

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 264

28 JULY 2014

PAGES 33252 TO 33376



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1 [PROCEEDINGS ON 28 JULY 2014]
 2 [09:35] CHAIRPERSON: The Commission resumes.
 3 Would you remind the witness that he's still under oath?
 4 AKANYANG JULIUS MOTLOGELOA: [s.u.o.
 5 through interpreter]
 6 MS MOSHWANE: Confirmed.
 7 CHAIRPERSON: Thank you. Mr Mojapelo?
 8 CROSS-EXAMINATION BY MR MOJAPELO (CONTD.):
 9 Thank you, Mr Chair. Good morning, Mr Motlogeloa.
 10 MR MOTLOGELOA: Good morning, sir.
 11 MR MOJAPELO: When we broke on Friday we
 12 were still dealing with the crouching moment of the
 13 strikers, do you still remember that?
 14 MR MOTLOGELOA: It is true.
 15 MR MOJAPELO: Yes, and this arises from
 16 paragraph 19 of your statement which is ZZ4 where you say,
 17 "The protesters used" – you're talking about the 13th now,
 18 on Monday, you say "The protesters used the same movement
 19 of crawling tactics as used on Sunday when they killed the
 20 two security officers."
 21 MR MOTLOGELOA: I remember that.
 22 MR MOJAPELO: What I want to do now is to
 23 show you footage of the 13th. Yes, can I ask the controller
 24 to play exhibit Z1 from 23 minutes 19 seconds?
 25 CHAIRPERSON: Do you want normal speed or

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1 slow motion?
 2 MR MOJAPELO: Even slow motion is fine.
 3 CHAIRPERSON: We've got slow motion –
 4 [VIDEO IS SHOWN]
 5 MR MOJAPELO: You can stop it now. Ja, I
 6 think –
 7 CHAIRPERSON: Stopped at 23:19.
 8 MR MOJAPELO: In fact, Mr Chair, it
 9 started at 23:19. It stopped at 23:25, I think.
 10 CHAIRPERSON: Alright, so we've now
 11 sorted out when it started and when it stopped, so we know
 12 exactly what clip has been shown. Thank you.
 13 MR MOJAPELO: Thank you, Mr Chair. Mr
 14 Motlogeloa, did you see the movement of the strikers?
 15 MR MOTLOGELOA: I did.
 16 MR MOJAPELO: Is this what you referred
 17 to in your paragraph 19 when you say, "The strikers used
 18 the same movement of crawling tactics as used on Sunday
 19 when they killed two security officers?"
 20 MR MOTLOGELOA: There is a slight
 21 difference.
 22 MR MOJAPELO: The difference is slight.
 23 MR MOTLOGELOA: It is so.
 24 MR MOJAPELO: But the crawling movement
 25 is more or less the same.

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1 MR MOTLOGELOA: The footage, they show
 2 them in almost a standing position but on Sunday they were
 3 more down, they were crawling more down.
 4 MR MOJAPELO: But in your statement that
 5 you drafted on the 17th of August when the events were still
 6 fresh in your mind, you said the protesters used the same
 7 movement.
 8 MR MOTLOGELOA: Yes, there is a
 9 difference because what I was saying there or what I am
 10 saying there, as I was addressing them at the bridge on
 11 Monday, as I was talking to them they sat where they were.
 12 That is what I am explaining.
 13 MR MOJAPELO: Okay. I must say I don't
 14 really understand your point.
 15 MR MOTLOGELOA: I am trying to explain
 16 that on Monday, as they were squatting, on Sunday when I go
 17 back I said they stormed us whilst they were from a
 18 squatting position. That is what I am saying.
 19 MR MOJAPELO: Okay but can we accept that
 20 your statement that you prepared on the 17th of August,
 21 paragraph 19, is still correct as I've read it to you?
 22 MR MOTLOGELOA: It is so but it can be
 23 the mistake of the person who was writing the statement but
 24 what happened is what I have explained to you.
 25 MR MOJAPELO: Okay, what I understand is

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1 that they used the same crawling movement but with a slight
 2 difference.
 3 MR MOTLOGELOA: This is what I explained.
 4 MR MOJAPELO: We spoke about the 11th,
 5 that is that day when you received in that the protesters
 6 were going to burn the NUM offices.
 7 MR MOTLOGELOA: It is true, sir.
 8 MR MOJAPELO: And then you said you
 9 received this message from a person that you've mentioned
 10 in paragraph 6, David who you say is your colleague.
 11 MR MOTLOGELOA: It is true.
 12 MR MOJAPELO: Where were you when you
 13 received this message?
 14 MR MOTLOGELOA: I was at Wonderkop
 15 Stadium.
 16 MR MOJAPELO: Were you in the company of
 17 the strikers? Were you at a distance from the strikers?
 18 MS MOSHWANE: Were you?
 19 MR MOTLOGELOA: Was he in the company of
 20 the strikers?
 21 MS MOSHWANE: Or?
 22 MR MOJAPELO: Or was he at a distance
 23 from the strikers?
 24 MR MOTLOGELOA: I was near where they
 25 were going to gather.

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1 MR MOJAPELO: After receiving this
 2 message what did you do?
 3 MR MOTLOGELOA: As I have explained, I
 4 drove away from them. I proceeded to the NUM offices. I
 5 then relayed the message that I had received.
 6 MR MOJAPELO: As you were moving from the
 7 stadium to the NUM offices, did you report your movements
 8 to the control room?
 9 MR MOTLOGELOA: I phoned the lady at the
 10 control room and I told her.
 11 MR MOJAPELO: You told her that you have
 12 information that the strikers were going to burn the NUM
 13 offices?
 14 MR MOTLOGELOA: No, the message was, I
 15 said that I was going to inform the men at the NUM office
 16 of what was going to happen.
 17 MR MOJAPELO: Yes, which is that the
 18 strikers are going to burn the NUM offices.
 19 MR MOTLOGELOA: The message was already
 20 from the control room. The control room, in other words,
 21 was aware of that. When I called the control room I was
 22 just telling them that I was proceeding to the NUM offices
 23 to go and ascertain if there are people there and to give
 24 them the message.
 25 MR MOJAPELO: Okay, thank you, I

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1 understand. You say the control room was already aware of
 2 what threatened to happen.
 3 MR MOJAPELO: Can you help us, if you
 4 can't you must just tell us, do you know why there is no
 5 video footage of this interaction of the strikers at NUM
 6 offices on the 11th?
 7 MR MOTLOGELOA: No, that is not my
 8 department.
 9 MR MOJAPELO: Okay, I accept. Okay,
 10 thank you. Mr Motlogeloa, whose department is that? Who
 11 will be able to assist the Commission with that question?
 12 MR MOTLOGELOA: My seniors are the ones
 13 who can explain.
 14 COMMISSIONER HEMRAJ: Do you perhaps
 15 know, sir, whether whatever is seen on the CCTV is
 16 automatically recorded?
 17 MR MOTLOGELOA: Referring to, if I may
 18 ask, m'lady?
 19 COMMISSIONER HEMRAJ: If any incident is
 20 seen on the CCTV camera in the control room, is that
 21 automatically recorded?
 22 MR MOTLOGELOA: It is true, yes.
 23 COMMISSIONER HEMRAJ: Thank you, Mr
 24 Motlogeloa.
 25 MR MOJAPELO: I'll move on to the 16th.

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1 Where were you on the 16th?
 2 MR MOTLOGELOA: What day was the 16th?
 3 MR MOJAPELO: The 16th August is Thursday,
 4 the day when there were 34 strikers who were shot by the
 5 police.
 6 MR MOTLOGELOA: I was on duty on that
 7 day.
 8 MR MOJAPELO: Can you tell us what was
 9 your involvement, what did you do on that day?
 10 MR MOTLOGELOA: I spent the day at the
 11 LPD offices. I was there next to the reception just
 12 waiting to assist people who came in and out.
 13 MR MOJAPELO: Were you there the whole
 14 day?
 15 MR MOTLOGELOA: No, I did not remain
 16 there for the day until late afternoon. I then proceeded
 17 to the Rowland Shaft crossing. It was around 15:00.
 18 MR MOJAPELO: At the Rowland Shaft
 19 crossing, were you able to hear the sounds of the volley of
 20 the gunfire that was –
 21 MR MOTLOGELOA: Yes, I heard the volley
 22 which came from the koppie.
 23 MR MOJAPELO: Thank you, and then what
 24 was your reaction?
 25 MR MOTLOGELOA: I remained where I was

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1 posted, waiting for the control room to give me orders as
 2 to where or what to do.
 3 MR MOJAPELO: Okay. Did the control room
 4 eventually give you orders?
 5 MR MOTLOGELOA: We were asked to
 6 accompany the ambulances which were summoned to go to the
 7 koppie to give assistance to those who were injured and we
 8 were also told to make sure that they arrived there safely.
 9 I accompanied one ambulance which went to the koppie and
 10 gave assistance to the injured. I then went together with
 11 the ambulance to Andrew Saffy Hospital.
 12 MR MOJAPELO: Okay, which koppie was
 13 this?
 14 MS MOSHWANE: He is now indicating with
 15 his right hand, he says the koppie was this side. There
 16 were many Nyalas around the koppie.
 17 MR MOJAPELO: That is the big koppie next
 18 to the kraal?
 19 MR MOTLOGELOA: Correct.
 20 CHAIRPERSON: Sorry to interrupt, was
 21 that the koppie that the strikers had been gathered on for
 22 some days or is that the big koppie behind that koppie?
 23 You were aware, were you, that there was a gathering of
 24 strikers for some days on a particular koppie?
 25 MR MOTLOGELOA: Yes, it's true.

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1 CHAIRPERSON: And then there was another
 2 koppie behind that koppie where some dead bodies, where
 3 some people were shot in the course of the Thursday
 4 afternoon and that koppie was surrounded by Nyalas. Now
 5 which koppie is the one you're talking about?
 6 [09:54] MR MOTLOGELOA: The koppie at which they
 7 normally gathered, the deep koppie.
 8 CHAIRPERSON: Yes, thank you, and when
 9 you left the LPD and went to the Rowland Shaft Crossing,
 10 you said that was about 4 o'clock. Were you instructed to
 11 go there?
 12 MR MOTLOGELOA: Yes, it was per order and
 13 the LPD was vacant. The people had already knocked off.
 14 CHAIRPERSON: Who gave you the order?
 15 MR MOTLOGELOA: It was directly from the
 16 control room.
 17 CHAIRPERSON: And what time did you get
 18 that instruction?
 19 MR MOTLOGELOA: It was as I explained
 20 earlier, Chair, around 16h00 because the shift ended at
 21 16h30 at LPD.
 22 CHAIRPERSON: And you told us that you
 23 heard the volley of gunfire.
 24 MR MOTLOGELOA: Correct.
 25 CHAIRPERSON: Were you already at the

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1 Rowland Shaft Crossing at that stage?
 2 MR MOTLOGELOA: Correct, Chair.
 3 CHAIRPERSON: So you got the instruction
 4 to go there before the shooting took place. Approximately
 5 how many minutes before you heard the shooting that you
 6 mentioned were you instructed to go to the Rowland Shaft
 7 Crossing?
 8 MR MOTLOGELOA: Could the question be
 9 repeated, Chair?
 10 CHAIRPERSON: Approximately how many
 11 minutes, what was the interval of time, the lapse of time
 12 between your getting the instruction to go to the Rowland
 13 Shaft Crossing and your going there and hearing this
 14 gunfire that you'd spoken about?
 15 MR MOTLOGELOA: I arrived at Rowland
 16 Crossing and waited. I am sure after 15 to 20 minutes when
 17 I heard the volley of fire.
 18 CHAIRPERSON: I see, thank you. And what
 19 exactly was the instruction you got in relation to your
 20 going to the Rowland Shaft Crossing? What were you told to
 21 do there?
 22 MR MOTLOGELOA: We were instructed to go
 23 and wait at the Rowland Shaft. There is a crossing at the
 24 Rowland Shaft, just to check the situation there that the
 25 traffic is well controlled and to see that there are no

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1 problems.
 2 CHAIRPERSON: And were there ambulances
 3 mentioned at that stage as well?
 4 MR MOTLOGELOA: No, Chair.
 5 CHAIRPERSON: When were you first told
 6 about the ambulances?
 7 MR MOTLOGELOA: Towards 17h00, that is
 8 when I received the message.
 9 CHAIRPERSON: That was after the
 10 shooting, in other words.
 11 MR MOTLOGELOA: Correct, Chair.
 12 CHAIRPERSON: So up to that time you were
 13 simply at the Rowland Shaft Crossing to make sure that the
 14 traffic was able to flow smoothly. Do I understand
 15 correctly?
 16 MR MOTLOGELOA: Correct, Chair.
 17 MR MOJAPELO: Thank you, Mr Chair. One
 18 last thing; you said, when I asked you about the lack of
 19 video footage you said it's not your department, we should
 20 ask the seniors. Are you able to assist us with a name of
 21 a person that we should ask?
 22 MR MOTLOGELOA: Our security section is a
 23 very big organisation. There are managers and those who
 24 are higher up; they're the ones who can assist.
 25 MR VAN AS: Mr Chairperson, if it will

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1 assist my learned friend, the next witness is Mr Botes and
 2 he was fairly intimately involved with the video cameras
 3 and that, so I'm sure he'll be able to assist in that
 4 regard.
 5 CHAIRPERSON: Yes, thank you very much.
 6 MR MOJAPELO: Thank you, Mr Chair, those
 7 are our questions.
 8 CHAIRPERSON: Thank you. Mr Wesley, who
 9 is next scheduled to cross-examine? Who is scheduled to
 10 cross-examine next?
 11 MR WESLEY: Chair, we've got – in the
 12 list it should be the NUM and Mrs Fundi.
 13 CHAIRPERSON: Mr Tip.
 14 CROSS-EXAMINATION BY MR TIP SC: Thank
 15 you, Mr Chair. Mr Motlogeloa, the topic that I'm mainly
 16 going to deal with is the events on the 11th of August 2012
 17 and I want to ask you this immediately; you were together
 18 with your fellow security officer, Sello Elias Dibakoane
 19 throughout that day, were you?
 20 MR MOTLOGELOA: It is true.
 21 MR TIP SC: And were you, the two of your
 22 regularly colleagues in the same vehicle doing patrols and
 23 the like?
 24 MR MOTLOGELOA: Yes, he is the one I work
 25 with all the time.

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1 MR TIP SC: And on the 11th and on other
 2 days the two of you would, I take it, discuss the
 3 information that you had received as to situations that you
 4 had to deal with and what you should do about it?
 5 MR MOTLOGELOA: It is true.
 6 MR TIP SC: Now it may be convenient for
 7 us to look at a statement that he has given and that is
 8 exhibit ZZ3, if we could have that on the screen, please.
 9 If we can go to paragraph 2.4, as I said, Mr Motlogeloa,
 10 it's really a convenient way I think of approaching it.
 11 There are a few paragraphs where Mr Dibakoane sets out the
 12 information that he had and I just want to confirm with you
 13 if it's correct that you had that information also.
 14 MR MOTLOGELOA: Are you referring to 2.4?
 15 MR TIP SC: I am. We'll begin there. If
 16 I may just read it, "On the evening of 10 August 2012 NUM
 17 stewards were escorting their members from the Wonderkop
 18 Hostel to the Rowland Shaft in order to report for duty."
 19 CHAIRPERSON: Mr Tip, I imagine 2.2 and
 20 2.3 are necessary to set the context, to explain the
 21 context of this action which is described in 2.4, is it
 22 not?
 23 MR TIP SC: Yes, thank you, Chair. I
 24 think my commitment to haste here perhaps made me short-
 25 circuit the process a bit. It will indeed –

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1 CHAIRPERSON: I don't want to discourage
 2 anybody from being hasty, but sometimes haste is bought at
 3 too high a price.
 4 MR TIP SC: Indeed, Mr Motlogeloa, to put
 5 it in proper context if you'll go with me to paragraph 2.2,
 6 which follows of course on 2.1 where there is reference to
 7 the fact that there was a decision by the RDOs and others
 8 to go on strike in support of a demand for R12 500. You've
 9 already described that you were aware of that, and then 2.2
 10 reads, "The National Union of Mineworkers (NUM) was not in
 11 support of the illegal strike and had called upon its
 12 members to report for duty." You were aware of that, I
 13 suppose?
 14 MR MOTLOGELOA: I do not concur with what
 15 2.2 says because I did not hear any word from NUM saying
 16 that their supporters are not joining illegal strike.
 17 MR TIP SC: Yes, it's not so much that
 18 NUM told you but that there was information to that effect.
 19 Did you not ever hear from anywhere that NUM had called
 20 upon its members to report for duty?
 21 MR MOTLOGELOA: I would not be telling
 22 the truth. I did not hear anyone saying NUM members must
 23 report for duty.
 24 MR TIP SC: Let us see if we can refresh
 25 your recollection and go on to 2.3. "The striking

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1 employees however attempted to intimidate workers who
 2 wanted to report for duty."
 3 MR MOTLOGELOA: I heard that regarding
 4 2.3 on Saturday when I reported for duty.
 5 MR TIP SC: So by early Saturday when you
 6 began your shift with Mr Dibakoane you were aware of
 7 reports to that effect. Is that correct?
 8 MR MOTLOGELOA: It is true.
 9 MR TIP SC: Mr Dibakoane goes on in
 10 paragraph 2.4 to say the following, "On the evening of 10
 11 August 2012 NUM stewards were escorting their members from
 12 the Wonderkop Hostel to the Rowland Shaft in order to
 13 report for duty."
 14 MR MOTLOGELOA: I said I heard that only
 15 on Saturday when I arrived on duty. That is what I had
 16 explained. I only heard about that when I reported for
 17 duty on Saturday.
 18 MR TIP SC: Yes, Mr Motlogeloa, I
 19 entirely understand that. When you and Mr Dibakoane came
 20 on duty early on the Saturday morning 11 August this was
 21 information that you then received and that you and he
 22 discussed, that you took account of.
 23 MR MOTLOGELOA: If that can be true,
 24 because a chat is a chat, it might have happened that we
 25 did talk about it.

