

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 263

25 JULY 2014

PAGES 33169 TO 33251



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1 [PROCEEDINGS ON 25 JULY 2014]
 2 [09:17] CHAIRPERSON: The Commission resumes. We
 3 were asked by Mr Van As to give him some time and which we
 4 did, and thereafter we were told that just after he told us
 5 we can come into the chamber, that other people wanted some
 6 time as well. Is everybody now happy, can we now proceed?
 7 Mr Van As?
 8 MR VAN AS: My learned friend Mr Tip is
 9 busy cross-examining the witness.
 10 CHAIRPERSON: No, no, I'm aware of that.
 11 I'm saying –
 12 MR VAN AS: Ja.
 13 CHAIRPERSON: No, I'm fully aware of
 14 that, but he wasn't the one who asked me to come in late,
 15 so I want to know –
 16 MR VAN AS: Yes, I can confirm that,
 17 thank you, Mr Chair.
 18 CHAIRPERSON: Everything under control.
 19 Mr Tip.
 20 MR TIP SC: Thank you, Chair.
 21 CHAIRPERSON: The floor is yours again.
 22 MR TIP SC: The witness to be reminded –
 23 CHAIRPERSON: Mr Masibi, you're reminded
 24 you're still under oath.
 25 JOSEPH MOGOMOTSI MASIBI: [s.u.o.]

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1 through interpreter]
 2 MS MOSHOANE: Confirmed.
 3 CROSS-EXAMINATION BY MR TIP SC (CONTD.):
 4 Mr Masibi, you'll remember that when we came to the end of
 5 yesterday I'd begun asking you about the end of your shift
 6 on 11 August, on the Saturday.
 7 MR MASIBI: I do recall.
 8 MR TIP SC: When you came to the end of
 9 the shift on that day where did you go as the knock-off
 10 place or to hand back a firearm if you had it?
 11 MR MASIBI: I went to the security
 12 offices.
 13 MR TIP SC: Yes, and where are those?
 14 MR MASIBI: It is at Middelkraal, known
 15 as Number 1.
 16 MR TIP SC: Alright, now do I understand
 17 that there was a bit of discussion when you'd come to the
 18 end of your shift when you were at Number 1 about what
 19 might happen on the following day, on the Sunday the 12th of
 20 August?
 21 MR MASIBI: It is true.
 22 MR TIP SC: Yes, and if I followed your
 23 evidence correctly, Mr Masibi, that discussion was
 24 basically to the effect that there might be a meeting on
 25 the Sunday.

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1 MR MASIBI: It is true.
 2 MR TIP SC: And do I also understand
 3 correctly that there was no discussion at all about the
 4 possibility of another march by strikers to the NUM
 5 offices?
 6 MR MASIBI: The information was there
 7 might be a meeting, but we did not know the details of the
 8 meeting.
 9 MR TIP SC: Alright, perhaps you could
 10 just answer me specifically, if you don't mind. Nothing
 11 was said about the possibility of another march by strikers
 12 to the NUM office?
 13 MR MASIBI: There was no such discussion.
 14 MR TIP SC: Thank you. Now Mr Masibi,
 15 perhaps you can just help us with one other detail relating
 16 to that discussion and that is the question of who is in
 17 command there, what the command structure is. Mr Mabelane
 18 as I understand it was the person who was in charge of your
 19 group on the Sunday.
 20 MR MASIBI: Mr Mabelane was the command
 21 in charge at the meeting at Wonderkop.
 22 MR TIP SC: Yes, thank you, and on the
 23 11th of August when you were having your discussion at the
 24 security office at Number 1, were there any security
 25 officers who were senior to Mr Mabelane present?

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1 MS MOSHOANE: The witness is repeating
 2 what I had interpreted to him. I think he wanted to
 3 understand what the question was.
 4 MR TIP SC: Yes, alright, let me try and
 5 explain it better for you, Mr Masibi, and perhaps the
 6 better way to do it is to ask you in this fashion. Who in
 7 your security section, who were the superior officers or
 8 managers above the rank of Mr Mabelane?
 9 MR MASIBI: It is Mr Hendrik Blaauw.
 10 MR TIP SC: So in other words if Mr
 11 Mabelane were to receive instructions from a senior person,
 12 that would be Mr Blaauw who would give him the instruction?
 13 MR MASIBI: It is true.
 14 MR TIP SC: Yes, thank you, and on the
 15 11th was Mr Blaauw at the security offices?
 16 MR MASIBI: I do not remember seeing him
 17 as there are many offices at the Number 1.
 18 MR TIP SC: Alright. Mr Masibi, I want
 19 to take you then back to, or onward, forward really to the
 20 events of 12 August.
 21 MR MASIBI: Okay.
 22 MR TIP SC: And I'm only going to deal
 23 with one aspect of it and that concerns the situation when
 24 you arrived at the scene at Wonderkop and the group of
 25 strikers was approaching you, but still at a little bit of

<p style="text-align: right;">Page 33173</p> <p>1 distance. Are you with me?</p> <p>2 MR MASIBI: I do understand.</p> <p>3 MR TIP SC: Good, and what you've told us</p> <p>4 in your evidence and what appears very clearly in your</p> <p>5 statement also, DDDD7, is that there was some disagreement</p> <p>6 amongst the security officers present. Mr Mabelane wanted</p> <p>7 things done in a certain way and disagreements were raised.</p> <p>8 MR MASIBI: It is true.</p> <p>9 MR TIP SC: And among those disagreements</p> <p>10 were very important matters such as the view that you held</p> <p>11 that there were not enough of you, not enough security</p> <p>12 officers to deal with the situation.</p> <p>13 MR MASIBI: It is true.</p> <p>14 MR TIP SC: And also that in that</p> <p>15 situation an armoured vehicle was necessary.</p> <p>16 MR MASIBI: It is true.</p> <p>17 MR TIP SC: And basically it was your</p> <p>18 view and you said the view of a number of other security</p> <p>19 officers that you were in fact, your group was not in a</p> <p>20 situation or in a position where it could deal with the</p> <p>21 strikers who were now rapidly approaching you.</p> <p>22 MR MASIBI: It is true.</p> <p>23 MR TIP SC: And as we know in fact it</p> <p>24 turned out to be the case tragically that you couldn't stop</p> <p>25 them.</p>	<p style="text-align: right;">Page 33175</p> <p>1 instructions from his seniors or it was his own idea.</p> <p>2 COMMISSIONER HEMRAJ: And the</p> <p>3 disagreement about the lack of resources, was that conveyed</p> <p>4 up the line? Was that discussed with anybody higher up in</p> <p>5 command to Mr Mabelane?</p> <p>6 MR MASIBI: We did not as there was not</p> <p>7 enough time and there were those who were in charge who</p> <p>8 were supposed to take the matter further.</p> <p>9 COMMISSIONER HEMRAJ: I don't understand</p> <p>10 that last part. What do you mean?</p> <p>11 MR MASIBI: We disagreed with Mr</p> <p>12 Mabelane's instruction but he insisted that we should try</p> <p>13 and stop the strikers.</p> <p>14 COMMISSIONER HEMRAJ: Yes, thank you, Mr</p> <p>15 Masibi.</p> <p>16 CHAIRPERSON: Mr Semenya, do you wish to</p> <p>17 ask any questions?</p> <p>18 CROSS-EXAMINATION BY MR SEMENYA SC:</p> <p>19 Indeed, Chair, just a few. Mr Masibi, let's go to your</p> <p>20 statement dated the 1st of October 2012. The one but last</p> <p>21 page indicated 30 on top, you were asked certain questions</p> <p>22 there.</p> <p>23 MS MOSHOANE: Did Mr Semenya say</p> <p>24 indicating 30? Mr Semenya?</p> <p>25 MR SEMENYA SC: Yes, 30.</p>
<p style="text-align: right;">Page 33174</p> <p>1 MR MASIBI: It is true.</p> <p>2 MR TIP SC: And I want then just to check</p> <p>3 a conclusion that I draw from this, the fact that you had</p> <p>4 this discussion at that scene as the strikers were</p> <p>5 approaching you on important matters like manpower,</p> <p>6 armoured vehicle and the like, that tells me that there had</p> <p>7 not been planning beforehand on how to deal with a march of</p> <p>8 that kind.</p> <p>9 MR MASIBI: Yes, it is true on that day</p> <p>10 we did not discuss about what was going to happen. We were</p> <p>11 just told to go and patrol to see if there was going to be</p> <p>12 a gathering.</p> <p>13 MR TIP SC: Thank you, Mr Masibi, those</p> <p>14 are my only questions. Thank you, Chair.</p> <p>15 CHAIRPERSON: Thank you.</p> <p>16 COMMISSIONER HEMRAJ: Something arising</p> <p>17 from Mr Tip's questions; you say in your statement that Mr</p> <p>18 Mabelane was very, he insisted that you try and stop the</p> <p>19 gathering. Do you know if there were specific instructions</p> <p>20 received by him about that?</p> <p>21 MS MOSHOANE: He doesn't know?</p> <p>22 COMMISSIONER HEMRAJ: Do you know if</p> <p>23 there were specific instructions received by him from</p> <p>24 anyone above?</p> <p>25 MR MASIBI: I do not know whether he got</p>	<p style="text-align: right;">Page 33176</p> <p>1 MR VAN AS: Mr Chairperson, it's page 4</p> <p>2 of the paginated bundle before Mr Masibi.</p> <p>3 MR MASIBI: It is before me.</p> <p>4 MR SEMENYA SC: I want to have it on</p> <p>5 record that there you were asked in the middle of the page</p> <p>6 "When you arrived at Wonderkop Hostel after returning from</p> <p>7 EPL did you experience or perceive anything different from</p> <p>8 the illegal gatherers other than your previous experience</p> <p>9 with illegal gatherings?" You see that? It was your</p> <p>10 answer, was it not, that "Yes, this crowd seemed</p> <p>11 different."</p> <p>12 MR MASIBI: It is true.</p> <p>13 MR SEMENYA SC: You were asked, "In what</p> <p>14 way were they different?" and your answer is "Their ranks</p> <p>15 seemed closer than my previous experiences. They reacted</p> <p>16 differently to my previous experiences. When we requested</p> <p>17 them to stop they went into a crouching position and</p> <p>18 continued banging their weapons together." Did they seem</p> <p>19 more organised, and your answer to that was yes.</p> <p>20 [09:37] MR MASIBI: My apology, yes, I did say</p> <p>21 yes.</p> <p>22 MR SEMENYA SC: And the next question is</p> <p>23 in what way were they organised and you say "They acted in</p> <p>24 unison almost as if they were trained or coached as to what</p> <p>25 to do."</p>

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1 MR MASIBI: It is true, it was like that.
 2 MR SEMENYA SC: If was your answer a yes
 3 also to the next question whether their movements were
 4 precise or deliberate.
 5 MR MASIBI: Yes, it is true.
 6 MR SEMENYA SC: And it is typed "Would
 7 you call it almost militant?" and you said "Most
 8 definitely."
 9 MR MASIBI: It is true.
 10 MR SEMENYA SC: The next question is
 11 looking at your description of their behaviour, do you
 12 think that they were waiting for your arrival, i.e. an
 13 ambush?
 14 MR MASIBI: No, by that I meant they were
 15 definitely willing to fight us, but only if necessary.
 16 MR SEMENYA SC: Ja, that's what you say
 17 that they were definitely willing to fight if necessary.
 18 MR MASIBI: Yes, it is true.
 19 MR SEMENYA SC: The next question put to
 20 you was "Were they better organised than previous groups?"
 21 and you said "Yes, definitely."
 22 MR MASIBI: Yes, it is true. I answered
 23 yes.
 24 MR SEMENYA SC: You see, for the record
 25 Brigadier Calitz almost describes this group in the terms

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1 you do, but Mr White, who is an expert, disagrees. Do you
 2 confirm this to be accurate though?
 3 MS LE ROUX: Chair, I don't want to
 4 interrupt my learned friend's cross-examination, but if I
 5 could ask him for a reference to where Mr White disagrees
 6 with this description of the group?
 7 CHAIRPERSON: If he's got it at his
 8 fingertips now he'll give it to you, otherwise he can give
 9 it to you later.
 10 MR SEMENYA SC: I'll give it to my
 11 learned colleague later. Mr White says the diagnostics
 12 that Calitz uses about this crowd fuelled his briefing of
 13 the members that there were some organised group and he
 14 said that was wrong. But I'll give it to my learned
 15 colleague, and those are the questions I have for the
 16 witness.
 17 CHAIRPERSON: Thank you. Before I invite
 18 Mr van As to re-examine, is there anyone else who wishes to
 19 cross-examine?
 20 MR WESLEY: Chair, could I please pose
 21 two questions? I said I didn't have any, but they're
 22 really more of a formal nature.
 23 CHAIRPERSON: You repented to that
 24 statement.
 25 MR WESLEY: I'm repenting.

