, but
21 he was prepared to escort them. And he was afraid that if
22 he didn't something more serious would happen and then the
23 points that Mr Mpofo is now going to put to you took place.
24 But certainly they don't appear as they were walking
25 towards the koppie to have been aggressive towards the

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1 police at that stage.
2 MR MPOFU: Thank you.
3 CHAIRPERSON: I think that's the point –
4 MR MPOFU: That's the point, Chairperson.
5 Thank you, yes, no I used the wrong words I said he
6 escorted them to the koppie. I was saying if he escorted
7 them towards the koppie.
8 MR BOTES: That's correct.
9 MR MPOFU: Do you understand?
10 MR MPOFU: Yes.
11 MR MPOFU: Okay. Now let's go to the
12 events of the 13th. It would be fair to say that those
13 events were initially sparked by your bringing to the
14 attention of the police what we now know as the breakaway
15 group of about 100 plus, correct?
16 MR BOTES: Are you referring to the spark
17 of the violence or the spark of the intervention?
18 MR MPOFU: The whole thing.
19 MR BOTES: Mr Chairman, I cannot say what
20 happened there because the surveillance equipment that they
21 used was at a distance, so I cannot say what initiated the
22 actual violence where the police were killed and the
23 persons were shot.
24 MR MPOFU: I accept that. All I'm saying
25 is that the police would not have been there in the first

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1 place for that violence if you had not spotted that group
2 in the surveillance equipment.
3 MR BOTES: That's correct, Mr Chair, but
4 we had to do it because it was a illegal march and there
5 was a threat posed to our operations where they can attack
6 another shaft where they attacked the K4 shaft the previous
7 night.
8 MR MPOFU: Well okay would it be fair
9 therefore to say that in your estimation the group at the
10 koppie was less of a danger than the group that you
11 activated the police to go and intercept?
12 MR BOTES: Mr Chairman, at that stage we
13 could have monitored the people at the koppie, but we could
14 not monitor the group that broke away so they posed at that
15 stage more serious risk than the people we could monitor at
16 the koppie.
17 MR MPOFU: Very good, so the people at
18 the koppie at that stage were posing less of a danger.
19 MR BOTES: That's correct, Mr Chair.
20 MR MPOFU: Yes and the people at the
21 koppie, when they were massacred later were posing the same
22 amount of danger as they were on the 13th correct?
23 MR BOTES: Mr Chairman, the group on the
24 13th was the militant group that was always separated when
25 they marched to any place from the bigger group. They

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1 always have a distance, they kept a distance between
2 themselves, the militant group who was heavily armed, they
3 always kept a distance between themselves and the bigger
4 group that followed them. The same at the koppie where
5 they sit down, there was a clear space, area between them
6 and that militant group that marched to K3 shaft on the 13th
7 is exactly the same militant group that were present on the
8 16th at the koppie.
9 MR MPOFU: That in terms of militancy or
10 in terms of the numbers? Was the group that you're
11 describing at the koppie also about 100 odd?
12 MR BOTES: Just repeat that, Sir.
13 MR MPOFU: I'm saying for the moment
14 accepting that the levels of militancy between the two
15 groups were the same, I'm saying are you also saying that
16 they were also of the same quantity? Were they the same
17 number?
18 MR BOTES: It would seem, Sir, like that
19 if you look at the video footage from the group at the
20 koppie and the group that went out to K3 shaft. I guess
21 it's around about 120 that went out to K3 shaft and it's
22 not much different from the group that were at the koppie
23 in the front.
24 [11:47] MR MPOFU: Okay, so when you called them
25 a breakaway group you didn't not mean they broke away from

<p style="text-align: right;">Page 33693</p> <p>1 the mass of people who were at the koppie? 2 MR BOTES: We just saw a group moving 3 away. Because of the distance, we could not clearly saw 4 which part of the group broke away, we just saw a group 5 broke away, but when we saw them with the helicopter and 6 also the video footage later, you could see. 7 MR MPOFU: That's exactly the point I'm 8 making, Mr Botes. 9 MR BOTES: Ja. 10 MR MPOFU: When you panicked about this 11 group that had broken away, at that stage you did not know 12 whether it was a group of the so-called militant group or 13 the non-militant group? 14 MR BOTES: No, we were not aware which 15 group was it. 16 MR MPOFU: Ja, that's the point I'm 17 making. 18 MR BOTES: Thank you, Sir. 19 MR MPOFU: Therefore that small group 20 potentially posed a much smaller danger than the groups 21 that was left behind? 22 MR BOTES: That's correct, Mr Chair, 23 because we could not identify if those persons were armed, 24 and because of the previous night's attack, we expected 25 another attack, and that is why any group that broke away</p>	<p style="text-align: right;">Page 33695</p> <p>1 understood, due to a lot of intimidation cases that came 2 out, reported to us, that, and people, the marching group 3 going through the hostels, the hawkers on the street 4 disappeared, everything just become abnormal, nobody has to 5 go where he wants to go, they must join the koppie. 6 MR MPOFU: I see. Well, isn't that even 7 more reason why should not have been massacred? If 80% of 8 that group were people who were innocent citizens, who were 9 hoodwinked or intimidated and were there unwillingly, isn't 10 that even more reason for circumspection so that they 11 cannot be killed with R5 gunfire? 12 MR BOTES: Mr Chairman, I cannot comment 13 on a massacre on people and who those people were, I cannot 14 identify those people that were killed were part of the 15 militant group or the innocent at the back, I cannot 16 identify that, but my view is that the police had a plan to 17 progressively disperse them into a smaller group and to 18 disarm them. So – 19 MR MPOFU: Let's say they were the so- 20 called militant group for the sake of progress, the point 21 I'm making is isn't it a more reason to be 22 circumspect if, according to you, 120 of a crowd of more 23 than 3 000, the only real troublemakers are 120, the rest 24 are just there from intimidation. Isn't that the more 25 reason to be circumspect, so that you eliminate the chances</p>
<p style="text-align: right;">Page 33694</p> <p>1 in such a closed, in a group formation, and not walking 2 away individually, poses at that stage for us a threat. 3 MR MPOFU: Ja. Anyway, well again, what 4 you cannot argue in relation to this is that the reaction 5 of the police and Lonmin security to that small group 6 indicated that you accepted that the people at the koppie 7 were not so much of a threat, because, as you say, they 8 could be monitored, and that therefore they – if I call the 9 one of the 15th overkill, I don't know what I'll call the 10 one on the 16th, but the avalanche of attacks that were 11 metered out on the 16th to a group that could be monitored, 12 which was not posing any immediate danger was, to say the 13 least, disproportionate and heinous. 14 MR BOTES: Mr Chairman, you must realise 15 that when we had that strike, about 80% of the people 16 attending the koppie do not want to be there willingly and 17 freely, they were intimidated to be there. So leaving the 18 group behind at the koppie, which we can monitor, is not 19 for us a threat, but any breakaway group we have to monitor 20 them. And that also showed when they rolled out the barbed 21 wire that many people left the koppie to the western side. 22 Those people coming from the villages, from Karee Hostel, 23 they left the area there not to engage with the police. So 24 that shows you those people didn't want to get involved, 25 and that's my indication, which I have read and which I</p>	<p style="text-align: right;">Page 33696</p> <p>1 of killing innocent citizens? 2 MR BOTES: Mr Chairman, I cannot – I 3 wasn't at the scene to say what was the reason, why the 4 people were shot. So to answer Mr Mpofu is that if the 5 police had to execute their plan, I cannot say why only 6 those people, or why should they be killed because of a 7 small number who really wants to strike. 8 CHAIRPERSON: I don't understand that to 9 be Mr Mpofu's question. What he's putting to you is this, 10 if you accept that 80% of the people were there because 11 they were intimidated, and assuming the number was 3,000, 12 just for the sake of proceeding with the point, that means 13 there's a maximum of about 600, probably fewer, who were 14 the actual intimidators, as opposed to the persons who were 15 intimidated. 16 MR BOTES: Correct. 17 CHAIRPERSON: The fact that you've got 18 80% of people there who are there because they're 19 intimidated, he says isn't that a reason for the police who 20 were dealing with them to be very careful to ensure that 21 they don't injure or kill among any of those 80%? Because 22 the majority of the people on the koppie are people who are 23 there, on what you've told us, because they've been 24 intimidated, and therefore when you deal with them, whether 25 you disperse them, or whatever else you're do to try to</p>

<p style="text-align: right;">Page 33697</p> <p>1 deal with the situation, you must bear in mind that 80% of 2 the people you're dealing with, trying to disperse, are 3 people who are only there because they intimidated, and 4 therefore you must limit, as far as you can, the forceful 5 dealing with the group. I think that's Mr – 6 MR MPOFU: Thank you, Chairperson. 7 MR BOTES: Thank you for clarity. I 8 think that was also taken into the plan from SAPS and that 9 is the reason why did not enclose the whole area with 10 barbed wire around the koppie, to enclose everybody, that's 11 my opinion. And I think they allowed people who don't want 12 to be there to escape freely from the engagement. 13 CHAIRPERSON: You're not really answering 14 the question, you're giving us your theory, which may or 15 may not be right, I am not concerned with that, as to what 16 the peace plan involved and how they were going to go about 17 it, but that's not what Mr Mpofo wants, all he wants to 18 know is, as I understand him, is whether you agree that 19 there was a need for considerable circumspection, as would 20 normally be the case, regard being had to the fact that 80% 21 of the people who were gathered on the koppie, were people 22 who were there, even though their hearts weren't exactly in 23 it. I think that's Mr Mpofo – 24 MR MPOFU: That is it. 25 CHAIRPERSON: I take, I mean, implicit in</p>	<p style="text-align: right;">Page 33699</p> <p>1 same direction of the barbed wires, but I also mentioned a 2 lot of people went away from the koppie to the west. 3 MR MPOFU: Yes, but the evidence is that 4 that group that you described as having then going 5 alongside the Nyalas, which was disallowed from escaping, 6 was moving in the direction of Nkaneng? 7 MR BOTES: That's correct, Mr Chair. 8 MR MPOFU: Thank you. And I know you 9 said you didn't – by the time Nyala 4 blocked them at the - 10 or whatever, you couldn't see properly? 11 MR BOTES: That's correct, Mr Chair. 12 MR MPOFU: Yes, alright. 13 CHAIRPERSON: If you're going to move on 14 to another point, it might be a convenient time to take the 15 tea adjournment. 16 MR MPOFU: Thanks, Chair. 17 CHAIRPERSON: But if you agree if you 18 agree with that, we'll take the tea adjournment? 19 MR MPOFU: Yes, I agree, Chairperson. 20 CHAIRPERSON: Alright, we'll take the tea 21 adjournment. Let's try very hard to be back in a quarter 22 of an hour. 23 [COMMISSION ADJOURNS COMMISSION RESUMES] 24 [12:22] CHAIRPERSON: The Commission will resume. 25 You are still under oath, Mr Botes. Mr Wesley, just for</p>
<p style="text-align: right;">Page 33698</p> <p>1 what you said about the police is that you actually agree 2 with the point, Mr Mpofo is putting to you. Am I correct? 3 MR BOTES: You're correct, Sir. 4 MR MPOFU: Thank you. Thank you, 5 Chairperson. And moreover, from that answer what is also 6 implicit is the fact that you are saying that the police, 7 as you say, allowed the intimidated groups – let's put it 8 that way – to escape. That's what you said, hey? 9 MR BOTES: That's correct, Mr Chair. 10 MR MPOFU: Ja, and they did not allow the 11 dangerous ones to escape? 12 MR BOTES: Mr Chair, I cannot comment why 13 they do not allow them, because, for obvious reasons, what 14 they have to explain. 15 MR MPOFU: Fair enough, no, for whatever 16 reason, but as you're saying, one of the reasons for 17 throwing the barbed wire was to disable those ones from 18 escaping, correct? 19 MR BOTES: That's correct, Mr Chair. 20 MR MPOFU: Yes. And you also, you have 21 said in your own evidence, that insomuch as that dangerous 22 group was escaping, they were doing so in the direction in 23 which the Nyalas were going, correct? 24 MR BOTES: That's correct, Mr Chair. I 25 said a lot of people went with the barbed wires towards the</p>	<p style="text-align: right;">Page 33700</p> <p>1 good order, can you remind us, or not remind us, you can 2 tell us, how much longer Mr Mpofo has? 3 MR WESLEY: Chair, it's 38 minutes. He's 4 had 52 minutes so far. 5 CHAIRPERSON: Thank you. Yes, Mpofo? 6 MR MPOFU: Chairperson, AMCU has given me 7 the ten minutes, and Mr Semenya is considering giving me 8 another ten. 9 CHAIRPERSON: I am not sure that these 10 times are transferable but I will consent to the ten 11 minutes from AMCU. 12 MR MPOFU: Thank you. Well, okay, thank 13 you, Chairperson. Hopefully we won't get there. Okay, Mr 14 Botes, seeing that time is of the essence, can we as it 15 were – okay, sorry, Chairperson, Mr Chaskalson had promised 16 to put a quick point through but I think he has just lost 17 his note, sorry. So he will do it later, maybe. Well, I 18 was not quite ready. Yes, Mr Botes, just to clean up one 19 of the issues we raised, and I'd like a comment, I am going 20 to argue that – and I am going to support that by using you 21 as the person who was kind of danger spotting or 22 troubleshooting, that objectively speaking, as I have 23 already said, the group of people who were at the koppie 24 itself, that was a place of relative safety really, or 25 let's put it of the least danger, if you looked at the</p>

<p style="text-align: right;">Page 33701</p> <p>1 various groups that we talk about, one of the 12th, one of 2 the 13th, and so on and so on. And I am going to base that 3 mainly on the fact that you know, what you've said, you 4 were monitoring these people, the media was there, you 5 know, some members if the public were there, but more 6 importantly of the ten deaths that preceded the tragedy, 7 with the possible exception of Mr Twala, all of them had 8 happened far away from the koppie, would you agree? 9 MR BOTES: That's correct, Mr Chairman, 10 and I believe it is from the militant group that went out 11 to Eastern Plats, went out to the other places where the 12 people were murdered. 13 MR MPOFU: Yes. And therefore, again, as 14 I said, one of the things we are going to argue is that to 15 then have this kind of military operation almost against 16 the group which is at the place of the least possible 17 danger, is absurd, it just doesn't make sense. 18 MR BOTES: Mr Chair, I understand your 19 comment. 20 MR MPOFU: Thank you. Alright, fine, 21 that's enough, you don't have to agree on that one. Well, 22 it's something we will argue. Alright, then very quickly, 23 you referred to meetings which were happening twice a day, 24 a morning one and an afternoon one, over the duration of 25 the troubled time. Correct.</p>	<p style="text-align: right;">Page 33703</p> <p>1 killings of the police. Do you have any comment? 2 MR BOTES: No, Sir. 3 MR MPOFU: All you can say is that the 4 second wave happened after the police were killed whether 5 there was a relationship between the two, you can't 6 comment. 7 MR BOTES: I cannot comment, I wasn't 8 aware that the politicians were involved. 9 MR MPOFU: Yes, yes, that's the first 10 wave, but never mind, that's fine. Right, now let's get to 11 the – is it correct that the – what you call the 12 amalgamation of the Lonmin JOC and the SAPS JOC happened at 13 the suggestion of Sinclair, correct? 14 MR BOTES: Mr Chair, the reason for 15 establish the police JOC is that the facility of the Lonmin 16 JOC is a small boardroom, and to accommodate everybody in 17 there was just impossible, and that is why we established a 18 second JOC which is about 150 metres from the Lonmin JOC 19 where everybody can be placed, accommodated, where there's 20 a boardroom table. There's enough, display soft boards to 21 put up maps and so forth. 22 MR MPOFU: Yes, I think that may well be 23 the reason, but that was brought about by Mr Sinclair. 24 MR BOTES: That's correct, as I 25 understood it, that's correct.</p>
<p style="text-align: right;">Page 33702</p> <p>1 MR BOTES: That's correct, Mr Chair. 2 MR MPOFU: Those meetings were taking 3 place at the JOC, correct? 4 MR BOTES: That's correct, Mr Chair. 5 MR MPOFU: And were those meetings that 6 were attended by you as management and SAPS as well as NUM? 7 MR BOTES: No, Mr Chair, only SAPS and 8 Lonmin. 9 MR MPOFU: Did you attend the other 10 meetings, there were also twice a day meetings, that's why 11 I am wanting clarity, which were apparently attended by 12 management and the Lonmin and the NUM, would those have 13 been separate meetings or the same ones? Well, you've 14 already said they were not the same ones you are referring 15 to at the JOC, would those have taken place elsewhere? 16 MR BOTES: Mr Chair, I assume so, I 17 wasn't present at those meetings. 18 MR MPOFU: You never attended – 19 MR BOTES: No. 20 MR MPOFU: - any of those? Okay. Thank 21 you. Right, then again before we deal with the – your role 22 in what I have dubbed the talk to collusion. I would like 23 your comment on the fact that we will go, also going to 24 argue that the hive of activity on the part of the police, 25 was directly induced by political pressure and by the</p>	<p style="text-align: right;">Page 33704</p> <p>1 MR MPOFU: So at his suggestion then and 2 because of the reasons you've mentioned there was a 3 consolidation of the two JOCs. 4 MR BOTES: That's correct, Mr Chair. 5 MR MPOFU: And you have said, when you 6 were being questioned yesterday by Ms Motloeny, you 7 practically were saying that your presence at the JOC, you 8 were the liaison person. 9 MR BOTES: That's correct. 10 MR MPOFU: Between the two organisations, 11 between SAPS and Lonmin. 12 MR BOTES: That's correct, Sir. 13 MR MPOFU: So you were at the heart of 14 the partnership, there was a partnership between the two, 15 correct? 16 MR BOTES: There is always a partnership 17 in a JOC operation, Mr Chairman. 18 MR MPOFU: Yes. 19 MR BOTES: I was part of the partnership. 20 MR MPOFU: You were part of that 21 partnership. 22 MR BOTES: That is correct, Mr Chair. 23 MR MPOFU: Ja, well, that's fine, you 24 call it a partnership, I call it collusion. But the other 25 answer that you gave was that you had to be there, and I am</p>

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1 quoting you directly.

2 MR BOTES: That's correct, Mr Chair.

3 MR MPOFU: So you saw your involvement as

4 being part of the – of being a representative of this

5 partnership between Lonmin and SAPS as essential.

6 MR BOTES: That's correct, Mr Chair, and

7 I was also requested by Brigadier Pretorius to move the

8 surveillance equipment over there and join the Lonmin JOC.

9 MR MPOFU: No, that's fair, but – and one

10 can say that the surveillance equipment was the heart of

11 the JOC. Correct?

12 MR BOTES: That is correct, Mr Chair.

13 MR MPOFU: So it follows that if the

14 heart of the JOC was being consolidated next door you had

15 to move there. That I understand. But what I am really

16 busy inspecting is, the fact that from that answer it would

17 seem that you would accept therefore that but for your

18 involvement without you being there, the operation might

19 have been, or even the planning of the operation might not

20 have happened as smoothly as it did. Correct?