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1 MR TIP SC: You know, Mr Motlogeloa, I'm
 2 not sure why you answer in that way. This was not a
 3 situation for casual chats, was it?
 4 MR MOTLOGELOA: I said we meet at work.
 5 When we receive the info it was just rumours that that had
 6 happened. We are on duty, we are together in the car.
 7 Whilst we are in the car we can start talking and say the
 8 info is that something of that sort happened last night.
 9 MR TIP SC: Yes. Well, was that among
 10 the topics that you and Mr Dibakoane discussed as you were
 11 preparing yourselves in relation to this march on 11
 12 August?
 13 MR MOTLOGELOA: Yes, as I had earlier
 14 testified we heard that last night, what is stipulated on
 15 2.2 and 2.3 happened and that the workers were going to
 16 gather.
 17 MR TIP SC: Let's move on and perhaps it
 18 will come back to you a bit more fully, Mr Motlogeloa. 2.5
 19 of Mr Dibakoane's statement he says, "I was informed by
 20 certain informants that there was much unhappiness about
 21 the NUM's intervention in this regard and that a mass
 22 meeting had been called for the next morning at 9 o'clock
 23 at the Wonderkop Stadium," and you understand that your
 24 colleague Mr Dibakoane is talking about the meeting that
 25 was in fact called that you attended on Saturday, 11

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1 August. Are you with me?
 2 MR MOTLOGELOA: It is true.
 3 [10:14] MR TIP SC: So you recall this
 4 information coming to your attention either beforehand or
 5 during your discussions with Mr Dibakoane on the Saturday
 6 morning.
 7 MR MOTLOGELOA: I said regarding 2.5 as
 8 Mr Tip referred, I disagree with Mr Dibakoane about certain
 9 informants, the words certain informants. I said I
 10 received the message through the control room when I went
 11 on duty as if referring to informant.
 12 MR TIP SC: Yes well he's describing his
 13 own sources. The point is that that bit of information was
 14 common to both you and Mr Dibakoane as at Saturday morning.
 15 MR MOTLOGELOA: I understand.
 16 MR TIP SC: Yes and you agree.
 17 MR MOTLOGELOA: I agree with you.
 18 MR TIP SC: And let us just touch on
 19 paragraph 2.6 please. I'm putting this paragraph to you on
 20 the same basis, Mr Motlogeloa, Mr Dibakoane says there "I
 21 was informed that the purpose of the aforesaid mass meeting
 22 was to confront and challenge the NUM at their offices
 23 situated close to the Wonderkop stadium as the NUM was not
 24 adhering to the 'no work embargo'."
 25 MR MOTLOGELOA: I agree with him there.

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1 MR TIP SC: And perhaps just to conclude
 2 this bit I put to you on the same basis paragraph 2.10 of
 3 Mr Dibakoane's statement which reads "At approximately 9:40
 4 both Mr Julius Motlogeloa, Julius and I were informed by an
 5 informant that it was the intention of the crowd to march
 6 down to the NUM offices and burn down the said offices."
 7 Can I just read the second sentence? "We were further
 8 informed that the motivating factor behind the crowd's
 9 decision can be attributed to the fact that the NUM was
 10 assisting its members to attend work the previous day."
 11 MR MOTLOGELOA: It is true.
 12 MR TIP SC: Thank you. Now, Mr
 13 Motlogeloa, the position then is that after some discussion
 14 I think between you and your colleague, Mr Dibakoane, you
 15 decided to drive ahead of the crowd, towards the NUM office
 16 to warn the NUM members there of the danger.
 17 MR MOTLOGELOA: It is true.
 18 MR TIP SC: Did you and Mr Dibakoane at
 19 any time discuss whether or not you shouldn't simply stop
 20 your vehicle in front of this crowd, get out and ask them
 21 to halt and to go back? Was that possible?
 22 MR MOTLOGELOA: It was not possible.
 23 MR TIP SC: What made that not possible?
 24 MR MOTLOGELOA: As we were standing where
 25 they had gathered the majority were still on the way to the

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1 meeting. We then decided that it was better for us to go
 2 and inform the people at the NUM offices of what was going
 3 to happen.
 4 MR TIP SC: Right, well suppose that you
 5 went to the NUM office, you spoke to Mr Setelele, we know
 6 that.
 7 MR MOTLOGELOA: It is true. I spoke to
 8 him.
 9 MR TIP SC: By then this crowd was moving
 10 along the road in the direction of the NUM office going to
 11 Wonderkop hostel area.
 12 MR MOTLOGELOA: It is possible that at
 13 the time I was still speaking to Mr Setelele. The crowd
 14 might have been on the way to the NUM offices.
 15 MR TIP SC: Well let's be a little more
 16 definite, Mr Motlogeloa. Let's go to your statement, ZZ4,
 17 paragraph 7. In paragraph 6 you deal with the fact that
 18 you had gone to speak to Mr Brown as you put it and you
 19 said there at the conclusion of paragraph 6 "I advised him
 20 to move out, vacate their offices to save their lives."
 21 MR MOTLOGELOA: It is true.
 22 MR TIP SC: Yes and as has already been
 23 remarked this morning by my learned friend, Mr Mojapelo,
 24 you made that statement on the 17th of August 2012 six days
 25 or so after the event, correct? Six days after the 11th of

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1 August.
 2 MR MOTLOGELOA: It is true.
 3 MR TIP SC: And I take it that the event
 4 and your impressions of them were still clear at that time
 5 when you made the statement.
 6 MR MOTLOGELOA: It can be true, although
 7 a lot happened at that time.
 8 MR TIP SC: Yes, Mr Motlogeloa, the point
 9 is that you saw fit in that statement to refer to the
 10 importance that the NUM people moved out in order to save
 11 their lives.
 12 MR MOTLOGELOA: It is true.
 13 MR TIP SC: Then let us get straight to
 14 the point. In your view at that time, having regard to
 15 what was going on, the lives of the NUM members at the NUM
 16 office were at risk because of the approaching strikers,
 17 correct?
 18 MR MOTLOGELOA: I was basing my facts on
 19 rumours. Hence my message was people are coming to burn
 20 NUM offices. If there are people at NUM offices that is
 21 the lives I was referring to and those are the people I had
 22 asked to vacate.
 23 MR TIP SC: At that stage you and Mr
 24 Dibakoane had already had sight yourselves of this group,
 25 this crowd, correct?

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1 MR MOTLOGELOA: It is true.
 2 MR TIP SC: You were no longer dependent
 3 on rumours, you could see for yourselves what the mood was
 4 of this crowd and what you, as a trained security officer,
 5 felt that you should be alert to.
 6 MR MOTLOGELOA: I was not looking at the
 7 huge crowd. What I was talking about is a person's life.
 8 MR TIP SC: Yes, what do you mean?
 9 MR MOTLOGELOA: I am answering to what
 10 you said that the action I took with Mr Dibakoane it was as
 11 if I was looking at the big crowd as they were going to the
 12 NUM offices that maybe the commotion or confusion that you
 13 are referring will happen. What I am talking was life.
 14 MR TIP SC: Yes, let us again get down to
 15 brass tacks, Mr Motlogeloa. You were there with your
 16 colleague and your duty is to see to the safety of all
 17 persons.
 18 MR MOTLOGELOA: It is true, that is our
 19 duty, a person's life comes first.
 20 MR TIP SC: Yes and you also have a duty
 21 to prevent wanton destruction of property on the Lonmin
 22 premises.
 23 MR MOTLOGELOA: It is true.
 24 MR TIP SC: And when you hear information
 25 that anybody is going to burn an office on Lonmin premises

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1 you have a duty to make sure that that does not happen.
 2 MR MOTLOGELOA: It is true, that is part
 3 of our duty.
 4 MR TIP SC: Yes, so let me get back to
 5 the theme that I raised a few minutes ago, you have
 6 information that this large group is coming the burn the
 7 NUM office.
 8 MR MOTLOGELOA: It is true.
 9 MR TIP SC: You are telling me that the
 10 response of you and your colleague was to go to the people
 11 who might be at the office and tell them to go away because
 12 the office was about to be burnt.
 13 MR MOTLOGELOA: No, that day when we were
 14 on duty it was not only myself and Mr Dibakoane.
 15 MR TIP SC: Well do tell us who else was
 16 there.
 17 MR MOTLOGELOA: There are names which I
 18 have listed FF –
 19 MS MOSHWANE: I was proceeding to
 20 interpret, he then interrupted me and said no that is not
 21 the names he was referring to. He had said page 2 and a
 22 list of names.
 23 MR TIP SC: Quite correct. You've come
 24 back to us, we are dealing just with the 11th. On the 11th
 25 is it correct that as far as Lonmin security personnel were

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1 concerned it was only you and Mr Dibakoane on the scene?
 2 MR MOTLOGELOA: No, it was not myself and
 3 Mr Dibakoane who were on duty on that day.
 4 MR TIP SC: At the scene I said.
 5 MR MOTLOGELOA: At Wonderkop stadium? Mr
 6 Tip.
 7 MR TIP SC: Sorry.
 8 MR MOTLOGELOA: At Wonderkop stadium?
 9 MR TIP SC: Yes, this event that we've
 10 been discussing for the last 45 minutes.
 11 MR MOTLOGELOA: Yes, it was not only me
 12 and Mr Dibakoane who were there on duty that day. But it
 13 is true that I went with Mr Dibakoane to NUM offices.
 14 MR TIP SC: Mr Motlogeloa, was there any
 15 other Lonmin security officer anywhere in the vicinity of
 16 Wonderkop stadium when you went tot the NUM office to warn
 17 them that their lives were at risk?
 18 MR MOTLOGELOA: No, we were in different
 19 cars, but where we had stopped I was with Mr Dibakoane
 20 inside our car.
 21 MR TIP SC: Can I take it that you and Mr
 22 Dibakoane were in the same car when you went to the NUM
 23 office to warn the people of their lives being at risk?
 24 MR MOTLOGELOA: It is true.
 25 MR TIP SC: Yes, now let me come back to

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1 my question. Are you telling us that when you knew of this
 2 intention to burn the NUM office your response was to go to
 3 the people at the NUM office and to tell them to go away,
 4 their office was to be burnt?
 5 [10:34] MR MOTLOGELOA: Yes, it is true. We saw
 6 it important that we should go to tell the men there what
 7 was going to happen, as the people who had gathered there,
 8 there were still more coming.
 9 MR TIP SC: Mr Motlogeloa, why didn't you
 10 decide to prevent the NUM from being burnt and instead of
 11 talking to the people at the NUM office, talk to the crowd
 12 and tell them to stop and go back?
 13 MR MOTLOGELOA: I hear what you are
 14 saying, sir, that we should have addressed the first group
 15 that was gathering. That possibility skipped our minds.
 16 We decided that we should go to the NUM offices.
 17 CHAIRPERSON: To the NUM offices, to tell
 18 the people at the NUM offices, didn't you?
 19 MR MOTLOGELOA: Indeed, Mr Chair.
 20 MS MOSHWANE: It is true, Mr Chair.
 21 CHAIRPERSON: Which meant, I take it,
 22 that you accepted that they might burn down the offices but
 23 it was more important that the lives of the NUM people
 24 should be saved?
 25 MR MOTLOGELOA: Though that their lives

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1 were in danger, we felt that life first.
 2 CHAIRPERSON: No, but –
 3 MR MOTLOGELOA: Life comes first.
 4 CHAIRPERSON: You see, in the statement
 5 that's been referred to, paragraph 6, you in fact say, "I
 6 advised him" – that's Mr Brown – "to move out/vacate the
 7 offices to save their lives." And in the previous sentence
 8 you say that you were going to the hospital and you
 9 informed Mr Brown that protesters were coming to destroy
 10 and burn the offices. So if it was true that the
 11 protesters were coming to destroy and burn the offices and
 12 if Mr Brown and his colleagues had decided to vacate the
 13 offices and left, that means the offices might well have
 14 been burnt down but at least their lives would have been
 15 saved.
 16 MS MOSHWANE: He earlier answered, it is
 17 true, Chair.
 18 MR TIP SC: You see, Mr Motlogeloa, I'm
 19 going to put it to you that it is just not, cannot be
 20 candid that it didn't occur to you and Mr Debukwane simply
 21 to stop the crowd and I will add to that, that it is
 22 apparent from everything that we have heard, it was not
 23 feasible for the two of you to stop that crowd. Do you
 24 agree?
 25 MR MOTLOGELOA: It is true.

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1 MR TIP SC: And that is because of the
 2 nature of the crowd and the level of the aggression that
 3 that crowd displayed.
 4 MR MOTLOGELOA: I cannot testify on
 5 behalf of their emotions. I said when I left where I had
 6 stopped, the majority of people were still coming to the
 7 meeting. I cannot say how their mood was when I left the
 8 scene.
 9 CHAIRPERSON: If it was correct though,
 10 if it was correct that they were going to burn down the
 11 offices - the aggression would be released as far as the
 12 offices were concerned, isn't that right?
 13 MR MOTLOGELOA: It is so but, Chair,
 14 those were still rumours.
 15 MR TIP SC: Mr Motlogeloa, we're going
 16 around in circles and I don't want to go around the circle
 17 again. I'm going to put to you a portion of the evidence
 18 of Mr Gegeleza who has testified in these proceedings.
 19 MR MOTLOGELOA: Thank you.
 20 MR TIP SC: I'll give you effect of it
 21 just for cross-reference, it's not necessary to put it up,
 22 I don't think. Day 39 page 4232 lines 12 to 19. Mr
 23 Gegeleza has told this Commission that the two of you, the
 24 two security officers from Lonmin came indeed to the NUM
 25 office and that on two, two occasions and that you had

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1 spoken to Mr Bongo.
 2 MR MOTLOGELOA: Mr Bongo spoke to Mr
 3 Debukwane.
 4 MR TIP SC: Yes, did you hear what was
 5 said?
 6 MR MOTLOGELOA: I was facing Mr Brown,
 7 that is the person I was speaking to.
 8 MR TIP SC: Mr Gegeleza says that Mr
 9 Bongo specifically asked whether the two of you could
 10 protect the NUM office and that he was told by you both
 11 that you were unable to do so.
 12 MR MOTLOGELOA: That is what Debukwane
 13 told me after speaking to Mr Bongo.
 14 MR TIP SC: Yes, so you heard that after.
 15 Then if I can just take you back to ZZ3, paragraph 2.18,
 16 this is of course Mr Debukwane's statement. He says, "Upon
 17 my request to Bongo to vacate the NUM office, he responded
 18 to me and asked whether Julius and I would remain behind
 19 and protect the NUM office." And as a matter of fact we
 20 know that you and Mr Debukwane did not remain behind in an
 21 attempt to protect the NUM office.
 22 MR MOTLOGELOA: It is true.
 23 MR TIP SC: And if you look at paragraph
 24 2.1, 2.21I, Mr Debukwane says the following and I'll ask
 25 you similarly whether you agree, "Both Julius and I decided

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1 to leave the area as it was unsafe for us to stay there."
 2 MR MOTLOGELOA: It is true.
 3 MR TIP SC: And what made it unsafe for
 4 you to stay there?
 5 MR MOTLOGELOA: Because of the rumours
 6 that were going around as to what was going to happen to
 7 the NUM offices. If you could look at what 2.19 says, "Mr
 8 Bongo - however, informed me that it was the intention to
 9 defend the NUM office against the crowd."
 10 MR TIP SC: Alright, well, you've read
 11 that out in English. Thank you very much and if I may,
 12 I'll just repeat it so that it's equally clear. 2.19 says,
 13 "Mr Debukwane: I did not answer Bongo. However, he
 14 informed me that it was their intention to defend the NUM
 15 office against the crowd," and then just to put you more
 16 full in the picture, I think you've already read it on
 17 screen, 2.20 says Mr Debukwane, "At this stage I could hear
 18 that the marching crowd was coming closer and I observed
 19 that the NUM members who were standing in and around the
 20 offices started congregating outside the NUM office gate."
 21 Correct?
 22 MR MOTLOGELOA: I agree.
 23 MR TIP SC: Yes, this was not a rumour
 24 about a possible crowd, this was a noisy, marching crowd
 25 that was coming closer, correct?