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1 CHAIRPERSON: Repenting accepted.
 2 CROSS-EXAMINATION BY MR WESLEY: And I do
 3 beg your pardon, Chair. Mr Masibi, the statement they call
 4 the ICAM statement, that formed part of the ICAM
 5 investigation that was conducted by Lonmin. Is that
 6 correct?
 7 MR MASIBI: Correct.
 8 MR WESLEY: You were interviewed when you
 9 prepared the statement. Is that correct?
 10 MR MASIBI: Yes, I was interviewed.
 11 MR WESLEY: Can you remember –
 12 MR MASIBI: I was asked questions.
 13 MR WESLEY: Yes, who interviewed you?
 14 Can you remember the person who did the interview with you?
 15 MR MASIBI: I cannot recall the name, but
 16 he was an officer from Safety Department.
 17 MR WESLEY: Safety Department. The ICAM
 18 report (Final) – if we could have DDDD2, I want to just
 19 show you the names and see if this maybe helps you. The
 20 final page, you see there are some names. You say safety,
 21 the document that you see there on the screen, it's signed
 22 by Philip Scholtz, Jacques Erasmus, head of safety, then
 23 there's names Obed Maku, Chris Thembe, Jakes Kruger and
 24 Chris Nel. So there's three gentlemen there with safety in
 25 their titles, Jacques Erasmus is head of safety, Jakes

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1 Kruger is the chief safety officer and Chris Nel who's a
 2 safety officer.
 3 MR MASIBI: I do see the names.
 4 MR WESLEY: Okay, can you remember if any
 5 of those interviewed you?
 6 MR MASIBI: It was Jakes Kruger with
 7 another safety officer whom I cannot remember, and Chris
 8 Thembe.
 9 MR WESLEY: Thank you, Chair.
 10 CHAIRPERSON: Yes. Mr van As, before you
 11 re-examine the witness – sorry, can we have that back on
 12 the screen, what we've just seen? Before you re-examine,
 13 Mr van As, can you tell us - if you can't tell us now you
 14 can perhaps tell us later - what's meant by the phrase at
 15 the very top there "Potential consequence, severity type
 16 and ranking: Safety – level 5." And then above that appear
 17 the words "Actual consequence, severity type and ranking:
 18 Safety/level 5." What does that mean?
 19 MR VAN AS: I'll take instructions and
 20 revert, Mr Chairperson. I don't know the answer at this
 21 stage.
 22 CHAIRPERSON: Do you know the answer, Mr
 23 Masibi? What is meant by that phrase that I read out?
 24 MR MASIBI: It is when they rate the risk
 25 level, because level 5 is the last level.

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1 CHAIRPERSON: Does that mean the highest,
 2 the most severe?
 3 MR MASIBI: The answer is yes.
 4 CHAIRPERSON: It can't get more severe
 5 than that.
 6 MR MASIBI: Level 5 is the highest
 7 according to the system they use.
 8 CHAIRPERSON: Yes, thank you very much.
 9 Mr van As.
 10 RE-EXAMINATION BY MR VAN AS: Yes, Mr
 11 Chairperson, I think it's when there are fatalities, but
 12 I'll confirm and revert to the Commission. Mr Masibi, in
 13 your time as a security officer at Lonmin have you
 14 previously experience a similar situation to what you
 15 experienced on the morning of 12 August 2012?
 16 MR MASIBI: It was a first. I never saw
 17 such.
 18 MR VAN AS: And then finally in answer to
 19 a question from Commissioner Hemraj, you were asked how
 20 long there was between what you call the disagreement
 21 between some of the security officers and Mr Mabelane and
 22 the actual attack. Can you give us an indication in terms
 23 of time?
 24 MR MASIBI: About five to 10 minutes.
 25 MR VAN AS: Thank you, Mr Chairperson.

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1 CHAIRPERSON: Thank you. Any questions
 2 from anyone else?
 3 COMMISSIONER HEMRAJ: Mr Wesley, are you
 4 going to deal with the events analysis at all?
 5 MR WESLEY: Not with this witness, Chair.
 6 COMMISSIONER HEMRAJ: Alright, thank you.
 7 CHAIRPERSON: Thank you, Mr Masibi,
 8 you'll be excused. Thank you for coming to give evidence.
 9 You're excused on this basis, that if it's necessary for us
 10 to get you back we won't have to subpoena you, you'll agree
 11 to come back just when you're asked to do so. If you're
 12 prepared to accept that you may leave, you may go.
 13 MR MASIBI: I have no problem with that,
 14 Mr Chair.
 15 CHAIRPERSON: Thank you very much, you're
 16 excused.
 17 [NO FURTHER QUESTIONS – WITNESS EXCUSED]
 18 CHAIRPERSON: Mr van As.
 19 MR VAN AS: Chairperson, may I ask for a
 20 short adjournment while we arrange for our next witness,
 21 who is Mr Julius Motlogeloa, to get into the witness box?
 22 CHAIRPERSON: Yes, certainly. How long
 23 do you need?
 24 MR VAN AS: 10 minutes maximum, thank
 25 you, Mr Chairperson.

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1 CHAIRPERSON: We'll adjourn for 10
 2 minutes maximum.
 3 [COMMISSION ADJOURNES COMMISSION RESUMES]
 4 [10:08] CHAIRPERSON: The Commission resumes.
 5 Would you –
 6 MS MOSHOANE: My colleague has taken over
 7 already.
 8 CHAIRPERSON: I see, alright. Mr Van As,
 9 your next witness?
 10 MR VAN AS: Thank you, Mr Chairperson.
 11 Mr Chairperson, perhaps before you swear the witness in if
 12 we can just go through the housekeeping exercise again.
 13 There are four documents. I understand none of them are
 14 annexures yet before the Commission. I'm told –
 15 CHAIRPERSON: Not exhibits.
 16 MR VAN AS: Sorry, exhibits before the
 17 Commission, yes. So if we could perhaps just mark them as
 18 exhibits, please.
 19 CHAIRPERSON: [Microphone off, inaudible]
 20 MR VAN AS: Quadruple D range.
 21 CHAIRPERSON: [Microphone off, inaudible]
 22 the affidavit, typed version, which is item 1 in the
 23 bundle, that will be, that's an affidavit dated the 17th of
 24 August made by the witness. That will be DDDD10. Then
 25 you've got the handwritten version of the affidavit. Is

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1 that the same affidavit actually, but –
 2 MR VAN AS: There are some differences
 3 between the two affidavits –
 4 CHAIRPERSON: Some differences, I see.
 5 Alright, so that will be DDDD –
 6 MR MOJAPELO: Sorry, Chair, the typed
 7 affidavit is already ZZ4.
 8 CHAIRPERSON: Oh, there we are.
 9 MR VAN AS: I beg your pardon.
 10 CHAIRPERSON: ZZ4, thank you very much.
 11 So we can keep DDDD10 for the handwritten version, and then
 12 there's a statement dated the 2nd of July, that's your item
 13 3, that will be DDDD11, and then there's, what's described
 14 as annexure JM1, ICAM statement of the 20th of September.
 15 That's not before us yet.
 16 MR VAN AS: That is probably more
 17 convenient for it – sorry.
 18 MR MOJAPELO: That is AAAA40.
 19 CHAIRPERSON: Sorry?
 20 MR MOJAPELO: The ICAM statement is
 21 AAAA40.
 22 CHAIRPERSON: Yes, I thought we'd seen it
 23 before. Thank you very much. So your item 4 is AAAA40,
 24 we've got that already. So effectively you've only got two
 25 new exhibits.

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1 MR VAN AS: Correct, Mr Chair.
 2 CHAIRPERSON: That's DDDD10 which is the
 3 handwritten version of the affidavit of the 17th of August,
 4 and a statement dated the 2nd of July.
 5 MR VAN AS: Thank you, Mr Chairman.
 6 CHAIRPERSON: Would you please swear the
 7 witness in, please, Mr Interpreter. Find out first if he's
 8 prepared to swear, take an oath and –
 9 MR MOTLOGELOA: I'm prepared to take an
 10 oath.
 11 CHAIRPERSON: Would you stand up please?
 12 Will you swear the evidence you will give before this
 13 Commission will be the truth, the whole truth, and nothing
 14 but the truth? Please raise your right hand, say "I swear,
 15 so help me God."
 16 AKANYANG JULIUS MOTLOGELOA: [d.s.s.
 17 through interpreter]
 18 MR MABUNDA: Taken an oath, Your
 19 Lordship.
 20 CHAIRPERSON: Thank you very much. Mr
 21 Van As.
 22 EXAMINATION BY MR VAN AS: Thank you, Mr
 23 Chairperson. Mr Motlogeloa, where are you employed?
 24 MR MOTLOGELOA: At Lonmin Platinum Mine.
 25 MR VAN AS: And what position do you

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1 occupy there?
 2 MR MOTLOGELOA: Senior security officer.
 3 MR VAN AS: And how long have you been
 4 working in that position?
 5 MR MOTLOGELOA: I started since 2008 up
 6 to date.
 7 MR VAN AS: There's a bundle of documents
 8 before you. I'd like to refer you to the first document in
 9 the bundle. That will be exhibit ZZ4, Mr Chairperson. It
 10 runs on for three pages. Can you identify that document,
 11 please?
 12 MR MOTLOGELOA: Yes, I know it.
 13 MR VAN AS: Thank you, and there's a
 14 signature on the last page, on page 3. That's your
 15 signature?
 16 MR MOTLOGELOA: That is my signature, Mr
 17 Chair.
 18 MR VAN AS: And have you read through
 19 this document?
 20 MR MOTLOGELOA: I read it.
 21 MR VAN AS: And do you confirm the
 22 contents of the document?
 23 MR MOTLOGELOA: I do, Chair.
 24 MR VAN AS: And can you confirm that this
 25 statement was signed by you at about 9 o'clock on the 17th

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1 of August 2012?
 2 MR MOTLOGELOA: Ja, the time is 11
 3 o'clock. The date is the 17th, 17 August.
 4 MR VAN AS: So at 11 o'clock that you
 5 signed the statement?
 6 MR MOTLOGELOA: That is the truth, yes.
 7 MR VAN AS: Mr Chairperson, if you look
 8 above the 9 o'clock there's actually 11 o'clock underneath
 9 Marikana and the date, towards the bottom of page 3.
 10 CHAIRPERSON: It looks as if it was sworn
 11 to, attested before it was actually signed by the witness,
 12 but I don't think anything turns on that in view of the
 13 fact he confirmed the contents now.
 14 MR VAN AS: Thank you. And then if you
 15 look at pages 4 to 12, there's a handwritten statement.
 16 Have you read through that statement?
 17 MR MOTLOGELOA: Yes, I see that.
 18 MR VAN AS: Who took the statement? Can
 19 you please tell the Commission?
 20 MR MOTLOGELOA: A certain policeman, the
 21 one who wrote it.
 22 MR VAN AS: And then if you go to page
 23 13, that will be exhibit DDDD11, there's a further
 24 statement. Can you confirm that that's your signature?
 25 MR MABUNDA: He's asking whether you

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1 refer to the typed one.
 2 MR VAN AS: The typed one.
 3 MR MOTLOGELOA: Ja, I notice my
 4 signature.
 5 MR VAN AS: Have you read through this
 6 statement?
 7 MR MOTLOGELOA: I read it, yes.
 8 MR VAN AS: And do you confirm the
 9 contents of the statement as well?
 10 MR MOTLOGELOA: There's a certain portion
 11 which I disagree with it in the statement.
 12 MR VAN AS: Will you please show the
 13 Commission which portion you disagree with?
 14 MR MOTLOGELOA: Both portion 14 and 19.
 15 MR VAN AS: Is that on page 13? There
 16 are only 10 paragraphs on page 13.
 17 MR MABUNDA: The typed version, he's
 18 referring to page 2.
 19 MR VAN AS: I beg your pardon, the first
 20 statement. Alright, please take us – that's paginated page
 21 2, Mr Chairperson. What don't you agree with, Mr
 22 Motlogeloa?
 23 MR MABUNDA: He asks as to whether he can
 24 read it –
 25 MR VAN AS: Please do.