21 MR BOTES: Mr Chairman, yes, my

22 contribution played a part in the planning of the police

23 because of the information I submitted to them, about the

24 layout of the area submitted to them, access routes,

25 etcetera. All other information they needed they had to

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1 consider those to plan an operational plan.

2 MR MPOFU: Yes. I understand now. But

3 you would also concede that if your input and involvement

4 was essential for the planning, then without it, obviously

5 the execution would not have happened because you were

6 executing the plan.

7 MR BOTES: Mr Chairman, I wouldn't say

8 without my involvement there would – no execution taking

9 place, I think regardless of Lonmin's intervention and

10 assistance, the police finally would have get a plan and

11 execute a plan, it would be different, it could be

12 different, they would have executed a plan.

13 MR MPOFU: No, thank you, you are quite

14 right, I put it too broadly. So the plan, the plan that

15 was finally executed, would have been – would not have been

16 implemented as it was, correct?

17 MR BOTES: Mr Chairman, I would say the

18 plan was totally formulated by Colonel Scott based upon the

19 information we submitted.

20 MR MPOFU: Yes, which was essential, we

21 have gone through this. Without the essential input of

22 yourself and other people admittedly, although a plan might

23 have been executed, let's say on the 18th or whatever, but

24 the plan that we know would not have materialised.

25 Correct?

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1 MR BOTES: That's correct, Mr Chair.

2 MR MPOFU: Yes. And therefore, the role

3 played by Lonmin in both the planning and the execution of

4 the plan that we know, which resulted in the 34 deaths on

5 the 15th at about four o'clock, was inseparable, correct?

6 MR BOTES: Was?

7 MR MPOFU: Was inseparable. You couldn't

8 say this is, only this part or – it was your input and

9 their input, put together, correct?

10 MR BOTES: That's correct, Mr Chair.

11 MR MPOFU: Surely the – you said, and I

12 am sure you are quite correct, one of the essential

13 contributions which you made was to explain the layout, the

14 geographical layout. Correct?

15 MR BOTES: That is correct, Mr Chair.

16 MR MPOFU: In fact we know that, I think

17 from Colonel Scott, that in the evening of the 13th or the

18 14th, he flew over the area with one of your people, it

19 might not have been you but he flew over the area at night.

20 Remember that?

21 MR BOTES: I cannot remember that.

22 MR MPOFU: You can't remember, okay,

23 that's fine. You see, you were questioned by Mr Chaskalson

24 I understand about the fact that you formed the impression

25 that General Annandale was overall in charge of the

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1 operation. Correct?

2 MR BOTES: That's correct, Mr Chair.

3 MR MPOFU: And we can rely on you because

4 you were there live, it's from your own observations of who

5 was calling the shots, correct?

6 MR BOTES: That's correct, Mr Chair.

7 MR MPOFU: Yes. Now, one of, again, I am

8 sorry to do this to you, but I have to put again what I am

9 going to argue as one of the major curiosities of this

10 case, is the fact that from what you've described, you as

11 Lonmin, played a more significant role in both the planning

12 and the execution of the plan, than General Mpembe seems to

13 have played who was supposedly the overall commander.

14 Would you comment or not?

15 MR BOTES: Mr Chair, I wouldn't say I

16 played the integral role, I purely submitted information

17 that the police can properly plan which was eventually

18 executed by the police, and not by Lonmin.

19 MR MPOFU: Ja. Believe me, we accept for

20 the possible use of SSG which is still a grey area, I am

21 not going to argue that Lonmin executed the plan. But the

22 mere point I am making is that it would strike one as

23 strange that from the documents, from the evidence, it

24 would seem that Lonmin personnel played a bigger role than

25 General Mpembe because even in these meetings, we don't

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1 hear any input, we even hear you, Mr Botes, said this and
 2 that in that meeting of the morning, but it was General
 3 Annandale who was really calling the shots on the other
 4 side, who was your partner, really. Correct?
 5 MR BOTES: I understand your comment,
 6 Sir.
 7 MR MPOFU: Pardon?
 8 MR BOTES: I understand your comment and
 9 –
 10 MR MPOFU: But you accept that's what it
 11 looks like, at least?
 12 MR BOTES: I accept your –
 13 MR MPOFU: Thank you.
 14 MR BOTES: Yes, Sir.
 15 MR MPOFU: So the other thing is that
 16 you, your participation in the D Day meeting, Sir, I call
 17 it that, that's the meeting of the morning, you know what I
 18 mean.
 19 MR BOTES: I understand.
 20 MR MPOFU: Is it Mr or Ms Moolman? A Ms?
 21 Moolman. Mr Botes, Adv Moolman was a lady?
 22 MR BOTES: Brigadier Pistorius.
 23 CHAIRPERSON: Who was the lady? There
 24 were two – she was a captain at that stage.
 25 MR BOTES: She was the legal

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1 representative of –
 2 CHAIRPERSON: She was a captain, and then
 3 made dramatically, promoted the professionally qualified
 4 people in the police, and she became a colonel overnight.
 5 But at the time she was a captain. And she was involved in
 6 drafting documents and helping with the minutes and she
 7 actually was present on the 13th near the railway line.
 8 MR BOTES: That's correct.
 9 CHAIRPERSON: Because she was a lady and
 10 Brigadier Pretorius was also a lady.
 11 MR BOTES: That's correct.
 12 CHAIRPERSON: They both are still ladies.
 13 MR MPOFU: I was just saying when I say
 14 the D Day meeting I am referring to her notes. You
 15 understand? Now I am saying then your involvement – well,
 16 firstly I want to put it squarely to you that you were
 17 seeking to minimise your involvement in that meeting.
 18 MR BOTES: I do not understand the
 19 question.
 20 MR MPOFU: Okay, I am saying that you
 21 were seeking to minimise your involvement because in your
 22 statement firstly, you don't say that you are involved in
 23 the D Day meeting. You remember that? There was an
 24 explanation but, and the Chairperson also asked you a few
 25 questions about it, but I am putting much stronger, I am

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1 saying that if you go to paragraph 49 of your statement,
 2 yes.
 3 CHAIRPERSON: The one read with 58?
 4 MR MPOFU: Read with 50, thank you,
 5 Chairperson. That's correct. There you say you arrived in
 6 the morning, do you see that? In the early morning, and
 7 then you say, these are the important ones, "from
 8 discussions I overheard I gathered that SAP had formulated
 9 a plan to proceed with disarming the group at the koppie."
 10 That didn't come from discussions you overheard, it came
 11 from a meeting of which you were a part, correct?
 12 MR BOTES: Mr Chairman, that could be, I
 13 did not specifically mention in my statement any JOCCOM
 14 meetings in the morning and the evening, I did not mention
 15 that in my statements so it could be coming from that.
 16 MR MPOFU: No, that's not true, Mr Botes.
 17 You did specifically mention paragraph 50, that's where the
 18 Chairperson is referring to, a meeting at which you were
 19 chased away.
 20 MR BOTES: That was later that afternoon.
 21 MR MPOFU: Yes, if – no, I understand
 22 that. But I am saying you did not mention the meeting from
 23 which you were not chased away which happened before that
 24 one.
 25 MR BOTES: Ja, I am referring to that. I

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1 did not mention that specifically in my statements, but I
 2 attended those meetings as well.
 3 MR MPOFU: Right, well, that's what I am
 4 saying, but not only did you not – it's one thing to
 5 forget, we all forget, but it's another to put the positive
 6 statement and say, I got this information from discussions
 7 that I overheard, when actually they came from a meeting
 8 which you attended. So you are giving a completely
 9 different and false impression.
 10 [12:41] MR BOTES: I understand, Mr Chairman, I
 11 could heard it from a former meeting but I earlier said
 12 there was discussions, there was senior officers in the
 13 meeting before a formal meeting and they already discussed
 14 that today they're going to disarm the people. There was
 15 already a general discussion before a formal meeting. I
 16 mentioned that earlier today.
 17 MR MPOFU: Ja. No, certainly. You
 18 mentioned it in your evidence.
 19 MR BOTES: Okay.
 20 MR MPOFU: I was just talking about the
 21 statement. You would also agree that the – sorry, Mr
 22 Chair. Let's just go to, I'll come back to this – how I'm
 23 going to come back to it is I'm going to allege that the
 24 collusion that I alleged did not just end on the 15th but it
 25 continued even thereafter but we'll come to that.

<p style="text-align: right;">Page 33713</p> <p>1 MR BOTES: I understand, Mr Chair. 2 MR MPOFU: So for now if you forgive me 3 for jumping away from that, I want to deal with the, what I 4 call the shooting instruction or the order to shoot and 5 kill the people. The history of this matter is that when 6 we were still in Rustenburg I raised this issue of the 7 instruction to shoot in relation to your statement. That's 8 why your statement is called GGG something because it 9 happened during the cross-examination of General Annandale 10 and I was attacked from all sorts of quarters. I think the 11 chairperson was the only person who understood the 12 connection between those words engage, the possible 13 connection and the actual shooting. And my point was 14 simply this, it is your evidence that the words engage 15 which you heard were was when the commotion was happening 16 in the vicinity of the kraal. Correct? 17 MR BOTES: That's correct, Mr Chair. 18 MR MPOFU: And it's also your evidence 19 that the word engage was said directly or immediately 20 before the big volley of shots from automatic gunfire. 21 MR BOTES: That's correct, Mr Chair. 22 MR MPOFU: And the issue here is this, 23 surely, and I think Mr Gotz touched on this, the purpose, 24 the main purpose of the people who were at the JOC at that 25 time was to monitor the operation. Correct?</p>	<p style="text-align: right;">Page 33715</p> <p>1 MR MPOFU: The - 2 MR BOTES: - multiple gunfire, automatics 3 - 4 MR MPOFU: Yes, multiple automatic 5 gunfire. 6 MR BOTES: Ja. 7 MR MPOFU: Now this occurrence for a 8 group of a people who are gathered at the JOC for the sole 9 purpose of monitoring the operation must've created some 10 sort of pandemonium to say the least or reaction or 11 exclamation. I mean I cannot even imagine what must've 12 been said there, some words which are unprintable. There 13 must've been - what's happening now, oh my lord or what the 14 dot, dot, dot. Whatever. 15 CHAIRPERSON: It's probably something a 16 bit stronger than that. 17 MR MPOFU: Yes, I think yes which I'm not 18 allowed to repeat at the moment, but you get what the 19 chairperson and I are saying - 20 MR BOTES: I understand fully what you're 21 trying to say and there was a lot of questions, there was a 22 lot of guessing what's happening. 23 MR MPOFU: Ja. 24 MR BOTES: Who was attacked, who was 25 shot, we could not understand what was happening.</p>
<p style="text-align: right;">Page 33714</p> <p>1 MR BOTES: That's correct, Mr Chair. 2 MR MPOFU: It was already clear that the 3 operation was, from the teargas and all that, that it was 4 getting to a critical stage. 5 MR BOTES: That's correct, Mr Chair. 6 MR MPOFU: Ja. And the - if the purpose, 7 the main purpose of those people were to monitor this then 8 surely the best of automatic gunfire which you have said 9 yourself, even if it was just one R5 that was, but you have 10 said that - 11 CHAIRPERSON: He says there were a 12 number, he says - 13 MR MPOFU: No, that's not - 14 CHAIRPERSON: - he emphasised the fact it 15 wasn't just one - 16 MR MPOFU: That's exactly the point I'm - 17 CHAIRPERSON: - a number were fired. 18 MR MPOFU: That's - thank you, 19 Chairperson. That's the point I'm making. Your evidence 20 is that, I think the chairperson said you could hear that 21 it was automatic gunfire and you said it was not only 22 automatic gunfire but it was a multiplicity of them. 23 Correct? 24 MR BOTES: That's correct. I said it was 25 -</p>	<p style="text-align: right;">Page 33716</p> <p>1 MR MPOFU: Yes. But of all those 2 possibilities what was clear that people must've died. It 3 might've even been the police but this was now the real, a 4 different ballgame as it were, correct? 5 MR BOTES: The first time it went through 6 my mind is when Colonel Vermaak said on the radio there's 7 people down. 8 MR MPOFU: Ja. 9 MR BOTES: And then I realised that 10 something terrible had gone wrong and people were shot. 11 MR MPOFU: Thank you. Yes. No, exactly. 12 In fact - sorry, Chair. 13 CHAIRPERSON: Sorry, I just want to ask 14 this question at this stage. According to what you could 15 see beforehand, the strikers weren't in possession of a 16 large number of firearms. Most of them had pangas and 17 those who were armed with dangerous weapons, had pangas and 18 assegais and that kind of thing. There were some firearms 19 - 20 MR BOTES: That's correct, Mr Chair. 21 CHAIRPERSON: - but according to the 22 evidence there weren't very many firearms. And what you 23 said was you heard a multiple - you heard a large number of 24 firearms. So it must've been - well let me not ask you 25 leading questions. Was it apparent that the, most of the</p>

<p style="text-align: right;">Page 33717</p> <p>1 firing must've been done from the police side?</p> <p>2 MR BOTES: Mr Chairman, from my personal</p> <p>3 point of view I thought that that was coming from the</p> <p>4 police, that they were shooting but the number of people</p> <p>5 when they said there's bodies laying down, there wasn't a</p> <p>6 distinction between striking bodies and police bodies</p> <p>7 laying down. So we were scared in the control room, in the</p> <p>8 JOC, that who was shot, who was killed because apart from</p> <p>9 just people being shot, people could've been stabbed. So</p> <p>10 we did not know who, which bodies was referred to.</p> <p>11 CHAIRPERSON: When you say we, are you</p> <p>12 referring to –</p> <p>13 MR BOTES: To the people –</p> <p>14 CHAIRPERSON: - things that were said in</p> <p>15 the JOCCOM?</p> <p>16 MR BOTES: In JOC, to the people in the</p> <p>17 JOC.</p> <p>18 CHAIRPERSON: Yes. Now who were among</p> <p>19 the people who raised these kind of queries?</p> <p>20 MR BOTES: Mr Chairman, basically all of</p> <p>21 us were talking to each other and trying to find out what</p> <p>22 happened and tried to establish what happened.</p> <p>23 CHAIRPERSON: You told us before when I</p> <p>24 asked you some at least of the people, you couldn't</p> <p>25 remember if General Mbombo was there, but you said General</p>	<p style="text-align: right;">Page 33719</p> <p>1 in a different world.</p> <p>2 MR BOTES: That's correct.</p> <p>3 MR MPOFU: And in your favour the – your</p> <p>4 evidence is consistent with what the descriptions which are</p> <p>5 given by Colonel Vermaak because he says effectively that</p> <p>6 he heard Brigadier Calitz giving an order. He says it in</p> <p>7 Afrikaans and then there was the shortly thereafter he saw</p> <p>8 the people down and he communicated that and you heard that</p> <p>9 – at least you heard the report about bodies down or</p> <p>10 something to that effect.</p> <p>11 MR BOTES: That's correct, Mr Chair.</p> <p>12 MR MPOFU: Ja. Alright. And when you</p> <p>13 saw obviously now, when you went home and then saw and</p> <p>14 heard the volley of fire on television like all of us, it</p> <p>15 was clear that that is what you heard at that time.</p> <p>16 MR BOTES: That's correct, Mr Chair.</p> <p>17 MR MPOFU: Okay. And okay now let's move</p> <p>18 to the last portion which I said I was going to cover about</p> <p>19 the post massacre collusion or post tragedy collusion.</p> <p>20 There is correspondence which is contained in, I don't know</p> <p>21 what to call it, Mr Chaskalson's bundle which occurred</p> <p>22 between – I'm sorry, Chairperson, I'm just assisting –</p> <p>23 CHAIRPERSON: My take –</p> <p>24 MR MPOFU: - Mr Botes' bundle.</p> <p>25 CHAIRPERSON: Page 71, Mr Botes' bundle.</p>
<p style="text-align: right;">Page 33718</p> <p>1 Annandale was there, Colonel Scott was there –</p> <p>2 MR BOTES: Colonel Scott was there,</p> <p>3 Brigadier Pretorius was there –</p> <p>4 CHAIRPERSON: - Brigadier Pretorius, was</p> <p>5 there anybody else that you can remember now?</p> <p>6 MR BOTES: Now that they mentioned</p> <p>7 Colonel Moolman, she was also there and there might be</p> <p>8 other people like the intelligence Brigadier Van Zyl, he</p> <p>9 could be there. I cannot specifically remember but they</p> <p>10 were normally in the JOC.</p> <p>11 CHAIRPERSON: All these people you've</p> <p>12 talked about were they taking part in this discussion that</p> <p>13 you just summarised for us?</p> <p>14 MR BOTES: They were trying to establish</p> <p>15 what was going on.</p> <p>16 MR MPOFU: Yes, and to speculate like you</p> <p>17 were speculating.</p> <p>18 MR BOTES: Correct and because at that</p> <p>19 stage the radios were so busy by Colonel Vermaak and</p> <p>20 Brigadier Calitz that there was no communication backwards</p> <p>21 to find out what really happened.</p> <p>22 MR MPOFU: Yes, no. That's what I'm</p> <p>23 saying.</p> <p>24 MR BOTES: Ja.</p> <p>25 MR MPOFU: It was clear that we were now</p>	<p style="text-align: right;">Page 33720</p> <p>1 MR MPOFU: Yes.</p> <p>2 CHAIRPERSON: It's the evidence leaders'</p> <p>3 starts at 71 –</p> <p>4 MR MPOFU: Yes.</p> <p>5 CHAIRPERSON: - but I think the way these</p> <p>6 – ja there's – but it's 71 and 72 I think.</p> <p>7 MR MPOFU: And 72, yes, Chairperson.</p> <p>8 CHAIRPERSON: Yes and –</p> <p>9 MR MPOFU: This bundle, Mr Botes which</p> <p>10 was prepared by Mr Chaskalson, remember? It was given to</p> <p>11 you –</p> <p>12 CHAIRPERSON: Do you have a copy?</p> <p>13 MR BOTES: Yes.</p> <p>14 CHAIRPERSON: Mr Mpofo is going to ask</p> <p>15 you about page 71 and 72.</p> <p>16 MR MPOFU: Now one of the emails, there</p> <p>17 are many emails – okay, put it this way. You had a lot of</p> <p>18 correspondence between yourself and the police post the</p> <p>19 tragedy.</p> <p>20 MR BOTES: That's correct and also prior</p> <p>21 to the incident.</p> <p>22 MR MPOFU: Yes, no. We've –</p> <p>23 MR BOTES: Yes.</p> <p>24 MR MPOFU: - covered the prior part.</p> <p>25 MR BOTES: Yes.</p>