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1 MR MOTLOGELOA: When I started testifying
 2 I said there were rumours that something was going to
 3 happen.
 4 MR TIP SC: Yes and now the two Lonmin
 5 security men are there, it's no longer a rumour, there is a
 6 crowd. It's a large crowd, it's making a noise and it's
 7 approaching. Let's leave aside rumours and deal with the
 8 facts.
 9 MR MOTLOGELOA: I agree on that, Mr
 10 Chair.
 11 MR TIP SC: And it was the approaching
 12 crowd that made it unsafe for you and your colleague to
 13 stay there and that's why you got in the vehicle and drove
 14 away, correct?
 15 MR MOTLOGELOA: It is –
 16 CHAIRPERSON: It's now quarter to, it's
 17 quarter to 11. I was proposing to take the first comfort
 18 break round about now but I'm in your hands. When it's
 19 convenient just let me know and we'll do it. I don't want
 20 to interrupt your cross-examination if you want to carry on
 21 for a bit but you can tell me when it's appropriate for
 22 you to take the adjournment.
 23 MR TIP SC: This would be a perfectly
 24 appropriate stage. I don't have more to deal with, I don't
 25 have much time left to deal with it but it's a slightly

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1 different aspect. It would –
 2 CHAIRPERSON: Well, unless you want to
 3 deal with – unless you want to deal with 2.22, the first
 4 sentence of it before we take the adjournment but I'm in
 5 your hands.
 6 MR TIP SC: I'll deal with that in one,
 7 under one topic after tea, Chair.
 8 CHAIRPERSON: Alright, we'll take the
 9 first comfort break at this stage for quarter of an hour.
 10 [COMMISSION ADJOURNS COMMISSION RESUMES]
 11 [11:11] CHAIRPERSON: The Commission resumes.
 12 Please tell the witness he's still under oath. Mr Tip.
 13 AKANYANG JULIUS MOTLOGELOA: [s.u.o.
 14 through interpreter]
 15 CROSS-EXAMINATION BY MR TIP SC (CONTD.):
 16 Thank you, Mr Chair. Could we have ZZ3 back on the screen,
 17 please? Paragraph 2.21, Mr Motlogeloa, as you'll recall
 18 this is the statement of Mr Dibakoane. We have dealt with
 19 the first sentence in paragraph 2.21. I want to deal with
 20 the second one. After you and he had decided that it was
 21 unsafe he says, "We climbed into the security vehicle and
 22 drove to the open field next to the taxi rank." Do you
 23 recall that?
 24 MR MOTLOGELOA: I remember.
 25 MR TIP SC: Then he says in paragraph

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1 2.22, "From this position we could clearly see the
 2 advancing crowd, which consisted of approximately 3 000
 3 people."
 4 MR MOTLOGELOA: I remember.
 5 MR TIP SC: And obviously, Mr Motlogeloa,
 6 it's not now a matter of merely hearing a crowd, you see
 7 them, there they are and there are about 3 000 of them,
 8 correct?
 9 MR MOTLOGELOA: Correct.
 10 MR TIP SC: And 2.22 then goes on and
 11 says, "We knew that the NUM office was not vacant and we
 12 decided in a last-ditch attempt to persuade the NUM members
 13 to vacate the office, to drive back to the NUM office once
 14 again." Correct?
 15 MS MOSHOANE: It is 2.23 or 2.22?
 16 MR TIP SC: It's 2.22, yes, that I've
 17 just read, about the last-ditch attempt.
 18 MR MOTLOGELOA: It is correct.
 19 MR TIP SC: Alright, and again the –
 20 well, I won't repeat my previous questions. Let me move
 21 on. Mr Motlogeloa, what I want to do is very briefly in
 22 the few minutes that I still have is just to touch on the
 23 actual confrontation between strikers and the NUM members,
 24 and I'm going to essentially draw from evidence that Mr
 25 Gegeleza has given here. I'm going to paraphrase, Chair,

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1 but just for the record in case it may be convenient to
 2 have a cross-reference, day 39, page 4242, lines 10 to
 3 4243, line 9, and also at page 4245, line 8 to 18, and what
 4 I'm about to put will be found there.
 5 As I said, I'm going to paraphrase. First of all
 6 from what you could see, although you were a little
 7 distance away, is it so that the unfolding of this
 8 confrontation happened very fast?
 9 MR MOTLOGELOA: It is true.
 10 MR TIP SC: And the point of the
 11 confrontation was in the immediate vicinity of the NUM
 12 office.
 13 MR MOTLOGELOA: It is true, but at the
 14 back.
 15 MR TIP SC: Yes. There was a group of
 16 marchers at the back of the office and also at the front of
 17 the office. Do you remember seeing that?
 18 MR MOTLOGELOA: I saw those who were at
 19 the back of the offices.
 20 MR TIP SC: Alright, and Mr Gegeleza says
 21 that there was a moment when the approaching strikers
 22 paused when they saw the NUM members. Did you notice that?
 23 MR MOTLOGELOA: No, I did not see that.
 24 MR TIP SC: And he also says that there
 25 were some stones thrown by them and also some chants of

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1 "Here are the dogs." Did you perhaps notice any of that?
 2 MS MOSHOANE: Some chance of?
 3 MR TIP SC: "Here are the dogs."
 4 MS MOSHOANE: Pardon?
 5 MR TIP SC: Chant. Chants.
 6 CHAIRPERSON: They chanted.
 7 MS MOSHOANE: Oh, chanted.
 8 CHAIRPERSON: And what they chanted was,
 9 "Here are the dogs."
 10 MS MOSHOANE: Thank you. Chant, okay.
 11 MR MOTLOGELOA: Could you please repeat
 12 the stone part? Who were throwing stones?
 13 MR TIP SC: Yes, that some of the
 14 strikers threw some stones towards the NUM members.
 15 MR MOTLOGELOA: At the side in which I
 16 was, the ones who were coming from the right as I've
 17 indicated, did not throw stones.
 18 MR TIP SC: And he also says that the two
 19 groups then moved towards each other and there was more or
 20 less at that time some shots that were fired by certain of
 21 the NUM officials.
 22 MR MOTLOGELOA: I wanted to understand
 23 what I testified or said. The NUM officials were the ones
 24 I saw pouncing on the strikers.
 25 MR TIP SC: You didn't hear any gunshots?

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1 MR MOTLOGELOA: I would be lying, as the
 2 car windows were closed and I was busy communicating with
 3 the office, telling them what was happening.
 4 MR TIP SC: And what Mr Gegeleza says is
 5 that with the gunshots the strikers turned and began to run
 6 and the NUM members chased after them.
 7 MR MOTLOGELOA: It will be difficult for
 8 me to say that the reason they turned and ran was because
 9 of the gunshot.
 10 MR TIP SC: Yes, because you didn't hear
 11 the gunshots, so you can't connect anything.
 12 MR MOTLOGELOA: Yes.
 13 MR TIP SC: Alright, now I'm not going to
 14 dwell on that aspect because I want very briefly to –
 15 CHAIRPERSON: Mr Tip, you've got five
 16 minutes.
 17 MR TIP SC: Five minutes, thank you,
 18 Chair. Perhaps then let me just ask you one detail from
 19 XX2, if we could have that on screen, please. At page 24,
 20 please. Now Mr Motlogeloa, just to orient you, you're
 21 probably familiar with this document; it's an extract from
 22 the Lonmin occurrence book. You recognise it?
 23 MR MOTLOGELOA: It is true.
 24 MR TIP SC: And you will see, although
 25 this is not the point of the question, that round about 9

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1 o'clock Frans Mabelane reports a person was shot at the
 2 Wonderkop Hostel, Block C5, and at 8 minutes past 9 Frans
 3 also reported a person shot who was next to the Schagen
 4 offices.
 5 CHAIRPERSON: I think we've got the wrong
 6 page up on the screen. What we have on the screen at the
 7 moment is the section of the occurrence book relating to
 8 the 10th, that's the Friday, the 10th of August. You're
 9 referring to events on the 11th. It looks as if 24 may not
 10 be the right page.
 11 MR TIP SC: Well, my apologies. It's the
 12 pagination I've got, but –
 13 CHAIRPERSON: Yes, I know, I –
 14 MR TIP SC: - perhaps, in any event –
 15 forgive me, I wasn't looking at the screen probably. If we
 16 can move to the 11th, the entries for the 11th. I'm
 17 indebted Chair, to you for pointing this out.
 18 CHAIRPERSON: I think the 11th would be, I
 19 suspect it's page 25 or 26. Just scroll down a bit and see
 20 where we got. You want the entries of about 9 o'clock in
 21 the morning, do you not?
 22 MR TIP SC: That's correct. On the 11th.
 23 CHAIRPERSON: Could we please scroll down
 24 to the 11th? It's probably the next page.
 25 MR TIP SC: Can we scroll down? Yes,

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1 that's –
 2 CHAIRPERSON: There we've got it.
 3 MR TIP SC: That's it.
 4 CHAIRPERSON: It's the 9 o'clock entry is
 5 the first one you read, I think, on the 11th of August.
 6 It's page 26 actually –
 7 MR TIP SC: 26, thank you, Chair.
 8 CHAIRPERSON: - of the exhibit as on the
 9 screen.
 10 MR TIP SC: Alright, so you see those two
 11 entries?
 12 MR MOTLOGELOA: That's correct.
 13 MR TIP SC: So the incident is over by
 14 the time that those entries are made.
 15 MR MOTLOGELOA: It is true.
 16 MR TIP SC: Then you will see a largish
 17 entry just below that against the time of 9:43.
 18 MR MOTLOGELOA: I see that.
 19 MR TIP SC: Which you'll see at the top
 20 is a short debrief by GS, who I think is probably Mr Graeme
 21 Sinclair.
 22 MR MOTLOGELOA: Correct.
 23 MR TIP SC: And then the second-last line
 24 in that large block you'll see an entry which reads, "PW
 25 instructed to put in place a no-go area between where NUM

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1 members stand and the mob at Wonderkop itself.”

2 MR MOTLOGELOA: I see that point.

3 MR TIP SC: And PW I think is probably a

4 reference to Mr Botha?

5 MR MOTLOGELOA: It is true.

6 MR TIP SC: Now the only question I want

7 to ask you is this, Mr Motlogeloa; did you at any time

8 after this incident in the remaining course of the 11th of

9 January or going on to the 12th of January –

10 CHAIRPERSON: I think it's August you're

11 talking about.

12 MR TIP SC: I beg your pardon. My

13 apologies, sorry. You looked surprise, with good reason,

14 Chair. August. The 11th of August, the remaining part of

15 11th August and going in to the 12th of August when you were

16 on duty again, did you ever hear anything about a no-go

17 area being established?

18 MR MOTLOGELOA: No, I did not hear that.

19 MR TIP SC: Alright, then finally and

20 briefly, on the 12th of August you've described that you

21 went on duty without a firearm because, as you put it, you

22 were expecting nothing extraordinary to happen on that day,

23 correct?

24 MR MOTLOGELOA: Correct.

25 MR TIP SC: And is it fair to conclude

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1 from that that there was no briefing session that you

2 attended or for you and your colleagues in which the

3 possibility of another march to the NUM office by strikers

4 was raised or discussed?

5 MR MOTLOGELOA: I agree with that.

6 MR TIP SC: Just one detail; when you go

7 on shift is it the ordinary practice that you carry a

8 shotgun, or is that done only when there's a particular

9 need perceived or otherwise?

10 MR MOTLOGELOA: When we report on duty we

11 take firearms which we book out.

12 MR TIP SC: And is it ordinarily so that

13 you would have a shotgun booked out to you when you go on

14 shift?

15 MR MOTLOGELOA: It is true.

16 MR TIP SC: But on the 12th of August 2012

17 you didn't take a shotgun.

18 MR MOTLOGELOA: It is true.

19 MR TIP SC: Is it up to you to decide

20 whether or not to take a shotgun?

21 MR MOTLOGELOA: On that day I decided.

22 MR TIP SC: And I think it follows from

23 the question I put, there was also as at the time that you

24 joined your colleagues, Mr Mabelane, Mr Fundi and the

25 others, that when you arrived at the scene there had been

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1 no planning put in place to deal with it as far as your

2 knowledge went?

3 MR MOTLOGELOA: It is true.

4 MR TIP SC: Thank you, Chair, those are

5 the questions.

6 CHAIRPERSON: Thank you, Mr Tip. Mr

7 Semenya, are you next?

8 CROSS-EXAMINATION BY MR SEMENYA SC:

9 Thank you, Chair. 12 August 2012 –

10 MR MOTLOGELOA: Yes, Mr Semenya.

11 MR SEMENYA SC: Your life and that of

12 your fellow security members of Lonmin was safe because you

13 ran away.

14 MR MOTLOGELOA: It is true, Mr Semenya.

15 MR SEMENYA SC: That's the only question

16 I have for this witness, Chair.

17 COMMISSIONER HEMRAJ: At the time you

18 became aware of the danger to the NUM office did you inform

19 the control room and did you inform your other colleagues

20 who were with you at the stadium?

21 [11:31] MR MOTLOGELOA: I spoke to the lady at

22 the control room and told her of our intention.

23 COMMISSIONER HEMRAJ: And did any of your

24 other colleagues accompany you to the scene at the NUM

25 offices?

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1 MR MOTLOGELOA: No, none followed.

2 COMMISSIONER HEMRAJ: Yes, thank you.

3 CHAIRPERSON: Thank you, Mr Semenya, for

4 dealing with your cross-examination so shortly. I trust

5 you've set an example which Mr Mpofu will follow.

6 MR MPOFU: Yes, Chairperson. Well,

7 firstly, I'm going to take Mr Semenya's time.

8 CHAIRPERSON: I didn't say that.

9 CROSS-EXAMINATION BY MR MPOFU: Thank

10 you, Chairperson. Good morning, Mr Motlogeloa.

11 MR MOTLOGELOA: Good morning, Mr Mpofu.

12 MR MPOFU: Yes, you've made it clear that

13 your organisation works in a hierarchical way, even though

14 it's not like the army or the police but you still follow

15 orders, correct?

16 MR MPOFU: And you've said, for example,

17 that on the 16th you stayed put where you were because you

18 were waiting for the next orders.

19 MR MOTLOGELOA: It is true, Mr Mpofu.

20 MR MPOFU: Yes. Now on the 12th of August

21 among your group, who gave the order to shoot?