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1 MR MABUNDA: - to the Commission.
 2 CHAIRPERSON: Which paragraph are you
 3 going to read to us?
 4 MR MOTLOGELOA: Page 14 –
 5 COMMISSIONER HEMRAJ: You mean paragraph
 6 14?
 7 MR MOTLOGELOA: Paragraph 14, yes.
 8 CHAIRPERSON: Is there a problem with
 9 paragraph 14? Is there something you don't agree with?
 10 MR VAN AS: Perhaps if they can just put
 11 it on the screen, Mr Chairperson, for those who don't –
 12 CHAIRPERSON: Yes, yes.
 13 MR MOTLOGELOA: The portion which I –
 14 CHAIRPERSON: Can we have the paragraph
 15 on the screen?
 16 MR MOTLOGELOA: The portion which I
 17 disagree is where it starts "Mr Mabelane ordered us to
 18 shoot at the protesters."
 19 CHAIRPERSON: You say that's not correct.
 20 What should it say?
 21 MR MOTLOGELOA: He did not tell me, that
 22 is Mr Mabelane, that I should shoot at the protesters.
 23 CHAIRPERSON: I see. So you say that
 24 statement that he ordered you to shoot, that's not correct,
 25 that shouldn't be in the statement?

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1 MR MOTLOGELOA: It is incorrect here,
 2 Chair.
 3 MR VAN AS: Perhaps I can clear it up, Mr
 4 Chairperson. On the day of the incident, on the 12th of
 5 August 2012 did you have a firearm with you?
 6 MR MOTLOGELOA: No.
 7 MR VAN AS: So Mr Mabelane couldn't have
 8 ordered you to shoot at anyone?
 9 MR MOTLOGELOA: That is correct, yes.
 10 MR VAN AS: Is that what you –
 11 CHAIRPERSON: The next sentence is also
 12 wrong because it says "We shot with rubber bullets." Now
 13 others may have shot with rubber bullets but you didn't.
 14 Is that correct? So to say "We shot" is also wrong. Your
 15 companions, or some of them may have shot, or your
 16 colleagues may have shot. Is that right?
 17 MR MOTLOGELOA: That's the portion which
 18 I disagree on, that I have said those words.
 19 MR VAN AS: The other security officers
 20 shot at the strikers, but you didn't have a firearm with
 21 you?
 22 MR MOTLOGELOA: Yes, my colleagues, they
 23 had the firearms, they're the ones who shot, but I didn't.
 24 MR VAN AS: Is there anything else you
 25 wish to draw to the attention of the Commission?

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1 MR MOTLOGELOA: Paragraph 19, Chair.
 2 CHAIRPERSON: What's the problem with
 3 paragraph 19? Paragraph 19 reads, "The protesters used the
 4 same" – you're now talking about things that you saw on
 5 Monday the 13th of August in this paragraph, and it reads,
 6 "The protesters used the same movements of crawling tactics
 7 as used on Sunday when they killed the two security
 8 officers. I can be able to identify the people who were
 9 leading, giving instructions, and always being in front of
 10 the group. I can possibly identify the people who murdered
 11 the two security officers and the police officials." Now
 12 that's what that paragraph says. Now what's wrong with it?
 13 What should it say?
 14 MR MOTLOGELOA: [African language] I can
 15 possibly identify the people who murdered the two security
 16 officers and the police officers.
 17 MR MABUNDA: As he said, the last portion
 18 of paragraph 19.
 19 COMMISSIONER HEMRAJ: Did you not say
 20 that?
 21 MR MOTLOGELOA: I did not say that at
 22 all.
 23 MR VAN AS: What did you say? Who were
 24 you possibly able to identify?
 25 MR MOTLOGELOA: Well, I was referring to

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1 the people with whom I spoke at the, near the bridge on
 2 Monday.
 3 CHAIRPERSON: Because earlier in the
 4 statement you mention that you were on the bridge and the
 5 group of strikers came up to you and they wanted to go on
 6 to the shaft to see if people were working, and you spoke
 7 to them. You explain that in the statement and you say
 8 that's what you were talking about, you won't be able to
 9 identify those people?
 10 MR MOTLOGELOA: That is the truth, Chair.
 11 CHAIRPERSON: Right, I think we've now
 12 sorted out the correct –
 13 MR VAN AS: Thank you, Mr Chairperson.
 14 CHAIRPERSON: Now we can get to the
 15 actual contents of the statement.
 16 MR VAN AS: Thank you, Mr Chairperson.
 17 Mr Motlogeloa, I'd like to take you to paragraph 6 of your
 18 first statements, that's paginated page 1, which deals with
 19 Saturday the 11th of August 2012.
 20 MR MOTLOGELOA: I see that, Sir.
 21 MR VAN AS: I want you to please tell the
 22 Commission in your own words what you saw on that day. You
 23 with respect are one of the few witnesses who witnessed,
 24 who saw the altercation that took place on the 11th near the
 25 NUM office. So please tell the Commission what you saw

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1 that day.

2 MR MOTLOGELOA: Ja, the day, that is on

3 Saturday, the time which has been mentioned there, I got a

4 report that some men have been gathered at the stadium. I

5 got the report that they were on their way to the NUM

6 office to go and burn it. They said that they were

7 dissatisfied because there were some other people who took

8 some people during the night and take them through to work.

9 Seeing that I noticed that they will cause some confusion

10 then I went together with my colleague Elias Dibakoane, we

11 proceeded through to the NUM office. We went to the NUM

12 office to go and inform them that there were some other

13 people who have gathered at the stadium and they were on

14 their way to come through to the NUM office with the aim of

15 coming to burn the office.

16 MR VAN AS: Is that the report Lonmin

17 Security had received that this group of people wanted to

18 burn the NUM office down?

19 MR MOTLOGELOA: Ja, those were the report

20 we got.

21 MR VAN AS: So you went to the NUM office

22 to warn the people in the NUM office?

23 MR MOTLOGELOA: Ja, we went through to

24 the NUM office in order to inform if there's anybody in the

25 NUM office, we are going to inform them that there were

Page 33194

1 some other people, there are certain people who will be

2 coming through to the offices to come and burn it.

3 MR VAN AS: And what happened when you

4 got to the NUM office?

5 MR MOTLOGELOA: Once I arrived at the NUM

6 office I met the chairperson, the late Mr Brown who was the

7 chairperson, I met him there in the offices.

8 MR VAN AS: The NUM chairperson?

9 MR MOTLOGELOA: Mr Brown, ja, the one, Mr

10 Brown, Rowland chairperson of NUM.

11 CHAIRPERSON: That was his nickname,

12 remember. He gave evidence before.

13 MR MOTLOGELOA: Ja, this is the nickname

14 which I'm using.

15 MR VAN AS: And what did he say to you?

16 MR MOTLOGELOA: Once I met him there I

17 informed him that there's some rumours that there will be

18 some people who'll come through to their office to come and

19 burn it out, so they should leave the office. Then they

20 told me that they are not leaving their offices. Well, I

21 gave them the message, then I left them, because they

22 remained in the office.

23 MR VAN AS: Where did you go to?

24 MR MOTLOGELOA: Well, I went a few paces

25 away, I cannot indicate now to show the distance between

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1 where I went and wait, just through the NUM office –

2 MR VAN AS: Mr Chairperson, I'll ask Mr

3 Wesley to perhaps assist us and if we can perhaps put up a

4 picture of the area of the NUM office and I'm told that's a

5 bird's eye view. Perhaps get that on the screen.

6 [10:28] CHAIRPERSON: While we're doing that, Mr

7 Tip is going to tell us the name of Mr Brown.

8 MR TIP SC: Yes, Chair, it's Mr Setelele

9 who has testified in these proceedings. As you know he is

10 deceased –

11 CHAIRPERSON: Yes.

12 MR TIP SC: - and he was commonly known

13 as Brown. So there's no doubt that Mr Brown is –

14 CHAIRPERSON: That was the evidence that

15 we heard.

16 MR TIP SC: - to whom Mr Motlogeloa is

17 referring.

18 MR VAN AS: Thank you, Mr Chairperson.

19 Mr Motlogeloa, can you orientate yourself there? Perhaps

20 if I can – I don't have the strobe with me, if Mr Wesley

21 can perhaps just put it on the NUM office for us.

22 CHAIRPERSON: As far as I remember the –

23 it's a dangerous thing I'm doing now, but as far as I can

24 remember if one looks at the picture on the right-hand side

25 there's a road proceeding from close to the bottom right-

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1 hand corner of the photograph diagonally to the left as it

2 were, up virtually the whole of the photograph, and near

3 the top of that on the right-hand side there are two

4 buildings. One of those had a reddish roof and the other a

5 whitish roof. The whitish roof according to the evidence

6 was the substation of the police service, which was not

7 always staffed apparently, and the red one was the NUM

8 office. Am I correct?

9 MR MOTLOGELOA: I see that, Chair.

10 CHAIRPERSON: Is that the NUM office? Or

11 was that the NUM office at the time?

12 MR MOTLOGELOA: Yes, that is the truth.

13 CHAIRPERSON: And the one next to it,

14 just below it on the photograph with the whitish roof, that

15 was I think a police substation that wasn't always staffed

16 though by the police. Is that right?

17 MR MOTLOGELOA: That is so, Chair.

18 MR VAN AS: Perhaps if you could just use

19 the red strobe light and show us where you and your

20 colleague went and stopped after you had spoken to Mr

21 Brown.

22 MR MABUNDA: As he's indicating there on

23 the chart, he's indicating where he had stopped, he was

24 waiting.

25 CHAIRPERSON: What he's indicating is

Page 33197

1 what looks like an open area above the NUM office. In fact
 2 if one moves one's eye upwards above the NUM office on the
 3 photograph is what looks like another building, you can see
 4 the roof, and then next to it and above it there's an open
 5 area and that's where he's pointing.
 6 MR MOTLOGELOA: What I'm indicating,
 7 Chair, is a tuck shop. Behind the tuck shop there's a
 8 street which comes in there, it's where I've waited.
 9 CHAIRPERSON: What I described as an open
 10 area is in fact a street.
 11 MR VAN AS: Alright, and then please tell
 12 the Commission what did you see over there.
 13 MR MOTLOGELOA: I'll now proceed to
 14 paragraph 7, Chair. The people who were in the NUM's
 15 office, I would say the number, they could be 30 in number.
 16 They came out of the office and stood just outside the
 17 office. While still standing there or waiting there I got
 18 the message that there were some people who were coming
 19 through to NUM office. I could also hear some people
 20 singing to indicate that they were coming towards NUM
 21 office.
 22 CHAIRPERSON: Were they coming towards
 23 the NUM office from, as one looks at the photograph, from
 24 below the office as one sees it on the photograph?
 25 MR MOTLOGELOA: Where I'm indicating is a

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1 taxi rank, they were from that direction, from the taxi
 2 rank.
 3 CHAIRPERSON: The taxi rank you show is
 4 more or less in line with a road, a T-junction, a road
 5 which proceeds at right angles towards the left of the
 6 photograph. There's an intersection between that road and
 7 the road I described earlier, the one that runs from the –
 8 diagonally from the bottom of the photograph, near the
 9 right-hand corner slightly towards the left. That
 10 intersection is where you're pointing out and the taxi rank
 11 is there?
 12 MR MOTLOGELOA: As I indicate, it's
 13 situated somewhere there. That's the taxi rank where I'm
 14 indicating.
 15 CHAIRPERSON: Now these people were
 16 coming up that street in the direction of the NUM office.
 17 You indicate now that they came –
 18 MR MABUNDA: Indicating the route they –
 19 CHAIRPERSON: Ja, you indicate that they
 20 came from along that road which is part of the T-junction I
 21 referred to, the one that runs more or less parallel with
 22 the bottom of the photograph and which joins up with the
 23 other road that I described at the point that you've just
 24 referred to. They came along that road moving from left to
 25 right on the photograph and then presumably they turned to