<p style="text-align: right;">Page 33721</p> <p>1 MR MPOFU: I'm post – immediately post 2 and a few days thereafter. 3 MR BOTES: That's correct, Mr Chairman, 4 and that was purely because of a subpoena that was served 5 on me, that I have to give all evidence and all information 6 over to the police. 7 MR MPOFU: When was that subpoena given? 8 MR BOTES: I think that was just after 9 the shooting, around about the 21st, 22nd of August. 10 MR MPOFU: Yes. But apart from that you 11 were, to put it mildly, comparing notes with people like 12 General or Brigadier Engelbrecht and General Van Zyl. 13 MR BOTES: That's correct, Mr Chairman. 14 MR MPOFU: Yes. 15 MR BOTES: My role as a security 16 professional on a mine and any security professional on any 17 industry like the bigger mining industry is exactly the 18 same purpose and functions as the police. 19 MR MPOFU: Yes. 20 MR BOTES: The only difference is on a 21 mining environment. So I have to work with the police very 22 closely to get to details and information that we can 23 investigate any crime activities, share intelligence and 24 that we can serve one purpose and that is to bring the 25 perpetrators to book.</p>	<p style="text-align: right;">Page 33723</p> <p>1 MR BOTES: Mr Chairman, there's 2 accusations but we work around a common goal to get to 3 fighting crime and syndicates and criminals. 4 MR MPOFU: No, I understand. I'm just 5 saying to you are you aware that dating back from the 80s, 6 particularly the National Union of Mine Workers, has been 7 complaining about collusion between mine security and the 8 State agencies? 9 MR BOTES: Ja, I wasn't aware of that 10 since that time. 11 MR MPOFU: Ja. Of the date, ja. But you 12 are aware of the accusations? You think they are unfounded 13 or you are just aware of them? 14 MR BOTES: I'm aware of them. 15 MR MPOFU: Thanks. Now one of the 16 emails, there are many of these emails which were 17 exchanging hands between you and the senior police 18 officials I'm talking about, but the ones that strike my 19 attention was where you, page 72, where you say a 20 commission – 21 CHAIRPERSON: Sorry, the one sent by 22 Colonel Visser – 23 MR MPOFU: Yes. 24 CHAIRPERSON: - to the witness – 25 MR MPOFU: To the witness, that's it.</p>
<p style="text-align: right;">Page 33722</p> <p>1 MR MPOFU: Yes. 2 MR BOTES: And whoever it is, it is 3 happened within the police, within the secure sources, 4 outside the secure sources, that is our obligation to look 5 and find the truth. 6 MR MPOFU: Yes. To, in your language to 7 form those partnerships, in my language to collude, 8 correct? 9 MR BOTES: That's your opinion, Sir. 10 MR MPOFU: Yes. Now have you yourself 11 ever been a policeman? 12 MR BOTES: Yes, for ten years. 13 MR MPOFU: For ten years. And most of 14 your people are also ex policemen or some of them. Let's 15 not say most. 16 MR BOTES: Not really here, but in the 17 Free State and the Western Cape. 18 MR MPOFU: Ja. It's one of the favourite 19 jobs of ex policemen to go to the mine security, it's a 20 better job, correct? 21 MR BOTES: That's better prospects, yes. 22 MR MPOFU: Yes, well – and you're aware 23 that historically in this country there has been – there 24 have been serious accusations of collusion between mine 25 security and the police.</p>	<p style="text-align: right;">Page 33724</p> <p>1 CHAIRPERSON: - at 16:19pm on the 29th of 2 August. 3 MR MPOFU: That's correct, Chairperson. 4 CHAIRPERSON: And you presumably are 5 going to refer to the third paragraph. 6 MR MPOFU: Third paragraph, yes. Well 7 I'll start at the beginning. A commission of – 8 CHAIRPERSON: Commission of inquiry is 9 the third para I would think. 10 MR MPOFU: Third, yes. "A commission of 11 inquiry has been appointed to probe the conduct of the 12 police and the aspects that led to people being shot". 13 CHAIRPERSON: I don't think this is an 14 exhibit. 15 MR MPOFU: It's not, okay well then can 16 we – 17 CHAIRPERSON: I think we should make it 18 an exhibit because you, for those who follow this in years 19 to come they want to know. 20 MR MPOFU: That's right, Chairperson. In 21 that case can we start from page 71? 22 CHAIRPERSON: It's EEEE 30.1 and 30.2 and 23 the page 71 will be 30.1 and 72 which is the one you're 24 focusing on particularly is EEEE – 25 MR MPOFU: 30.2.</p>

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1 CHAIRPERSON: - 30.2.
 2 MR MPOFU: Thank you, Chairperson. And
 3 then it goes on, sorry, you'll forgive me. If you just –
 4 MR BOTES: Yes.
 5 MR MPOFU: - read from the document
 6 itself. I don't think it can be put up here. "We are
 7 currently in the process of preparing for the commission
 8 and need to gather all facts of incidents in question.
 9 Certain aspects were reported and handled by mine security
 10 and investigated as such". And then it says "We just need
 11 to verify that we present all the available facts to the
 12 commission and not serious contradictions with the fact
 13 that you will be presenting to the commission". In other
 14 words the purpose of this email was to align, again to put
 15 in a neutral way, to align the versions of Lonmin and the
 16 police on certain aspects, if one can put it as mildly as
 17 that. Is that correct?
 18 MR BOTES: If you read it like that, yes,
 19 you can see it that like that, Sir.
 20 MR MPOFU: Yes. And you know what's
 21 going to follow. In my language that is that it's further
 22 collusion even after the event.
 23 MR BOTES: Mr Chairman, that is why I
 24 referred this request from Colonel Visser to our Lonmin
 25 legal advisor, Dan Mokwena, that he can look at the request

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1 and also to furnish me with the right information that I
 2 can, what I can furnish to the police subsequent to the 205
 3 I received that I have to give all evidence and incidents,
 4 everything we have, I have to give that over to the police.
 5 MR MPOFU: And also in that same vein,
 6 okay, fine. I won't come back on that evidence because
 7 it's now an exhibit, so I'll lead some of it in evidence,
 8 in argument. If you go to pages 16 and 17 of the same
 9 document, Chairperson, we can just proceed maybe make that
 10 30 point – page 16 and 17, 30.3.
 11 CHAIRPERSON: Yes.
 12 MR MPOFU: 16 and 17, Chairperson.
 13 CHAIRPERSON: I see, yes. This is the,
 14 ja, 30.3, this is the page 16 of the evidence leaders
 15 Botes' bundle. And page 17 is – it's 17 and 18 is it?
 16 MR MPOFU: Yes.
 17 CHAIRPERSON: No, it's only –
 18 MR MPOFU: Just 17.
 19 CHAIRPERSON: And then 17 will be 30.4.
 20 [13:01] MR MPOFU: And page 9 will be 30.5,
 21 Chairperson. Sorry, we are moving.
 22 CHAIRPERSON: Alright, so we've got – so
 23 16 is 30.3, 17 is 30.4 and 19 is 30.5 –
 24 MR MPOFU: 9. 9.
 25 CHAIRPERSON: Sorry, 9.

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1 MR MPOFU: Let's make it 9 and 10.
 2 CHAIRPERSON: 9 and 10.
 3 MR MPOFU: 9 and 10.
 4 CHAIRPERSON: 9 and 10, so that will be
 5 30.5 and 30.6.
 6 MR MPOFU: And 6, thank you, Chairperson.
 7 CHAIRPERSON: Alright, I've entered that
 8 in my book.
 9 MR MPOFU: Thank you.
 10 CHAIRPERSON: Sorry, may I interrupt you?
 11 You've put these documents to him. How much longer do you
 12 have to be?
 13 MR MPOFU: Chairperson, I think
 14 [microphone off, inaudible] I'll wrap up when we get –
 15 CHAIRPERSON: Alright, okay.
 16 MR MPOFU: It might be even shorter.
 17 CHAIRPERSON: Alright, yes, one can only
 18 hope.
 19 MR WESLEY: Sorry, Chair, there's only 10
 20 minutes left.
 21 CHAIRPERSON: No, but wait –
 22 MR MPOFU: Of the original time?
 23 CHAIRPERSON: I allowed him to take
 24 transfer of some AMCU time, remember.
 25 MR MPOFU: Yes –

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1 MR WESLEY: It's including that
 2 transferred time, Chair.
 3 CHAIRPERSON: I see, alright. So you've
 4 only got – you're in AMCU time now, Mr Mpofu. Shall we
 5 take the adjournment now –
 6 MR MPOFU: Yes.
 7 CHAIRPERSON: - and you can do your 10
 8 minutes –
 9 MR MPOFU: Yes, Chairperson.
 10 CHAIRPERSON: The witness can read the
 11 documents over the lunch hour.
 12 MR MPOFU: Yes, thanks.
 13 CHAIRPERSON: Sorry, lunch is three-
 14 quarters of an hour, and then you can ask the questions,
 15 use your last 10 minutes then.
 16 MR MPOFU: Thank you, Chairperson.
 17 CHAIRPERSON: We'll adjourn now till
 18 quarter to 2.
 19 [COMMISSION ADJOURNS COMMISSION RESUMES]
 20 [13:49] CHAIRPERSON: The Commission resumes. Mr
 21 Botes, you're still under oath.
 22 DIRK CORNELIUS BOTES: [s.u.o.]
 23 CHAIRPERSON: Mr Mpofu, you've got your
 24 last 10 AMCU minutes.
 25 CROSS-EXAMINATION BY MR MPOFU (CONTD.):

<p style="text-align: right;">Page 33729</p> <p>1 Thank you, Chairperson. Mr Botes, the good news is that 2 I've been given an extra two hours, so – 3 MR BOTES: Excellent. 4 MR MPOFU: Okay. 5 CHAIRPERSON: [Microphone off, inaudible] 6 MR MPOFU: The witness said it's 7 excellent. 8 CHAIRPERSON: Some people have got a 9 sense of humour. 10 MR MPOFU: Yes, Chairperson, including 11 the witness. Okay, Mr Botes, just also to clean up 12 something that we covered earlier, yesterday you said that 13 the words "joint operation centre" self-evidently means 14 that it's a joint operation in justifying the involvement 15 of Lonmin there. Correct? 16 MR BOTES: That's correct, Mr Chair. 17 MR MPOFU: So therefore one can conclude 18 from that that this was to that extent a joint operation. 19 MR BOTES: That's correct, Mr Chair. 20 MR MPOFU: Yes, okay, and what would you 21 say – okay, no, don't say anything. Let's move to where we 22 were, which is the, what I call the post-tragedy collusion. 23 In a nutshell the exhibits that we marked before lunch show 24 very clearly that even after the 16th, and in fact one of 25 them is, I know specifically you were asked, I was busy</p>	<p style="text-align: right;">Page 33731</p> <p>1 isn't it, Mr Botes? 2 MR BOTES: Mr Chairman, no, there was 3 clearly a case against him of intimidation at K3 Shaft 4 after the shooting incident – 5 MR MPOFU: Okay. 6 MR BOTES: And the investigation was 7 directed to him that he intimidated Mr Jan Thirion and I 8 went there to follow our internal disciplinary process and 9 that is to suspend him whilst we conduct further 10 investigations for a disciplinary hearing. 11 MR MPOFU: Okay, so you agree with Mr Van 12 As that the only reason was the intimidation? 13 MR BOTES: Intimidation to a case, that's 14 correct, Mr Chairperson. 15 MR MPOFU: That was the only reason? 16 MR BOTES: That was relevant to the 17 incident. 18 MR MPOFU: I know it was relevant. Was 19 that the only reason? 20 MR BOTES: That's correct, Mr 21 Chairperson. 22 MR MPOFU: Then go to EEEE4.3, which is 23 page 58, paginated 48 of the papers, of the Lonmin index. 24 That's the notice of suspension for Mr Nzuzza. Have you got 25 it?</p>
<p style="text-align: right;">Page 33730</p> <p>1 doing a bail application for the people who had been 2 arrested and so on from the 27th to the 29th and Brigadier 3 Van Zyl was giving evidence there, as he was also 4 corresponding to you, you were supplying them with the 5 names and union affiliation and so on. Remember that? 6 MR BOTES: That's correct, Mr Chair. 7 MR MPOFU: Yes. On top of that you also, 8 after the event you effectively collaborated with the 9 police in the arrest of Mr Nzuzza. Correct? 10 MR BOTES: Mr Chairman, that was very 11 coincidence. I went to the shaft where Mr Nzuzza was 12 working. We conducted our own investigations concerning 13 the intimidation and, not only him but all the others, and 14 he was the first that we approached that we want to suspend 15 from work and when doing that at the time the police 16 arrived and they want to arrest Mr Nzuzza. 17 MR MPOFU: Yes, but you are the person 18 who – well firstly, how can you suspend somebody for having 19 been a leader of the strike? What's wrong with that? 20 MR BOTES: Just repeat the question. 21 MR MPOFU: Why did you think you can 22 suspend Mr Nzuzza because he was a leader during the strike? 23 MR VAN AS: Sorry, Mr Chairperson, that's 24 not the reason Mr Nzuzza was suspended. 25 MR MPOFU: Well, it's one of the reasons,</p>	<p style="text-align: right;">Page 33732</p> <p>1 MR BOTES: Yes, I have. 2 MR MPOFU: Can you read it out? What 3 does it say as to the reason? "Alleged misconduct" – 4 MR BOTES: "Alleged case investigated 5 that you were involved in an intimidation at K3 Shaft and 6 that you were identified as a leader during the strike." 7 MR MPOFU: Ja, so there were two reasons 8 then after the word "and," correct? 9 MR BOTES: That is correct. 10 MR MPOFU: Thank you. Okay, let's move 11 on. And you accept that that's not an acceptable reason 12 for suspending someone? 13 MR VAN AS: Sorry, Mr Chairperson, my 14 learned friend must put the proper question to the witness. 15 It was an unprotected strike. There was a court order 16 compelling the workers to come back to work and Mr Nzuzza 17 was identified as a leader of employees participating in an 18 unprotected strike. That constitutes misconduct. He must 19 put the question on that basis to the witness. 20 MR MPOFU: Well, Mr Van As, with the 21 greatest respect must decide what he wants to – first he 22 was disputing that it was, there was a charge of being a 23 leader of a strike. Now when it's exposed he wants to say 24 that it's an offence. How can it ever be an offence? 25 Where is it an offence to be a leader during an unprotected</p>

<p style="text-align: right;">Page 33733</p> <p>1 strike?</p> <p>2 CHAIRPERSON: No, but if there's a court</p> <p>3 order, if it's an unprotected strike, the point Mr Van As</p> <p>4 is making is if it's an unprotected strike and there's been</p> <p>5 an interdict against it –</p> <p>6 MR MPOFU: So?</p> <p>7 CHAIRPERSON: - then if you participate</p> <p>8 in action which constitutes contempt of court it could</p> <p>9 arguably be the kind of offence which leads to dismissal.</p> <p>10 MR MPOFU: Okay, well we'll argue that –</p> <p>11 CHAIRPERSON: But that's a –</p> <p>12 MR MPOFU: - [inaudible] victimisation.</p> <p>13 Thank you, we'll move on.</p> <p>14 CHAIRPERSON: That's a legal point which</p> <p>15 you can argue at the end.</p> <p>16 MR MPOFU: Ja.</p> <p>17 CHAIRPERSON: All the material facts I</p> <p>18 think are before us.</p> <p>19 MR MPOFU: Ja, well I'll put to you that</p> <p>20 neither you nor Mr Van As would have denied that there was</p> <p>21 a charge about being a leader of the strike if it was a</p> <p>22 valid charge. It's just victimisation.</p> <p>23 MR BOTES: Mr Chairman, this was purely a</p> <p>24 suspension to the investigation. It is not already a</p> <p>25 charge to Mr Nzuzi. That was purely a charge on the</p>	<p style="text-align: right;">Page 33735</p> <p>1 MR MPOFU: Thank you, Chairperson. And</p> <p>2 then you also participated in giving away, at EEEE7 you</p> <p>3 provided the police with people's, names about 14 of them.</p> <p>4 Correct?</p> <p>5 CHAIRPERSON: What document is it, are</p> <p>6 you –</p> <p>7 MR BOTES: Which document are you</p> <p>8 referring to, Sir?</p> <p>9 MR MPOFU: EEEE7. EEEE7, Mr Botes.</p> <p>10 MR BOTES: Mr Chairman, can I just get</p> <p>11 the page number of my bundle?</p> <p>12 MR MPOFU: 64.</p> <p>13 CHAIRPERSON: Page 64.</p> <p>14 MR BOTES: Page 54?</p> <p>15 CHAIRPERSON: 60 –</p> <p>16 MR MPOFU: 64.</p> <p>17 CHAIRPERSON: Six-four.</p> <p>18 MR BOTES: 64. That's correct, Mr</p> <p>19 Chairman, based, after being requested by the Captain Van</p> <p>20 der Merwe, Investigation Police Task Team. They supplied</p> <p>21 me with nicknames and possible names which we had to verify</p> <p>22 for him as Lonmin employees and submit full details of</p> <p>23 those.</p> <p>24 MR MPOFU: Yes, and page, that's the –</p> <p>25 CHAIRPERSON: What appears on page 64 –</p>
<p style="text-align: right;">Page 33734</p> <p>1 allegations of the suspension and the pending investigation</p> <p>2 that were followed up with disciplinary formulating any</p> <p>3 charges afterwards.</p> <p>4 MR MPOFU: Okay. Well okay, I'm sure one</p> <p>5 day Lonmin will make up its mind. You are now saying it</p> <p>6 was not a charge. Mr Van As says it was, but let's leave</p> <p>7 it.</p> <p>8 CHAIRPERSON: There's a further point.</p> <p>9 Even if he hadn't been a leader, if he'd merely – Mr Tokota</p> <p>10 who appears in these matters tells me that even if you're</p> <p>11 not a leader, if you take part in an unprotected strike you</p> <p>12 can be dismissed without that being an unfair labour</p> <p>13 practice, and so if you can be dismissed you can presumably</p> <p>14 be suspended pending an inquiry as to whether the</p> <p>15 circumstances of your participation in the unprotected</p> <p>16 strike warranted your dismissal. So –</p> <p>17 MR MPOFU: Well, Chairperson, with the</p> <p>18 greatest –</p> <p>19 CHAIRPERSON: - that may be a non-issue,</p> <p>20 but you've got the point that you asked what the reason</p> <p>21 was. You put a particular reason; that was denied. You</p> <p>22 then showed that this document showed you were right.</p> <p>23 MR MPOFU: That's right.</p> <p>24 CHAIRPERSON: So you've got that point,</p> <p>25 you can argue it at the end.</p>	<p style="text-align: right;">Page 33736</p> <p>1 MR MPOFU: It starts on 62 actually,</p> <p>2 Chairperson.</p> <p>3 CHAIRPERSON: Alright, it appears that</p> <p>4 you received a subpoena from the police in terms of section</p> <p>5 205 of the Criminal Procedure Act. Now if you had declined</p> <p>6 to provide that information you would have had to appear</p> <p>7 before a magistrate.</p> <p>8 MR BOTES: That's correct, Mr Chairman.</p> <p>9 CHAIRPERSON: And if you'd refused before</p> <p>10 the magistrate to give the information, unless you could</p> <p>11 raise a valid ground of privilege, you would have been sent</p> <p>12 to prison. Is that correct?</p> <p>13 MR BOTES: That's correct. That's the</p> <p>14 bottom-line.</p> <p>15 MR MPOFU: I'm sorry about that calamity</p> <p>16 that almost befell you, but on paragraph 62 to 63 –</p> <p>17 CHAIRPERSON: Mr Mpofo, he says he</p> <p>18 received a subpoena in terms of section 205. That appears</p> <p>19 at page 62 –</p> <p>20 MR MPOFU: Yes, I know what a subpoena</p> <p>21 is, Chairperson. I've seen it before. So one of the</p> <p>22 people you included on page 62 of your list of the people</p> <p>23 that you were giving away to avoid going to prison –</p> <p>24 MR BOTES: Yes.</p> <p>25 MR MPOFU: - was Mr Siphethe Phatsha who</p>