22 MR MOTLOGELOA: I heard rumours that Mr

23 Mabelane gave the order to shoot.

24 MR MPOFU: Yes, but at least one thing

25 you can confirm is that the first shot came from your side,

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1 from the security guards.
 2 MR MOTLOGELOA: The shooting I am talking
 3 about, Mr MPOFU, is when I arrived and my other colleagues
 4 had already formed that line.
 5 MR MPOFU: Yes, yes, I think we are
 6 talking about the same place – that shot came from the
 7 security guards.
 8 MR MOTLOGELOA: Yes, it is true. The
 9 shot came whilst I was busy doing what I was told.
 10 MR MPOFU: Okay. Now the next issue I
 11 want to deal with is what, there seemed to be also some
 12 form of – you yourselves, like the police, work with
 13 information and intelligence although sometimes that word
 14 is not appropriate but you work in the same way of getting
 15 things like police intelligence.
 16 MR MOTLOGELOA: It is true, Mr MPOFU.
 17 MR MPOFU: And that is why, for example,
 18 now and again in your statement you say you relied on
 19 informants.
 20 MR MOTLOGELOA: Mr MPOFU, I have
 21 testified that the info that I received was from the
 22 control room informing me what was going to happen or what
 23 to do.
 24 MR MPOFU: Yes. No, that's how I had
 25 understood you properly but maybe that will give you a

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1 chance to clarify. When Mr Tip put to you, for example,
 2 ZZ3, 2.10 which says that, where Mr Debukwane says – maybe
 3 we can put it up and this is just an example, he says, "At
 4 approximately 9:40 both Mr Julius Motlogeloa and I were
 5 informed by an informant that it was the intention of the
 6 crowd to march down to the NUM offices and burn down the
 7 said offices." You agreed with Mr Tip that that was a
 8 correct statement so I just wanted you to say what was your
 9 experience, where did you get that information?
 10 MR MOTLOGELOA: Mr MPOFU, if you could go
 11 back a bit, I have said the word or the terms that Mr
 12 Debukwane – I did not mention that.
 13 MR MPOFU: Yes, no, that's true. I just
 14 wanted to clarify because there seemed to be a
 15 contradiction. So you yourself, your version is that that
 16 information came from the control room.
 17 MR MOTLOGELOA: It is true, Mr MPOFU.
 18 MR MPOFU: And it would be true to say in
 19 this kind of situation that we're dealing with here, there
 20 are always rumours flying around. Some of them are true,
 21 some of them turn out not to be true.
 22 MR MOTLOGELOA: Yes, I agree with you
 23 there.
 24 MR MPOFU: Yes, but in fairness to
 25 yourself, even if the rumour turns out to be true or false,

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1 you can't take chances. If someone, if there's a rumour
 2 that says offices are going to be burned you have to take
 3 some precautionary measures in case the rumour is true,
 4 isn't that correct?
 5 MR MOTLOGELOA: It is true.
 6 MR MPOFU: It doesn't mean you yourself
 7 believe the rumour. It's just that as a good security
 8 guard you have to take precautions.
 9 MR MOTLOGELOA: It is true, Mr MPOFU.
 10 MR MPOFU: Yes and I think there was,
 11 around this particular rumour of what was likely to happen
 12 there was some cross-purpose between you and Mr Tip, so I
 13 just want to clarify this. The rumour was not that there's
 14 a crowd of 3 000 people. That was a fact, you saw it
 15 yourself. That was not a rumour, correct?
 16 MR MOTLOGELOA: It is possible that they
 17 were 3 000 because it was a large crowd.
 18 MR MPOFU: Yes. No, that's what I'm
 19 saying. Irrespective of the number, it was not a rumour
 20 that there's a large crowd coming, that you saw yourself.
 21 MR MOTLOGELOA: It is true, Mr MPOFU.
 22 MR MPOFU: But the rumour was what they
 23 were going to do at the NUM offices.
 24 MR MOTLOGELOA: It is true, sir.
 25 MR MPOFU: Yes. And you don't know the

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1 reliability of the original source of that rumour.
 2 MR MOTLOGELOA: It is true.
 3 MR MPOFU: And in fact the evidence or at
 4 least the surrounding evidence would seem to suggest that
 5 that rumour was false. It was the wrong intelligence or it
 6 was the opposite of intelligence.
 7 MR VAN AS: Perhaps my learned friend
 8 must lay a basis for that assertion.
 9 MR MPOFU: Fair enough. You know that
 10 for example on the 12th of September there was a similar
 11 rumour that the offices were going to be burnt, correct?
 12 CHAIRPERSON: September or August?
 13 MR MPOFU: I'm sorry, I'm –
 14 CHAIRPERSON: At least you're closer to
 15 August than Mr Tip was but –
 16 MR MPOFU: At least I'm better with
 17 September, Chairperson. Okay, on the 12th of August there
 18 was a similar rumour that the NUM offices were going to be
 19 burnt, do you remember that?
 20 MR MOTLOGELOA: Ja, the 12th was a Sunday,
 21 yes. It is true.
 22 MR MPOFU: But in actual fact those
 23 offices were not burnt?
 24 MR MOTLOGELOA: It is true, Mr MPOFU.
 25 MR MPOFU: And in actual fact the

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1 security guards, despite their best efforts, had failed to
 2 stop the crowd from reaching the NUM offices on the 12th.
 3 MR MOTLOGELOA: It is true.
 4 MR MPOFU: And their own evidence is that
 5 they actually went there and they turned back because there
 6 was no-one.
 7 MR MOTLOGELOA: I did not know about
 8 that.
 9 MR MPOFU: Yes, well, even –
 10 CHAIRPERSON: Mr Mpofu -
 11 MR MPOFU: Sorry, Chairperson.
 12 CHAIRPERSON: We did an inspection in
 13 loco –
 14 MR MPOFU: I was coming to that.
 15 CHAIRPERSON: Oh, okay.
 16 MR MPOFU: Yes. And even ourselves with
 17 the Chairperson and some of the people who are here, a few
 18 months later which was the 1st of October 2012, we went
 19 there and those offices had not been burnt.
 20 MR MOTLOGELOA: It is true, sir.
 21 MR MPOFU: So it's highly probable or
 22 possible –
 23 CHAIRPERSON: Mr Mpofu, that's not all we
 24 saw at the inspection. What we also saw at the inspection
 25 was, where they were shown to us by the gentleman who was

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1 later murdered, that – he was going to be a witness – that
 2 attempts had apparently been made, this is what we were
 3 shown, that attempts had been made to gain access to the
 4 building. There were marks in the vicinity of the windows
 5 and so on. So it's not just that we saw the office
 6 buildings standing in their pristine condition.
 7 MR MPOFU: That's not what I said,
 8 Chairperson I said it was not burnt. Was it burnt? Maybe
 9 that I –
 10 CHAIRPERSON: No – no, I was adding
 11 something. I wasn't quarrelling with what you said.
 12 MR MPOFU: Oh.
 13 CHAIRPERSON: I was dealing with an
 14 omission.
 15 MR MPOFU: Okay, thank you. Yes, so when
 16 we went on the – the offices had still not been burnt. I
 17 think you have already agreed to that, Mr –
 18 MR MOTLOGELOA: It is true, Mr Mpofu.
 19 MR MPOFU: Yes. And therefore we are
 20 going to argue at the end that the probability is that the
 21 rumour even on the 11th was false because here it happened
 22 on the 12th when the crowd was reportedly even angrier than
 23 it was the day before, that they reached the offices and
 24 they did not burn the offices, despite the rumour.
 25 MR MOTLOGELOA: Mr Mpofu, I'm not

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1 answering on the part of rumours but yes, the offices were
 2 not burnt.
 3 MR MPOFU: Yes, that's correct. That's
 4 good enough, thank you. Now let's go to – or let me just
 5 ask you one question. Do you as security, like the police,
 6 do you also work using paid informers?
 7 MR MOTLOGELOA: No, Mr Mpofu, I'm just a
 8 [vernacular] meaning an ordinary employee.
 9 MR MPOFU: Okay, thank you. I
 10 understand, yes. You are saying you are just a foot
 11 soldier, yes. So if there was that system of paid
 12 informers it would be for the people senior to you.
 13 MR MOTLOGELOA: It is true, sir.
 14 MR MPOFU: Okay. Now let's move to the
 15 11th. Your information is that – or rather let me put it
 16 this way. The information that is before the Commission is
 17 that before that morning there was a group of armed NUM
 18 people allegedly escorting people to work. You are aware
 19 of that?
 20 MR MOTLOGELOA: Yes, Mr Mpofu, I heard
 21 that when I reported on duty that day.
 22 MR MPOFU: And – okay fine, I accept
 23 that. That's when you heard from other people but when you
 24 got to the NUM offices there were about 30 people armed
 25 with all sorts of, an assortment of dangerous weapons,

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1 correct?
 2 MR MOTLOGELOA: Yes, it is true. What I
 3 saw were knobkerries.
 4 MR MPOFU: Yes, you didn't see the guns
 5 that they were carrying.
 6 MR MOTLOGELOA: No, I did not see a gun.
 7 MR MPOFU: Alright. You didn't hear of
 8 any rumours, as you would put it, of the police trying to
 9 disarm those armour wielding NUM people? I'm now talking
 10 about the ones who were, quote/unquote, "escorting people
 11 to work."
 12 MR MOTLOGELOA: No, Mr Mpofu, I did not
 13 hear that.
 14 MR MPOFU: Yes. And your assessment of
 15 the situation was that the looming danger will be averted
 16 by the NUM people vacating the offices, correct?
 17 [11:51] MR MOTLOGELOA: Yes, the rumours were
 18 they were going to burn NUM offices, but no mention of
 19 lives.
 20 MR MPOFU: Yes, okay thank you. Well,
 21 you've almost answered – a lot was being made about these
 22 few words in paragraph 6 of your statement that you wanted
 23 them to vacate in order to save lives. That's what I was
 24 going to clarify. You've heard nothing about attacks to
 25 people themselves?

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1 MR MOTLOGELOA: It is true.
 2 MS MOSHOANE: Mr Mpfu, could you please
 3 repeat the last part?
 4 MR MPOFU: Yes, okay, I'll ask it
 5 differently. I think you explained to Mr Tip – I just want
 6 you to confirm that – that what you were saying was there's
 7 a rumour about burning offices.
 8 MR MOTLOGELOA: It is true, Mr Mpfu.
 9 MR MPOFU: And obviously if someone is
 10 inside a burning office then their life will be threatened.
 11 MR MOTLOGELOA: It is true, Mr Mpfu.
 12 MR MPOFU: And that's what you meant by
 13 saying they must save their lives.
 14 MR MOTLOGELOA: It is true, Sir.
 15 MR MPOFU: Thank you. Now had Mr Brown
 16 or Mr Setelele and the others who were there heeded your
 17 advice, then that commotion or shooting incident would have
 18 been avoided, correct?
 19 MR MOTLOGELOA: I would not say the
 20 shooting could not have occurred because what I said the
 21 rumours were here are people who are said to be coming to
 22 burn NUM offices. That is why we said people should vacate
 23 the NUM offices so that when the offices are burnt lives
 24 must not be lost.
 25 MR MPOFU: Yes, no I understand that, but

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1 I'm saying that when you were advising them to vacate the
 2 offices and live basically, they refused and said they were
 3 going to defend their offices, correct?
 4 MR MOTLOGELOA: Yes, that is what I heard
 5 from Mr Dibakoane whilst he was speaking to the person he
 6 was speaking to that that was what was said.
 7 MR MPOFU: Yes, and that's why for
 8 example you – I don't know if it's your statement, I think
 9 it's Mr Dibakoane's statement talks about a second attempt,
 10 or what he called the last-ditch attempt to get them to
 11 leave.
 12 MR MOTLOGELOA: It is true.
 13 MR MPOFU: Okay, just before we leave the
 14 11th, it's also true that – I can't blame you because you
 15 didn't know this – part of what made you to act was the
 16 other rumour that these people had met there because they
 17 were angry with the NUM activities of the previous night,
 18 or early morning, correct?
 19 MR MOTLOGELOA: That is the rumours that
 20 I heard when I went on duty on Saturday.
 21 MR MPOFU: Yes, and I don't have to put
 22 the statement, it's reflected on 2.5, the part that Mr Tip
 23 – you yourself, you did not know, did you, that the meeting
 24 of the 11th had actually been agreed upon on the afternoon
 25 of the 10th, long before the NUM had wielded any pangas the

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1 following evening?
 2 MR MOTLOGELOA: Yes, I was not aware of
 3 that.
 4 MR MPOFU: Yes, so you can be forgiven
 5 for believing it. Okay. Right.
 6 CHAIRPERSON: Mr Mpfu, I was proposing
 7 to take the tea adjournment at 12 o'clock. I'm just
 8 mentioning that to you now, there are a couple of minutes
 9 to go, but when you have reached an appropriate stage will
 10 you let me know?
 11 MR MPOFU: Chairperson, yes, this is an
 12 appropriate stage.
 13 CHAIRPERSON: We'll take the tea
 14 adjournment. We must try to be back by quarter past 12.
 15 [COMMISSION ADJOURNS COMMISSION RESUMES]
 16 [12:15] CHAIRPERSON: The Commission resumes.
 17 Please remind the witness that he's still under oath and
 18 then Mr Mpfu will continue with his cross-examination.
 19 MR MOTLOGELOA: Confirmed.
 20 CROSS-EXAMINATION BY MR MPOFU [CONTD]:
 21 Thank you. Mr Motlogeloa, can we just go to 2.21 of that
 22 page?
 23 MR MOTLOGELOA: Yes, Mr Mpfu.
 24 MR MPOFU: There you were referred to a
 25 point where Mr Dibakoane says "Both Julius and I decided to

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1 leave the area as it was unsafe for us to stay there." Do
 2 you remember that?
 3 MR MOTLOGELOA: I remember that, Mr
 4 Mpfu.
 5 MR MPOFU: Yes and it was unsafe there
 6 because you heard a group of people were coming and we know
 7 what the rumour was about them and you heard another group
 8 that was saying they are going to be sticking around to
 9 defend their offices, correct?
 10 MR MOTLOGELOA: It is true, Mr Mpfu.
 11 MR MPOFU: Yes and you've also testified
 12 that you can't say what the mood of the strikers was,
 13 correct?
 14 MR MOTLOGELOA: It is true, Sir.
 15 MR MPOFU: But you also said it was not
 16 feasible to stop them, that's because of the numbers.
 17 MR MOTLOGELOA: I said that did not cross
 18 my mind, I did not think about it.
 19 MR MPOFU: Okay. Now It's also true that
 20 you, yourself did not see any dangerous weapons either with
 21 the crowd, among the crowd that was coming or with those
 22 ones who were injured subsequently, correct?
 23 MR MOTLOGELOA: It is true as the group
 24 that was coming was far, I saw them from far.
 25 MR MPOFU: Yes. Now there's a witness

<p style="text-align: right;">Page 33304</p> <p>1 who – I'll call him that for charitable reasons, Mr X says 2 that he blames you, the security guards for shooting the 3 two people who were shot there – 4 MR MOTLOGELOA: Are you referring to the 5 shooting, Saturday shooting? 6 MR MPOFU: Saturday yes, Sir. 7 MR MOTLOGELOA: I do not agree with him 8 there. I did not shoot anyone. 9 CHAIRPERSON: He didn't say the witness, 10 he said security guards. You didn't see any security 11 guards shooting any of the strikers. 12 MR MOTLOGELOA: No, Chair, I did not see 13 any shooting. 14 MR MPOFU: Ja, no, I know, it's common 15 cause, you heard Mr Tip said that the shots were fired by 16 certain NUM officials. But what you can legitimately blame 17 security people for is that it did nothing to stop the 18 attack by the NUM people on the crowd, correct? 19 MR MOTLOGELOA: As Mr Tip said it 20 happened quickly. 21 MR MPOFU: Is that the reason why you did 22 nothing? 23 MR MOTLOGELOA: Yes, Mr Mpofu. 24 MR MPOFU: You also did nothing 25 subsequently, even if it happened too fast, to get the</p>	<p style="text-align: right;">Page 33306</p> <p>1 security people there took any steps to say to the police 2 whoever had shot was one of those 30 people and therefore 3 they must act. The police were not there. 4 MR MOTLOGELOA: Mr Mpofu, to give an 5 answer to that at the time that we realised that people 6 were injured the police were not there. Another point is 7 when we realised that people were injured we then made it a 8 point to give medical assistance. 9 MR MPOFU: Yes, don't get me wrong. That 10 I understand, you had to prioritise the injured people. 11 I'm saying once the injured people were not safe in the 12 hospital you could have taken, again I'm using you in 13 plural, could have taken steps to ensure that the 14 assailants were identified. 15 MR MOTLOGELOA: That can be true, but the 16 fact is at the time the police arrived there were no more 17 people around there. People had now scattered or left. 18 MR MPOFU: Yes, but you knew Mr Setelele 19 was there. 20 MR MOTLOGELOA: It is true. 21 MR MPOFU: Yes, actually just to cut this 22 point down, the truth of the matter is that until today, 23 despite the fact that those people have been identified 24 they has not been arrested. 25 MR MOTLOGELOA: I agree with you on that</p>
<p style="text-align: right;">Page 33305</p> <p>1 arrested. 2 MR MOTLOGELOA: As I had earlier 3 testified I did not see any shooting happening, I only 4 heard after the incident that people were shot at during 5 the scuffle. 6 MR MPOFU: No I accept that, but you 7 could have said to the police well whoever shot these 8 people was one of the 30 people also and therefore they 9 must be arrested. 10 MR VAN AS: That's unfair, with respect. 11 The witness never even saw – he never heard the shooting, 12 he never saw the shooting, he didn't know who did the 13 shooting. He wasn't in a position to express an opinion as 14 to who discharged the shots. 15 CHAIRPERSON: Mr Mpofu's point is that he 16 could have said one of those 30 people was responsible for 17 what happened. I take your point, he couldn't have said in 18 respect of the shooting because he didn't know about the 19 shooting. But I think that the rest of the question is – I 20 cannot disallow it. 21 MR MPOFU: Thank you, Chairperson. I 22 think it's also my fault that I didn't clarify the 23 question. Remember now when I said you, I'm not talking 24 about you as an individual, but as the security people who 25 were present there. But to your knowledge none of the</p>	<p style="text-align: right;">Page 33307</p> <p>1 point, but we are talking about a police matter. 2 MR MPOFU: No I understand. I'm just 3 saying, I'm putting part of the blame on you, I know that 4 some of the blame must go to the police or most of the 5 blame should go to the police because subsequently the 6 people were identified. 7 MR MOTLOGELOA: Yes, I concur with you 8 there, but it depends where it is reported and who reports 9 it. 10 CHAIRPERSON: Can we cut this short? As 11 far as I recall there was a docket opened, we saw the 12 docket. 13 MR MPOFU: I read it, that's why – 14 CHAIRPERSON: - an investigation of any 15 nature had been done. The point you're busy trying to make 16 to the witness has already been made as far as I'm 17 concerned. Long, long ago when the NUM people were giving 18 evidence it was quite clear what had been done by the 19 police and what had not been done. So I don't think you 20 need to cross-examine this witness at length – 21 MR MPOFU: No, that's true, Chairperson, 22 that's why anything I'm saying I got it from what you are 23 referring to, but the point I'm making is simply that 24 besides the people having been identified as indicated in 25 that docket none of them were ever arrested. And in fact</p>

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1 Mr Setelele went to the grave without having been charged
 2 for this.
 3 CHAIRPERSON: Yes but we know that
 4 already all I'm saying is you don't have to repeat the
 5 point, we've got it.
 6 MR MPOFU: Yes okay, moving on. We've
 7 covered this point, I just want to round it off. It's true
 8 that your colleagues, Mr Fundi and Mr Mabulani were killed
 9 in the course of trying to prevent the crowd from reaching
 10 the NUM offices, correct?
 11 MR MOTLOGELOA: It is true, Mr Mpfu.
 12 MR MPOFU: And we now know that the
 13 workers did reach the office, so it was a futile exercise,
 14 correct? Or at least that's how it turned out.
 15 MR MOTLOGELOA: I had explained that
 16 earlier when I testified.
 17 MR MPOFU: No that's true. And that's
 18 why I said I've already asked you, but I'm building to
 19 something different now.
 20 MR MOTLOGELOA: I hear you, Mr Mpfu.
 21 MR MPOFU: I would say in terms of
 22 preventing the people from going to the NUM offices that
 23 the people really died for no apparent reasons because the
 24 people did go to the NUM offices and they did not burn
 25 them.