Page 33199

1 their left and came up the other road in the direction of
 2 the NUM office. Is that right?
 3 MR MOTLOGELOA: As I'm indicating, I said
 4 they turned to the left as they were coming.
 5 MR TIP SC: I wonder if it might not
 6 assist for me just to remind the Commission that at the
 7 time that we presented evidence concerning this during the
 8 testimony of Mr Setelele and Gegeleza we introduced three
 9 photographs, YY 1, 2 and 3, which recorded these areas and
 10 labelled each of the streets, and it might be easier to say
 11 street number B than to try to describe it here.
 12 CHAIRPERSON: That's a very good idea, Mr
 13 Tip. I was trying to do my best with the photograph before
 14 us.
 15 MR TIP SC: Quite so, Chair, yes.
 16 CHAIRPERSON: It will make things much
 17 easier, I think, if we look at those photographs. Perhaps
 18 they could be shown to the witness. Give me the exhibit
 19 numbers again please, Mr Tip.
 20 MR TIP SC: Chair, the exhibits are
 21 YY2.1, .2, .3. Yes.
 22 CHAIRPERSON: Thank you, Mr Tip, that's
 23 an important contribution to the Commission. Can you see
 24 that photograph now? This photograph shows us on the left-
 25 hand side the football stadium. Do you see that? Then

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1 there's a road below the football stadium that runs past
 2 the Schagen workshop and eventually intersects with the
 3 road we referred to earlier, the one that runs from the
 4 bottom right-hand corner diagonally and slightly to the
 5 left, past the, it looks like the hospital, past that
 6 intersection we talked about, the taxi rank and then
 7 towards the NUM office and it's called Street B on this
 8 photograph. That's Street B. Street A is the one that
 9 comes from below the football stadium and then Street D is
 10 the one immediately below the, or just on the right-hand
 11 side of that police substation. And there's another
 12 street, Street C, which runs from Street B towards Street
 13 D. Is that as you remember it?
 14 MR MOTLOGELOA: I see that, Chair. Their
 15 route started from Street A. They walked up to the stop
 16 sign, then they turned to the left, turning to Street C.
 17 MR VAN AS: And how many of them were
 18 there approximately, Mr Motlogeloa?
 19 MR MOTLOGELOA: Well, it's a mere
 20 estimation. There were many people, just looking at them.
 21 MR VAN AS: And were these people armed?
 22 MR MOTLOGELOA: That I could not see
 23 because I was far away from them.
 24 MR VAN AS: And what happened then?
 25 CHAIRPERSON: I think you said they were

Page 33201

1 singing. Could you hear what they were singing?
 2 MR MOTLOGELOA: Well, I could hear the
 3 sound of people singing, that they were singing, yes. When
 4 one looks at Street C, the people, some of the people they
 5 walk in the way I'm indicating, without turning to the, in
 6 C Street.
 7 CHAIRPERSON: What you're indicating was
 8 they walked up the street which is described as Street B
 9 actually towards the NUM office and they came more or less
 10 opposite the street which is marked C on the photograph.
 11 Is that what you told us? What I want to know from you,
 12 you said they were singing, I wanted to know if you could
 13 hear what they were singing.
 14 MR MOTLOGELOA: Well, seeing that I
 15 seated in the car I could hear that they are singing, but I
 16 could not understand clearly what type of song they were
 17 singing. If one looks where I'm indicating it's an open
 18 space. Those men who were standing there –
 19 CHAIRPERSON: He's indicating the open
 20 space which is below the letters WPL which are in brackets
 21 and which are in line with the wording NUM office.
 22 MR MOTLOGELOA: Yes. Those men who stood
 23 just right in front of the NUM office, they came there
 24 running, following those people in the street. Well, they
 25 changed their minds, then they ran towards the direction

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1 where he's indicating. Well, it was just a confusion, now
 2 they were chasing each other and then they ran down the
 3 street now.
 4 CHAIRPERSON: What the witness showed was
 5 that they ran from in front of the NUM office down back
 6 towards – down in the direction of the intersection, as
 7 we've referred to it, the intersection between Street A and
 8 Street B.
 9 MR MOTLOGELOA: Correct, Chair.
 10 CHAIRPERSON: Yes, I'm told that I
 11 described it incorrectly. Can you show it to us again,
 12 please?
 13 MR MOTLOGELOA: They came up to where I'm
 14 indicating, those people who were singing. If one looks
 15 just in the neighbourhood there's a container, it seems as
 16 if it was an MTN container –
 17 MR VAN AS: Chair, the interpreter is not
 18 speaking into a mike that is on. It's not going on record.
 19 CHAIRPERSON: Could you repeat your
 20 translation? What he showed us was they were more or less
 21 in line with a motor car which was in the street in line
 22 with what's described as satellite police station. Those
 23 are the people singing, they got about that far. He then
 24 spoke about a container, an MTN container, I seem to
 25 remember we saw it at the inspection in loco when we went

Page 33203

1 there. Can you perhaps show that to us on the photograph?
 2 MR MOTLOGELOA: Ja, if one looks at the
 3 back of the police station there was a container there,
 4 situated there. Those who were singing, some of them they
 5 moved towards that direction. Those are the people whom I
 6 have seen.
 7 CHAIRPERSON: That's further up. That's
 8 more or less in line with the NUM office, the left-hand
 9 side as one sees it on the photograph.
 10 MR MOTLOGELOA: Yes. When they arrived
 11 at the spot where I'm indicating there's a fence which
 12 surrounds the NUM office, there's a corner, one can move
 13 along the fence. The NUM office people, they were standing
 14 where I'm indicating.
 15 CHAIRPERSON: The NUM people were
 16 standing - is it the NUM people you're talking about? They
 17 were standing below the wording WPL on the photograph.
 18 MR MOTLOGELOA: The NUM people they were
 19 standing there, yes. They leave that place and then they
 20 follow those people because those people they came running
 21 in that direction where I'm indicating. Then I noticed
 22 those people they were running now down as I'm indicating.
 23 Now there was a confusion; they were chasing each other.
 24 Some were going down. I was at the top there, as I'm
 25 indicating, I could see what is happening.

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1 COMMISSIONER HEMRAJ: I'm sorry, I don't
 2 quite follow who was chasing whom here.
 3 CHAIRPERSON: [Microphone off, inaudible]
 4 contribute to the debate. Yes, who wants to contribute
 5 first? What do you want to say?
 6 MS MAPULE: The interpretation is
 7 something else. It's going to be very difficult for people
 8 that would be reading the record to get clarity as to who
 9 was chasing who.
 10 CHAIRPERSON: I'm trying to get clarity
 11 of that. The first point you've indicated – sorry, you
 12 also wanted to speak, Sir.
 13 MR MOSIKILI: It's the same point, Chair
 14 and what the witness said, Chair, was that there was
 15 confusion, but what was clear is that those coming from
 16 that direction were being chased down. So it wasn't
 17 chasing of each other.
 18 CHAIRPERSON: Alright, let's take it
 19 slowly. I think you told us the NUM people were standing
 20 more or less below the letters WPL on the photograph and I
 21 think you indicated that the other people, the ones who had
 22 been singing, had come up that street that's marked B and
 23 they appeared to have turned to the right below the words
 24 NUM Office, in other words just beyond the NUM office
 25 itself which is shown on the photograph. Is that right?

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1 Is that correct?

2 MR MOTLOGELOA: Yes.

3 CHAIRPERSON: And then the NUM people

4 started chasing them. Is that right?

5 MR MOTLOGELOA: The NUM people, they were

6 the first to come out chasing those people.

7 CHAIRPERSON: And those people as you

8 call them, that's to say the singing people who had come to

9 the NUM office, they then ran away. Is that right? In

10 which direction did they run?

11 MR MOTLOGELOA: Ja those people who were

12 singing, they ran away, yes.

13 CHAIRPERSON: In which direction did they

14 run? Perhaps you can show us that.

15 [10:48] MR MOTLOGELOA: Yes.

16 CHAIRPERSON: Alright, I think does that

17 clarify the problem for those who were looking mystified

18 earlier? Alright, okay. Alright, now you can go on with

19 your story. I think, Mr Van As, I give you your witness

20 back.

21 MR VAN AS: Thank you, Mr Chairperson.

22 Did you hear any firearms being discharged? Did you hear

23 any gunshots?

24 MR MOTLOGELOA: No, I didn't hear the

25 sound of a firearm.

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1 MR VAN AS: Alright, and you say in your

2 statement you later heard that two people had been shot,

3 but you didn't see that, did you?

4 MR MOTLOGELOA: No, I heard that after,

5 yes, I heard about that, but I didn't see it.

6 MR VAN AS: And did you see anyone being

7 injured during this altercation?

8 MR MOTLOGELOA: Well, I left the spot

9 where I had stopped and then I go down.

10 MR MABUNDA: As he's indicating, Chair.

11 CHAIRPERSON: He indicates that he went

12 down street B in the direction of the intersection we spoke

13 about. He turned right, his right, into street A, which he

14 also indicated.

15 MR MOTLOGELOA: Yes, down A Street, yes.

16 Well, I was driving down, I was driving, I'm indicating my

17 route. When I arrived at that spot where I'm showing

18 somebody pointed with a finger that there's somebody who

19 has been injured, he's in the Schagen workshop there where

20 I'm indicating.

21 CHAIRPERSON: What you showed us is that

22 you stopped in line with the second rectangle, which I take

23 it is a roof of a building. As one comes from the

24 intersection moving left across the photograph there are

25 two white rectangles which I take it are buildings with

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1 roofs, and you indicated you stopped more or less where

2 there's a vehicle actually as we can see next to the second

3 one as one moves up towards the left, and you indicate that

4 you were then, when you were there you were told that there

5 was someone injured at the Schagen workshop, which is spelt

6 S-C-H-A-G-E-N correctly and on the photograph but

7 incorrectly in your statement, paragraph 8.

8 MR VAN AS: Mr Chairperson, I now want to

9 move on to the Sunday. I don't know if you want to take an

10 adjournment at this stage before –

11 CHAIRPERSON: Just before we take the

12 adjournment, if we've finished the story of the Saturday,

13 what he says in his statement is there were victims who

14 were shot at C5 and it should be Schagen workshop. Now we

15 can see the Schagen workshop on the photograph and the

16 evidence was that one of the injured persons was lying

17 there and taken away by ambulance to the hospital. Where

18 was the other one? You talk about C5. Can we see C5 on

19 this photograph? What does C5 mean?

20 MR MOTLOGELOA: I'm indicating here, that

21 is a block where I'm showing.

22 CHAIRPERSON: Alright, what I think you

23 showed us, the rectangle with the words "Speed A" appearing

24 in it is at the bottom of a building with a bluish roof,

25 which I take it is one of the hostel buildings. Is that

Page 33208

1 right?

2 MR MOTLOGELOA: Yes, Sir.

3 CHAIRPERSON: And what you show us is at

4 the top as it were, as one looks at the photograph, of that

5 hostel building, that's the area that you talked about. Is

6 that, that's called, known as C5?

7 MR MOTLOGELOA: No, there's a block where

8 I'm indicating, the hostel. It's the hostel block.

9 CHAIRPERSON: That hostel block is known

10 as C5? Is that right?

11 MR MOTLOGELOA: Yes, that is C5.

12 CHAIRPERSON: Now the other person, one

13 injured person was found near the Schagen workshop. You

14 said the other one was found at C5. Now C5 is that block,

15 but where exactly on the photograph, are you able to tell

16 us was that person?

17 MR MOTLOGELOA: If you look there,

18 there's Schagen, where I'm indicating. There's the yard of

19 the Schagen. There's a passage in between there, as I'm

20 indicating. One can walk there. He was seated there,

21 where I'm indicating.

22 CHAIRPERSON: What you are indicating is

23 the person, the other injured person was near the top left-

24 hand corner of that block as we see it on the photograph.

25 Is that right?

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1 MR MOTLOGELOA: Yes.

2 CHAIRPERSON: Alright, Mr Van As, you

3 said you wanted a tea adjournment?

4 MR VAN AS: I'm in your hands, Mr

5 Chairperson, but before I go on to the Sunday this is

6 perhaps an appropriate time –

7 CHAIRPERSON: You see, if we take the tea

8 adjournment – alright, we'll take a short break of five or

9 10 minutes now and then we'll take the tea adjournment

10 closer to noon so that we can go through to 1 o'clock

11 without further mishap.

12 [COMMISSION ADJOURNS COMMISSION RESUMES]

13 [11:11] CHAIRPERSON: The Commission resumes.