<p style="text-align: right;">Page 33737</p> <p>1 according to us really had no other involvement in these 2 matters except that he was a witness here. 3 MR BOTES: Mr Chairman, I cannot say 4 where these people were involved. I was given the names by 5 the police. This is the names they supplied me with and on 6 a next affidavit I added a table to this previous affidavit 7 with all the details of them. So those names came from the 8 police, not for us, and they didn't tell me whether they're 9 suspects or accused or complainants or witnesses, I don't 10 know. They gave it to me and say I must verify it. 11 MR MPOFU: Yes, okay. Well, Mr Phatsha 12 and Mr Magidiwana were witnesses here, but I accept what 13 you're saying. Finally you are aware that Lonmin on the 14 16th when the people that I represent were arrested, that 15 they spent several hours at the Lonmin premises where they 16 were incarcerated? 17 MR BOTES: Mr Chairman, after the arrest 18 we made a facility available, which is at the recruitment 19 hub. That was the only place which was nearby and 20 controlled away from any threats. We made that available 21 where they were kept in the car park, which was surrounded 22 with a fence, and then they were taken inside the building 23 where the police prepare the dockets against them, the FIC 24 against them, statement of arrest and open a case docket 25 against them. From there they were transported to the</p>	<p style="text-align: right;">Page 33739</p> <p>1 request was reasonable for the police that we can provide 2 the facility where they can safely accommodate, where they 3 cannot escape. No police stations could have handled that 4 volume of people and that is why they were kept there and 5 the police processed the people from there and take them 6 out to the cells where they were detained. 7 MR MPOFU: Okay, I'll ask you a question 8 which will cover both this and another aspect. 9 CHAIRPERSON: Two questions ago was 10 finally, but – 11 MR MPOFU: Yes, finally, Chairperson. 12 CHAIRPERSON: This is lastly as in 13 lastly. 14 MR MPOFU: And in conclusion, yes. So 15 yes, it's true that there were three police stations in the 16 surrounding areas that serve the mining area, broadly 17 speaking. Correct? 18 MR BOTES: That's correct, Mr Chair. 19 MR MPOFU: Mooinooi, Bethanie, and 20 Marikana. 21 MR BOTES: That's correct, Mr Chair. 22 MR MPOFU: Ja, now firstly those 23 policemen who work there - or I have to do a job for Ms 24 Pillay. When at paragraph, I think it's 24, or when you 25 said you referred information to the commander, the station</p>
<p style="text-align: right;">Page 33738</p> <p>1 various police stations for detention. 2 MR MPOFU: Yes. Oh ja, whatever the 3 details, we don't have time now but the point is that the 4 people were incarcerated at Lonmin premises and processed, 5 I think is the generic word for what you've just described. 6 MR BOTES: That's correct. 7 MR MPOFU: Processed from there. 8 MR BOTES: They were processed, but we 9 were not part of that. We gave that to the police to work 10 out. 11 MR MPOFU: Well, what do you mean you 12 were not part of it? Lonmin provided that facility. 13 MR BOTES: We were not part at – 14 MR MPOFU: Of the processing of – 15 MR BOTES: - the facility of the 16 processing. 17 MR MPOFU: Yes, fair enough. 18 MR BOTES: That's correct. 19 MR MPOFU: Ja, that's the point. Well, 20 to go back to our favourite question: wouldn't it be 21 strange then that the Lonmin which had for six days refused 22 even to speak to these workers now is prepared to imprison 23 them and keep them in their premises? What do you think of 24 that? You think that's fair, or is it acceptable? 25 MR BOTES: Mr Chairman, I think the</p>	<p style="text-align: right;">Page 33740</p> <p>1 commander, were you referring to Mr Govender? 2 MR BOTES: Are you referring to on the 3 Friday night when I said – 4 MR MPOFU: Yes. 5 MR BOTES: - the police didn't want to 6 assist us? 7 MR MPOFU: Yes. 8 MR BOTES: That was Captain Govender. 9 MR MPOFU: Yes, thank you. Okay, now the 10 question I was asking you was surely the policemen, 11 including Captain Govender and others who served this area 12 from the three police stations surrounding it, firstly were 13 familiar with the surrounding of the mines, so those are 14 the people who should have been at the joint operations 15 centre to – well, it wouldn't be collusion – to assist 16 their colleagues. Would you agree with that? 17 MR BOTES: Mr Chairman, it was not my 18 choice to choose who should join the operation. That was – 19 MR MPOFU: Ja – 20 MR BOTES: That was General Annandale and 21 there were representatives from each station initially in 22 the JOC and then they sorted it out and who was permanently 23 sitting in the JOC. They always attended the JOCCOM 24 meetings in the morning and in the evening, as well 25 representing the stations.</p>

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1 MR MPOFU: Yes, that's the point I'm
2 making. If those people were there and they were familiar
3 with the place then the role of showing the lie of the
4 land, as it were, was played by them. Your involvement was
5 merely to collude with the police because you could not be
6 performing the duties that was being performed by these
7 people who were familiar with the surroundings. That's the
8 point I'm making.

9 MR BOTES: Mr Chairman –

10 CHAIRPERSON: What do you say to that?

11 MR BOTES: Mr Chairman, I disagree
12 because the police cannot provide them big printed maps of
13 the areas because they do not have, firstly, that
14 information printed and they do not have facilities to
15 print all those information and assist with the detailed
16 information of critical sites, exposure sites which can be
17 targeted by the striker teams for a possible attack and to
18 have a business interruption of Lonmin.

19 CHAIRPERSON: I think that's it, Mr
20 Mpofo.

21 MR MPOFU: Thanks, Chairperson. Well, if
22 I can just put this then to you for your comment. Given
23 what you and I have discussed that, you know, you were part
24 of this joint operation, you assisted the police in
25 effecting some of the arrests, you kept people in your

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1 premises and you were, as you call it, an essential part of
2 the overall operation, then you cannot blame the employees
3 that that is not what would be expected from their employer
4 and that you are therefore equally, or partly to blame for
5 their arrest, their deaths and their injuries.

6 CHAIRPERSON: What do you say to that?

7 MR BOTES: I disagree to that.

8 CHAIRPERSON: Alright, that's it, Mr
9 Mpofo.

10 MR MPOFU: Thank you, Chairperson.

11 CHAIRPERSON: Who's going to cross-
12 examine on behalf of the SAPS? Mr Semenya, I believe
13 you've got three-quarters of an hour. You don't have to
14 use the full three-quarters of an hour if you don't want
15 to.

16 MR SEMENYA SC: I'm putting my time in
17 the piggybank, I'll use it in the future.

18 MR MPOFU: If it's not transferable it
19 can't be bankable, Chairperson.

20 CROSS-EXAMINATION BY MR SEMENYA SC: Mr
21 Botes, I represent the South African Police Service. Is it
22 fair to say that the events of the 16th in particular, and
23 given the outcomes were completely a surprise to all of
24 you?

25 MR BOTES: Mr Chairman, hundred percent.

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1 We were all surprised to the outcome. What was planned in
2 the JOC was totally different from what happened. The
3 whole plan was in a non-violence manner plan, applying the
4 minimum force until the people are dispersed where they can
5 be able to disarm smaller groups into the veld and not
6 handle the bigger groups.

7 [14:09] MR SEMENYA SC: And for that reason the
8 people in the JOC including yourself were not paying
9 particular attention even to the timelines when things were
10 happening at what point except those notes that were taken.

11 MR BOTES: Because of the chaos that
12 ensued after the rolling out of the barbed wire and
13 everything that happened afterwards and all the intensity
14 that happened and everybody screaming. There's commands
15 given and there's chopper – Colonel Vermaak is on the
16 radio. There was chaos. We did not monitor any events and
17 note down those accurately that we were supposed to do.
18 I'm pretty sure that there's many things that we missed
19 out, but when you are in a group discussion and everybody
20 talks then you realise gee whizz I forgot that, I forgot
21 that, I forgot that. But thinking back after two years and
22 trying to remember everything what happened is very
23 difficult. And I realise that I cannot even remember the
24 people in the JOC during that time. So it's positive what
25 you say.

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1 MR SEMENYA SC: In fact it was much later
2 that it occurred to the people of the JOC that there were
3 two incidents of shooting. Is that right?

4 MR BOTES: Absolutely, Mr Chairman, we
5 were not aware from the second koppie, that came in much,
6 much later on and we were totally surprised by the second
7 shooting because there was not communication directly from
8 Brigadier Calitz that they shooting there. I know that the
9 water canons to the back, we didn't know where the back was
10 because it was out of view of the camera and we did not
11 know what was happening there.

12 MR SEMENYA SC: As is human sometimes
13 hindsight is very insidious. You know once you witness a
14 car accident your mind tells you, you almost saw it coming.
15 That's human that, Mr Botes.

16 MR BOTES: I agree with you, Mr Chairman.

17 MR SEMENYA SC: I want to share with you
18 some statements of some witnesses we have had. And I want
19 to see whether that accords with your experience on the
20 day. So if I may ask that we look at exhibit JJJ107,
21 paragraph 111. You won't have it before you I'm sure, I'll
22 just try and orientate you. This is the statement of
23 Brigadier Calitz. He is describing what is happening after
24 the unfurling of the barbed wire. Perhaps if we started at
25 110. It reads "I instructed Nyala 4 to move forward after

<p style="text-align: right;">Page 33745</p> <p>1 which it did. This was the stage the group of armed 2 strikers were advancing towards the SAPS members in an 3 attacking manner. Nyala 4 managed to cut in front of 4 them." Do you remember that episode, Mr Botes? 5 MR BOTES: Mr Chairman, I could not see 6 that because the people ran to the north. 7 MR SEMENYA SC: This approach is depicted 8 in exhibit L, slide 168 and slide 171, that's what he says 9 there. Then follows this paragraph. "The group then moved 10 back and in a horseshoe shape came back to the police line 11 for the second time. When I noticed this approach of the 12 armed strikers I instructed the Papa Nyalas which is the 13 POP dispersion group to engage. The word in code engage is 14 used to order the dispersal group to get involved. I gave 15 further instructions to the dispersal group to move forward 16 and block the advancing strikers." 17 Could that be the engage that you heard over the 18 radio? 19 MR BOTES: Mr Chairman, I heard about 20 three or four engage, engage commands directly in one 21 breath. 22 MR SEMENYA SC: Correct. 23 MR BOTES: And like he's very excited at 24 that he said engage, engage, engage. So I would assume 25 that was at the kraal where the serious attack took place</p>	<p style="text-align: right;">Page 33747</p> <p>1 you call a two second, three second split I.E the engage 2 and all of this happening inside two seconds. 3 MR BOTES: No, Mr Chairman, it could not. 4 That takes much longer for the first engagement from the 5 dispersing group from the Nyalas, water canons, teargas, so 6 that would take a few longer seconds. 7 MR SEMENYA SC: All right. I want to 8 show you also the statement of Colonel Vermaak which is 9 LLL8, if we may start from paragraph 10, but in particular 10 paragraph 11. Chair, if I can exploit your bilingual 11 talents. 12 CHAIRPERSON: Where do you want me to 13 start translating from? From om 15:39? Is that it or is 14 it further on after that? I think it's after that isn't 15 it? A bit later than that, it's – 16 MR SEMENYA SC: Maybe if you can do 17 paragraph 11, I'll put the context to the witness. The top 18 part, yes Brigadier Calitz. 19 CHAIRPERSON: Yes all right. Paragraph 20 11 begins "The group – 21 MR SEMENYA SC: Sorry, Chair, if you 22 start at the top of the page which would be paragraph 10, 23 at "Brigadier Calitz het opdrag gegee." 24 CHAIRPERSON: Yes, "Brigadier Calitz gave 25 instruction, that being an order that members must mount an</p>
<p style="text-align: right;">Page 33746</p> <p>1 because as I mentioned to Mr Chairman that in that 2 conversation I could hear the burst of shots. 3 MR SEMENYA SC: But it is fair to say 4 that there was according to you only one time that the 5 engage, engage, engage was uttered over the radio. 6 MR BOTES: That's correct, Mr Chair. 7 MR SEMENYA SC: Can we go to 112? It 8 says Brigadier Calitz there. "I also instructed the water 9 canons to move forward and disperse the crowd by spraying 10 them with water. The water canon did that, at the same 11 time I instructed the PAPA Nyalas to have the dispersion 12 and as the water canons were spraying the armed strikers 13 with water teargas was also used. Stun grenades were also 14 used to repel the armed strikers. With these measures not 15 effective rubber balls were also fired at the armed 16 strikers." Do you see that? 17 MR BOTES: I see that, Mr Chair. 18 MR SEMENYA SC: He still says at 113 "The 19 armed strikers moved back as they did the first time, they 20 again moved in a semi circle formation, back around the 21 small kraal." Now configuration is depicted in exhibit L, 22 slide 177. Do you see that? 23 MR BOTES: I see that, Mr Chair. 24 MR SEMENYA SC: Now this narrative, I 25 want to suggest to you, could not have happened inside what</p>	<p style="text-align: right;">Page 33748</p> <p>1 operation to protect themselves against the attack of the 2 mass." He refers to photograph 1515. "The members delayed 3 or stopped or carried until the mass was practically on the 4 at the Nyala and the wire trailer. From the helicopter it 5 could be seen that the water canon, the word is deploy, but 6 I'm not sure it was or were deployed or were being 7 deployed. Stun grenades and teargas were also used against 8 the attack of the group. Teargas canisters were being used 9 against the attack of the group." And then paragraph 11 10 begins, "the group moved back and regrouped on the other 11 side of the kraal, paragraph 15.16, the police – and 12 attacked the police again at about 15:55. It was clearly 13 observed from the air that the group was not going to 14 surrender. Brigadier Calitz again gave the members 15 instruction to mount the operation." I take it that's his 16 Afrikaans equivalent of engage, "it almost appeared as if 17 the members did not hear. Because of the incident on 18 Monday the 13th of August where the two police members were 19 hacked to death under the helicopter I realised that the 20 members would have to act in order to protect themselves. 21 I again repeated Brigadier Calitz's instruction from the 22 helicopter whereupon I saw that the members were acting or 23 engaging. Groups [attackers] photograph 1517, ran away in 24 the direction of the shacks abutting on the scene, this is 25 15:56. At 15:58 we flew over the scene and noticed that a</p>

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1 number of persons were lying on the ground." Is that where
 2 I must stop?
 3 MR SEMENYA SC: That's where you can
 4 stop. The reading of this statement and the evidence of
 5 Colonel Vermaak seems to show a timeline far lower than
 6 two, three seconds between the word engage and the people
 7 lying on the ground. Do you agree?
 8 MR BOTES: I know that, Mr Chair.
 9 MR SEMENYA SC: And I want us to look
 10 again at exhibit JJJ11, photo 1515.
 11 CHAIRPERSON: This is one of the
 12 photographs that Colonel Vermaak took from his helicopter
 13 and you can see at the top of the photograph is the koppie
 14 and then as one moves in a – diagonally to the left one
 15 sees a group of police vehicles. One sees the kraal,
 16 that's below those police vehicles and one sees to the
 17 right of the kraal and going across to the centre of the
 18 photograph a number of people who I take it are strikers.
 19 You can also see a wire – if you look at the top left-hand
 20 corner of the photograph you can see an Nyala, just below
 21 the word share actually on the frame of the three. Below
 22 the top of the photograph, I suppose about an eighth of the
 23 way into the photograph, that's Nyala 1. And then as one
 24 moves down diagonally towards the right one comes across
 25 Nyala 2 and then further to the right Nyala 3 and you can

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1 actually see the wire being uncoiled between the two
 2 Nyalas. But wait a minute, I think the first one I said
 3 was Nyala 1 may in fact be Nyala 2. I've got an idea Nyala
 4 1 may be off the screen. I think the one that's got the
 5 wire behind it is probably Nyala 4, but anyway you can see
 6 the Nyalas and you can see the wire.
 7 MR BOTES: I know that.
 8 CHAIRPERSON: Yes in fact that Nyala, the
 9 one which I think is Nyala 4 is at that point next to the
 10 pole which contains a light which was used as a fixed point
 11 in a lot of the evidence. Yes.
 12 MR SEMENYA SC: Mr Botes, according to
 13 the evidence this is the moment more or less when engage,
 14 engage is uttered by Brigadier Calitz. You would realise
 15 that the group had not moved around the kraal as yet to
 16 where the TRT line is stationed.
 17 MR CHASKALSON SC: Sorry, Chairperson,
 18 I'm interrupting here, but in fact the evidence is that the
 19 shout engage was uttered on several occasions. And the
 20 evidence of Lieutenant-Colonel Vermaak is that he heard
 21 Brigadier Calitz shouting engage, there was no response to
 22 it and then he repeated it several times and that was at
 23 the point at which the crowd was advancing on the TRT line.
 24 CHAIRPERSON: The group had already gone
 25 in this horseshoe direction around the kraal and were on

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1 the left-hand side of the kraal as we can see it on the
 2 photograph.
 3 MR MPOFU: Yes. Chairperson, sorry. I
 4 cross-examined Colonel Vermaak on this point and his
 5 evidence was that – I said to him had he known that the
 6 people were facing – because he said since he was in the
 7 air he couldn't tell which unit they were facing. Had he
 8 known that they were facing TRT would he have been
 9 surprised and he said yes. He thought it was POP or
 10 something, so it's definitely after the around the kraal
 11 situation.
 12 CHAIRPERSON: It sounds as if there's
 13 objection being taken to your question, Mr Semenya.
 14 MR SEMENYA SC: May I reply to it, Chair?
 15 CHAIRPERSON: Yes, of course. I'm not
 16 upholding it yet, I may not depending on what you say.
 17 MR SEMENYA SC: If we go to the statement
 18 of Vermaak the very one that we started reading at LLL8,
 19 the bottom of paragraph 10 where it says "Brigadier Calitz
 20 het opdrag gegee that die lede, of lede moet loop om hulle
 21 te beskerm teen die aanval van die massas foto 1515."
 22 That's the photo I'm referring to. That is the photo that
 23 we have just seen.
 24 CHAIRPERSON: Perhaps we could go just to
 25 the foot of the previous page the section in paragraph 10

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1 which is immediately before the part that I translated.
 2 Can we have that please Mr Operator? Perhaps we should
 3 start at Five lines in the footage. Instruction or an
 4 order was given to the wire carts, vehicles to deploy
 5 because the group was beginning to move up and down, photos
 6 1514 and 4540. They moved for the first time to the Nyalas
 7 and the wire trailers. Brigadier gave the members of the
 8 Nyala an instruction to open the doors because the group
 9 was aggressive. The group moved to the kraal at 15:46
 10 where the last Nyalas had deployed its wire trailer to the
 11 kraal where the last Nyala, that's Nyala 4 had deployed its
 12 wire trailer. The group was at that stage about 3000
 13 people, attackers and then it goes on. Brigadier Calitz
 14 gave instruction to the group to mount an operation to
 15 protect themselves against the attack of the masses. There
 16 he says photo 1515.
 17 MR MPOFU: Sorry, Chairperson, maybe it
 18 can also be of assistance. What is the photo number there?
 19 CHAIRPERSON: 1515.
 20 MR MPOFU: 1515. No that's the relevant
 21 photo, Chairperson. The relevant photo you will find at
 22 GGG17, paragraph 7.
 23 MR SEMENYA SC: I don't know if Mr Mpofu
 24 wants to substitute the statement of the witness. The
 25 witness is telling us what photo he's referring to.