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1 MR MOTLOGELOA: Yes, because that is what
 2 we saw after the incident at that time.
 3 MR MPOFU: Another reason why those steps
 4 were senseless as I put is that fact that on the 11th you in
 5 your wisdom and you've explained why, decided not to
 6 prevent the crowd from going to the offices, but rather to
 7 have the offices vacated. Do you remember that?
 8 MR MOTLOGELOA: It is true, Sir.
 9 MR MPOFU: And the evidence will be that
 10 the crowd that was marching on the 11th was not armed, but
 11 the crowd that was marching on the 12th was armed with
 12 dangerous weapons.
 13 MR MOTLOGELOA: Mr Mpfu, I had earlier
 14 testified that on Saturday I saw the group far.
 15 MR MPOFU: Yes. No, no I accept that.
 16 Sorry I'm just saying the evidence of other witnesses is
 17 that the crowd was not armed with dangerous weapons on the
 18 11th. You can't dispute that because they were far.
 19 MR MOTLOGELOA: It is true, Sir.
 20 MR MPOFU: Yes, so if that is so then
 21 really what we have here is a situation where a crowd that
 22 is not armed with dangerous weapons, you in your wisdom
 23 decides that it's wiser not to try and stop them, to get
 24 the people to vacate the offices, which is commendable.
 25 And again when I say you I mean the security personnel.

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1 And just to finish my question and yet on the 12th when you
 2 have a group of people who seemed to be armed with
 3 dangerous weapons, who have already threatened the other
 4 security people then on this day, when they are less
 5 threatening the decision is to stop them from reaching the
 6 NUM office. What is the logic in that?
 7 MR MOTLOGELOA: Mr Mpfu, I hear you,
 8 Sir, but what I want to explain is there was a man who
 9 decided that we should do something different to yesterday.
 10 MR MPOFU: Yes, whoever that man is I'm
 11 just saying you'd agree with me that it's senseless if on
 12 the one day the people were not prevented and on the day
 13 when they had dangerous weapons then an attempt was made to
 14 prevent them.
 15 [12:35] MR MOTLOGELOA: Mr Mpfu, it will be
 16 difficult for me to answer on behalf of another person.
 17 MR MPOFU: No, that's fine. You're still
 18 employed there, correct?
 19 MR MOTLOGELOA: Until today, Sir.
 20 MR MPOFU: Okay, then I won't ask you to
 21 criticise [inaudible, speaking simultaneously with
 22 interpreter]. You've said that on – or at least what you
 23 heard was that on the 10th, or the early hours of the 11th
 24 NUM had been involved in certain activities to break the
 25 strike.

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1 MR MOTLOGELOA: Please explain, Mr Mpfu,
 2 what you mean.
 3 MR MPOFU: Yes, you said that when you
 4 were asked about ZZ3, you confirmed to Mr Tip that you were
 5 aware that, about 2.2 and 2.3. 2.2 is the one that says
 6 "The NUM was not in support of the illegal strike and had
 7 called upon its members to report on duty," and before tea
 8 you said it was also reported to you that they had been
 9 going around wielding pangas to allegedly escort people to
 10 go to work. That's what I mean by activities to break the
 11 strike, or to undermine it.
 12 MR MOTLOGELOA: Mr Mpfu, I have
 13 explained or answered Mr Tip, but I disagree that NUM had
 14 said people must go to work. The rumours that people were
 15 escorted to work the previous night is what I was talking
 16 about.
 17 MR MPOFU: Okay, fair enough. Let's move
 18 to the 12th. It would be true that, would you agree with me
 19 that the task of protecting the NUM offices or whatever it
 20 is that you thought you were doing on the 12th was, really
 21 should have been carried out by the police? It was beyond
 22 the scope and capacity of Lonmin Security.
 23 MR MOTLOGELOA: That is what I had
 24 explained, Mr Mpfu, that the decision that was taken by
 25 the other person agrees with what you are saying.

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1 MR MPOFU: Yes, I know. That's a
 2 decision you don't want to criticise. Okay. Yes, but the
 3 view that I'm expressing was shared by Mr Mabelane at
 4 least.
 5 MR MOTLOGELOA: What did Mr Mabelane say,
 6 Mr Mpofo?
 7 MR MPOFU: According to your evidence at
 8 33249 to 33250, that's day 263, Chairperson, last Friday,
 9 can you put it up?
 10 MS MOSHOANE: Day 263 to be put on the
 11 screen.
 12 MR MPOFU: Okay, look, I'll read it out
 13 anyway for now.
 14 CHAIRPERSON: You haven't got very much
 15 time left, but you know you say for now; I understand what
 16 you're saying, but you may have to put it now. You're
 17 putting to him what he said on day 263 and wasn't the
 18 decision taken to engage the strikers on the Sunday, taken
 19 by Mr Mabelane? "Engage" in the sense of stopping them
 20 from [inaudible, speaking simultaneously with interpreter].
 21 MR MOTLOGELOA: It is so, Mr Chair.
 22 MR MPOFU: Yes, but yet Mr Mabelane, I'm
 23 saying he might have been part of the decision as you have
 24 explained earlier, but the point I was making is a
 25 different one, that –

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1 CHAIRPERSON: Is that the page that you
 2 wanted on the screen now? What page do you want?
 3 MR MPOFU: Okay, that's page 33249 to
 4 33250, right at the end.
 5 CHAIRPERSON: There you've got 249 and –
 6 MR MPOFU: Yes, you say you, "I –
 7 CHAIRPERSON: What line, Mr Mpofo?
 8 MR MPOFU: Line 24 of the first page and
 9 line 1 of the next one. "Yes, I recall Mr Mabelane phoning
 10 the control room. He then complained that there was no
 11 police officers available. He said that as he was walking
 12 past me." You remember that?
 13 MR MOTLOGELOA: It is true, Mr Mpofo.
 14 MR MPOFU: Yes, and you also were one of
 15 the people who were frustrated by the absence of the police
 16 for such a big task.
 17 MR MOTLOGELOA: It is so because the
 18 situation was not conducive.
 19 MR MPOFU: Yes.
 20 CHAIRPERSON: You've got five minutes, Mr
 21 Mpofo.
 22 MR MPOFU: In fact when the police came
 23 and asked you, you were rude to them. When they eventually
 24 came, at 33228, you say "The police" –
 25 CHAIRPERSON: 3-3-2-8 something. 3-3-2-

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1 8?
 2 MR MPOFU: 2-2-8. It's just about –
 3 CHAIRPERSON: Oh, 3-3-2-2? What is it?
 4 33228?
 5 MR MPOFU: 2-2-8, yes, Chairperson.
 6 CHAIRPERSON: A little bit before where
 7 we are now.
 8 MR MPOFU: You say "One police car
 9 arrived at the" –
 10 CHAIRPERSON: What line?
 11 MR MPOFU: From 23, Chairperson.
 12 CHAIRPERSON: Yes, there we are.
 13 MR MPOFU: Before the female could call
 14 you back there was one police car that arrived at the
 15 scene. The police asked what was happening and you people
 16 said to them "You can also see what is happening in front
 17 of you."
 18 MR MOTLOGELOA: No, Mr Mpofo, it was not
 19 out of disrespect when I said that.
 20 MR MPOFU: No, I understand. But I'm
 21 saying at least you've confirmed that you were frustrated
 22 by their absence because this was a big job.
 23 MR MOTLOGELOA: It is true, Sir.
 24 MR MPOFU: And when you advised Mr
 25 Mabelane not to take a particular approach it was because

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1 to you the risk of death or injury was foreseeable,
 2 correct?
 3 MR MOTLOGELOA: Yes, according to the
 4 message that we received from Mr Dewald Louw.
 5 MR MPOFU: Did Louw explain his own near-
 6 death experience?
 7 MR MOTLOGELOA: No, we just received the
 8 message through radio that he's saying.
 9 MR MPOFU: Yes, okay. Now there's an
 10 important issue which, if the Chairperson allows me to deal
 11 with, I need to deal with about the 13th. Your evidence is
 12 that when you encountered the strikers it was near the
 13 bridge and the pipelines, correct?
 14 MR MOTLOGELOA: It is true, Mr Mpofo.
 15 MR MPOFU: And your own experience was
 16 that the crowd had behaved totally differently from the
 17 12th.
 18 MR MOTLOGELOA: About the behaviour it
 19 will be difficult because as they were approaching the
 20 bridge they were singing.
 21 MR MPOFU: Yes, okay. After they
 22 approached the bridge you had a discussion with them.
 23 MR MOTLOGELOA: It is true, Mr Mpofo.
 24 MR MPOFU: And they were very
 25 cooperative?

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1 MR MOTLOGELOA: That is what I think from
 2 them –
 3 MR MPOFU: Yes, or –
 4 MR MOTLOGELOA: - or applauded from them.
 5 MR MPOFU: Yes, and in fact this time
 6 they were very respectful. When you said to them turn
 7 around, they turned around.
 8 MR MOTLOGELOA: That is what I applaud
 9 until today.
 10 MR MPOFU: Yes, and they submitted to
 11 your request and that's why you applaud them?
 12 MR MOTLOGELOA: It is true, Mr Mpofo.
 13 MR MPOFU: In fact you even used the word
 14 that they then begged, they were begging you to get the
 15 employer to talk to them, correct?
 16 MR MOTLOGELOA: It is true, Mr Mpofo.
 17 MR MPOFU: And from that you, once they
 18 left you perceived no further risk and you went on to your
 19 other duties?
 20 MR MOTLOGELOA: It is true, Sir.
 21 MR MPOFU: And all this being very
 22 cooperative, being very respectful, being submissive and
 23 begging happened while you observed that they were
 24 crouching and they were still banging their weapons as they
 25 had done previously, correct?

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1 MR MOTLOGELOA: It is true, Sir.
 2 MR MPOFU: And in fact your evidence was
 3 that they, at least at that point - and I think again there
 4 was confusion between you and Mr Mojapelo – at least at
 5 that point, not when they met the police, their crouching
 6 was the same as it had been on the 12th?
 7 MR MOTLOGELOA: Yes, I said it was
 8 slightly different because there they were, they sat, they
 9 were crouching more down.
 10 MR MPOFU: Yes, what I'm trying to
 11 explain is – at least I want you to clarify the Commission,
 12 when Mr Mojapelo showed you this morning a video of the
 13 crouching of the 13th, you remember that?
 14 MR MOTLOGELOA: I remember.
 15 MR MPOFU: And that is when you said it
 16 was slightly different.
 17 MR MOTLOGELOA: It is true, Mr Mpofo.
 18 MR MPOFU: But what I'm saying is that Mr
 19 Mojapelo I think was misunderstanding your statement. When
 20 you said the crouching was the same as that one of the 12th
 21 you were not talking about what was on the video, you were
 22 talking about what happened at the pipeline, correct?
 23 MR MOTLOGELOA: It is true, Mr Mpofo.
 24 CHAIRPERSON: I think you've made your
 25 point, Mr Mpofo. Your time is now up.

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1 MR MPOFU: Sorry, Chairperson –
 2 CHAIRPERSON: You've made your point. I
 3 understand the point you made. Whatever you want on the
 4 record to argue the point you made is there.
 5 MR MPOFU: Yes, Chairperson, can I get a
 6 few minutes just to round –
 7 CHAIRPERSON: No, your time is up, Mr
 8 Mpofo. I'm sorry. I gave you a little extra time to
 9 achieve the point you were aiming for and you've made it
 10 and I'm afraid that's the end of your cross-examination.
 11 Mr Van As, re-examination?
 12 RE-EXAMINATION BY MR VAN AS: Thank you,
 13 Mr Chairperson. Mr Motlogeloa, when you warned NUM to
 14 vacate their offices, was that before or after you saw the
 15 strikers marching to the NUM office?
 16 MR MOTLOGELOA: Before I saw them
 17 proceeding to the office.
 18 MR VAN AS: Did you hear Mr Mabelane give
 19 an order to shoot on the 12th, on the Sunday?
 20 MR MOTLOGELOA: No, I did not hear that
 21 order.
 22 MR VAN AS: And how far were the strikers
 23 away from you and what were they doing when the first shot
 24 was fired?
 25 MR MOTLOGELOA: On the first shot I

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1 cannot confirm it was the first shot. As I had testified I
 2 said they were singing in a crouching position, busy
 3 banging the iron rods they had, as they did. They were
 4 coming in a crouching position towards us. They even
 5 begged us to get out of the way, they want to pass.
 6 MR VAN AS: How did they beg you to get
 7 out of the way?
 8 MR MOTLOGELOA: They used hand gestures,
 9 like I am indicating now.
 10 CHAIRPERSON: You're waving your hands
 11 from side to side.
 12 MS MOSHOANE: Waving the hands to the
 13 side.
 14 MR VAN AS: And did they explain to you
 15 why they were going to the NUM office?
 16 [12:55] MR MOTLOGELOA: It was only the rumours
 17 that we heard which we spoke of.
 18 MR VAN AS: Did they explain to you, the
 19 strikers who were crouching and moving towards you, did
 20 they tell you why they were going to the NUM office?
 21 MR MOTLOGELOA: No, Sir.
 22 MR VAN AS: Alright, now let's get to the
 23 bridge on the Monday. How many security guards were with
 24 you on the bridge?
 25 CHAIRPERSON: Is this the bridge near the

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1 pipeline?
 2 MR VAN AS: Near the pipeline, Mr
 3 Chairperson.
 4 MR MOTLOGELOA: I would be lying about
 5 the number, Mr Mike.
 6 MR VAN AS: More than on the Sunday?
 7 MR MOTLOGELOA: Yes, we were more than
 8 the number on Sunday.
 9 MR VAN AS: And you were also higher up
 10 than what the strikers were?
 11 MS MOSHOANE: Pardon?
 12 MR VAN AS: You were standing higher than
 13 them?
 14 MR MOTLOGELOA: It is true.
 15 MR VAN AS: And what would have happened
 16 to these strikers if they'd attacked you?
 17 MR MOTLOGELOA: I cannot answer to that
 18 because I do not know what their intentions were.
 19 MR VAN AS: No further questions, thank
 20 you, Mr Chairperson.
 21 CHAIRPERSON: The question is if they had
 22 attacked you – I know you didn't know what their intentions
 23 were, but if they had intended to attack you and they had
 24 tried to attack you, what would have happened? Can you
 25 tell us?