14 Madam Interpreter, would you please tell the witness he's

15 still under oath? Mr Van As.

16 AKANYANG JULIUS MOTLOGELOA: [s.u.o.

17 through interpreter]

18 MS MOSHOANE: Confirmed.

19 EXAMINATION BY MR VAN AS (CONTD.): Thank

20 you, Mr Chairperson. Mr Motlogeloa, I now want to go to

21 the 12th of August 2012, the Sunday. Can you remember when

22 you came on duty that day?

23 MR MOTLOGELOA: I do.

24 MR VAN AS: What time was it?

25 MR MOTLOGELOA: At 6 in the morning.

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1 MR VAN AS: Now you say in paragraph 9 of

2 your statement at round about 9 o'clock that morning you

3 received a radio call from Dewald Louw.

4 MR MOTLOGELOA: Yes, it is so.

5 MR VAN AS: Could we please have exhibit

6 AAAA35.3 on the screen? Alright, I want you to please tell

7 the Commission, you say you travelled in your vehicle to

8 this area. Please tell the Commission where did you stop

9 your vehicle?

10 MR MOTLOGELOA: On this day I used this

11 road [that he is indicating].

12 CHAIRPERSON: Mr Van As, if we go back to

13 Mr Tip's exhibit then we've got street A and street B. I

14 think they're marked. It makes it much easier, otherwise

15 we'll talk about the road that goes to the left and the

16 road that goes to the right.

17 MR VAN AS: Chairperson, we tried that.

18 We just couldn't get this area in Mr Tip's photographs. Mr

19 Wesley and I tried that during the adjournment to see if we

20 couldn't get the area –

21 CHAIRPERSON: Well, if it is only one

22 road it doesn't really matter, but if you're going to go on

23 like this then – anyway, what he indicated was the road

24 which we're talking about earlier with the loop in it which

25 runs at right angles to the road that runs up from the

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1 bottom right-hand of the photograph, diagonally, slightly

2 to the left.

3 MR VAN AS: Could you please show us

4 where you parked your vehicle?

5 MR MOTLOGELOA: I parked my vehicle where

6 I'm indicating now.

7 CHAIRPERSON: What he indicates, as one

8 moves from the right-hand side of the photograph, at the

9 beginning of the loop, just in the area contained within

10 the loop, top right-hand corner of the loop actually,

11 that's where he stopped his car, his vehicle.

12 MR VAN AS: And in what direction was the

13 vehicle facing?

14 MR MOTLOGELOA: In that direction that

15 I'm indicating.

16 CHAIRPERSON: Facing the T-junction.

17 MR MOTLOGELOA: It is true.

18 MR VAN AS: And you say in your statement

19 that there was then a discussion between certain of the

20 security officers and Mr Mabelane. Can you please tell us

21 about that?

22 CHAIRPERSON: I'm sorry, before we get

23 there, Mr Van As, in his statement, para 10 he talks about

24 the superintendent was already at the side of the Wonderkop

25 Hostel. Who was the superintendent?

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1 MS MOSHOANE: Is it of the typed or

2 handwritten –

3 MR VAN AS: Typed statement.

4 MS MOSHOANE: Is it paragraph 10?

5 CHAIRPERSON: Page 2 of the bundle of

6 documents, paragraph 10 near the top of the page, the third

7 line says, "The superintendent was already at the side of

8 Wonderkop Hostel." Now to whom were you referring when you

9 spoke of the superintendent?

10 MR MOTLOGELOA: I was referring to Mr

11 Mabelane and Mr Fundi.

12 COMMISSIONER HEMRAJ: Who is the

13 superintendent then?

14 MR MOTLOGELOA: They are both

15 superintendents.

16 COMMISSIONER HEMRAJ: Yes, thank you.

17 CHAIRPERSON: So when you said "The

18 superintendent was already at the side of Wonderkop Hostel

19 at the time he summoned us for backup," which of the

20 superintendents were you referring to?

21 MR MOTLOGELOA: I am referring to both.

22 CHAIRPERSON: Yes, carry on, Mr Van As.

23 MR VAN AS: Thank you, Mr Chairperson.

24 And what did the superintendents, Mr Fundi and Mr Mabelane,

25 what did they say to you?

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1 MS MOSHOANE: Wearing? What were they
 2 wearing?
 3 MR VAN AS: What did they say to you?
 4 MS MOSHOANE: Oh, thank you.
 5 MR MOTLOGELOA: The person who spoke to
 6 me was Mr Mabelane. He gave me a message saying that it is
 7 alleged that there are people who are coming in the
 8 direction of NUM offices. I also could see that large
 9 crowd. Mr Mabelane then instructed me that we should block
 10 those people not to go to the NUM offices. We then turned
 11 back as I had met him. I met him at the hostel kitchen.
 12 MR VAN AS: Perhaps show us there.
 13 MS MOSHOANE: The witness is asking that
 14 the photo be moved more to the left.
 15 CHAIRPERSON: What he's indicating, I'm
 16 not sure how material it is, what he's indicating is that
 17 road that we talked about earlier which has the loop in it
 18 which runs from right to left across the photograph, he
 19 indicated that the place where he met Superintendent
 20 Mabelane was off the photograph but to the left.
 21 MR MOTLOGELOA: Confirmed, Chair. We
 22 drove a way back up to where we stopped [where the witness
 23 is now indicating]. I stopped the vehicle –
 24 CHAIRPERSON: What he's indicating is the
 25 position in the area in the loop that you indicated to us

Page 33214

1 earlier.
 2 MR MOTLOGELOA: Correct, Chair.
 3 MR VAN AS: And what did Mr Mabelane say
 4 to you?
 5 MR MOTLOGELOA: As I had earlier said, Mr
 6 Mabelane said we should not allow the mob to go towards NUM
 7 offices. He then said we should block them by placing our
 8 vehicles in a line. I then realised that that was not
 9 right to do that.
 10 COMMISSIONER HEMRAJ: In a line where?
 11 MR MOTLOGELOA: According to him when you
 12 look at the picture, that is Schagen, according to his
 13 request he wanted us to form a line there.
 14 CHAIRPERSON: The line you indicated was
 15 a line across the road, that's the road that runs from
 16 right to left on the photograph and more or less in line
 17 with the left-hand end of the loop that we can see there.
 18 MR MOTLOGELOA: Correct.
 19 CHAIRPERSON: Where were the people who
 20 were coming, I take it we can call them strikers for
 21 brevity purposes, where were they coming? Were they coming
 22 along that road from the left-hand side of the photograph?
 23 MR MOTLOGELOA: As I'm indicating now,
 24 yes Chair, from the –
 25 CHAIRPERSON: Coming from the left-hand

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1 side of the photograph along that road. Ja, okay.
 2 MR MOTLOGELOA: Correct, Chair.
 3 CHAIRPERSON: Now sorry, before you carry
 4 on, I notice from paragraph 10 that you've given names of
 5 people who were there, that's including Mr Mabelane and Mr
 6 Fundi, but of course not including you. So does that mean
 7 there were altogether 12 security people from Lonmin there
 8 at this spot at the time?
 9 MR MOTLOGELOA: I was also part of that.
 10 CHAIRPERSON: That's what I mean. So
 11 there were 12 people altogether. You've got 11 listed in
 12 the paragraph, including Mr Mabelane and Mr Fundi, but your
 13 name is not there. So am I correct in thinking there were
 14 12 of you there at the time?
 15 MR MOTLOGELOA: We were 12.
 16 CHAIRPERSON: And you go on to say in the
 17 next paragraph there were about 2 000 strikers approaching.
 18 Is that right? On your estimation.
 19 MR MOTLOGELOA: Yes, it was my
 20 estimation.
 21 CHAIRPERSON: Yes, so the 12 of you were
 22 expected to stop, block this approximately 2 000 strikers?
 23 MR MOTLOGELOA: It is true, yes.
 24 MR VAN AS: And there were two security
 25 officers to a vehicle. Am I correct? That was Mr Masibi's

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1 evidence yesterday.
 2 MR MOTLOGELOA: Correct.
 3 MR VAN AS: So Mr Mabelane wanted to
 4 block the road with six security vehicles?
 5 MR MOTLOGELOA: I agree according to the
 6 number that was there.
 7 MR VAN AS: And what did you think of
 8 this idea?
 9 MR MOTLOGELOA: I did not concur with it.
 10 MR VAN AS: Why not?
 11 MR MOTLOGELOA: I could see that it was
 12 risky.
 13 MR VAN AS: Carry on.
 14 MR MOTLOGELOA: I then decided that I am
 15 not going to stop there.
 16 MS MOSHOANE: Chair, the witness was
 17 indicating, if he could again indicate that "I will not
 18 stop there."
 19 CHAIRPERSON: What you're indicating, you
 20 wouldn't stop at the place you've indicated to us earlier,
 21 that's to say in the loop at the right-hand end of the
 22 loop. That's where you told us you had brought your
 23 vehicle to a stop.
 24 MR MOTLOGELOA: Correct.
 25 MR VAN AS: Alright, what did the 12

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1 security officers do then after you've now moved your
 2 vehicle away and parked it?
 3 MR MOTLOGELOA: As I was parking my car
 4 where I had earlier indicated, I then saw the other
 5 security officers [in the area that he has indicated, if he
 6 could again indicate, Chair]. I saw the other security
 7 officers in that area.
 8 CHAIRPERSON: If you can describe that
 9 area with more particularity, it's difficult to follow. Is
 10 it midway against the loop, that island in the loop, midway
 11 there? Is that right? Or was that across the road that we
 12 talked about?
 13 MR MOTLOGELOA: It was inside, not across
 14 the road.
 15 CHAIRPERSON: So it was actually inside
 16 the loop. Inside the loop, is that right?
 17 MR MOTLOGELOA: Inside the loop, Chair.
 18 CHAIRPERSON: Which way were you facing,
 19 or were the vehicles facing?
 20 MR MOTLOGELOA: My vehicle was standing
 21 where I had indicated, facing –
 22 CHAIRPERSON: Towards the intersection?
 23 MR MOTLOGELOA: Towards the intersection,
 24 correct.
 25 MR VAN AS: And what did the security

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1 officers do? Did they form a line then?
 2 MR MOTLOGELOA: Yes, they did.
 3 MR VAN AS: Can you show the Commission
 4 where was that line formed, on the photograph?
 5 MR MOTLOGELOA: If I remember it could be
 6 somewhere there, as I'm indicating, in the middle of the
 7 loop.
 8 CHAIRPERSON: In the middle of the island
 9 in the loop?
 10 MR MOTLOGELOA: The loop, inside the
 11 loop.
 12 CHAIRPERSON: Now your vehicle was facing
 13 towards the intersection, in other words with your
 14 vehicle's back towards the approaching strikers. Is that
 15 right?
 16 MR MOTLOGELOA: Correct, Chair.
 17 CHAIRPERSON: And the other five vehicles
 18 driven by your colleagues, were they also facing in the
 19 same direction?
 20 MR MOTLOGELOA: I start with the Polo
 21 vehicle.
 22 MS MOSHOANE: The witness is indicating
 23 where the Polo vehicle was standing.
 24 MR MOTLOGELOA: The car I mentioned, the
 25 Protea Coin one, stood where I indicated now.

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1 CHAIRPERSON: We'd better get this on the
 2 record one by one. The first vehicle you spoke about, that
 3 was in the middle of the island, the loop, above the white
 4 rectangle which we see on the photograph, close to the
 5 road, and the second vehicle referred to, the Protea one,
 6 that was on the right-hand, towards the right-hand top
 7 corner of the loop, or was that in the road itself?
 8 MR MOTLOGELOA: Yes, the Protea one was
 9 on the road.
 10 CHAIRPERSON: Alright, now the first one
 11 you spoke about, which way was that facing, the one in the
 12 middle of the loop close to the road above that white
 13 rectangle we see?
 14 MR MOTLOGELOA: The Polo was facing the
 15 intersection.
 16 CHAIRPERSON: Right, and the Protea
 17 vehicle, the second one you referred to, was that also
 18 facing the intersection?
 19 MR MOTLOGELOA: In the same direction,
 20 the intersection.
 21 CHAIRPERSON: That's accounted now for
 22 three vehicles. The other three?
 23 MR MOTLOGELOA: The other security
 24 vehicle was where I have indicated, he was also facing the
 25 intersection.