<p style="text-align: right;">Page 33753</p> <p>1 CHAIRPERSON: No, no, no I think to be 2 fair Mr Mpofu is saying that you've identified the wrong 3 photograph as 1515. That's what he's saying, whether he's 4 right or wrong is a matter that we'll have to decide, but 5 that's the point he's making. 6 MR CHASKALSON SC: Chairperson, can I 7 answer with reference to the evidence, oral evidence of 8 Lieutenant-Colonel Vermaak in the transcript because the 9 confusion is that there were two instructions from 10 Brigadier Calitz to engage. The first at photograph 1515 11 and second at photograph 1516 and the relevant passage in 12 the evidence is at page 25343 on day – sorry I don't have 13 the day, but I will read the evidence of Lieutenant-Colonel 14 Vermaak. 15 CHAIRPERSON: Does the operator need the 16 day in order to find the page? 17 MR CHASKALSON SC: If he searches on that 18 number 25343 it should be – 19 CHAIRPERSON: You've got it now on the 20 screen? 21 MR CHASKALSON SC: Yes and at line 11 – 22 thank you, Chair. "Now just for identification purposes, 23 Colonel, just to be clear, we know that the little line 24 that we see behind the line of Nyalas that's the TRT basic 25 line and the members forming up on the left of the kraal</p>	<p style="text-align: right;">Page 33755</p> <p>1 basies bietjie nader op daardie stadium was, waar dit 2 gebeur het. In die foto was net voor die gebeure was hy 3 geneem en op daardie stadium het ek, ek het die Blackberry 4 hanteer en Pentax hanteer, ek die polisie radio terselfde 5 tyd ook beman." So on your evidence, this picture, asked 6 by Ms Pillay was taken immediately before the first attack 7 that you describe. And then does it go on after that? And 8 then – yes, and then he goes on, the first attack that you 9 refer to is one on the second line paragraph – where is it? 10 Oh, the second attack. "The first attack is one that you 11 are referring towards the end of paragraph 10 in your 12 statement." "Dit is korrek." "Do I understand you to be 13 saying that took place on what one can call the right-hand 14 side of the small kraal?" "Dit is korrek." "On the 15 photograph" "Dit is korrek." "Right, that was repelled in 16 the sense that the group then left that spot, went around 17 the kraal. I think around the kraal on the lower side of 18 the kraal, as we see in the photograph?" "Dit is korrek." 19 "To the position on the other side, the left-hand side, 20 that's the left-hand side as per the photograph." "Dit is 21 korrek." So I say, "Now I say in that sense the attack was 22 repelled." Now what it means, what exactly caused that 23 repelling? Then he goes on about that. So what does all 24 that amount to then, Mr Semenya? 25 MR SEMENYA SC: Well, may I just put some</p>
<p style="text-align: right;">Page 33754</p> <p>1 would be the POP line. And now that attack you're 2 describing at 15:55 with reference to those two lines can 3 you tell us what it is that you saw from the air and then 4 Lieutenant Colonel Vermaak says, "vir ons was dit moeilik 5 gewees om te onderskei of dit TRT, NIU of POP lede was. 6 Maar ons het - 7 [14:29] Brigadier Calitz het die lede opdrag gegee om te 8 engage, en weereens het ek opgemerk dat daar 'n 9 moontlikheid is dat die mense hom nie op die radio hoor 10 nie, and ek het op grond wat ons van wat ons op die 11 Maandag, en wat ons die Maandag gesien het besef dat 12 hierdie groep gaan week tussen die polisiemanne inbeweeg en 13 ek het sy opdrag herhaal dat die lede moet engage." "Okay, 14 Colonel, just to be clear in terms of your statement, you 15 refer to an attack at 15:55." And then you refer to 16 Brigadier Calitz issuing the instruction, om optrede te 17 loods, and you are repeating that instruction. "Dit is 18 korrek." So in that sequence what I am asking you to 19 describe is what occurred at 15:55, what you saw at 15:55, 20 that's before Brigadier Calitz issued the instruction that 21 members be – 22 CHAIRPERSON: It's maybe even clearer if 23 one goes on to line 13 and following. "Wat ons gesien het, 24 is die voorste punt van die groep wat voor beweeg het, het 25 om die kraal daar ombeweeg met die polisiemanne wat dan nou</p>	<p style="text-align: right;">Page 33756</p> <p>1 series of questions and if the objection is still valid, I 2 will see whether it is still valid, Chair, with the 3 witness. 4 MR MPOFU: Chairperson, I am sorry, know 5 which photograph is relevant to this evidence because 6 paragraph 7 of GGG17, because that's the one that I used to 7 deal with this point with Vermaak. It's very simple. It 8 will show you exactly which photograph you are referring 9 to, which is not this one. 10 MR SEMENYA SC: I am indebted to - 11 MR MPOFU: You can also show Mr Semenya. 12 MR SEMENYA SC: I am indebted to Mr 13 Mpofu. Can I do it the way I am supposed to. 14 CHAIRPERSON: Mr Chaskalson has his light 15 on, I don't know whether that was my accident or design. 16 MR CHASKALSON SC: That's accidental. 17 MR SEMENYA SC: The water cannon was used 18 subsequent to the words "engage, engage," that you heard. 19 Right? 20 MR BOTES: That's correct, Mr Chair. And 21 even before that the water cannon was used. 22 MR SEMENYA SC: Because according to the 23 evidence leaders water is used, is it Mr Chaskalson, eight 24 seconds before the shooting happens. 25 MR CHASKALSON SC: That sounds about</p>

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1 right, I mean give or take five in other direction.
 2 MR SEMENYA SC: Do you follow?
 3 MR BOTES: I follow, Mr Chair.
 4 MR SEMENYA SC: Now, if the water was
 5 used subsequent to the words "engage, engage," and it was
 6 used approximately six seconds before the volley, it cannot
 7 be that the time line between you hearing the words
 8 "engage," it was about two to three seconds that you heard
 9 the fire coming through. Would that be correct?
 10 MR BOTES: Mr Chairman, what I heard was
 11 that during the conversation of Colonel Vermaak, by
 12 pressing in the key, holding the key of the radio engage, I
 13 heard the burst of shots. Before that, the water cannon
 14 was used and I also mentioned that teargas were used and
 15 then it said, there's nothing on evidence on the photos,
 16 but there's clearly on that picture, if you look on that
 17 picture, you can see smoke there and my assumption is that
 18 is teargas that has been used.
 19 MR SEMENYA SC: At the height of my
 20 question, Mr Botes, is that the time lines of which in this
 21 instance are in seconds, you may be mistaken about them.
 22 MR BOTES: Mr Chairman, the instructions
 23 was that the people should use rubber bullets and they must
 24 use the water cannon and teargas. After that, my – what I
 25 heard was the, when there was intense, when the engagements

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1 took place and in that conversation I heard the burst of
 2 shots. The previous engagements after water cannons and
 3 teargas and rubber bullets, were done earlier.
 4 MR SEMENYA SC: I accept, except that you
 5 are putting it at a time line of two seconds or three
 6 seconds. I am saying you may be mistaken about the gap
 7 between the word "engage" and you hearing the shots.
 8 MR BOTES: Mr Chairman, that is what I
 9 heard.
 10 COMMISSIONER HEMRAJ: How many commands
 11 to engage, did you hear?
 12 MR BOTES: Only that one serious one,
 13 where Colonel – Brigadier Calitz was excited and he shouted
 14 to the people on the radio, "engage." It was not a
 15 command, he shouted to the people "engage."
 16 MR SEMENYA SC: And you are certain it
 17 was Brigadier Calitz that you heard him say?
 18 MR BOTES: I am sure it was him.
 19 MR SEMENYA SC: You are sure it was him?
 20 MR BOTES: Yes, I am sure it was him.
 21 CHAIRPERSON: Is there not a possibility,
 22 this is what essentially is being asked by Mr Semenya, that
 23 the last "engage" you heard, an instant or so before the
 24 shooting started, was from Brigadier Calitz, because you
 25 remember Brigadier Calitz's statement that I read out, was

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1 that he heard Calitz give the order "engage," sorry, I must
 2 get it right. Vermaak's statement was that he heard Calitz
 3 give the command "engage." The members didn't react and he
 4 remembered what had happened on the 13th, and he was afraid
 5 there was going to be big trouble, so he repeated the order
 6 which Calitz had said. Now, is it possible that what you
 7 heard was, the last "engage" you heard, was Calitz
 8 repeating – sorry, I will get it right eventually. Is it
 9 possible that the last "engage" you heard was Vermaak
 10 repeating what Calitz had said because he had seen the
 11 members hesitating and not acting immediately. Is that a
 12 possibility?
 13 MR BOTES: Mr Chairman, it is a
 14 possibility, yes.
 15 MR SEMENYA SC: Well, it can't be a
 16 possibility, Mr Botes, because you are certain it was
 17 Calitz you heard?
 18 MR BOTES: I heard Calitz saying
 19 "engage," and to me, he repeated that three times or more,
 20 and it wasn't a normal instruction, and during a key of a
 21 radio, I cannot 100% say it is Calitz's key of the radio
 22 but continuous conversations took place after that, and
 23 there was chaos. I heard the burst of –
 24 CHAIRPERSON: You heard the burst of
 25 gunfire. The question is, it may well be quite important,

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1 actually, is the last "engage" you heard, is it possible, I
 2 understood you to say "yes," Mr Semenya I think heard you
 3 say something different. Let's make, let's find out which
 4 of us heard correctly. Is it possible that the last
 5 "engage" that you heard was actually the voice of Vermaak?
 6 MR BOTES: It is possible, Mr Chair.
 7 CHAIRPERSON: I take it, you heard this
 8 on the radio –
 9 MR BOTES: Ja.
 10 CHAIRPERSON: - there's an enormous
 11 amount of noise going on.
 12 MR BOTES: There was a lot of noise,
 13 there was a lot of anxious in the JOC, what's happening,
 14 because we saw everything happening and then there was
 15 chaos, and then all these engagements is taking place. So
 16 it's possible that –
 17 CHAIRPERSON: So to be fair, you might
 18 have had difficulty distinguishing Vermaak's voice from
 19 Calitz's voice.
 20 MR BOTES: That's possible, Mr Chair.
 21 MR SEMENYA SC: Mr Botes, most things are
 22 possible, I guess, let's explore this a little bit. What
 23 you did hear was the word "engage," and you are certain in
 24 your mind as far as you could decipher who the voice
 25 belonged to, it was that of Brigadier Calitz.

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1 MR BOTES: That's correct, that is what I
2 assumed and that is what I put in my statement and I said
3 it was Brigadier Calitz which I heard.
4 MR SEMENYA SC: Now let's explore the
5 possibility that the Chair is referring to, if Colonel
6 Vermaak is correct, there would have been quite some moment
7 lapsing between what Brigadier Calitz says "engaged," he
8 considers and looks at the group down, he realises they are
9 not responding to it, and he repeats it.
10 MR BOTES: I hear what you say, Mr Chair,
11 and if that was the case, I cannot deny it because there
12 was a lot of anxiety in the JOC about it.
13 MR SEMENYA SC: Okay, you see, if I
14 understood your evidence-in-chief, you had a graphic
15 impression of some people being injured and perhaps even
16 killed. Is that the picture you draw?
17 MR BOTES: That is correct, Mr Chair.
18 MR SEMENYA SC: Almost instantaneously as
19 the word was used by the Chair.
20 MR BOTES: By the engagement?
21 MR SEMENYA SC: Yes, you heard the rapid
22 fire or the volley or that -
23 MR BOTES: Yes.
24 MR SEMENYA SC: - and it - in your mind
25 that there may be people there who are seriously injured or

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1 hurt.
2 MR BOTES: That's correct, Mr Chair.
3 MR SEMENYA SC: And you say that was
4 appreciated by everybody in the JOC.
5 MR BOTES: No, Mr Chair, not appreciated.
6 There was a concern that who was shot, and who was killed.
7 MR SEMENYA SC: Yes, but that there are
8 injuries there was almost as clear in your head as crystal.
9 MR BOTES: Because it was very traumatic
10 for us, and for me personally.
11 MR SEMENYA SC: I accept. Now, help me
12 with this, is it not strange that when that shooting
13 happens at 5350 that you don't call for any ambulance at
14 all.
15 MR BOTES: Mr Chairman, there was already
16 ambulances deployed with the police. We thought that was
17 enough, and so it wasn't strange for us to call for more
18 ambulances because it's not use calling for ambulances when
19 you do not know what's going on.
20 MR SEMENYA SC: Sorry, say that again,
21 sorry.
22 MR BOTES: It wasn't necessary for me to
23 call for more ambulances because we already put out
24 ambulances with the police on forward holding 1 and 2.
25 MR SEMENYA SC: Yes, but the instruction

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1 must be forward holding area 1, please go there's something
2 wrong happening somewhere.
3 MR BOTES: Mr Chairman, we only got a
4 request afterwards to send more ambulances because there
5 was already ambulances at the sites with the police.
6 MR SEMENYA SC: Okay, let me understand
7 your evidence. In the JOC as and when the shots are fired
8 -
9 MR BOTES: Yes.
10 MR SEMENYA SC: - and as you have the
11 picture in your mind there are people hurt, do you
12 verbalise that to General Annandale? Do you say there must
13 be people who may be killed there or injured?
14 MR BOTES: Everybody in the JOC guessed
15 what was happening, and everybody talked and tried to
16 understand what was happening. I did not, I cannot
17 remember requesting or talking specifically to somebody
18 about specific that I can remember.
19 MR SEMENYA SC: Yes, because the evidence
20 of General Annandale is that it did not occur to him that
21 at that time that there could be something as serious as
22 what you say you pictured in your mind.
23 MR BOTES: Mr Chairman, that is what I
24 experienced. I felt that something terribly went wrong and
25 that is what I experienced and I felt that there's -

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1 because I was frustrated not to see there, in the first
2 point, and you hear all these shots and you do not know
3 what's happening. So of course, you think afterwards
4 because of the previous incidents that happened from the
5 weekend.
6 MR SEMENYA SC: But you do not verbalise
7 your anxieties about it to anybody in the JOC, am I right?
8 MR BOTES: No, we did talk about it, but
9 I cannot exactly tell you what I talked about.
10 MR SEMENYA SC: You don't verbalise it to
11 Scot because he also says it didn't occur to him at that
12 time that this was the case.
13 MR BOTES: No, I cannot think that I
14 specifically mentioned to them, I think people were killed.
15 MR SEMENYA SC: Not even to Adv Moolman?
16 MR BOTES: I cannot remember, Mr Chair.
17 MR SEMENYA SC: Does it strike you as
18 strange that there are no instructions coming out of the
19 JOC as a result of this picture that is clearly in your
20 head?
21 MR BOTES: Mr Chairman, we all waited for
22 feedback from the ground, from the ground personnel and
23 from the commanders. We were all waiting for that to get
24 feedback to hear what was happening.
25 MR SEMENYA SC: Why don't you call the