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1 MR MOTLOGELOA: Mr Chair, it would have
 2 been difficult for them to reach us as we were above them,
 3 on top of the bridge.
 4 COMMISSIONER HEMRAJ: I'd just like to
 5 understand when you left the area outside the NUM office
 6 for your own safety on the 11th, was it because of something
 7 you saw?
 8 MR MOTLOGELOA: As I had testified
 9 earlier I said the priority was people's lives and the
 10 uttering that we are not going nowhere, we are standing
 11 here.
 12 COMMISSIONER HEMRAJ: You haven't
 13 answered my question. You decided to leave for your own
 14 safety. Why did you do that?
 15 MR MOTLOGELOA: I had testified earlier
 16 it was twofold. One group says we are going to burn the
 17 offices, one group says we are staying put to protect the
 18 offices. When you ask yourself a question what if the
 19 situation is as it was, what will happen when the two
 20 parties clash or come together, that is why I saw that my
 21 life was in danger if the two could come together.
 22 MR MPOFU: Chairperson –
 23 CHAIRPERSON: [Microphone off, inaudible]
 24 MR MPOFU: Yes, can I ask one question
 25 arising from your questions?

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1 CHAIRPERSON: [Inaudible, speaking
 2 simultaneously with interpreter]
 3 MR MPOFU: Arising from your question.
 4 CHAIRPERSON: Yes, no I think Mr Mpofo is
 5 entitled to ask a question arising from – is it my question
 6 or my –
 7 MR MPOFU: No, yours, Chairperson.
 8 CHAIRPERSON: I see, alright.
 9 MR MPOFU: Ja, at the bridge and the
 10 pipeline, if the strikers had wanted to shoot at your for
 11 example, they could have done that, correct?
 12 MR MOTLOGELOA: Mr Mpofo, I am not sure
 13 of that point because I do not know if they had firearms.
 14 CHAIRPERSON: If they had firearms they
 15 could have shot at you? It must follow, surely.
 16 MR MPOFU: Despite the fact that you say
 17 they were in a different mood and so on, assuming they had
 18 firearms and they were minded to shoot at you, they could
 19 have done so?
 20 CHAIRPERSON: If they'd had firearms and
 21 they were minded to shoot at you people they could
 22 physically have done so?
 23 MR MOTLOGELOA: I would dispute that,
 24 Chair, because their intention, they said they wanted to go
 25 to the shaft to ask those who were on duty to go home

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1 because there was a work stoppage.
 2 CHAIRPERSON: Yes, and then you told
 3 them, or they were told that there was no one working at
 4 the shaft. Is that right?
 5 MR MOTLOGELOA: It is true, Chair.
 6 CHAIRPERSON: Mr Mpofo, I think that's
 7 your point, isn't it?
 8 MR MPOFU: Yes. Thanks.
 9 CHAIRPERSON: Mr Chaskalson?
 10 MR CHASKALSON SC: Sorry, Chair, if I can
 11 just put one question to the witness.
 12 CHAIRPERSON: In the absence of Mr
 13 Mojapelo, on his behalf, yes, alright.
 14 MR CHASKALSON SC: Thank you, Chair. It
 15 flows from the statement of Mr Dibakoane, ZZ3, and
 16 paragraph 2.11. There Mr Dibakoane is talking about when
 17 you and he moved towards the NUM offices to tell the NUM
 18 members that the crowd was coming, and Mr Dibakoane says –
 19 MS MOSHOANE: You said 2 point?
 20 MR CHASKALSON SC: 11.
 21 MS MOSHOANE: 2.11, yes, the first
 22 paragraph?
 23 MR CHASKALSON SC: Ja, well just the
 24 second one on the screen at the moment. What he says is
 25 "Upon hearing this news both Julius and I were concerned

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1 about the safety of the Lonmin employees and NUM officials
 2 who were at the NUM offices. Our concern stemmed from the
 3 fact that there was already tension between the members of
 4 NUM and the striking workers. This tension was evident
 5 from the songs that the striking employees were singing and
 6 chanting, as well as the fact that one deceased NUM member
 7 had already been found that morning." My question is do
 8 you know anything about a NUM member who was found killed
 9 in the morning of the 11th?
 10 MR MOTLOGELOA: I do not remember that.
 11 MR CHASKALSON SC: So you don't remember
 12 even reports or rumours that a NUM member had been killed
 13 on the morning of the 11th?
 14 MR CHASKALSON SC: Mr Chaskalson, it's a
 15 body had been found that morning. So he might actually
 16 have been killed the day before, or night before. But the
 17 point is the finding of a dead body that morning. That's –
 18 MR CHASKALSON SC: Sorry, it's not
 19 necessarily a killing that morning, but the body found that
 20 morning.
 21 MR MOTLOGELOA: It will be difficult to
 22 remember because that day if it had happened it slips my
 23 mind.
 24 MR CHASKALSON SC: Thanks.
 25 CHAIRPERSON: One last thing, you talked

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1 about the, or rather Mr Dibakoane talked about something
 2 and said it related to both of you, talked about the songs
 3 the striking employees were singing and chanting. Did you
 4 hear the songs that the striking employees were singing and
 5 chanting?
 6 MR MOTLOGELOA: As I explained on Friday,
 7 Chair, that on Saturday I only heard the sound of the song
 8 but I cannot remember the words and what was sung.
 9 CHAIRPERSON: I see. Thank you. You may
 10 be excused, that's the end of your evidence, but on the
 11 basis that if we have to get you back, if some point arises
 12 and it's necessary for us to get you back we won't have to
 13 subpoena you; you'll be prepared to come on being asked to
 14 come. Are you prepared to accept that condition?
 15 MR MPOFU: Chairperson –
 16 MR MOTLOGELOA: I do not have a problem
 17 with that, Chair.
 18 CHAIRPERSON: Yes, Mr Mpofo?
 19 MR MPOFU: I'm sorry, Chairperson, just
 20 before you excuse the witness, one question arises from
 21 your question. At –
 22 CHAIRPERSON: What is the question? I
 23 can't see one. I thought the answer I got was not
 24 unfavourable to you, but –
 25 MR MPOFU: No, no, no, at AAAA40, page 3

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1 thereof, 35 of the paginated Lonmin pages, in relation to
 2 the question asked, you were asked, "Could you make out
 3 what they were singing about?" and your answer was, "No,
 4 but it is familiar to me because it is the same song they
 5 always sing when banging their weapons together."
 6 CHAIRPERSON: Do we have the wrong – oh,
 7 maybe we've got the correct affidavit now, I think. Is
 8 that right? The song, you said you couldn't make out the
 9 words, but you could hear the singing and chanting. Was it
 10 the song that they normally sing, or ordinarily sing when
 11 they're clanking their weapons together?
 12 MR MOTLOGELOA: I understand you, Mr
 13 Mpofo.
 14 CHAIRPERSON: What's the answer?
 15 MR MPOFU: All I want is that do you
 16 stand by that answer?
 17 MR MOTLOGELOA: Yes, that I cannot
 18 remember what the words of the song were, I still stand by
 19 it.
 20 MR MPOFU: That's the answer, thank you.
 21 CHAIRPERSON: Alright, thank you. Okay,
 22 you'll be excused now on the basis that you agree to come
 23 back if we need you without having to subpoena you. Thank
 24 you very much.
 25 [NO FURTHER QUESTIONS – WITNESS EXCUSED]

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1 CHAIRPERSON: We'll now take the lunch
 2 adjournment. We'll resume at 10 to 2. No sorry, we're
 3 having a meeting at lunchtime, so we'll resume at 2
 4 o'clock.
 5 [COMMISSION ADJOURNS COMMISSION RESUMES]
 6 [14:11] CHAIRPERSON: The Commission resumes. Mr
 7 Van As.
 8 MR VAN AS: Thank you, Mr Chairperson.
 9 Mr Chairperson, as with our other witnesses we've prepared
 10 a bundle of documents. I understand that the – have you
 11 not – perhaps can I just take a –
 12 CHAIRPERSON: We've been handed a file
 13 which says, which contains affidavits, statements and
 14 documents relating to Dirk Botes. Is that the file you're
 15 referring to?
 16 MR VAN AS: That's the file I'm referring
 17 to, Mr Chairperson.
 18 CHAIRPERSON: So you call Mr Dirk Botes?
 19 MR VAN AS: I'm calling Mr Botes as a
 20 witness. I see Commissioner Hemraj doesn't seem to have
 21 one –
 22 CHAIRPERSON: Dirk Cornelius Botes.
 23 MR VAN AS: Correct, Mr Chairperson. Mr
 24 Chairperson, I'm going to ask my learned friend Ms Pillay
 25 to please deal with the numbering of exhibits. She's

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1 kindly collated the exhibits and if I could ask her to just
 2 please list them for you in relation to the various –
 3 CHAIRPERSON: We'll proceed quite quickly
 4 then.
 5 MR VAN AS: Thank you.
 6 CHAIRPERSON: And at the end of today or
 7 tomorrow she can give me something to write into my
 8 notebook.
 9 MR VAN AS: Could I then proceed in the
 10 meantime?
 11 CHAIRPERSON: Alright. Mr Botes, would
 12 you stand up, please? Are you prepared to swear or do you
 13 wish to make an affirmation?
 14 MR BOTES: I'm prepared to swear
 15 [Microphone off, inaudible].
 16 CHAIRPERSON: Alright, will you swear
 17 that the evidence you'll give before this Commission will
 18 be the truth, the whole truth, and nothing but the truth?
 19 Please raise your right hand and say, "I swear, so help me
 20 God."
 21 DIRK CORNELIUS BOTES: So help me God.
 22 CHAIRPERSON: No, "I swear, so help me
 23 God."
 24 MR BOTES: I swear.
 25 CHAIRPERSON: So help me God. Alright,

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1 please be seated. You may be seated, thank you. What are
 2 your full names? No, no, you can sit down.
 3 MR BOTES: Dirk Cornelius Botes.
 4 CHAIRPERSON: You must remember whenever
 5 you're going to say something turn your microphone on.
 6 MR BOTES: Sure.
 7 CHAIRPERSON: What are your full names?
 8 MR BOTES: Dirk Cornelius Botes.
 9 CHAIRPERSON: Thank you. Mr Van As.
 10 EXAMINATION BY MR VAN AS: Thank you, Mr
 11 Chairperson. Mr Botes, where are you employed?
 12 MR BOTES: I'm employed at Lonmin.
 13 MR VAN AS: And how long have you been
 14 employed there?
 15 MR BOTES: For 15 years.
 16 MR VAN AS: And what position do you
 17 occupy there?
 18 MR BOTES: I'm a security manager in the
 19 security department.
 20 MR VAN AS: Mr Botes, you've deposed to a
 21 series of affidavits and statements. I'd like to take you
 22 through them, please. The first affidavit is an affidavit
 23 you deposed to, it's item number 1, it's an undated
 24 affidavit relating to the employment history of Mr Langa.
 25 Can you confirm that?

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1 MR BOTES: That's correct, Mr Chair.
 2 MR VAN AS: The fourth affidavit, item
 3 number – and Mr Chairperson, just for record purposes,
 4 that's exhibit EEEE1. You then deposed to a further
 5 affidavit relating to camera footage, that's item 4,
 6 exhibit EEEE3, and you deposed to that on 8 November 2012.
 7 Can you confirm that?
 8 CHAIRPERSON: The first one was EEEE1.
 9 Have we then got a EEEE2?
 10 MR VAN AS: Mr Chairperson, what I wanted
 11 to do is wanted to deal with the affidavits that don't
 12 relate to the actual events. Mr Botes –
 13 CHAIRPERSON: Okay, alright. I'll leave
 14 a blank in my notebook and write EEEE2 –
 15 MR VAN AS: Perhaps I should just go in
 16 chronological order –
 17 CHAIRPERSON: Ja, let's do it for –
 18 MR VAN AS: Very well, Mr Chairperson.
 19 CHAIRPERSON: - so the record doesn't
 20 look like too much of a canine breakfast.
 21 MR VAN AS: You then deposed to an
 22 affidavit on the 18th of October 2012. That's EEEE2, item 2
 23 in your bundle. Can you confirm that?
 24 MR BOTES: That's correct, Mr Chairman.
 25 MR VAN AS: We'll come back to these

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1 statements and affidavits in due course. You then deposed
 2 to a statement on the 8th of November 2012 and that's an
 3 existing exhibit, Mr Chairperson –
 4 MR BOTES: That's correct.
 5 MR VAN AS: That's exhibit GGG19. Can
 6 you confirm that, Mr Botes?
 7 MR BOTES: That's correct, Mr Chairman.
 8 MR VAN AS: You then deposed –
 9 CHAIRPERSON: That's item 3, is it?
 10 MR VAN AS: Item 3, Mr Chairperson. You
 11 then deposed to an affidavit on the 8th of November 2012,
 12 that's EEEE3. Can you confirm that?
 13 MR BOTES: That's correct, Mr Chairman.
 14 MR VAN AS: And you then deposed to an
 15 affidavit on the 4th of December 2012, that's EEEE4. Can
 16 you confirm that? Item 5.
 17 MR BOTES: That's correct, Mr Chairman.
 18 MR VAN AS: And you then deposed to an
 19 affidavit on the 27th of February 2013, item 6, that's
 20 exhibit EEEE5.
 21 MR BOTES: That's correct –
 22 MR VAN AS: Can you confirm that?
 23 MR BOTES: That's correct.
 24 MR VAN AS: A further one was 2nd of
 25 August 2013, that's EEEE6.

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1 MR BOTES: That's correct, Mr Chairman.
 2 MR VAN AS: A further one on the 12th of
 3 August 2013, that's EEEE7, item number 8 in your bundle.
 4 Can you confirm that?
 5 MR BOTES: That's correct, Mr Chairman.
 6 MR VAN AS: You then deposed to a
 7 statement on the 3rd of July 2014 and that's already an
 8 exhibit, Mr Chairperson, exhibit AAAA39.
 9 MR BOTES: That's correct, Mr Chairman.
 10 MR VAN AS: You deposed to a further
 11 supplementary statement on the 3rd of July 2014, that's
 12 EEEE8.
 13 MR BOTES: That's correct, Mr Chairman.
 14 MR VAN AS: A further supplementary
 15 statement on the 23rd of July 2014, EEEE9. Can you confirm
 16 that?
 17 MR BOTES: That's correct, Mr Chairman.
 18 MR VAN AS: And those, can you confirm
 19 those are the statements or affidavits that you deposed to
 20 in relation to this matter?
 21 MR BOTES: That's correct, Mr Chairman.
 22 MR VAN AS: Alright. Now just for
 23 purposes of clarity, EEEE1 simply related to the clocking
 24 history of the late Mr Julius Langa and his employment
 25 details. Can you confirm that?

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1 MR BOTES: That's correct, Mr Chairman.
 2 MR VAN AS: Item number 1. EEEE3 related
 3 to video footage and a Google map pinpointing, which you
 4 did at the request of the evidence leaders. Can you
 5 confirm that?
 6 MR BOTES: That's correct, Mr Chairman.
 7 MR VAN AS: That's EEEE3. EEEE4 were the
 8 employment particulars and a suspension notice for a Mr
 9 Xolani Nzuzza. Can you confirm that?
 10 MR BOTES: That's correct, Mr Chairman.
 11 MR VAN AS: And then you also deposed to
 12 affidavits on the 27th of August 2013, EEEE5 – sorry, I beg
 13 your pardon, EEEE6 and that related again to the
 14 positioning of cameras. Can you confirm that?
 15 MR BOTES: That's correct, Mr Chairman.
 16 MR VAN AS: And then EEEE7 is an
 17 affidavit that you – EEEE6 and EEEE7 are affidavits that
 18 you deposed to relating to the identity of certain persons
 19 at the behest of the South African Police Services. Can
 20 you confirm that?
 21 MR BOTES: That's correct, Mr Chairman.
 22 MR VAN AS: Relating to their nicknames
 23 and as to the actual full names.
 24 MR BOTES: Correct.
 25 MR VAN AS: So that's insofar as

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1 affidavits not relating to your own version of events are
 2 concerned, as to what you saw, experienced during the
 3 events are concerned.
 4 MR BOTES: That's correct, Mr Chairman.
 5 MR VAN AS: Then you deposed to five
 6 different statements and affidavits relating to your
 7 version of events.
 8 MR BOTES: That's correct, Mr Chairman.
 9 MR VAN AS: The first statement is one on
 10 the 18th of October 2012, that's EEEE2. Do you stand by
 11 that statement?
 12 MR BOTES: Mr Chairman, I made another
 13 statement on the 8th of November which I added some, that is
 14 item number 3, which I added some paragraphs to the initial
 15 statement made from the 16th of October.
 16 MR VAN AS: Other than the fact that you
 17 added these paragraphs is there anything else that you wish
 18 to draw to the attention of the Commission?
 19 MR BOTES: No, Mr Chairman.
 20 MR VAN AS: So with respect, Mr
 21 Chairperson, for all intents and purposes annexure GGG19 is
 22 an amplified version of exhibit EEEE2 in that certain
 23 paragraphs were merely added. You then also deposed to a
 24 statement on the 3rd of July 2014, that's AAAA39. Is there
 25 anything you wish to tell the Commission about this

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1 statement?
 2 MR BOTES: Mr Chairman, there was a
 3 portion removed from that statement in paragraph 17 where
 4 there's previous mention made of a person that was
 5 allegedly shot, where we tried to discover this body, and
 6 after various investigations we could not find it with the
 7 police Task Team, and then I decided to remove it from my
 8 statement.
 9 MR VAN AS: And then you deposed to a
 10 supplementary affidavit on the 3rd of July 2014. That's
 11 exhibit EEEE8. Can you explain to the Commission why you
 12 deposed to this affidavit?
 13 MR BOTES: Mr Chairman, the date in the
 14 initial affidavit was incorrect, so I just merely corrected
 15 the date on that affidavit.
 16 MR VAN AS: Mr Chairperson, in an attempt
 17 to save time, Mr Botes initially referred to events that
 18 had happened on the 11th of August 2012 when in fact that
 19 happened on the 10th of August 2012 and he corrected his
 20 statement to reflect that. And then finally you deposed to
 21 a further supplementary affidavit on the 23rd of July 2014,
 22 that's exhibit EEEE9. Could you perhaps just take us
 23 through that? That's item number 11.
 24 CHAIRPERSON: Page 95 of your –
 25 MR VAN AS: Page 95, Mr Chairperson.