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1 CHAIRPERSON: Then you point to a spot
 2 near the right-hand, in the road but near the right-hand
 3 top corner of the loop.
 4 MR MOTLOGELOA: Correct, Chair.
 5 COMMISSIONER HEMRAJ: The reference to
 6 the Protea vehicle, is that an armoured vehicle?
 7 MR MOTLOGELOA: No, it was not an
 8 armoured vehicle but a soft-skin, it was an ordinary
 9 vehicle.
 10 CHAIRPERSON: Yes, and then there are two
 11 more vehicles. Yes, soft-skin is a word, expression they
 12 use for a vehicle that's not an armoured vehicle.
 13 MS MOSHOANE: Thank you, Chair.
 14 CHAIRPERSON: It can easily be penetrated
 15 by things that shouldn't be fired at it.
 16 MS MOSHOANE: Thank you, Chair.
 17 CHAIRPERSON: So you've accounted for
 18 four vehicles now. Tell us about the other two, if you
 19 can.
 20 [11:31] MR MOTLOGELOA: If I remember well there
 21 was another vehicle which had stopped where I am indicating
 22 now, but it was facing down.
 23 CHAIRPERSON: What you indicate is a spot
 24 to the right of the beginning of the loop as one approaches
 25 from the intersection side. To the right of that there

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1 appears to be bushes or trees and between the bushes and
 2 the, or the trees and the road here's an open space and
 3 that's where you're indicating this vehicle was. Is that
 4 correct?
 5 MR MOTLOGELOA: Correct, Chair.
 6 CHAIRPERSON: What sort of vehicle was
 7 that? Do you know?
 8 MR MOTLOGELOA: It was a normal sedan,
 9 the one similar to the ones we're using.
 10 CHAIRPERSON: The reason I ask you is
 11 according to the evidence Mr Fundi and Mr Mabelane, they
 12 were using a blue and white Nissan Livina. Is that the
 13 vehicle you're referring to, or was it another one?
 14 MR MOTLOGELOA: Yes, but I am coming to
 15 the Livina.
 16 CHAIRPERSON: The vehicle you're talking
 17 about now is not the vehicle that Mr Fundi and Mr Mabelane
 18 used, but was another vehicle, also a Nissan Livina. Do I
 19 understand correctly?
 20 MR MOTLOGELOA: No, Chair, it was not a
 21 Nissan Livina, it was a van.
 22 CHAIRPERSON: Oh, a van. A van, sorry.
 23 Okay, now the last vehicle I think is the Nissan Livina.
 24 Can you tell us where that was?
 25 MR MOTLOGELOA: If I remember well the

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1 Livina was parked where I'm indicating now, but it was
 2 facing down.
 3 CHAIRPERSON: What you are indicating is
 4 the roadway which is part of that loop, you're indicating a
 5 spot to the left of those bushes or trees that we referred
 6 to earlier and this vehicle you say was also pointing
 7 downwards, so that's toward the bottom of the photograph.
 8 MR MOTLOGELOA: Correct, Chair.
 9 MR VAN AS: Thank you, Mr Chairperson.
 10 Now you say the line's been formed and were you armed that
 11 day? Did you have a firearm with you?
 12 MR MOTLOGELOA: No, I was as I am seated
 13 here today.
 14 MR VAN AS: Alright, and what did you do
 15 at that stage?
 16 MR MOTLOGELOA: I alighted out of the
 17 vehicle. As I went back I then saw that my colleagues had
 18 already formed the line that I had mentioned. As I was
 19 walking towards them then I saw my co-colleague, the one I
 20 went with, it is Mr Dibakoane, he had placed his shotgun on
 21 the ground and his hands were up and he was surrendering.
 22 When I observed him it was as though he was trying to
 23 speak, or to address the group that was coming towards him.
 24 CHAIRPERSON: Where was the group, or
 25 rather more accurately, where were the front persons in the

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1 group at that stage?
 2 MR MOTLOGELOA: According to me they were
 3 walking where I am indicating now.
 4 CHAIRPERSON: If one looks at the
 5 photograph one sees to the left of that loop there's a
 6 building with a roof that's partly dark blue and partly
 7 light blue and if one goes below that building, across the
 8 road there are two objects, I don't know what, I can't see
 9 what they are from the photograph, one white and one brown,
 10 and just to the left of those two objects is the point that
 11 you've shown us.
 12 MR MOTLOGELOA: Chair, it is slightly to
 13 the back because the building you are referring to, the one
 14 with the blue colour, is the Schagen building.
 15 CHAIRPERSON: Thank you.
 16 MR VAN AS: So you say –
 17 CHAIRPERSON: What you showed us was
 18 below the Schagen building as one looks at the photograph,
 19 actually across the road and then there are objects, I
 20 don't know what they are – perhaps you can tell me – one
 21 which looks like a white circle, one below that a brown
 22 object. What are they? Do you know?
 23 MR MOTLOGELOA: Yes, Chair, but slightly
 24 behind those two –
 25 MR VAN AS: Are those the two you're

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1 referring to, Mr Chairperson?
 2 MR MOTLOGELOA: - brown and white
 3 objects.
 4 MR VAN AS: Are those the objects you're
 5 referring to on the –
 6 CHAIRPERSON: What are they?
 7 MS MOSHOANE: He says just slightly
 8 behind –
 9 CHAIRPERSON: Yes, but I'm just
 10 interested to know what they are. It's better to describe
 11 them as what they are rather than objects. If you don't
 12 know what they are we won't waste time.
 13 MR VAN AS: Do you know what those
 14 objects are, the ones I'm putting the strobe light on, Mr
 15 Motlogeloa?
 16 MR MOTLOGELOA: If I remember well there
 17 was a big boulder and a dustbin, a big rock.
 18 CHAIRPERSON: [Microphone off, inaudible]
 19 apparently rocks. Now the front members of the group of
 20 strikers, there were about 2 000 of them I think you said,
 21 the front ones were about there and Mr Dibakoane had put
 22 his shotgun on the ground and raised his hands in the air.
 23 MR MOTLOGELOA: Correct, Chair.
 24 CHAIRPERSON: And what did he do? Did he
 25 speak to the advancing strikers?

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1 MR MOTLOGELOA: As I walked towards him
 2 whilst he had lifted his hands up, according to what my
 3 observation I thought that he was trying to stop them from
 4 advancing towards him by that hand gesture. I then reached
 5 where he was. I tried to walk past him a bit. I also
 6 lifted my hands up, trying to stop those men who were
 7 advancing and also trying to find out what the problem was.
 8 As it was that last group that I spoke about were now in a
 9 crouching position, singing. Some were clashing their
 10 traditional weapons. They were waving, as I am doing now
 11 using my left hand, meaning get out of the way. I stood
 12 firmly where I was and said "Oh please men, what is the
 13 problem? What is going on?" It seemed like they were not
 14 hearing what I was saying as there was a large noise.
 15 As we were standing there and them advancing
 16 towards us in the crouching position, one person who was
 17 behind me on my right shot a rubber bullet towards the
 18 strikers, but I could not see who it was as I was facing
 19 the strikers as I stood. At that moment the men who were
 20 coming in a crouching position towards us, singing, then
 21 suddenly stood up and then ran very fast towards us. I
 22 also ran, got into the vehicle that I had mentioned and
 23 then closed the door.
 24 When I was driving there, as I had indicated, the
 25 car that I am talking about was trying to reverse from that

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1 spot. It nearly collided into me as I drove very fast
 2 towards the intersection.
 3 CHAIRPERSON: So the spot you pointed out
 4 is the spot in the road immediately above those bushes or
 5 trees which we can see, which you've referred to now.
 6 MR MOTLOGELOA: Correct, Chair.
 7 CHAIRPERSON: Now the strikers who were
 8 approaching you from whom you were escaping, they were
 9 singing, you told us. Did you tell us they were singing?
 10 You say in your statement they were singing. You did tell
 11 us they were singing. What were they singing? Could you
 12 hear?
 13 MR MOTLOGELOA: No, Chair, I just hear
 14 the sound of the singing. My intention was just to speak
 15 to them and ask them what the problem was.
 16 COMMISSIONER HEMRAJ: At the time you
 17 were speaking to them were you able to see whether they had
 18 anything in their possession?
 19 MR MOTLOGELOA: Yes, one could see they
 20 had dangerous weapons.
 21 CHAIRPERSON: What sort of dangerous
 22 weapons?
 23 MR MOTLOGELOA: Knobkieries, some had
 24 pangas, that is what I saw.
 25 CHAIRPERSON: Thank you. Yes, Mr Van As,

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1 would you like to carry on with the evidence?
 2 MR VAN AS: Thank you, Mr Chairperson.
 3 And how were they dressed? The strikers, what were they
 4 wearing?
 5 MR MOTLOGELOA: Some had blankets over
 6 their shoulders, some had red cloths around their heads.
 7 MR VAN AS: Right, and you testified that
 8 you climbed into your vehicle and you drove away. How far
 9 did you drive? Where did you stop? Can you perhaps show
 10 us on the photograph?
 11 MS MOSHOANE: The witness is indicating
 12 that "I drove and ran up to where I'm indicating now."
 13 CHAIRPERSON: You're indicating a spot on
 14 the, what I think is described as street B in the other
 15 photograph, a point, he turned right when he got to the
 16 intersection, went down the road and ended up on a point
 17 which is off the screen, to the far right.
 18 MR MOTLOGELOA: Correct, Chair.
 19 MR VAN AS: And what did you observe from
 20 that point?
 21 MR MOTLOGELOA: Before I could reach the
 22 spot that I had earlier indicated, as I was where I'm
 23 indicating now, as I was there the group, the big group
 24 then ran towards where I'm indicating now, up to where I'm
 25 indicating now.

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1 CHAIRPERSON: What you indicate now is a
 2 spot at the beginning of the loop as one approaches from
 3 the right-hand side in line with those bushes or trees that
 4 you've referred to, in the roadway there.
 5 MR MOTLOGELOA: Correct, Chair. That
 6 group had surrounded a vehicle which looked like the one Mr
 7 Mabelane and Fundi were driving, or were in. Some strikers
 8 ran past that car and started throwing stones at the cars
 9 which were driving away from that spot. We drove up to the
 10 spot that I indicated because we now realised that they
 11 were far from us.
 12 As I was standing there we then realised that Mr
 13 Mabelane's car was not amongst the cars which were where we
 14 were. That is when I took the phone, that is the company
 15 phone. I then phoned the control room. I then spoke to a
 16 female person. I then said the following to her, "Ma'am,
 17 where we are standing or parked, it's seemed like we are
 18 short of some, we are not – the people I could not see are
 19 Mr Mabelane and Mr Fundi. Please call them and find out
 20 their whereabouts." I stood and waited and she returned
 21 the call, the female.
 22 Before the female could call me back there was
 23 one police car that arrived at the scene. The police asked
 24 what was happening. We said to them "You can also see what
 25 is happening in front of you." The police also said, "No,

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1 we cannot approach the scene as the vehicle that we were
 2 using was a small vehicle.”
 3 The female then called me back and told me that
 4 she could not go through to Mr Mabelane’s phone, that is Mr
 5 Mabelane and Mr Fundi’s phone. As we were standing there
 6 we then saw a big smoke. The smoke was coming from where
 7 the Polo was parked, or standing.
 8 CHAIRPERSON: The Polo, was that the
 9 vehicle that Mr Masibi had been driving?
 10 MR MOTLOGELOA: Correct, Chair. When we
 11 saw the smoke then we realised that the Polo is on fire.
 12 [11:51] It seemed the smoke was coming from the car which
 13 was driven by Mr Mabelane and Fundi. It also seemed to be
 14 on fire. Some of the big mob that walked past in the
 15 direction of NUM offices, they proceeded in that direction,
 16 I did not know where they were going. They then came back
 17 and it happened as I’m indicating now that in that road
 18 which is named A there were many people there. Two cars
 19 were burning, one could see that they were on fire. As we
 20 were standing some of our colleagues then arrived. I stood
 21 where I was standing. After a while I realised that there
 22 were no longer too many people near where the two cars were
 23 burning. I then drove with Mr Dibakoane and drove back.
 24 When we arrived at the spot that I’m indicating now there
 25 were now too many police officers.