<p style="text-align: right;">Page 33765</p> <p>1 overall commander?</p> <p>2 MR BOTES: And because of the radio coms</p> <p>3 that were very busy, I know that Brigadier Pretorius tried</p> <p>4 to get information, everybody tried to get information but</p> <p>5 we only get her request afterwards to send more ambulances.</p> <p>6 CHAIRPERSON: Would it be necessary to</p> <p>7 have told General Naidoo unless he was engaged in some</p> <p>8 frolic of his own, that he must the ambulances from forward</p> <p>9 holding area 1 to the scene, or would he have been able to</p> <p>10 hear himself, who had been listening on the radio what had</p> <p>11 happened?</p> <p>12 MR BOTES: Mr Chairman, my view was that</p> <p>13 hearing the events after, exactly what happened afterwards,</p> <p>14 my assumption is that they will not call the ambulances</p> <p>15 immediately. They will first clear the scene, make the</p> <p>16 scene safe, before they call any ambulances in. So it is</p> <p>17 not that the burst is taking place and immediately there's</p> <p>18 instructions on the radio to call the ambulances. Of</p> <p>19 course they must clear the scene first, they must make it</p> <p>20 safe first before any ambulance personnel are allowed to go</p> <p>21 on site.</p> <p>22 CHAIRPERSON: You haven't really answered</p> <p>23 my question. The question is you heard something on the</p> <p>24 radio, which conveyed to you what you told us, and you say</p> <p>25 your impression was everybody else in the room. My</p>	<p style="text-align: right;">Page 33767</p> <p>1 MR BOTES: I mean something else that you</p> <p>2 will not send any ambulances no matter who has been shot.</p> <p>3 MR SEMENYA SC: Mr Botes, I want to</p> <p>4 suggest to you that what you describe now as your</p> <p>5 observations of the 16th is quite significant, it paints a</p> <p>6 picture of everyone in the JOC more or less being shocked</p> <p>7 by what you have immediately heard.</p> <p>8 MR BOTES: That is correct, Mr Chair.</p> <p>9 MR SEMENYA SC: And almost a déjà vu of</p> <p>10 the days gone past of the 13th.</p> <p>11 MR BOTES: No, Mr Chair, I wouldn't say</p> <p>12 so.</p> <p>13 MR SEMENYA SC: Well, given the fact</p> <p>14 since you got hyper-anxious about it.</p> <p>15 MR BOTES: Well, your own people are</p> <p>16 killed, and then you also know what was the threat, you can</p> <p>17 see what was the risks about the group, if there's a</p> <p>18 possible attack on the police, and you do not know if the</p> <p>19 police are attacked and how many policemen are dead. So it</p> <p>20 is of course for us worrying in the JOC to establish and to</p> <p>21 find out who has been shot and who has been injured, no</p> <p>22 matter which side it is because there was a risk to both</p> <p>23 sides because the intention was not to shoot the striking</p> <p>24 group.</p> <p>25 MR SEMENYA SC: Well, let's quickly run</p>
<p style="text-align: right;">Page 33766</p> <p>1 question is if General Naidoo had be listening to the</p> <p>2 radio, and not being engaged, well, unless he was engaged</p> <p>3 in a frolic of his own, would he have heard on the radio</p> <p>4 what you heard, and been able to come to the same</p> <p>5 conclusion?</p> <p>6 MR BOTES: Mr Chairman, I am pretty sure</p> <p>7 he did not hear it on the radio, because he was close</p> <p>8 enough to hear the shots fired.</p> <p>9 MR CHASKALSON SC: In fact, Chairperson,</p> <p>10 the evidence of General Naidoo was that he did hear the</p> <p>11 shots fired.</p> <p>12 MR BOTES: So he was close enough to hear</p> <p>13 the shots fired, so he could make a decision to take the</p> <p>14 ambulances immediately in. But what's the use of taking</p> <p>15 the ambulances in, if he's still not aware what really</p> <p>16 happened and who is shot, and who has been killed. My</p> <p>17 assumption is that he must get –</p> <p>18 CHAIRPERSON: I am sorry, is that a good</p> <p>19 point that you have to know who's been shot and who's been</p> <p>20 killed. Are you suggesting that if you knew the police had</p> <p>21 been killed you would have got the ambulances there double</p> <p>22 quick time, and if you knew that it was the strikers who</p> <p>23 were killed, he would gone in first gear all the way. I</p> <p>24 don't think you mean that, so to be fair. I think you mean</p> <p>25 something else, perhaps you should –</p>	<p style="text-align: right;">Page 33768</p> <p>1 off.</p> <p>2 CHAIRPERSON: Did you see Mr Wesley's</p> <p>3 sign?</p> <p>4 [14:49] MR SEMENYA SC: 18th day of October 2012,</p> <p>5 page 22, that's the statement you write first about these</p> <p>6 events, right? Is that right?</p> <p>7 MR BOTES: Which page?</p> <p>8 MR SEMENYA SC: Page 22 of that bundle of</p> <p>9 documents, that's the first statement you write, October</p> <p>10 2012.</p> <p>11 CHAIRPERSON: Your statement of the 18th</p> <p>12 of October, two days after the event, and I think Mr Mpfu</p> <p>13 is referring you to paragraph 57. It's actually, it's</p> <p>14 typed page 17 of the statement. It's page 22 of the</p> <p>15 bundle.</p> <p>16 MR BOTES: Of this bundle?</p> <p>17 CHAIRPERSON: No, no, not the evidence</p> <p>18 leaders' bundle. Your own bundle, the Lonmin bundle.</p> <p>19 You've got a bundle of documents relating to your evidence</p> <p>20 which Mr Van As handed us.</p> <p>21 MR BOTES: Page 22.</p> <p>22 CHAIRPERSON: Ja, it's page 22 of that</p> <p>23 bundle.</p> <p>24 MR BOTES: Yes.</p> <p>25 CHAIRPERSON: And I suspect that Mr Mpfu</p>

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1 is referring you to paragraph 57. Is that right, Mr Mpfu?
 2 Sorry, I beg your pardon, Mr Semenya. It's difficult to
 3 see how one can confuse the two of you, but I succeeded in
 4 doing the impossible. Paragraph 57.
 5 MR SEMENYA SC: That's right, the date is
 6 correct. Mr Botes?
 7 MR BOTES: The date?
 8 MR SEMENYA SC: Yes.
 9 MR BOTES: 18th of October.
 10 MR SEMENYA SC: Yes, is it correct?
 11 MR BOTES: Can you repeat the question,
 12 Sir?
 13 MR SEMENYA SC: The date appearing on
 14 your first statement, being the 18th of October 2012 is
 15 correct?
 16 MR BOTES: That's correct, Mr Chair.
 17 MR SEMENYA SC: Now let me touch quickly
 18 on this. Lonmin have a network of intelligence gathering
 19 tools, including individuals.
 20 MR BOTES: That's correct, Mr Chair.
 21 MR SEMENYA SC: And yet you're not able
 22 to infiltrate this small ring to collect as much
 23 intelligence as you could about them, right?
 24 MR BOTES: Mr Chairman, I do not exactly
 25 know what you meant by that.

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1 MR SEMENYA SC: It was difficult to
 2 collect intelligence about what the motives of this group
 3 are, who are they going to kill next, how, what rituals are
 4 going to be performed next, etcetera, etcetera.
 5 MR BOTES: Mr Chairman, yes, we did
 6 receive a lot of information from our sources and, but not
 7 who was targeted next from the group.
 8 MR SEMENYA SC: In fact the intelligence
 9 we have on record here is intelligence that you had as
 10 well.
 11 MR BOTES: That's correct, Mr Chair.
 12 MR SEMENYA SC: Now you confirm that the
 13 first time on the 16th at 6 o'clock JOCCOM you did hear the
 14 strategy, amongst others of dispersing, breaking the group
 15 into smaller groups and then arresting those?
 16 MR BOTES: That's correct, Mr Chair.
 17 MR SEMENYA SC: And there was no
 18 intention of encircling the entire 3 000 at the koppie?
 19 MR BOTES: Not encircle the people on the
 20 koppie –
 21 MR MPOFU: No, Chairperson, I'm sorry,
 22 that question cannot be valid. The email from this witness
 23 is that after that meeting there were 300 people there.
 24 MR SEMENYA SC: I just asked whether
 25 there was an intention to encircle 3 000 people.

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1 MR BOTES: Mr Chairman, no –
 2 CHAIRPERSON: [Microphone off, inaudible]
 3 to ask the question, it's a negative, it's a question
 4 designed I think to elicit a negative answer, so what –
 5 MR MPOFU: Chairperson, I'm sorry, that's
 6 not the point. The point is the question was asked as
 7 follows. "At 6:30 there was no intention to encircle the
 8 entire 3 000 people there." I'm saying long after 6:30,
 9 9:30 if the email is correct, this witness's evidence is
 10 that there were 300 people there. There. There.
 11 CHAIRPERSON: I know. It doesn't make
 12 the question objectionable. He can ask the question.
 13 Carry on, Mr Semenya. Whether it will help him is another
 14 matter, but I don't think I can stop him asking the
 15 question.
 16 MR SEMENYA SC: You were in the JOCCOM at
 17 6 o'clock. Was there any talk of encircling 3 000 people
 18 at the koppie?
 19 MR BOTES: Mr Chairman, no, definitely
 20 not. It was only planned to put razor wire out on the
 21 eastern side of the group of people striking to allow those
 22 others to escape to the left into the veld.
 23 MR SEMENYA SC: Okay, the last aspect; Mr
 24 Mpfu put it to you that the greater number of people on
 25 the koppie were allowed to escape to the west.

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1 MR BOTES: That's correct, Mr Chair.
 2 MR SEMENYA SC: And the smaller tight
 3 group, could they also disperse to the west?
 4 MR BOTES: They could also if they wanted
 5 to.
 6 MR MPOFU: No, Chairperson, I'm sorry, I
 7 mean this one I'm sure I'm entitled to object. It seems it
 8 is its purpose to put words in my mouth.
 9 CHAIRPERSON: We've already got the
 10 answer on record, but what's the objection?
 11 MR MPOFU: Well, that –
 12 CHAIRPERSON: What's the objection? He
 13 said the intention was to allow the larger lot to go to the
 14 west. Next question is was it possible for the smaller
 15 group to go to the west. That's the question. What's –
 16 MR MPOFU: No, that's not the question.
 17 The question is "Mr Mpfu," that is me –
 18 CHAIRPERSON: Yes?
 19 MR MPOFU: - said that the larger group
 20 was escaping to the west. I never said anything of that
 21 sort.
 22 CHAIRPERSON: That's correct. Yes, Mr
 23 Semenya, I think that perhaps you should reformulate your
 24 question. Don't put anything into the mouth of Mr Mpfu
 25 because if it isn't what he said he finds it inedible. So

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1 just put the question in a manner that doesn't raise that
2 kind of objection.

3 MR SEMENYA SC: After the break, Chair,
4 I'll amuse Mr Mpofu by reading him the transcript, but I'll
5 withdraw the question if I'm wrong.

6 MR MPOFU: You're wrong.

7 CHAIRPERSON: Mr Mpofu, you know these
8 interjections cause a bit of laughter but they don't really
9 advance the cause, so I suggest –

10 MR MPOFU: Well, Chairperson, then why
11 didn't you say the same remark when Mr Semenya said he's
12 going to amuse me? Why must I be censored and not him?
13 You should have then –

14 CHAIRPERSON: Alright, censure is
15 extended to you as well, Mr Semenya. Would you like to
16 carry on with your cross-examination?

17 MR SEMENYA SC: No, I'm done, Chair.

18 CHAIRPERSON: Are you done, alright. Re-
19 examination, Mr Van As, how long are you going to be?

20 MR CHASKALSON SC: Chair, if I might be
21 permitted just to put one document –

22 CHAIRPERSON: I beg your pardon, you did
23 tell me this morning that you were going to apply to deal
24 with one short matter once Mr Mpofu finished.

25 MR CHASKALSON SC: Yes, we –

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1 CHAIRPERSON: Alright, application is
2 granted.

3 MR CHASKALSON SC: Thank you. Mr Botes,
4 we received copies of the central, the COP OB yesterday and
5 there's one entry that I want to put to you –

6 CHAIRPERSON: Are you going to make the
7 document an exhibit?

8 MR CHASKALSON SC: Please, Chairperson.
9 I'm not sure where we –

10 CHAIRPERSON: It's EEEE31.

11 MR CHASKALSON SC: And it's on paginated
12 page 62411 of that document, if we could just call it up.

13 CHAIRPERSON: How do I – never mind what
14 page it's on, how do I describe it?

15 MR CHASKALSON SC: It's an extract from
16 the COP, from the Lonmin COP occurrence book for 16 August
17 2012.

18 CHAIRPERSON: Very well, that document so
19 described is an exhibit, as EEEE31.

20 MR CHASKALSON SC: It's the entry at
21 16:06. You had it; go back up. 713, entry 713 reads as
22 follows, "COP received a call from extension 5516 reporting
23 that Sierra 1," we think the next word is Ndwambe, who is a
24 Lonmin Security employee, "and Sierra 3, they will be busy
25 helping the police to chase the people at the koppie. CPU

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1 will not attend the alarm at Karee storm water dam level
2 reported."

3 Now this seems to be a report from Sierra 1 and
4 Sierra 3 saying that they are not going to be in a position
5 to respond to an alarm because they will be busy helping
6 the police to chase the people at the koppie, and if I'm
7 correct Sierra 1 was the vehicle that was occupied by Mr
8 Van Rooyen, Mr Mjungu and Mr Ximba, that's from HHH60, that
9 photograph of the deployments, and Sierra 3 was Mr Ndwambe
10 and Mr Malemela.

11 Now was it within the permission of Mr Van
12 Rooyen, Mr Mjungu, Mr Ximba, Mr Ndwambe and Mr Malemela to
13 elect not to respond to a call and instead to help the
14 police chase people at the koppie?

15 MR BOTES: Mr Chairman, this instruction
16 wasn't from me and clearly he, they were not allowed to
17 assist the police. I think this was anxious by the people
18 just looking for excuses to be at the koppie and to observe
19 what was going on. We never gave instructions for these
20 people to assist the police and neither were they at the
21 koppie at 6 or 10 minutes past 4 in the afternoon. The, I
22 think the first security vehicle arrived at the kraal at
23 16:48. That was the first security vehicle that arrived
24 there and that is the security guys that I sent with the
25 ambulances to help escort the ambulances in.

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1 MR CHASKALSON SC: Well, we know what
2 these two vehicles' registrations are. The one is HSC574NW
3 and the other is HSC573NW. Lonmin would presumably still
4 have vehicle tracking records for those vehicles, or have
5 access to vehicle tracking records for those vehicles on
6 the 16th?

7 MR BOTES: Mr Chairman, that is why I say
8 I've done the exercise of all the vehicles, that includes
9 the CPU, this is CPU vehicles. I'd done a exercise and I
10 plotted all those vehicles also on the Google map and to
11 see which vehicles were where at what time. So that is why
12 I can say with confidence that they were not there after 4
13 o'clock.

14 MR CHASKALSON SC: It would help us
15 immensely if we could have access to those records and your
16 work on them –

17 MR BOTES: I would gladly –

18 MR CHASKALSON SC: - because that would
19 answer the question.

20 MR BOTES: I can gladly provide that to
21 you.

22 MR CHASKALSON SC: Can we ask the Lonmin
23 team to make that available?

24 MR BHAM SC: An email has been sent to my
25 instructing attorney for that and she's getting them for

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1 me.

2 MR CHASKALSON SC: Thanks. If I can just

3 clarify, the email referred only to these two vehicles, but

4 I think if the exercise has been done on all vehicles it

5 would be nice to put this matter to rest in respect of –

6 MR BHAM SC: That would be preferable and

7 we'll do it.

8 COMMISSIONER HEMRAJ: The entry at 6:25,

9 it's 700, there seems to be some reluctance on the part of

10 this gentleman to attend to the alarm in the area.

11 MR BOTES: What time is that, Mr

12 Chairman?

13 COMMISSIONER HEMRAJ: 6:25, page 62408,

14 6:25, entry 700.

15 MR BOTES: Mr Chairman, yes, that is why

16 I say these people were not allowed in any operations.

17 They had to do their normal crime prevention functions.

18 That is attending alarms, attending to complaints where

19 people phone in and that were their normal job operations.

20 The people I dealt with is the strike first responders,

21 which is not the crime prevent unit.

22 MR CHASKALSON SC: Chair, I don't have

23 any further questions but what Lonmin has also provided us

24 is the shooting reports of the 10th of August and it may be

25 a useful, or an appropriate time to hand them up as

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1 exhibits.

2 CHAIRPERSON: Alright, they will be

3 exhibit EEEE32, "Lonmin shooting reports" –

4 MR CHASKALSON SC: Of 10 August. There

5 are three reports, two for Mr Kellerman, one for Mr Botha.

6 CHAIRPERSON: So it's 32.1, 32.2, and

7 32.3.

8 MR CHASKALSON SC: I think rather 32A,

9 32B and 32C because there are several pages each.

10 CHAIRPERSON: Alright. 32A is Lonmin

11 shooting report of 10 August 2012 in respect of, who's the

12 first one?

13 MR CHASKALSON SC: Mr Kellerman.

14 CHAIRPERSON: In respect of Kellerman.

15 MR CHASKALSON SC: 37 millimetre rubber

16 stoppers.

17 CHAIRPERSON: Oh well, never mind what

18 they are –

19 MR CHASKALSON SC: No, because he files

20 two, Chair, so one needs to distinguish.

21 CHAIRPERSON: Oh, I see. 37 millimetre

22 stoppers. Okay, and then 32B is what?

23 MR CHASKALSON SC: Is also a shooting

24 report in respect of Mr Kellerman, but in this case it's

25 rubber rounds, not rubber stoppers, and the third is for Mr

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1 Botha.

2 CHAIRPERSON: PW Botha?

3 MR CHASKALSON SC: That's correct, and if

4 I can briefly summarise the volumes, Mr Botha reports

5 shooting 17 rubber rounds, Mr Kellerman 18 rubber rounds

6 and five rubber stoppers.

7 CHAIRPERSON: Thank you. I think this is

8 an appropriate stage for us to take the tea adjournment.

9 We'll come back at 20 past. Mr Van As, how long are you

10 likely to be?

11 MR VAN AS: 10, 15 minutes, Mr

12 Chairperson.

13 CHAIRPERSON: Alright, well if you make

14 it 10 minutes then we've got half an hour for Mr Sinclair's

15 examination-in-chief can be given and concluded by 4

16 o'clock.

17 MR VAN AS: Thank you, Mr Chairperson.

18 CHAIRPERSON: We now adjourn for quarter

19 of an hour.

20 [COMMISSION ADJOURNS COMMISSION RESUMES]

21 [15:18] CHAIRPERSON: The Commission resumes. Mr

22 Botes, you are still under oath. Mr Van As.

23 MR VAN AS: Thank you, Mr Chairperson.

24 Mr Botes, you were asked about camera 218, you are familiar

25 with the camera I am referring to?

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1 MR BOTES: I think that's the one at the

2 taxi rank, Mr Chair.

3 MR VAN AS: Correct. As at the 11th of

4 August 2012, did it have a default position?

5 MR BOTES: No, Mr Chair.

6 MR VAN AS: Then you also testified that

7 you tasked someone to go through the original video footage

8 for camera 218 for the 11th of August 2012. Do you recall

9 that evidence?

10 MR BOTES: That's correct, Mr Chairman

11 MR VAN AS: Is that original video

12 footage still available?