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1 MR BOTES: Mr Chairman, I made this
 2 supplementary statement due to the fact that when I'm
 3 preparing and go through the JOC sheet I realised that the
 4 dates is incorrect in the previous supplementary statements
 5 affidavits, so this supplementary statement was made to
 6 correct it where most of the incidents referred to on the
 7 Saturday happened on Friday the 10th and not on the
 8 Saturday. And I also added more factual information about
 9 Sunday the 12th when I personally went into the hostel,
 10 which wasn't mentioned into my initial statements.
 11 MR VAN AS: And then if I could please
 12 take you to exhibit EEEE10, that's a discharge register.
 13 That appears at page 99 of the bundle of documents, Mr
 14 Chairperson. Perhaps if that could just be placed on the
 15 screen.
 16 MR BOTES: Mr Chairman, there's an error
 17 on this shooting incident where the heading is "Rounds
 18 used," you're referring to that?
 19 MR VAN AS: Perhaps if, we'll get to that
 20 one in due course. On this one if you look at item number
 21 3, it's got "D Botes" and it states there that you
 22 discharged eight rounds.
 23 MR BOTES: That is item 154.
 24 MR VAN AS: Right, can you confirm that
 25 that is in fact what happened on the 12th of August 2012?

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1 MR BOTES: That's correct. It's eight
 2 rounds that I discharged on that day.
 3 MR VAN AS: If we move on to the next
 4 document, page 100, exhibit EEEE11.
 5 MR BOTES: Mr Chairman, it is on this
 6 record where there's a error. It mentioned that I
 7 discharged eight shotgun rubber rounds, which is incorrect.
 8 It should be birdshot.
 9 MR VAN AS: So under rounds used there
 10 where it says "eight shotgun rubber rounds by Botes," it
 11 should read "eight shotgun birdshot rounds discharged by
 12 Botes"?
 13 MR BOTES: That's correct, Mr Chairman.
 14 MR VAN AS: If we go back to page 73 of
 15 the bundle of documents, please, Mr Chairperson, which is
 16 exhibit AAAA39, and if you go to paragraph 23, it's about
 17 four lines from the bottom of the page, you confirm there
 18 that "I fired birdshot towards their legs." You see about
 19 four, five lines from the bottom of the page?
 20 MR BOTES: That's correct, Mr Chairman.
 21 MR VAN AS: Are those the eight rounds
 22 that you're referring to in the shooting report?
 23 MR BOTES: That's correct, in the
 24 discharge register.
 25 MR VAN AS: Other than for those

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1 amendments, do you stand by the statements and affidavits
 2 that you've made?
 3 MR BOTES: That's correct, Mr Chairman.
 4 MR VAN AS: I then want to take you to
 5 the very last document that forms part of this bundle, item
 6 number 12, and that's an existing exhibit. It's exhibit
 7 AAA60.1 and 60.2, and these documents are defined as
 8 "Mining security postings," and page 102 is no more than a
 9 blow-up of what appears on page 101. Please explain to the
 10 Commission what this document is, where it was and why it
 11 was there.
 12 MR BOTES: Mr Chairman, we had a daily
 13 deployment of the security personnel across the Lonmin
 14 property and being in charge of the Lonmin JOC we have a
 15 posting sheet, so when the guys report on duty we
 16 immediately write down, note down all the names onto the
 17 flipchart, which is displayed in the JOC for the SAPS
 18 commanders that they can see how many police, how many
 19 security members are deployed and also in which areas.
 20 That was a request from the police JOC commander, General
 21 Annandale, that we display our security members that he's
 22 aware where is the security members deployed, that when his
 23 police go around the sites that they're aware from the
 24 security deployment as well.
 25 MR VAN AS: And was that done every day

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1 during the week of – well, from the establishment of the
 2 JOC until the 16th of –
 3 MR BOTES: That's correct, Mr Chairman.
 4 MR VAN AS: - of August 2012. Right, you
 5 also say in your statement that you were requested to move
 6 surveillance equipment to the JOC, to the police JOC. Can
 7 you please explain those circumstances?
 8 MR BOTES: Mr Chairman, that was on
 9 Tuesday morning when I arrived at the JOC. I've met
 10 Brigadier Pretorius and due to the facility of this Lonmin
 11 JOC that was too small to accommodate everybody it was
 12 decided that the police JOC be established next to this
 13 Lonmin JOC in a separate premise, which is called a lapa,
 14 and in that, the establishment of the police JOC I was
 15 requested to move the surveillance equipment over that they
 16 have visuals of all the cameras, which is greatly assisting
 17 them to make decisions when incidents happen.
 18 MR VAN AS: Mr Chairperson, Mr Botes
 19 deals with this at paragraph 41 to 43 of exhibit AAAA39,
 20 perhaps if that can just be put on the screen and he can
 21 confirm that.
 22 MR CHASKALSON SC: Chairperson, the
 23 screen apparently has a difficulty that we're told would
 24 require five minutes to correct. I'm not sure what, how
 25 much Mr Van As is going to be depending on exhibits that

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1 are exhibited during the evidence-in-chief and whether we
 2 can wait until teatime to do this.
 3 CHAIRPERSON: As far as I can see the
 4 numbering was out. If that's the only problem –
 5 MR CHASKALSON SC: No, Chair, it's that
 6 the screen is flickering and occasionally compressing the
 7 image.
 8 MR VAN AS: I was going to refer to one
 9 further reference, but perhaps if we can take an
 10 adjournment and then sort the screen out.
 11 MR CHASKALSON SC: I'm told that this
 12 requires the electricity to be switched off entirely and it
 13 will be up in five minutes, but if it can wait till the tea
 14 adjournment, let's do it at the tea adjournment.
 15 CHAIRPERSON: Mr Van As, can it wait for
 16 the tea adjournment?
 17 MR VAN AS: I think it can wait until the
 18 tea adjournment.
 19 CHAIRPERSON: Let's wait until the tea
 20 adjournment.
 21 MR VAN AS: Just to recap your evidence,
 22 you were requested by the police to move the surveillance
 23 equipment into the police JOC?
 24 MR BOTES: That's correct, Mr Chairman.
 25 MR VAN AS: And what role did you then

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1 play? Did you then go into the police JOC after that?
 2 MR BOTES: Mr Chairman, I joined the
 3 police JOC from the Wednesday the 15th on a fulltime basis
 4 and my role there purely was to coordinate the Lonmin
 5 functions in a supporting role and to address any situation
 6 that is involved and reported to the Lonmin that I can
 7 deploy my personnel to go out for investigation to confirm
 8 any information that we might receive, or rumours, and then
 9 we also utilise the CCTV equipment to see if there's any
 10 risk of marches or threats towards our installations and
 11 operations. So my role was purely there to coordinate our
 12 functions and should the police need any assistance, any
 13 display, layout, maps, footages, critical installations,
 14 then I would provide that to the police.
 15 MR VAN AS: Mr Botes, we know that there
 16 was a JOCCOM meeting at 1 o'clock on Thursday, 16 August
 17 2012. Did you attend this meeting?
 18 MR BOTES: Mr Chairman, no, although I
 19 attended all the other JOCCOM meetings during the morning
 20 or the afternoon, in the evening, the debriefing sessions,
 21 I was requested by General Annandale to be excused. As
 22 well as the surveillance operators.
 23 [14:31] So we left the JOCCOM meeting and after they
 24 finished we returned to our normal operations inside the
 25 JOC.

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1 MR VAN AS: And did General Annandale or
 2 any other senior police officer give you any instruction in
 3 relation to Lonmin personnel during the police operation on
 4 the Thursday afternoon?
 5 MR BOTES: Mr Chairman, it was made clear
 6 that during the police exercise at the koppie that no
 7 security personnel should and must be present or take part
 8 in the operation. That is an instruction from him which I
 9 elevated to my security guys and my security guys remained
 10 at their positions at the different shafts from eastern
 11 plats, western plats and at Karee mines and they stayed
 12 there, remained there until I called them back after the
 13 exercise from the police.
 14 MR VAN AS: Now you were in the JOC at
 15 the time of the actual police operation.
 16 MR BOTES: That's correct, Mr Chair.
 17 MR VAN AS: Did you at some stage realise
 18 that there'd been injuries or casualties?
 19 MR BOTES: Mr Chairman, due to the
 20 distance of the surveillance equipment from the scene I
 21 could not clearly see what was happening. I could see and
 22 heard, co-ordinate what I heard on the radio that the
 23 barbed wire trailers were pulled out and immediately then I
 24 saw the people running in line with as they deployed the
 25 barbed wires and I saw smoke in the area. I also saw the

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1 water canon and because of the smoke and the water canon
 2 spray we could not clearly see what was happening at the
 3 kraal or at the koppie.
 4 MR VAN AS: And what did you do once you
 5 realised that there'd been casualties?
 6 MR BOTES: Mr Chairman, that was a bit
 7 later on during the incident where I heard Brigadier Calitz
 8 call on the radio for engage, engage, engage. There was a
 9 lot of conversations between Colonel Vermaak and Brigadier
 10 Calitz about people going in which direction, running
 11 directions and much later I heard Colonel Vermaak said on
 12 the radio that there's people down. So at that stage we
 13 didn't know if the people are lying down, surrendering or
 14 whatever the case may be. And about 20 minutes later then
 15 I realised and then we get messages in the JOC that there
 16 was people shot and that people are killed and people are
 17 injured. So I immediately called my security guys because
 18 it is a standard practise in security, although the
 19 ambulances were assigned to the police at the different
 20 holding points I called my security guys in that they can
 21 escort those ambulances into the scenes what happened.
 22 MR VAN AS: Now I just want to go back to
 23 Saturday the 11th of August 2012. Were you at work that
 24 day?
 25 MR BOTES: Yes, Mr Chairman, I attended a

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1 briefing session at about 2 o'clock in the afternoon.
 2 MR VAN AS: And what was discussed at
 3 that briefing session?
 4 MR BOTES: We were basically discussing
 5 the incident, the clash that happened earlier in the
 6 morning between NUM and the striker group where two people
 7 were shot. And NUM were also present at that meeting and
 8 they accused us from not doing enough to protect the people
 9 and the NUM members saying that we and the police are not
 10 doing enough. So the whole discussion around about there
 11 was that in attempt to get more policemen on site Henry and
 12 Graham was – Graham Sinclair, Henry Blaauw and Graham
 13 Sinclair they were the people that was busy with this
 14 intervention, trying to get the police on site. And we
 15 decided to get more police resources in and also to contact
 16 more – Graham would contact more security reinforcements
 17 with hard skin vehicles that they could come and assist us.
 18 MR VAN AS: Were you involved in either
 19 communicating with the police or tasking and trying to
 20 secure more outside security personnel?
 21 MR BOTES: Mr Chairman, no not on
 22 Saturday although I spoke to the branch commander from
 23 Marikana SAPS on Friday night. But further from that I
 24 wasn't involved in any police liaisons or requests.
 25 MR VAN AS: I think I did less than my 30

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1 minutes, Mr Chairperson.
 2 CHAIRPERSON: Thank you, Mr van As.
 3 Who's going to cross-examine on behalf of the evidence
 4 leaders?
 5 MR CHASKALSON SC: I am, Chairperson.
 6 CHAIRPERSON: How long has been allocated
 7 to you?
 8 MR CHASKALSON SC: Three hours I'm told,
 9 Chairperson.
 10 CHAIRPERSON: So you'll still be busy
 11 when we adjourn at 4 o'clock.
 12 MR CHASKALSON SC: I will, Chairperson.
 13 CHAIRPERSON: Please proceed.
 14 CROSS-EXAMINATION BY MR CHASKALSON SC:
 15 Thank you, Chairperson. Mr Botes, before I get into the
 16 cross-examination proper there's a fair amount of
 17 clarification and almost leading that I need to do, so the
 18 nasty questions are going to come later.
 19 CHAIRPERSON: Because you're cross-
 20 examining, Mr Chaskalson.
 21 MR CHASKALSON SC: First of all I would
 22 like to clarify the status of a range of documents which I
 23 understand you played some role in preparing which give
 24 details of the persons who are deceased and who were
 25 arrested. And if we can first of all refer to a document

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1 that was sent under cover of an email from you on the 31st
 2 of August 2012 called Deceased List of 44 as at 28 August
 3 2012. If we can call that up. It is the – and for the
 4 purposes of the video display it's exhibit numbered 1 on my
 5 list, but we need to give it a new number which will be
 6 EEEE12. Sorry has Mr Botes got a bundle of documents in
 7 front of him?
 8 CHAIRPERSON: Are you going to put this
 9 up on the screen because then we'd have to have the five
 10 minute adjournment?
 11 MR CHASKALSON SC: I think let's have the
 12 five minutes.
 13 CHAIRPERSON: Unless it can be seen on
 14 the side – ag let's take the five minute adjournment and
 15 get it over with.
 16 MR CHASKALSON SC: I'm going to use a lot
 17 of exhibits at this point, so it would make sense,
 18 Chairperson.
 19 CHAIRPERSON: Let's take the five minute
 20 adjournment. Please five minutes as in four plus one.
 21 [COMMISSION ADJOURNS COMMISSION RESUMES
 22 [15:02] CHAIRPERSON: You're still under oath, Mr
 23 Botes.
 24 DIRK CORNELIUS BOTES: [s.u.o.]
 25 CHAIRPERSON: Mr Chaskalson.

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1 CROSS-EXAMINATION BY MR CHASKALSON SC (CONTD.):
 2 Thank you, Chair. Mr Botes, we were going to show you a
 3 spreadsheet with a list of the deceased that had been
 4 forwarded under cover of your email of 31 August 2012. Can
 5 we have it exhibited, or put up on the screen? It will be
 6 EEEE12.
 7 CHAIRPERSON: [Microphone off, inaudible]
 8 MR CHASKALSON SC: It is, Chairperson.
 9 Unfortunately my bundle hasn't been paginated, but it is
 10 the first document in the bundle of documents.
 11 CHAIRPERSON: If this was a case in one
 12 of the High Courts in this country it would be struck from
 13 the roll if the pages weren't paginated.
 14 MR CHASKALSON SC: Chairperson, if you
 15 could strike this case from the roll I would be very
 16 grateful.
 17 CHAIRPERSON: If you push me hard enough
 18 I will.
 19 MR CHASKALSON SC: Mr Botes, do you
 20 recognise this document?
 21 MR BOTES: Yes, I recognise it, Mr
 22 Chairman.
 23 MR CHASKALSON SC: Can you just explain
 24 to the Commission what it is and the circumstances in which
 25 it was drawn up?

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1 MR BOTES: Mr Chairman, if I look at the
 2 email I've sent numerous updated sheets of deceased and
 3 injured persons up and down the stream, and if I look at
 4 this email it's coming from Rosemary Molefe. She was at
 5 that stage in Human Capital and she was responsible to
 6 organise all the funerals of all the deceased. She
 7 forwarded to Samuel who, and then afterwards I receive it
 8 because I would at that stage, I was interested to know
 9 where the persons will be buried that we can assist our
 10 social worker with any problems, any information he might
 11 have about the deceased.

12 MR CHASKALSON SC: And for present
 13 purposes what I would emphasise is that this is a schedule
 14 that sets out the names of all 44 victims, their employer
 15 and company numbers where those are known, their
 16 occupations, where they were Lonmin employees, where they
 17 were employed in Lonmin, the union affiliation where that
 18 was known and their home addresses.

19 MR BOTES: Yes.

20 MR CHASKALSON SC: So it gives us
 21 something of a profile of the victims.

22 MR BOTES: That's correct, Mr Chairman,
 23 and I received this list from the Human Capital. I think I
 24 might added a column to this sheet, like the union
 25 membership that I understand the sheet whose, from which

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1 union was, were the persons affiliated, but I cannot
 2 remember compiling the sheet myself. I received it from
 3 Human Capital.