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1 CHAIRPERSON: That’s the spot near where
 2 the two vehicles were burning? You’ve indicated that to us
 3 before.
 4 MR MOTLOGELOA: Correct, Chair. We then
 5 parked our car where I am indicating.
 6 CHAIRPERSON: That’s further down near
 7 the – to the right at the bottom of the loop there.
 8 MR VAN AS: And were other members of
 9 Lonmin Security and the police there already when you
 10 arrived back there?
 11 MS MOSHOANE: Excuse me?
 12 MR VAN AS: Were there other members of
 13 Lonmin security and police already on the scene when you
 14 returned?
 15 MR MOTLOGELOA: Where I’m indicating now,
 16 that is where I met one of my colleagues.
 17 CHAIRPERSON: That was in an open space
 18 to the right of where you parked your vehicle.
 19 MR MOTLOGELOA: Where I am now
 20 indicating, that whole area were full of police.
 21 CHAIRPERSON: That whole area below those
 22 trees there that we can see, that we’ve spoken of before.
 23 MR MOTLOGELOA: Correct, Chair.
 24 CHAIRPERSON: Yes, Mr van As.
 25 MR VAN AS: Mr Chairperson, I’m not going

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1 to deal with the bodies and that. I think we can just move
 2 on to the Monday -
 3 CHAIRPERSON: Well, I suggest we move on
 4 to the Monday after we’ve taken tea. We’ll take a tea
 5 adjournment, 15 minutes. You won’t be finished by 1
 6 o’clock today, I suppose.
 7 MR VAN AS: I will. Thank you, Mr
 8 Chairperson.
 9 CHAIRPERSON: And the first cross-
 10 examiner is going to be – who’s the first cross-examiner
 11 going to be? Mr Mojapelo from the evidence leaders, and
 12 after that. How long are you going to be, Mr Mojapelo?
 13 MR MOJAPELO: I will be about 45 minutes.
 14 CHAIRPERSON: How long?
 15 MR MOJAPELO: 45 minutes.
 16 CHAIRPERSON: 45 minutes, so it sounds as
 17 if, if you’re lucky you’ll finish at 1 o’clock when we
 18 adjourn. You may actually have to continue on Monday
 19 morning, but let’s be optimistic and hope we can finish by
 20 1:00. Let’s take the adjournment now.
 21 [COMMISSION ADJOURNS COMMISSION RESUMES]
 22 [12:16] CHAIRPERSON: The Commission resumes.
 23 Please remind the witness he’s still under oath.
 24 AKANYANG JULIUS MOTLOGELOA: [s.u.o.
 25 through interpreter]

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1 MS MOSHOANE: Confirmed.
 2 CHAIRPERSON: Mr Van As.
 3 EXAMINATION BY MR VAN AS (CONTD.): Thank
 4 you, Mr Chairperson. Mr Motlogeloa, I now want to go to
 5 the Monday, the 13th of August 2012. You say at paragraph
 6 17 of your first statement, the typed one, paginated page 3
 7 of the bundle –
 8 MR MOTLOGELOA: It is before me.
 9 MR VAN AS: - that at about 10 o’clock on
 10 the 13th of August you went to K3 Shaft because a group of
 11 strikers were marching in the direction of K3 Shaft.
 12 MR MOTLOGELOA: Correct.
 13 MR VAN AS: Now we’ve got this on video
 14 footage, so we don’t need to go through it again. I please
 15 want you to just tell the Commission what role did you play
 16 when you were on the bridge and the strikers were in front
 17 of you, what did you do?
 18 MR MOTLOGELOA: When the group reached
 19 the bridge I stood on top of the bridge. I then spoke to
 20 them. I addressed them in the Fanagalo language which is
 21 used at the mine. I wanted to find out from the men where
 22 are you going to. The person who stood up and spoke to me
 23 was a man wearing a green blanket. He said that “We heard
 24 at the shaft that there are employees who are on duty. We
 25 wanted to go there and inform them that they should go home

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1 and stop work as we were not working." He then spoke in
 2 Zulu, saying "We are fighting for our rights." I then
 3 begged them and said "No, men, there are no people at the
 4 shaft, the people have gone home." I then used my hand,
 5 picked them up and said "Please go back to where you come
 6 from."
 7 The man that I was speaking to who had a green
 8 blanket on his shoulders, around his neck, we spoke for a
 9 long time and we understood each other, the language that
 10 we were using. He then said "We hear what you are saying,
 11 we understand. We will go back." He then begged me and
 12 said "Please go and get us management to come to the
 13 koppie, we want to speak to management." I then told him
 14 that I'm going to relay the message to the manager to come
 15 to the koppie. After we had reached an agreement they then
 16 turned back without any problem or trouble. They then went
 17 back.
 18 As we were standing there police vehicles
 19 arrived. We then pointed the direction in which the group
 20 went. I then left the area and went back to the office.
 21 MR VAN AS: You say in paragraph 19 of
 22 the statement that the protesters used the same movement of
 23 crawling tactics. What do you mean by that?
 24 MS MOSHOANE: In paragraph?
 25 MR VAN AS: Paragraph 19, it's on the

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1 screen there. First sentence in -
 2 MR MOTLOGELOA: That is how I had
 3 testified and explained when I started giving evidence that
 4 the saying that I said I will identify, I was referring to
 5 the men at the bridge whom I was speaking to.
 6 CHAIRPERSON: No, no, I think you
 7 misunderstood the question. Mr Van As' question related to
 8 the first sentence of paragraph 19. It is correct that
 9 when you spoke originally at the beginning of your evidence
 10 you told us that the second and third sentence of paragraph
 11 19 weren't correct, but you didn't say anything about the
 12 first sentence and Mr Van As wants you to elaborate on what
 13 you say in the first sentence of paragraph 19.
 14 MS MOSHOANE: Mr Chair, it is the
 15 interpreter's fault. I read the whole paragraph 19. My
 16 apologies. May I -
 17 CHAIRPERSON: That's alright, but you can
 18 explain to him then that he's only being asked about the
 19 first sentence.
 20 MS MOSHOANE: Thank you.
 21 CHAIRPERSON: We do know that he - he
 22 already explained to us that the second and third sentence
 23 weren't correct.
 24 MR MOTLOGELOA: I was mentioning the
 25 manner in which they were walking when I stop them, they

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1 were in a crouching position.
 2 MR VAN AS: At the bridge?
 3 MR MOTLOGELOA: At the bridge.
 4 MR VAN AS: And then if you go to
 5 paragraph 13, can you just please confirm that you also
 6 made that statement - page 13, I beg your pardon - page 13
 7 of the bundle, that's exhibit DDDD11.
 8 MS MOSHOANE: That's the typed part?
 9 MR VAN AS: Typed one. Is that your
 10 statement as well?
 11 MR MOTLOGELOA: Confirmed.
 12 MR VAN AS: And that's your signature?
 13 MR MOTLOGELOA: Correct.
 14 MR VAN AS: Then if you'll go on to the
 15 next document, please, that's exhibit AAAA40, it runs from
 16 pages 14 to 16.
 17 MS MOSHOANE: It is before the witness.
 18 MR VAN AS: Is that your ICAM statement?
 19 MR MOTLOGELOA: Correct.
 20 MR VAN AS: And can you confirm that you
 21 signed it on the 26th of September 2012 at the bottom of
 22 page 16?
 23 MR MOTLOGELOA: Confirmed.
 24 MR VAN AS: And do you still stand by the
 25 content of these two statements?

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1 MR MOTLOGELOA: I do, except the section
 2 where it says, it mentions firearms. I do not agree with
 3 that.
 4 MR VAN AS: Because you didn't have a
 5 firearm during this whole process. You've already told the
 6 Commission that.
 7 MR MOTLOGELOA: Correct.
 8 MR VAN AS: Those are my questions, thank
 9 you, Mr Chairperson.
 10 CHAIRPERSON: Thank you, Mr Van As. Mr
 11 Mojapelo?
 12 CROSS-EXAMINATION BY MR MOJAPELO: Thank
 13 you, Mr Chair. Mr Motlogeloa, can we start with your
 14 reason for not carrying a firearm.
 15 MR MOTLOGELOA: On the day, the Sunday, I
 16 took it for granted that there was not going to be a
 17 problem.
 18 MR MOJAPELO: Okay, can you explain to
 19 the Commission what is the normal equipment of a Lonmin
 20 security officer?
 21 MR MOTLOGELOA: A bulletproof vest, a
 22 hand radio, company cell phone and a firearm.
 23 MR MOJAPELO: What type of a firearm?
 24 MR MOTLOGELOA: A 9-millimetre firearm.
 25 MR MOJAPELO: Okay, can you also explain

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1 to us what does it mean when they say the security
 2 situation is Code Red?
 3 MR MOTLOGELOA: If I understand you well
 4 it means the situation is out of control, or not normal.
 5 MR MOJAPELO: Okay. If we start on the
 6 12th, the previous day, that is on the 11th you witnessed a
 7 commotion at the NUM offices and then you saw, you also saw
 8 two people who were allegedly shot during that commotion.
 9 Correct.
 10 MR MOJAPELO: What was the code of the
 11 security situation at Lonmin at that time?
 12 MR MOTLOGELOA: The condition was not
 13 conducive that day.
 14 MR MOJAPELO: Okay, am I correct that
 15 Lonmin Security uses colours, like the highest alert is
 16 Code Red?
 17 MR MOTLOGELOA: Yes, but on the day we
 18 never used codes, the colour codes.
 19 MR MOJAPELO: One last question on this.
 20 Using your word, you say the situation was, to paraphrase,
 21 it was not normal.
 22 MR MOTLOGELOA: Are you referring to
 23 Saturday? If so, yes.
 24 MR MOJAPELO: I'm referring to Saturday
 25 and – yes, yes, I'm referring to Saturday.

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1 MR MOTLOGELOA: It is true.
 2 MR MOJAPELO: Is there any change in the
 3 equipment that a security officer carries if the situation
 4 is not normal?
 5 MR MOTLOGELOA: We do not change the
 6 equipment.
 7 MR MOJAPELO: Okay, and –
 8 COMMISSIONER HEMRAJ: Sorry, do you book
 9 out a firearm every day or are you issued with a firearm
 10 that you keep on your person all the time?
 11 MR MOTLOGELOA: It is booked daily.
 12 MR MOJAPELO: Okay, thank you,
 13 Commissioner. On paragraph 6 of the typed statement, that
 14 is ZZ4, you mention the name there that informed you that
 15 the protesters were going, have decided to destroy and burn
 16 the NUM offices.
 17 MR MOTLOGELOA: It is my colleague I work
 18 with. He had already received the message before I did.
 19 He wanted to relay the message to me.
 20 MR MOJAPELO: Okay, the name that you
 21 mention there it's of a colleague?
 22 MR MOTLOGELOA: Correct.
 23 MR MOJAPELO: And then on the 12th, you
 24 say the same thing again on paragraph 11, that you received
 25 the message which is almost similar, that the protesters

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1 are going to march to burn the NUM offices.
 2 MR MOTLOGELOA: That message I received
 3 from the control room.
 4 MR MOJAPELO: You received that one from
 5 the control room?
 6 MR MOTLOGELOA: Correct.
 7 MR MOJAPELO: Okay, you did not receive
 8 any information from the strikers?
 9 MR MOTLOGELOA: Which day are you
 10 referring to?
 11 MR MOJAPELO: On the 11th and on the 12th.
 12 MR MOTLOGELOA: No, I did not receive any
 13 message from the strikers.
 14 MR MOJAPELO: Okay, during that week,
 15 from the 9th to the 16th, did you ever receive any message
 16 about the strike and the security state from the strikers?
 17 MR MOTLOGELOA: The only messages I
 18 receive are via the control room when I'm on duty.
 19 MR MOJAPELO: So the control room is the
 20 one that received the information that we can term
 21 intelligence?
 22 MR MOTLOGELOA: It seems so, because I
 23 only received message via the control room.
 24 MR MOJAPELO: Okay, that's fine. Can we
 25 go back to the 12th? We know that you had a radio on the

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1 12th and then you also received communications from amongst
 2 others, Dewald Louw.
 3 MR MOTLOGELOA: That is the message I
 4 overheard Dewald Louw relaying to the control room.
 5 MR MOJAPELO: Yes, what I want to
 6 establish before I ask you a question is that your radio
 7 was in good working order. Is that so?
 8 MR MOTLOGELOA: As I was at Eastern Plant
 9 there is a problem with receiving messages there, but I
 10 could hear the voice of the person who was relaying the
 11 message to the control room was Dewald.
 12 MR MOJAPELO: Yes, in your statement you
 13 mention that, the statement is AAAA40.
 14 [12:36] MR MOTLOGELOA: Yes, that is a message I
 15 overheard when Mr Dewald Louw relayed it to the control
 16 room.
 17 MR MOJAPELO: Did you receive any other
 18 from Dewald Louw over the radio after this message?
 19 MR MOTLOGELOA: None.
 20 MR MOJAPELO: Because in your statement
 21 the next thing that you mention, I'm still on AAAA40, the
 22 next thing that you mention after receiving a backup call
 23 is that you drove past - I'm paraphrasing - past the Andrew
 24 Saffy hostel and the next thing you saw the gatherers
 25 approaching the hostel boom gate.