13 MR BOTES: No, Mr Chairman.

14 MR VAN AS: Did you participate in the

15 ICAM investigation into the deaths of Mr Fundi and Mr

16 Mabelane?

17 MR BOTES: No, Mr Chairman, not at all.

18 MR VAN AS: Did you authorise the use of

19 any live ammunition on the 10th of August 2012, near the

20 Rowland Shaft Crossing?

21 MR BOTES: Live ammunition?

22 MR VAN AS: Other than rubber bullets.

23 MR BOTES: No, Mr Chairman.

24 MR VAN AS: Are you aware of anybody

25 using ammunition other than rubber bullets –

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1 MR BOTES: No, Mr Chairman.
 2 MR VAN AS: - on that day.
 3 MR BOTES: Not aware of that.
 4 MR VAN AS: And I'd like to briefly take
 5 you to exhibit XXX11, you recall that's the memorandum
 6 setting out the names of certain senior managers.
 7 MR BOTES: I remember that, Mr Chair.
 8 MR VAN AS: Where do these managers work?
 9 MR BOTES: Mr Chair, they were senior
 10 managers from the shaft operations at the mining division.
 11 MR VAN AS: And in exhibit XXX11 there's
 12 reference made to influencing decision making, what
 13 decision making was that? What does that mean?
 14 MR BOTES: Mr Chairman, that was when
 15 security had certain requirements and we had to make
 16 certain decisions, that we can do it amicably and without
 17 contacting other managers and wait, and have delays. So we
 18 can immediately make decisions and then if there's anything
 19 we need to do, me and that person can make it and we can
 20 execute whatever we decided on.
 21 MR VAN AS: What sort of decisions would
 22 be made in those circumstances?
 23 MR BOTES: Mr Chairman, that could be
 24 anything, that could be from any threat to an operation and
 25 we need to evacuate that can be, if we need to do, take a

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1 scraper and scrape a road, we can do that, so the support
 2 was from the Lonmin Mining Exco that if security needs
 3 something to execute their duties, for the assistance of
 4 the police, then we can do that. And not only for the
 5 police, but also for us to execute our duties pertaining to
 6 marches towards sites, monitoring people, whatever is
 7 needed during that operation.
 8 MR VAN AS: And then you were cross-
 9 examined at length about the joint operation between Lonmin
 10 and the police, and you conceded that it was the form of a
 11 joint operation. I want you to please tell the Commission
 12 what do you mean by "joint operation" in those
 13 circumstances?
 14 MR BOTES: Mr Chairman, a joint operation
 15 is in practice and for many years now, it is a joint
 16 operation of all available interested parties to the
 17 operation. When you have a big operation and that involves
 18 the municipality, your municipality manager will sit into
 19 that JOC as well. So any interested party that can
 20 contribute to the resolution of an emergency, no matter
 21 what it is. Then all interested parties sit into a JOC
 22 operation.
 23 MR VAN AS: Right then you at the
 24 commencement of proceedings this morning, Commissioner
 25 Hemraj asked you about the shooting incidents on the 10th of

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1 August 2012. If we could please perhaps have exhibit DDDD9
 2 placed on the screen. You made reference to a discharge
 3 register, and you made reference to shooting reports during
 4 your evidence this morning, do you recall, Mr Botes?
 5 MR BOTES: That's correct, Mr Chairman.
 6 MR VAN AS: Is this a discharge register?
 7 MR BOTES: This is a discharge register,
 8 and the person responsible for this book, register, is Gean
 9 Kellerman who is the appointed designated person for the
 10 mining division handling all firearms and ammunition, the
 11 control of that.
 12 MR VAN AS: If you look at, and I know
 13 it's a bit dull, but if you look at entries – entry number
 14 3, under "Botha" and you scroll across, you see it makes
 15 reference to 17 rubbers, can you see that?
 16 MR BOTES: I can see that, Mr Chair,
 17 that's the third one from the September entry 2012.
 18 MR VAN AS: And if you go one down,
 19 there's Kellerman and it makes reference to 16 rubbers as
 20 well, do you see that?
 21 MR BOTES: That's correct, Mr Chair.
 22 MR VAN AS: And the next one is again
 23 Kellerman and it's five rubbers.
 24 MR BOTES: That is correct, Mr Chair.
 25 MR VAN AS: And is that normal procedure

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1 for a register of this nature to be collated in relation to
 2 the shooting incident?
 3 MR BOTES: Mr Chairman, that is part of
 4 our standing operation standards and procedures that they
 5 have to follow, when any round is discharged in execution
 6 of your work, you declare it and then a shooting report is
 7 also filled in to declare it.
 8 MR VAN AS: And Mr Mpofu fairly conceded
 9 that he won't argue that Lonmin participated in the
 10 execution of the SAPS operation but he is going to argue
 11 that Lonmin participated in the planning of the SAPS
 12 operation. Do you recall that being put to you?
 13 MR BOTES: I recall that, Mr Chair.
 14 MR VAN AS: And again, you conceded again
 15 fairly, with respect, that Lonmin did participate to a
 16 degree in the planning of the SAPS operation, do you recall
 17 that?
 18 MR BOTES: I recall that, Mr Chair.
 19 MR VAN AS: Now, I'd like to just ask you
 20 four questions in relation to Lonmin's role in the planning
 21 of the SAPS operation. Firstly, did you play any role in
 22 determining the timing of the SAPS operation?
 23 MR BOTES: No, Mr Chairman.
 24 MR VAN AS: Secondly, did you play any
 25 role in determining the personnel to be involved in the

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1 SAPS operation?

2 MR BOTES: No, Mr Chairman.

3 MR VAN AS: The weapons to be used in the

4 SAPS operation.

5 MR BOTES: No, Mr Chairman.

6 MR VAN AS: And the actual strategy to be

7 implemented in the SAPS operation.

8 MR BOTES: No, Mr Chairman.

9 MR VAN AS: And then finally, Mr Mpofu

10 put it to you that police officers from local police

11 stations would have been able to play the role in the JOC

12 that you played. My question to you is, would these police

13 officers have been aware where the Lonmin cameras were?

14 MR BOTES: No, Mr Chairman.

15 MR VAN AS: And would they have been able

16 to co-ordinate the Lonmin camera equipment and visual

17 surveillance equipment that was in the JOC?

18 MR BOTES: No, Mr Chairman.

19 MR VAN AS: Those are my questions, thank

20 you, Mr Chairperson.

21 CHAIRPERSON: Thank you, Mr Van As. You

22 were asked a number of questions by Mr Semenya and I would

23 ask you two questions flowing from those. The first is,

24 after this volley of shots that you heard, you have

25 described the reaction, did you continue to listen to the

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1 radio?

2 MR VAN AS: Mr Chairman, we tried to, but

3 there was a lot of chaos onto the radio, and later, about

4 10, 15 minutes later, it normalised, let us put it that

5 way, that you can, that the people can start relating to

6 each other what's happening.

7 CHAIRPERSON: But you see, the evidence

8 is that after the shots were fired at what we call scene 1,

9 Brigadier Calitz went what we call scene 2, which is also

10 known as Koppie 3, and a number of other members of the

11 police service went there as well. Kent, and General

12 Naidoo, and others. And there were, and Colonel Vermaak

13 was flying over that, and giving instructions, passing on

14 instructions, did you hear that on the radio?

15 MR BOTES: We heard instructions given

16 but we could not, we did not know where it was.

17 CHAIRPERSON: Yes, so you could hear, it

18 would be correct to say, you could hear the operations were

19 continuing, instructions were being given and so forth.

20 MR BOTES: Correct.

21 CHAIRPERSON: But you didn't know where

22 exactly –

23 MR BOTES: Like the water cannon,

24 requesting going out, but we didn't know where it was.

25 CHAIRPERSON: No, I understand. But you

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1 knew that operations, it was clear that the operation was

2 continuing or further operations were continuing.

3 MR BOTES: We thought that that portion

4 of that further instructions was part of the dispersement

5 of the people and arrests. We never anticipated that there

6 was people surrounded or –

7 CHAIRPERSON: No, no –

8 MR BOTES: - attacks on people on the

9 koppie.

10 CHAIRPERSON: The point is that

11 operations were continuing.

12 MR BOTES: Yes.

13 CHAIRPERSON: So if it had been thought

14 appropriate to stop operations continuing at that stage,

15 that instruction could have been given.

16 MR BOTES: Yes, it could have been given.

17 CHAIRPERSON: From the JOC.

18 MR BOTES: That's correct, Mr Chair.

19 CHAIRPERSON: Okay. That's the first

20 question – the first topic. The second topic I want to

21 deal with you shortly is, you said everything came, this

22 whole thing came as a big surprise to everybody, no one

23 ever envisaged for a moment that what actually happened was

24 likely to happen. Is that correct?

25 MR BOTES: That's correct, Mr Chair.

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1 CHAIRPERSON: Now, did you know that

2 someone, there's controversy as to who it was, but someone,

3 a fairly senior member of the police service, officer in

4 the police service, ordered at some stage before the

5 shooting took place, just before four o'clock, ordered an

6 extra 4 000 bullets for R5s, and they were ordered, they

7 were delivered to Marikana, got to the JOC, Brigadier

8 Pretorius said, don't be silly, we don't need them, and

9 sent them away. Did you know about that?

10 MR BOTES: I am not aware of that, Mr

11 Chairman.

12 CHAIRPERSON: Don't be silly is my

13 addition, but she sent them back. Now, you can imagine

14 what she thought even if she didn't say it. You were aware

15 of that?

16 MR BOTES: I am not aware of it, Mr

17 Chair.

18 CHAIRPERSON: That seems to indicate that

19 somebody at least, some senior police officer, official in

20 authority to order 4 000 bullets for R5s, must have

21 foreseen the possibility of some big shootout which

22 involved the police using the ammunition they had and

23 requiring substantially more, that's right, isn't it?

24 MR BOTES: I understand that.

25 CHAIRPERSON: Mm. Now there's also

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1 evidence that somebody early in the morning, requested four
 2 hearses to be made available, or kept available. They
 3 weren't as a result, but somebody, that's the evidence
 4 undisputed, police mortuary vans. Now that also indicates
 5 that somebody, a fairly senior official in the police
 6 service, foresaw serious problems and required, requested
 7 that mortuary vans should be made available. So it's not
 8 entirely correct to say that nobody in senior ranks of the
 9 police force foresaw shooting and deaths of the nature that
 10 took place. Would that be a fair comment?
 11 MR BOTES: I am surprised to hear that,
 12 Mr Chair. In my presence I was not aware that any
 13 mortuary vans were ordered to be on standby.
 14 CHAIRPERSON: I am not suggesting you
 15 were, I am just saying, you would agree –
 16 MR BOTES: Ja.
 17 CHAIRPERSON: - in the light of that
 18 evidence the proposition that nobody foresaw any deaths on
 19 a major scale taking place, can't stand up.
 20 MR BOTES: No.
 21 CHAIRPERSON: Is that right? Okay.
 22 Thank you very much. There is one other question I must
 23 ask, there was an issue as to whether it was safe for
 24 senior members of Lonmin management to go to the koppie to
 25 speak to the strikers. I think you were aware of that

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1 issue.
 2 MR BOTES: I am aware of that, Mr Chair.
 3 CHAIRPERSON: In fact, senior management
 4 of Lonmin categorically refused to go to the koppie,
 5 despite the fact that the strikers asked them to do so.
 6 And they gave as either the reason or they made the reason,
 7 safety considerations. Is that correct?
 8 MR BOTES: I understand it, Mr Chair.
 9 CHAIRPERSON: Yes. Now of course, we
 10 also know that the two trade union presidents went on the
 11 Wednesday afternoon to the koppie, with police protection,
 12 and one of the rules of the operation was they weren't
 13 allowed to leave the police Nyala, and they spoke to the
 14 strikers by – through a loud-hailer and so forth. So I
 15 take it, it would be fair to say that if senior members of
 16 management of Lonmin had been prepared to go to the koppie
 17 under the same conditions, the safety considerations would
 18 have fallen away.
 19 MR BOTES: Not fallen away, Mr Chair, I
 20 do not understand that. What do you mean by falling away?
 21 CHAIRPERSON: Being in an Nyala.
 22 MR BOTES: Ja.
 23 CHAIRPERSON: And being police
 24 protection.
 25 MR BOTES: Yes.

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1 CHAIRPERSON: And they hadn't set foot
 2 outside the Nyala which after all is a fortified armoured
 3 vehicle, isn't it? It's not a soft skin vehicle. They
 4 would have been safe.
 5 MR BOTES: I would, I agree fully with
 6 you.
 7 CHAIRPERSON: Thank you. Was this
 8 discussed with you at any stage at the time their refusals
 9 were made to go to the koppie?
 10 MR BOTES: Mr Chairman, it wasn't
 11 discussed directly with me but I've heard the conversations
 12 taking place and maybe because I know that they immediately
 13 feel threatened, in such a way that they requested for
 14 personal bodyguards that they feel threatened and maybe
 15 that's the reasons why they refused to go to the koppie.
 16 But my view was that I also personally had a conversation
 17 with one of the managers, and asked him why they can't go,
 18 and I said to him that the police can protect them. It
 19 will be safe for them to go, so if they want to go, it will
 20 be safe. So I assured them personally to Joe Mokwadi that
 21 if they want to go it will be safe by police escort.
 22 CHAIRPERSON: You said you assured them,
 23 who were the people to whom you gave that assurance?
 24 MR BOTES: I spoke to Joe Mokwadi about
 25 it.

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1 CHAIRPERSON: I see. He was the only one
 2 but –
 3 MR BOTES: Which I spoke personally to.
 4 CHAIRPERSON: Yes, yes, he obviously
 5 could have conveyed what you said to his colleagues.
 6 MR BOTES: Ja, I don't know.
 7 CHAIRPERSON: One last, I was going to
 8 ask you something else but I think I won't do so. Mr Mpofo
 9 you turned your light on, what-
 10 MR MPOFU: No, I apologise, I thought you
 11 were finished.
 12 CHAIRPERSON: I have finished.
 13 MR MPOFU: Just one question arising from
 14 your –
 15 CHAIRPERSON: What's the question?
 16 MR MPOFU: Mr Botes, you, it is correct
 17 isn't it, that you became aware that on the 10th the
 18 conversation that you are talking about with the
 19 Chairperson, must have happened when the people were
 20 already at the koppie. Is that correct?
 21 MR BOTES: That's correct, Mr Chair.
 22 MR MPOFU: But is it correct that on the
 23 10th, long before the people were at the koppie, long before
 24 they had any arms, when they were described as peaceful,
 25 that management refused –

<p style="text-align: right;">Page 33793</p> <p>1 CHAIRPERSON: It doesn't arise from my 2 question.</p> <p>3 MR MPOFU: Well, it does, you are talking 4 about management refusal to speak.</p> <p>5 CHAIRPERSON: I asked about management 6 going to the koppie and they could do so safely, that was 7 my question. The point you are making, I can understand 8 what it is, it's a point you can argue without any 9 difficulty.</p> <p>10 MR MPOFU: No, Chairperson I am sorry -</p> <p>11 CHAIRPERSON: Yes, yes, Mr Mpofo. I am 12 disallowing your question.</p> <p>13 MR MPOFU: No, you can, but not on the 14 basis that it doesn't arise, because that's exactly what 15 you were questioning about.</p> <p>16 CHAIRPERSON: My question was about going 17 to the koppie, being concerned about matters of safety, 18 being able to speak to the people on the koppie, without 19 being afraid -</p> <p>20 MR MPOFU: Yes. And my question shows 21 that that is nonsense, if that refusal was done on the 10th, 22 when the people were not hostile, it's exactly the same 23 point.</p> <p>24 CHAIRPERSON: It's a point you can argue 25 on the facts that are common cause. Question disallowed.</p>	<p style="text-align: right;">Page 33795</p> <p>1 security measure to take, in relation to the request for 2 hearses, particularly when the evidence is that or with the 3 death of Mr Twala the day before, I mean two days before 4 there was a struggle in obtaining a hearse for the removal 5 of that body. Would that be a reasonable security measure 6 to take in relation to the operation of the 16th?</p> <p>7 MR BOTES: There was a struggle to remove 8 his body because the people were afraid.</p> <p>9 [15:38] Firstly the message got through to the JOC by 10 means of journalists and the JOC did not believe it at 11 first and because there was not much police members 12 deployed at the koppie at the time everybody thought it is 13 a trap, they want to entrap the policemen, and we did not 14 send out police members immediately until we got sufficient 15 police members to go to the koppie and to go and look where 16 the -</p> <p>17 CHAIRPERSON: That's not an answer to the 18 question. The question deals with the fact that there was 19 a delay in getting the hearse, getting the mortuary 20 vehicle, you see, and the question you're asked is was it 21 appropriate, regard being had to the delay on the Tuesday 22 to get a mortuary vehicle, was it sensible and appropriate, 23 reasonable and so on, to request four on the Thursday 24 morning. That's your question, Mr Semenya?</p> <p>25 MR BOTES: No, he wasn't -</p>
<p style="text-align: right;">Page 33794</p> <p>1 Thank you, Mr Botes, you are - thank you for your evidence, 2 you are excused on the basis that - Mr Semenya your light 3 is on.</p> <p>4 MR SEMENYA SC: There is something that 5 arises from your question, Mr Chair, in relation to the -</p> <p>6 CHAIRPERSON: What question? Sorry?</p> <p>7 MR SEMENYA SC: In relation to the 8 hearses the Chair asked about.</p> <p>9 CHAIRPERSON: What's the question you 10 want to ask? If you want to ask a question you have to run 11 the question past me, so I can decide whether I allow you 12 to put it.</p> <p>13 MR SEMENYA SC: I will do so, Chair. Mr 14 Botes, I was going to say that in relation to the request 15 for hearses, the evidence is also that that was because of 16 the delays in obtaining hearses on time for the removal of 17 Twala. Would that be a proper preparation for security to 18 arrange those hearses to avoid the delays they have 19 experienced in the past? Would that be ordinary?</p> <p>20 MR BOTES: Can the question just be 21 repeated please?</p> <p>22 CHAIRPERSON: I wasn't going to allow it, 23 but in view of the fact that you want it repeated I will 24 allow him to repeat it. Yes, ask the question again.</p> <p>25 MR SEMENYA SC: Is that reasonable</p>	<p style="text-align: right;">Page 33796</p> <p>1 CHAIRPERSON: Wasn't, alright.</p> <p>2 MR BOTES: No.</p> <p>3 CHAIRPERSON: The further question that 4 flows from that of course is I asked the question for a 5 totally different reason, not only if it was appropriate to 6 get hearses but whether the fact that hearses were asked 7 for indicated foresight on the part of some senior member 8 of the police service that there might be a need for at 9 least four mortuary vehicles on that day, and I understood 10 you to answer that question in the affirmative. You said 11 yes.</p> <p>12 MR BOTES: Yes, I said yes.</p> <p>13 CHAIRPERSON: The application for 14 questions arising are getting out of hand. Adv Hemraj 15 wants to ask one too. I don't know what it is, but I'll 16 allow her to ask it.</p> <p>17 COMMISSIONER HEMRAJ: Mr Botes, the 18 conversation between you and Mr Kwadi -</p> <p>19 MR BOTES: Yes.</p> <p>20 COMMISSIONER HEMRAJ: - about the safety 21 aspect of management going to the koppie -</p> <p>22 MR BOTES: Yes.</p> <p>23 COMMISSIONER HEMRAJ: - do you recall 24 when that conversation took place?</p> <p>25 MR BOTES: That was either on the Tuesday</p>