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1 MR MOTLOGELOA: Correct.

2 MR MOJAPELO: You did not receive - when

3 I say you I mean you and your team now, you did not receive

4 any message from Dewald Louw about these people that you

5 are seeing now.

6 MR MOTLOGELOA: The only message I

7 received was from my colleague who was with me in the

8 vehicle, Mr Dibakoane.

9 MR MOJAPELO: What was the message?

10 MR MOTLOGELOA: Correction. I am saying

11 the message I received was when I was in the company of

12 Dibakoane. It was the message from Mr Dewald Louw which I

13 mentioned.

14 MR MOJAPELO: Okay, understood. Did you

15 observe any of your colleagues whether they had radio on

16 them on that day?

17 MR MOTLOGELOA: Most of our vehicles have

18 got radios and some use hand radio. The vehicle which we

19 were using had a radio.

20 MR MOJAPELO: Okay. So did any of your

21 colleagues mention any message from Dewald Louw except that

22 message that he was calling for backup when he was alerted?

23 MR MOTLOGELOA: No.

24 MR MOJAPELO: Was there – this question

25 that I'm asking you, I've been asked by the Mrs Mabelane

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1 team to ask you whether you and your colleagues received

2 any warning from Dewald Louw's team about the attitude of

3 the strikers?

4 MR MOTLOGELOA: No.

5 MR MOJAPELO: Okay. Can we go back on

6 the 12th now and talk about the attitude of the strikers

7 that you are facing now? You said, I'm paraphrasing, but

8 you said the protestors were crouching.

9 MR MOTLOGELOA: It is true.

10 MR MOJAPELO: I'm reading from AAAA40,

11 the last paragraph on page 1 there. You say "The crowd

12 started moving closer in a crouching position and a warning

13 shot was fired in a westerly direction. I do not know who

14 fired the warning shot."

15 MR MOTLOGELOA: It is true.

16 MR MOJAPELO: Then you said "The

17 gatherers then stood up and aggressively stormed in our

18 direction."

19 MR MOTLOGELOA: It is true.

20 MR MOJAPELO: As I understand you,

21 including your evidence today, these strikers were moving

22 slowly in a crouching position.

23 MR MOTLOGELOA: Correct.

24 MR MOJAPELO: They started running, I

25 meaning they started storming towards you after the shots

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1 were fired.

2 MR MOTLOGELOA: Correct.

3 MR MOJAPELO: Was it the first time that

4 you saw the strikers in this crouching position?

5 MR MOTLOGELOA: It was the first time.

6 MR MOJAPELO: Thank you. The Commission

7 has so far been told that evidence will be submitted that

8 this crouching is a sign of respect and submissiveness.

9 Reference to that, Mr Chair, will be day 142, page 15506,

10 line 1 to 6.

11 Okay, what I want to know from you is that when

12 you spoke to these strikers in a crouching position before

13 they could attack your team, firstly did they obey your

14 instructions?

15 MR MOTLOGELOA: They were still in a

16 crouching position, as I said.

17 MR MOJAPELO: Okay, what I want to know

18 is what was – your instruction was for them to disperse, if

19 I get it correctly.

20 MR MOTLOGELOA: No, not for them to

21 disperse, but what I wanted to know from them was what was

22 the problem, can we solve it, or resolve it.

23 MR MOJAPELO: Okay, the next thing I want

24 to know is did they show you respect?

25 MR MOTLOGELOA: No, they were just down

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1 in a crouching position, singing, advancing towards us.

2 MR MOJAPELO: Yes, I know they were

3 advancing towards us, but in your view were they showing

4 you respect?

5 MR MOTLOGELOA: It is difficult for me to

6 say because they were down in a crouching position,

7 advancing towards us.

8 MR MOJAPELO: Thank you, but the end

9 result of your interaction is that you ended up running

10 away.

11 MR MOTLOGELOA: I had earlier testified

12 that they stood and then they pounced aggressively towards

13 us.

14 MR MOJAPELO: And then you ran away.

15 MR MOTLOGELOA: Yes.

16 MR MOJAPELO: Okay, will I be wrong if I

17 conclude that they did not show you any respect and they

18 were not submissive to any of your instructions?

19 MR MOTLOGELOA: I would be lying because

20 they then advanced towards us aggressively. I did not know

21 then what their intention was.

22 MR MOJAPELO: Okay. On the statement

23 ZZ4, Mr Van As has just asked you that you said that you

24 witnessed them crouching the same way as they were

25 crouching the previous day, that is on the 13th.

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1 MR MOTLOGELOA: It is true. That is the
 2 manner in which they moved until they reached where we
 3 were.
 4 MR MOJAPELO: Okay. We did not see any
 5 footage of the 12th of their crouching, but I can beg for
 6 the Chairman's permission to show seven seconds of the
 7 crouching on the 16th and I want you to – on the 16th, I
 8 know you were not there on scene 1. I just want you to see
 9 the movement and –
 10 CHAIRPERSON: Okay, you've got my
 11 permission. What exhibit is it that you want to show him?
 12 MR MOJAPELO: It's JJJ194, the 16th.
 13 CHAIRPERSON: But from when to when on
 14 the clip do you want him to be shown?
 15 MR MOJAPELO: On 1 minute 3 seconds to 1
 16 minute 10 seconds.
 17 MS MOSHOANE: I was just advising the
 18 witness to look at the smaller TV screen. It is more
 19 clearer.
 20 MR MOJAPELO: I think that is enough.
 21 CHAIRPERSON: Did you see it clearly
 22 enough? Because you were looking on the big screen
 23 initially. It's only seven seconds, would you like to see
 24 it again and watch it on the small screen?
 25 MR MOTLOGELOA: I did see it, Chair.

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1 CHAIRPERSON: Alright. Well then you can
 2 answer the question Mr Mojapele asked you.
 3 MR MOJAPELO: Is this the position of the
 4 strikers, the crouching movement of the strikers that you
 5 saw on the 12th?
 6 MR MOTLOGELOA: The 12th was on a Sunday.
 7 MR MOJAPELO: On the Sunday before your
 8 colleagues –
 9 MR MOTLOGELOA: No, it was not the same.
 10 MR MOJAPELO: What is different between
 11 this one and that one?
 12 MR MOTLOGELOA: The manner in which they
 13 were crouching on the 12th, they were much more down than
 14 they are on the 16th.
 15 MR MOJAPELO: Okay, but they were still
 16 walking.
 17 MR MOTLOGELOA: Yes, as he is indicating.
 18 You could see the movement.
 19 MR MOJAPELO: Okay, the other thing is
 20 that it was playing in slow motion, but I wanted to ask you
 21 about the trees, but I don't think that it is relevant now.
 22 CHAIRPERSON: Sorry, let me ask a
 23 question that I should have asked earlier. The clip that
 24 he was shown, was that being shown in slow motion or was it
 25 normal speed? Because if it was in slow motion it might

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1 help if it's shown to him at normal speed. So perhaps he
 2 should look at it again.
 3 MR MOJAPELO: It was in slow motion.
 4 CHAIRPERSON: Sorry? You say it was in
 5 slow motion. Now would you please look at it again, look
 6 at the small screen, it's clearer I think. We'll see it
 7 from 1 minute 4 seconds through to 1 minute 10 seconds at a
 8 normal speed.
 9 MR MOTLOGELOA: I have observed it.
 10 MR MOJAPELO: Okay, comment?
 11 MR MOTLOGELOA: The Sunday movement was
 12 not the same as the one I see now.
 13 MR MOJAPELO: Okay.
 14 CHAIRPERSON: Do I understand you to say
 15 the difference was that they were crouching more on the
 16 Sunday than they were in that clip that you've just seen?
 17 In other words their heads were lower to the ground. Would
 18 that be the correct description of what the problem, or
 19 what the difference is?
 20 MR MOTLOGELOA: Chair, I can say they
 21 were like squatting, I use the term squatting. On the 16th
 22 it looked like they were standing.
 23 CHAIRPERSON: In other words they were
 24 bent forward more on the Sunday and their heads were, as it
 25 were, closer to the ground on the 16th according to the

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1 video clip you saw. Would that be correct?
 2 MR MOTLOGELOA: Yes, Chair, the movement
 3 was not the same as the movement on the 16th.
 4 CHAIRPERSON: I don't think you're going
 5 to finish today. You might want to show him on Monday when
 6 we resume the movement we saw on the video clips of what
 7 happened on the 13th when they stood up during the counting
 8 near the railway line. There was also a particular posture
 9 which may or may not be helpful to put to the witness.
 10 Obviously you're not ready to do that now, I take it. So
 11 we're going to stop in four minutes or thereabouts. So
 12 you're not going to finish your cross-examination it seems.
 13 Am I right?
 14 MR MOJAPELO: Yes, that's fine.
 15 CHAIRPERSON: Okay, well use up the time
 16 from now until 1 o'clock and then you'll resume on Monday
 17 morning.
 18 MR MOJAPELO: Okay, I can use the four
 19 minutes left now to ask you the questions that have been
 20 asked by Mrs Mabelane, which is they want to know about the
 21 equipment that the Lonmin has? That is during that August
 22 2012. They want to know whether you had at your disposal
 23 armoured vehicles.
 24 [12:55] MR MOTLOGELOA: At the site there were no
 25 armoured vehicles.

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1 MR MOJAPELO: Yes, at the site where you
 2 were during the attack there was no armoured vehicle. What
 3 I want to know is that at the time did Lonmin have armoured
 4 vehicles which can be readily available to the security
 5 officers?
 6 MR MOTLOGELOA: They were available.
 7 MR MOJAPELO: Okay, and –
 8 CHAIRPERSON: How many did they have?
 9 Can you tell us?
 10 MR MOTLOGELOA: I would be lying, Chair –
 11 CHAIRPERSON: No, well I wouldn't want
 12 you to –
 13 MR MOTLOGELOA: I do not remember the
 14 number.
 15 CHAIRPERSON: Yes, I wouldn't want you to
 16 lie, but if the need to use armoured vehicles had been
 17 present in the mind of those in charge on the morning of
 18 the 12th, would it have been possible to have got those
 19 armoured vehicles to the scene to help to deal with the
 20 situation that encountered you when you got there?
 21 MR MOTLOGELOA: Yes, Chair.
 22 MR MOJAPELO: Did any of you call for the
 23 armoured vehicles during that attack?
 24 MR MOTLOGELOA: Yes, I recall Mr Mabelane
 25 phoning the control room. He then complained that there

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1 past 9 on Monday morning when we reassemble.
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1 were no police officers available. He said that as he was
 2 walking past me, going into his vehicle.
 3 MR MOJAPELO: You did not hear him
 4 specifically calling for the armoured vehicles?
 5 MR MOTLOGELOA: No, I did not hear him
 6 asking for armoured vehicles except what I said earlier.
 7 MR MOJAPELO: Okay. The other thing they
 8 want to know is the training. They want to know whether
 9 your training, the training of Lonmin security personnel,
 10 especially those who were there on the 12th, did prepare you
 11 enough to deal with that kind of a conflict.
 12 MR MOTLOGELOA: It is true.
 13 MR MOJAPELO: Then the last question,
 14 what type of protective clothing did you have on that day
 15 on the 12th?
 16 MR MOTLOGELOA: I had a bulletproof vest
 17 on.
 18 MR MOJAPELO: Do you have shields and
 19 headgears, the things that protect people who deal with the
 20 strikers, on the head?
 21 MR MOTLOGELOA: They were available but
 22 we did not have them on that day.
 23 MR MOJAPELO: Mr Chair –
 24 CHAIRPERSON: I suggest we now adjourn at
 25 this stage. You can resume your cross-examination at half

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