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<p>1 or the Wednesday, not on the Thursday the 16th.</p> <p>2 COMMISSIONER HEMRAJ: Thank you, Mr</p> <p>3 Botes.</p> <p>4 CHAIRPERSON: Thank you very much. On</p> <p>5 condition that you agree to come back without our having to</p> <p>6 serve a subpoena on you if it's necessary for you to come</p> <p>7 back, I don't know that it will be but if it is necessary</p> <p>8 that you'll agree to come back –</p> <p>9 MR BOTES: Of course. Of course, Mr</p> <p>10 Chairman.</p> <p>11 CHAIRPERSON: On that basis you're</p> <p>12 excused. Thank you.</p> <p>13 [NO FURTHER QUESTIONS – WITNESS EXCUSED]</p> <p>14 CHAIRPERSON: Mr Bham, you're going to</p> <p>15 call the next witness?</p> <p>16 MR BHAM SC: Thank you. The next witness</p> <p>17 is Mr Sinclair. Before he comes in, Mr Chairman, may I</p> <p>18 just address a couple of housekeeping matters. At the</p> <p>19 adjournment I placed on your tables a bundle of documents.</p> <p>20 That bundle contains documents which different parties have</p> <p>21 suggested will be referred to in Mr Sinclair's evidence and</p> <p>22 in order to facilitate that we've incorporated it into a</p> <p>23 single bundle. There are a few documents still to be</p> <p>24 added, they will be added at the end of the bundle and Ms</p> <p>25 Pillay is going to attend to that, so by tomorrow there</p>	<p>1 MR SINCLAIR: Sir, it's Graeme Miller</p> <p>2 Sinclair.</p> <p>3 CHAIRPERSON: M-I-L-L-E-R?</p> <p>4 MR SINCLAIR: M-I-L-L-E-R, and the Graeme</p> <p>5 is –</p> <p>6 CHAIRPERSON: The Graeme as in Graeme</p> <p>7 Pollock?</p> <p>8 MR SINCLAIR: No, G-R-A-E-M-E, yes, in</p> <p>9 Graeme Pollock.</p> <p>10 CHAIRPERSON: As in Graeme Pollock, ja.</p> <p>11 MR SINCLAIR: That's right.</p> <p>12 CHAIRPERSON: Alright, Mr Bham.</p> <p>13 EXAMINATION BY MR BHAM SC: Thank you.</p> <p>14 Mr Chairman, I understand the annexure, exhibit number for</p> <p>15 Mr Sinclair's witness statement is FFFF1. Mr Sinclair, you</p> <p>16 have in front of you your witness statement. Do you see</p> <p>17 that?</p> <p>18 MR SINCLAIR: Yes, Mr Chairman.</p> <p>19 MR BHAM SC: And if you turn to the last</p> <p>20 page of that witness statement on page 12 there's a</p> <p>21 signature there. Is that your signature?</p> <p>22 MR SINCLAIR: That is my signature, Mr</p> <p>23 Chair.</p> <p>24 MR BHAM SC: Mr Sinclair, may I ask you</p> <p>25 to turn to paragraph 15 of your witness statement, one-</p>
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<p>1 will be a complete single bundle of all documents to be</p> <p>2 referred to in Mr Sinclair's evidence.</p> <p>3 CHAIRPERSON: Thank you, that will make</p> <p>4 our task much easier. Thank you very much. Would you like</p> <p>5 to start leading the – call the witness?</p> <p>6 MR BHAM SC: Yes.</p> <p>7 CHAIRPERSON: Yes, I see he hasn't</p> <p>8 arrived yet.</p> <p>9 MR BHAM SC: Yes, he's outside –</p> <p>10 CHAIRPERSON: We've got some policemen</p> <p>11 here, we'll send a posse to go and fetch him. Mr Sinclair,</p> <p>12 would you please stand up? You're standing up already,</p> <p>13 remain standing. Are you prepared to swear that you're</p> <p>14 evidence will be true, or do you wish to affirm?</p> <p>15 MR SINCLAIR: I will swear.</p> <p>16 CHAIRPERSON: Will you swear that the</p> <p>17 evidence you will give before this Commission will be the</p> <p>18 truth, the whole truth, and nothing but the truth? Would</p> <p>19 you please raise your right hand and say, "I swear, so help</p> <p>20 me God"?</p> <p>21 GRAEME MILLER SINCLAIR: I swear, so help</p> <p>22 me God.</p> <p>23 CHAIRPERSON: You may be seated, thank</p> <p>24 you. What are your full names? You can tell us those when</p> <p>25 you're sitting down. What are your full names?</p>	<p>1 five?</p> <p>2 MR SINCLAIR: I am there, Sir.</p> <p>3 MR BHAM SC: Is there anything in that</p> <p>4 paragraph you wish to correct?</p> <p>5 MR SINCLAIR: Mr Chair, on the third line</p> <p>6 after January 2012 I wrote, now I put in there "I was</p> <p>7 notified". I think that was an incorrect word. I should</p> <p>8 have put in there "I was informed of".</p> <p>9 MR BHAM SC: Thank you, Mr Sinclair.</p> <p>10 Subject to that change, do you stand by the witness</p> <p>11 statement that you've made?</p> <p>12 MR SINCLAIR: Mr Chair, I stand by the</p> <p>13 witness statement, Mr Chair.</p> <p>14 MR BHAM SC: That witness statement was</p> <p>15 signed on 10 July 2014. Is that correct?</p> <p>16 MR SINCLAIR: That is correct.</p> <p>17 MR BHAM SC: You will see on the first</p> <p>18 page on the top left-hand corner though there's a very</p> <p>19 small print which says "Affidavit 09102012." That would</p> <p>20 suggest the date of 9 October 2012. Can you explain that</p> <p>21 date to the Commission, please?</p> <p>22 MR SINCLAIR: Mr Chair, I was required to</p> <p>23 make a statement, that was a draft statement that I made</p> <p>24 for the process. I don't understand "process" but I made</p> <p>25 an initial draft statement, Mr Chair.</p>

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1 CHAIRPERSON: I'm sorry, Mr Tokota and I
 2 have got a problem in respect of the earlier correction.
 3 Do I understand that page 93, para 15, line 3, the last –
 4 MR BHAM SC: Should be the words "I
 5 also" –
 6 CHAIRPERSON: Should be "was informed
 7 of"?
 8 MR BHAM SC: "I was informed of".
 9 CHAIRPERSON: Alright, thank you. That's
 10 what I had. Mr Tokota is now up to speed with us. What's
 11 the next point you're dealing with?
 12 MR BHAM SC: On the first page of the
 13 statement you'll see on the top left-hand corner in very
 14 small print the words "Affidavit" followed by "09102012."
 15 The date is 9 October 2012. I'm just asking Mr Sinclair,
 16 having regard to the date on which he signed the statement,
 17 to explain that and his testimony was that was the initial
 18 draft into the process.
 19 Mr Sinclair, in paragraph 1 you state, "I was
 20 previously employed by Lonmin as the Group Mining Emergency
 21 & Security Manager." During 2012, and in particular August
 22 2012, what was your position at Lonmin?
 23 MR SINCLAIR: Sorry, during?
 24 MR BHAM SC: 2012, and in particular
 25 August 2012.

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1 MR SINCLAIR: I was the Lonmin Group
 2 Mining Emergency & Security Manager.
 3 CHAIRPERSON: Yes, before we go on, this
 4 draft statement that was dated the 9th of October 2012, this
 5 draft statement of the 9th of October 2012, does that still
 6 exist?
 7 MR SINCLAIR: Mr Chair, I did see it. I
 8 did, I made it. I did see it, and when I read it later I,
 9 like this word that I've changed now, I just thought that
 10 is actually not appropriate or whatever and I redid it for
 11 this statement. I don't know it if –
 12 CHAIRPERSON: Is it still available –
 13 MR SINCLAIR: I think it is with the
 14 legal team. I am not sure.
 15 CHAIRPERSON: I see. So if it's
 16 available I'm sure it can be made available to us.
 17 MR SINCLAIR: I believe so. I can't
 18 answer that, Sir.
 19 CHAIRPERSON: We'll take it up with your
 20 lawyers, alright. Yes, please carry on, Mr Bham.
 21 MR BHAM SC: Thank you. Mr Sinclair, in
 22 paragraphs 4 and 5 you discuss your responsibilities. Is
 23 that a reference to your responsibilities the Group Mining
 24 Emergency & Security Manager?
 25 MR SINCLAIR: Mr Chairman I, that is.

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1 MR BHAM SC: And could you briefly
 2 explain to the Commission what those responsibilities
 3 entail?
 4 MR SINCLAIR: Mr Chair, on the mining, on
 5 the emergency side I run every, I was – let me clarify
 6 that. I was responsible to manage all the emergency
 7 operations, be it medical trauma, ambulance transport,
 8 first-aid training, fire training and fire precautions.
 9 Those were my duties and there is a comprehensive list of
 10 what it entails on the emergency. On the security side –
 11 and I had an emergency manager who was actually responsible
 12 for that, reporting in to me.
 13 I then on the security side had a security
 14 manager reporting in to me and I, my main functions were to
 15 ensure that he dealt with operational issues and the day-
 16 to-day running of the security. Mine was budget related,
 17 dealing with if there were HR issues that involved
 18 discussions with issues of security, if there were issues
 19 relating to a new, for instance a type of fencing that the
 20 engineering people wanted, those were my communications.
 21 I also was responsible for attending the Chamber
 22 of Mines security meetings with the other security managers
 23 and that type of thing, as well as security liaison with
 24 the various police levels that were appropriate for me to
 25 deal with.

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1 On the emergency side I also attended meetings
 2 for instance like the Mines Rescue and those type of
 3 things, Mr Chair. That was my – and then I had a report, I
 4 reported directed in to the vice chairman of Technical,
 5 which at that time was Mr Frank Russo-Bello, who then in
 6 turn report in to Mr Mark Munroe, the executive vice chair
 7 – the executive vice –
 8 CHAIRPERSON: President.
 9 MR SINCLAIR: President, Sir.
 10 COMMISSIONER HEMRAJ: Who was the
 11 security manager that reported to you about day-to-day
 12 running in August of 2012?
 13 MR SINCLAIR: My security manager was Mr
 14 Henry Blaauw and the emergency manager was Mr Peter
 15 Drysdale.
 16 MR BHAM SC: Mr Sinclair, in paragraph 8
 17 you make reference to 49 fulltime registered mining
 18 security officials and 420 contract security employees. I
 19 just want to ask you two questions on that paragraph. The
 20 first is when you talk about registered mining security
 21 officials, what do you make reference to?
 22 MR SINCLAIR: Mr Chair, in the security
 23 the manager, the security manager and his subordinates have
 24 to be registered. There's a legal compliance and they were
 25 those, that, they were the registered people, Henry Blaauw

<p style="text-align: right;">Page 33805</p> <p>1 and the people below him were the registered people in that 2 area. Is that the question you asked me, Sir? 3 MR BHAM SC: Thank you. And the 49 4 fulltime registered mining security officials and the 420 5 contract security employees, what were they essentially 6 geared towards dealing with? 7 MR SINCLAIR: The mining officials were 8 broken into various, into several categories, for instance 9 crime prevention response, tactical security response, 10 investigations, and the contract people were primarily on 11 guarding across the – sorry, Sir, primarily on guarding 12 across the property and yes, there was a specific task that 13 we had them to do, for instance searching at the mine 14 crushers, searching, going into the mines and coming out 15 the mines, or on roadblocks or whatever, but primarily they 16 were deployed on guarding access control, perimeter 17 guarding, etcetera. 18 MR BHAM SC: Thank you. Mr Sinclair, in 19 paragraph 9 where you talk about your efforts to develop 20 systems to combat crime, in that context on the fourth line 21 you talk about the existing liaison between the security 22 section and the local SAPS, and on the next page in 23 paragraph 13 on the fourth line you make reference to the 24 good working relationships between mining security at 25 Lonmin and senior police officers in the North West</p>	<p style="text-align: right;">Page 33807</p> <p>1 they weren't in a good state in my opinion we contributed 2 to going there and we developed a relationship, because my 3 view was where there was crime we needed the police, and to 4 have that we needed to have a relationship with them so 5 that if something went on in our property we were able to 6 communicate correctly with the right people, doing the 7 right things to prevent crime, and for our communities 8 around us, the community forums, we insisted that those be 9 motivated. So that was the relationship that we built up 10 over a period of time. 11 I had people at different levels attending 12 different forums and they had to go there and report back 13 in that development to focus on what our task was and the 14 assistance that we would need from the law if there was 15 something criminal or that type of thing taking place. Or 16 for instance if there was a road accident, because we have 17 the N4, we would deal with that, Mr Chairman, and that was 18 the things that we built up. 19 They knew our – they would visit, they knew our 20 operations, where our hostels were, where the mineshafts 21 were, where the roads were. We also knew their structures 22 and how we must communicate, and that was the relationship 23 that we developed. 24 CHAIRPERSON: I take it you had their 25 mobile phone numbers and they had yours?</p>
<p style="text-align: right;">Page 33806</p> <p>1 province, and in the last sentence of paragraph 13 you make 2 reference to attendance at cluster commander meetings with 3 a view to coordinate security matters. 4 Could you briefly explain to the Commission the 5 nature of the liaison which existed between yourself and 6 the local SAPS, as well as the nature of that working 7 relationship which you discuss as a good working 8 relationship, and the coordination of security matters? 9 MR SINCLAIR: Mr Chair, in brief, when I 10 took over in 2010 I detected that there was a relationship, 11 but I was not satisfied with that, for instance our 12 community police forums, because we are surrounded by 13 informal settlements, and I insisted that a security person 14 was appointed in the various stations. I went out and 15 introduced myself to the stations. I took Mr Blaauw with 16 me. We made sure that we knew who – because we were served 17 by police stations in two clusters, a difficult scenario 18 for a mine property. So we made sure that we knew who the 19 station commanders were, who the crime prevention, or the 20 public order person at the station and who the 21 investigation person was. 22 We then also made sure that we'd introduced 23 ourselves to the, to their direct reports and their 24 structures. We fitted into the forums. There were forums 25 that were in place; we fitted into those forms. We, if</p>	<p style="text-align: right;">Page 33808</p> <p>1 MR SINCLAIR: Just say that again. 2 Sorry, Sir? 3 CHAIRPERSON: I take it they had your 4 mobile phone numbers and you had theirs, and they had 5 yours? 6 MR SINCLAIR: Sir, we definitely had 7 that. We had mobile phones, we had station numbers. We 8 knew, we had the correct – what's the word you used? – the 9 structures, we had the correct structures and they had our 10 structures so that we could make sure that the 11 communication was – and it didn't always work, but we 12 definitely went out of our way to develop those 13 relationships. 14 MR BHAM SC: Thank you, Mr Sinclair. If 15 you'll turn to paragraphs 16 and 17 you'll see on the 16 second line of paragraph 16 and the first line of paragraph 17 17 you make reference to unprotected marches. Could you 18 explain to the Commission what you were referring to when 19 you said this, used that phrase? 20 MR SINCLAIR: Mr Chair, what I'm 21 referring to is I became aware as the head of Mining 22 Security that the legal requirements of the Gatherings Act 23 and those things and we developed a relationship with the 24 people who needed to have permissions for gatherings and 25 that, and we needed a relationship with the police so that</p>

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1 we could control these, and those were done so that the law
2 was complied with.

3 However, if that process of the Gatherings Act,
4 the requirements for the Gatherings Act was not done I
5 would term that – and what are the words I used? – I would
6 view it as an unprotected gathering or an unprotected event
7 if it was in contravention of that. That is what I'm
8 meaning by that, Mr Chair.

9 CHAIRPERSON: [Microphone off, inaudible]
10 no notification, because notifications had to be given –
11 MR SINCLAIR: No - and permission.
12 CHAIRPERSON: If that hadn't happened,
13 permission and so on, approved routes and that kind of
14 thing, if that hadn't happened that's what you call an
15 unprotected –
16 MR SINCLAIR: That's what I would refer
17 to as an unprotected, or illegal.
18 MR BHAM SC: Thank you, Mr Sinclair. Mr
19 Sinclair, if you could turn to the next page, you'll see at
20 the top of that page you make reference to orange mode,
21 green mode and later in your statement you talk of red
22 mode. Could you very briefly explain to the Commission the
23 different modes by colour coordination which existed in
24 your security department and what they referred to?
25 MR SINCLAIR: Mr Chairman, to get

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1 operations into a more effective system we have sat down
2 and defined what is our requirements. If something from
3 the normal changes, what then happens.
4 [15:58] What do we need to do and we sat and put our
5 heads together, my security members, myself, the emergency
6 members. We came up with this formula and for us it
7 worked. A green mode would be a normal operation. The
8 normal day to day, coming to work, signing on, doing what
9 you have to do, normal control rooms and everything, that
10 was it. There would be incidents, but that was in normal
11 day to day and we would term that a green mode. We would
12 not have an information centre. I think some people might
13 call it a JOC, I refer to it as our security and emergency
14 information centre. So we would have that in the normal
15 mode and that wouldn't be operational, however, if there
16 was an indication either from information that our people
17 had picked up or whatever, something was going to be out of
18 the ordinary. We weren't sure of it, we would then turn
19 that into what we would term an orange mode. That would
20 facilitate that the small information centre would most
21 probably be activated with an additional CCTV camera, a
22 telephone operator and somebody in control of it over and
23 above the normal operations. And certain documents would
24 be required to be kept and that will be managed and there
25 was a communication. If, however, then something changed

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1 where there was a concern, either violence or an
2 unprotected march as an example that we didn't know where
3 it was going and we felt this needed additional management.
4 And then we would go into a red mode where there were
5 additional requirements. There would be very careful logs
6 kept, very careful deployment issues done, there would have
7 been a max it then goes out of the normal operations. So
8 that was our way, are we in green mode, are we in red mode,
9 are we in orange mode and that I would – and I did through
10 to my management team. So that they also knew the level of
11 our operation, it was our way of managing. Mine together
12 with my team.
13 MR BHAM SC: Thank you, Mr Chairman, it's
14 now 4 o'clock.
15 CHAIRPERSON: How much longer do you
16 need?
17 MR BHAM SC: I still need a bit of time.
18 CHAIRPERSON: I know you do, how much
19 longer? You originally asked for half an hour, you've had
20 20 minutes so far.
21 MR BHAM SC: I've used 15 minutes.
22 CHAIRPERSON: No on my calculation you
23 used 20, but never mind. I was prepared to sit until ten
24 past –
25 MR BHAM SC: I'm not going to finish and

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1 there's an important aspect that's going to come towards
2 the tail end, so –
3 CHAIRPERSON: All right.
4 MR BHAM SC: If you'd like me to continue
5 I'll do so, I don't have difficulty with that, Mr Chair.
6 I'm certainly not going to finish –
7 CHAIRPERSON: But if it's an important
8 topic you want to deal with now and it will be interrupted
9 if we go till ten past, you may as well start at 9 o'clock
10 tomorrow morning.
11 MR BHAM SC: Mr Chairman, before we
12 conclude may I just request so that we're conveniently
13 working on a single bundle. If any of the parties have
14 additional documents which have not yet been notified that
15 they're going to refer to in Mr Sinclair's cross-
16 examination if they could advise Ms Pillay about it so that
17 we can have a single consolidated bundle working
18 through the cross-examination.
19 CHAIRPERSON: I think that's a very
20 appropriate request. Ms Pillay.
21 MS PILLAY: Chair, just to add to that
22 that Lonmin has kindly made available a pack for the
23 parties a collection of all the documents and that pack's
24 been left with Mr Mpofo. So any of the parties that want
25 access to those documents should contact Mr Mpofo.

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
6 people are going to need it?
7 MR MPOFU: Chairperson, I've already
8 passed it onto NUM and AMCU and the families. It's being
9 copied right now and SAPS has indicated –
10 CHAIRPERSON: So the matter is being
11 looked after. Thank you. All right, Mr Bham 9 o'clock
12 tomorrow.
13 [COMMISSION ADJOURNED]
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