4 MR CHASKALSON SC: But it's Lonmin's
 5 assessment of these details?

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

7 MR CHASKALSON SC: Then I want to refer
 8 you to a similar sheet that relates to the arrested persons
 9 and if we could then turn over to the next document in this
 10 bundle, which is five pages into the bundle, it's entitled
 11 "Arrests made on 16 August 2012," and that will be exhibit
 12 EEEE13. Now this is a document that was forwarded to the
 13 evidence leaders from the legal representatives of NUM. It
 14 appears to us to be a final draft of an earlier, or a final
 15 version of an earlier draft that you had prepared at the
 16 instance of Brigadier Engelbrecht. Does that ring true to
 17 you?

18 MR BOTES: Mr Chairman, yes, I recognise
 19 this sheet and after NUM queried the number of membership
 20 towards the different union affiliations I've done a
 21 recheck on my initial data sheet which I got from the time
 22 office and I do not know if this is the final corrected one
 23 that I returned to NUM.

24 MR CHASKALSON SC: It was made available
 25 to us by NUM's legal representatives in May this year. Is

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1 there a later version?
 2 MR BOTES: I cannot recall, but this
 3 might be the final one that I amended and corrected.

4 MR CHASKALSON SC: And the first draft of
 5 it was prepared for Brigadier Engelbrecht at SAPS Criminal
 6 Intelligence. Is that correct?

7 MR BOTES: Mr Chairman, that one from
 8 Brigadier Engelbrecht was very early and it wasn't the
 9 final amended version, if this was the final amended
 10 version.

11 MR CHASKALSON SC: Yes, no I know it
 12 wasn't the final version, but Brigadier Engelbrecht asked
 13 you to prepare a list of union affiliation of the arrested
 14 persons on the 27th of August and that's how this process
 15 started.

16 MR BOTES: That's correct –

17 MR CHASKALSON SC: Is that correct?

18 MR BOTES: That's correct, Mr Chairman,
 19 if I look at the emails attached.

20 MR CHASKALSON SC: Then moving to the
 21 next step –

22 CHAIRPERSON: Before you get there can I
 23 just ask a question about this one? What is SACO, S-A-C-O?

24 MR BOTES: SACO is a system used on the
 25 mine where persons use their access card to clock and it's

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1 an automated system that open the turnstiles to the
 2 operations. So SACO is the access control system, so all
 3 employees who are engaged who's working for Lonmin,
 4 employees or contractors, are engaged on SACO to allow them
 5 access into certain areas.

6 CHAIRPERSON: Some persons on this list
 7 are described as, if one looks at the relevant column it
 8 says "Not SACO."

9 MR BOTES: That's correct.

10 CHAIRPERSON: "Not on SACO." What does
 11 that mean?

12 MR BOTES: The meaning is during that
 13 time when we searched for names it was searched by our
 14 secretary, Amanda van der Merwe. In later emails at the
 15 back dated 30th of August I ask her to go through the SACO
 16 system, try to pick up the suspects names on SACO that we
 17 can identify them as employees or contractors working for
 18 Lonmin. This list was compiled from a handwritten sheet
 19 that I received from the police and the spelling of those
 20 were very poor, so sometimes the name was exchanged with
 21 the surname and we have to search according to what we got
 22 from the police in their handwritten sheets that we
 23 received from the police and try to establish who's the
 24 employees, who's the contractors for Lonmin.

25 COMMISSIONER HEMRAJ: So does "Not on

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1 SACO" mean that they're not employees?
 2 MR BOTES: If not on SACO it's not
 3 employees or contractors employed at Lonmin.
 4 CHAIRPERSON: You've got both the
 5 employees and contractors. By contractors I take it you
 6 mean people who are working for someone from another firm –
 7 MR BOTES: From another company –
 8 CHAIRPERSON: - which has got a contract
 9 to provide services or something of that sort to Lonmin?
 10 MR BOTES: That's correct, Mr Chairman.
 11 MR CHASKALSON SC: And for instance if we
 12 go to the top of the final sheet you'll see that under the
 13 second entry it says "Ex NEWRAC K3." Now NEWRAC would be a
 14 contractor. That isn't Lonmin itself.
 15 MR BOTES: NEWRAC is a contractor, but ex
 16 NEWRAC means he's no longer employed by NEWRAC but he's
 17 discharged from NEWRAC, but he previously worked for NEWRAC
 18 company at Lonmin, Mr Chair.
 19 MR CHASKALSON SC: And if someone was
 20 employed at another platinum mine in the area, would they
 21 get picked up on SACO, or is it just Lonmin and Lonmin
 22 contractors?
 23 MR BOTES: Only Lonmin which is on SACO.
 24 The other companies have their own systems and we are not
 25 integrated with them.

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1 MR CHASKALSON SC: Thank you. The next
 2 documents, or not documents in fact. The next exhibits I
 3 want to refer you to are Google Earth files and these are
 4 Google Earth files that were discovered by Lonmin. They
 5 are three Google Earth files describing three separate
 6 incidents in the week of the 9 to 16 August 2012.
 7 The first is a Google Earth file describing the
 8 confrontation between NUM and AMCU on the 11th of August.
 9 Sorry, Chairperson, we don't have these printed out because
 10 they're Google Earth files. We can't print them out. What
 11 we can do is at a later stage when we look at them freeze
 12 particular snapshots in Commission which will then become
 13 exhibits, but if we can quickly call up the Google Earth
 14 file NUM/AMCU, which will become EEEE14, and if I can ask
 15 our video operator to highlight the, just to click in the
 16 box that says "11-08-2012 clash" so that the icons become
 17 visible. Do you recognise this Google Earth file?
 18 MR BOTES: Yes, Mr Chair, I compiled it
 19 on Google.
 20 MR CHASKALSON SC: Thanks. At this stage
 21 I just want you to identify them and get them in as
 22 exhibits. We'll come down to their details later when
 23 we're dealing with the relevant events. The next one is a
 24 Google Earth file relating to the murder of Mr Fundi and Mr
 25 Mabelane on the 12th, so if we can shut down this Google

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1 Earth file and call that one up as EEEE15, and again if I
 2 can ask for the box to be clicked and maybe to zoom in so
 3 that Mr Botes can see some meaning in all of it, and Mr
 4 Botes, do you recognise that Google Earth file?
 5 MR BOTES: That's correct, Mr Chair.
 6 MR CHASKALSON SC: And that's a Google
 7 Earth file that you compiled to describe the movement of
 8 Lonmin Security vehicles in the incident in which Mr Fundi
 9 and Mr Mabelane were murdered?
 10 MR BOTES: That's correct, Mr Chair.
 11 MR CHASKALSON SC: And I presume,
 12 although we'll get into this in some more detail later,
 13 that you were using the AVL vehicle tracking records of the
 14 particular vehicles to position their places at various
 15 times?
 16 MR BOTES: That's correct, Mr Chair, only
 17 difference is that we used at a stage a BitTrack system
 18 instead of AVL from the police, which is similar, but it is
 19 a similar system.
 20 MR CHASKALSON SC: It's a vehicle
 21 tracking system using GPS?
 22 MR BOTES: Correct.
 23 MR CHASKALSON SC: The last Google Earth
 24 exhibit, which will be EEEE16, is one fixing the position
 25 of the body of Mr Langa on the 13th of August, and if we can

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1 shut down this one and call up EEEE16, and again if we can
 2 just highlight the position of the body, and Mr Botes,
 3 again is this a Google Earth file that you prepared? The
 4 only information on this file is the position where Mr
 5 Langa's body was found on the 13th.
 6 MR BOTES: That's correct, Mr Chair.
 7 MR CHASKALSON SC: And if we can just
 8 scroll out so that the – scroll back in a little bit.
 9 Actually no, no, sorry. Sorry. Scroll out to where the
 10 lettering from the previous file is visible and now if we
 11 can untag the previous file and if you can just orient the
 12 Commissioners as to where this body is relative to where
 13 the Wonderkop Hostel complex is so that they can see the
 14 position of Mr Langa's death relative to a place with which
 15 they're more familiar.
 16 MR BOTES: Mr Chair, if you look where
 17 Marikana is noted, that red dot, Marikana is noted, east
 18 from it there's a railway line just south from Marikana
 19 where it is noted, and just close west to the Marikana
 20 description is the Wonderkop Hostel. Further west is the
 21 koppie and so if you go on the railway line to the east, to
 22 Eastern Platinum Mine, between Eastern Platinum Hostel and
 23 Segwaelane next to the railway line, the body was found
 24 there.
 25 MR CHASKALSON SC: And if you were to

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1 estimate the distance?
 2 MR BOTES: About - straight in line,
 3 about five to six kilometres.
 4 MR CHASKALSON SC: Thank you. Now the
 5 next exhibit I would want to refer you to is video footage
 6 of the scene of Mr Langa's death on the morning of 13th
 7 August, the scene with police and ambulance present was
 8 captured on camera 637 Hostel Main Dome. I don't want to
 9 play that footage -
 10 MR BOTES: Sure.
 11 MR CHASKALSON SC: - because not much
 12 happens.
 13 MR BOTES: Sure.
 14 MR CHASKALSON SC: But if we can just
 15 take a screenshot from it for you to identify it as exhibit
 16 EEEE17, and if we can call up EEEE17, will you confirm that
 17 that's a screenshot from camera 637 at the Hostel Main Dome
 18 and that the scene that is depicted there is the scene
 19 around Mr Langa's body with SAPS and the ambulance
 20 personnel there on the morning of the 13th?
 21 MR BOTES: That's correct, Mr Chairman.
 22 I tried to use this image and shacks at the back as a guide
 23 to plot the position on the Google mp.
 24 MR CHASKALSON SC: Thank you. The next
 25 document that I would like to exhibit with you is a

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1 spreadsheet setting out the Lonmin OB log. The Lonmin
 2 attorneys did not want us to print out a version of the
 3 spreadsheet going beyond 16 August, so we just printed out
 4 up to 16 August. The file that we have is a file that was
 5 saved on 27 August and has Lonmin as its author. If we can
 6 call up this - not the spreadsheet file, but the actual PDF
 7 printout file, which is -
 8 CHAIRPERSON: Is this going to get an
 9 exhibit number in the quadruple E series, or is it one of
 10 the ones you're going to deal with later?
 11 MR CHASKALSON SC: No, Chairperson, it
 12 should become 18, EEEE18, and Chairperson, if we can just
 13 reserve as EEEE18A the actual spreadsheet file because
 14 there may be some information in the file itself, and in
 15 particular in the metadata of the file that may become
 16 relevant. Now this document which - no, hang on. Sorry,
 17 sorry, this document has been printed out too long. I must
 18 apologise. Oh no, no, it hasn't. It starts on the 27th of
 19 July -
 20 CHAIRPERSON: It starts on -
 21 MR CHASKALSON SC: - and it runs all the
 22 way through -
 23 CHAIRPERSON: It starts on the 21st of
 24 July actually.
 25 MR CHASKALSON SC: The 21st of July -

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1 CHAIRPERSON: The one we have on the
 2 screen.
 3 MR CHASKALSON SC: - and it runs all the
 4 way to the last page of the 16th, which includes some
 5 entries from the 17th. The actual document runs through to
 6 the 27th of August, well the actual spreadsheet. Do you
 7 recognise this spreadsheet, Mr Botes?
 8 MR BOTES: I do, Mr Chairman.
 9 MR CHASKALSON SC: Can you describe what
 10 it is?
 11 MR BOTES: Mr Chairman, it is a
 12 spreadsheet that was started by Graeme Sinclair in the
 13 Lonmin JOC that instead of the old standard occurrence
 14 book, which is a manual document, standard document in the
 15 police and in the security industry, is to replicate any
 16 incidents that happen electronically on the sheet that you
 17 can easy control it and easy send it away instead of making
 18 copies, etcetera. So it is a replica basic from your old
 19 occurrence book where the operator sits and updates this
 20 sheet from the events as it is reported and happening.
 21 MR CHASKALSON SC: Now Mr Botes, can I
 22 just get clarity on how the system works. Is it, as it
 23 were, second generation synthesis of various handwritten
 24 occurrence books, or is it an electronic occurrence book
 25 that is filled out as events happen, or is it a combination

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1 of both?
 2 MR BOTES: Mr Chairman, no, it's a
 3 combination of both and it is not an electronic occurrence
 4 book, it is normal Excel spreadsheet which is populated by
 5 the operator himself. It is not a system that gives you
 6 functionalities into creating and replacing the old
 7 occurrence book. This is a simple Excel spreadsheet which
 8 is updated by the operator in front of the computer.
 9 COMMISSIONER HEMRAJ: So it's data that's
 10 captured electronically?
 11 MR BOTES: That's correct, Mr Chairman.
 12 MR CHASKALSON SC: And it's data that's
 13 captured as that data comes in. It's not as though at the
 14 end of the day someone looks at their notes and fills out
 15 what happened in the day.
 16 [15:22] MR BOTES: They were supposed to capture
 17 it as the events taking place or when any reports is made
 18 to the JOC.
 19 MR CHASKALSON SC: And who did the data
 20 capturing?
 21 MR BOTES: Mr Chairman, there was various
 22 operators working at the JOC at different times and the
 23 operator in charge at that moment he's supposed or she's
 24 supposed to capture it.
 25 MR CHASKALSON SC: So someone sits in

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1 front of a computer inside the Lonmin JOC.
 2 MR BOTES: That's correct, Mr –
 3 MR CHASKALSON SC: And captures
 4 information as it comes in.
 5 MR BOTES: That's correct, Mr Chair.
 6 COMMISSIONER HEMRAJ: I'm so sorry, Mr
 7 Chaskalson. But are there also handwritten notes of the
 8 events as they come in which was then captured
 9 electronically?
 10 MR BOTES: With the surveillance
 11 operators sitting in front of the cameras they have each an
 12 occurrence book where they also note down what they see.
 13 It's not necessarily what they see is immediately
 14 transferred or sent over to the Lonmin JOC. There was a
 15 big gap between the operators, every time when they see
 16 something and note it down there was a lack of
 17 communication between those operators to forward all those
 18 information immediately over to the Lonmin operator in the
 19 JOC that that person can capture it accurately. All the
 20 events, all the surveillance, anything that was noted or
 21 seen.
 22 MR CHASKALSON SC: And would that
 23 information that an operator captured find its way into
 24 this log in any way?
 25 MR BOTES: Mr Chairman, it was supposed

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1 to work like that, but it didn't because we have different
 2 locations making it very difficult for the operator to
 3 immediately report back to the Lonmin JOC that they can
 4 capture it. So we tried to update this sheet afterwards
 5 and we gave the occurrence books to Amanda and we asked her
 6 to update this sheets from all the occurrence the operators
 7 had to have a accurate date sheet of all the events that
 8 took place. But I assume that was after the 27th of August
 9 when this was sent out.
 10 CHAIRPERSON: Mr Tip, I see you turned
 11 your light on.
 12 MR TIP SC: Yes Chair, it occurs to me to
 13 avoid any lack of synchronicity – well Mr Chaskalson's
 14 anticipated my query and that is whether XX2 and the
 15 spreadsheet that is contained in that is not the same as
 16 this.
 17 MR CHASKALSON SC: There are some
 18 differences. We'll get to them in due course. It's not an
 19 identical document. Now the – you referred to OBs are
 20 different locations. Now the OBs of which we're aware of
 21 are the CPU OB, the COP OB and the EDM OB, are there other
 22 OBs?
 23 MR BOTES: Yes, Mr Chairman, there was a
 24 OB at each operator, sitting in front of the surveillance
 25 equipment. We had two work stations, two operating

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1 stations in the SAPS JOC. Each of those operators had an
 2 OB where they noted down whatever they saw and then we also
 3 had then normal occurrence book at the crime prevention
 4 unit. The COP is the Central Operations which is at
 5 another location, not close to where the JOC was and what
 6 was the last? The EDM.
 7 MR CHASKALSON SC: The EDM, Emergency –
 8 MR BOTES: The EDM OB is Emergency JOC
 9 which is also a different location from where the Lonmin
 10 JOC was and also the police JOC.
 11 MR CHASKALSON SC: So ignoring police OBs
 12 at the moment there should be five different Lonmin OBs,
 13 CPU OB, COP OB, EDM OB and the two OBs that operate at work
 14 stations in the Lonmin JOC.
 15 MR BOTES: That's correct, Mr Chair.
 16 MR CHASKALSON SC: But do those OBs still
 17 exist in hard copy form?
 18 MR BOTES: Mr Chairman, I believe so
 19 because we stored all those as evidence for the Commission.
 20 MR CHASKALSON SC: Because we haven't
 21 seen continuous OBs from 9 to 16 August on any of those
 22 five as far as I'm aware. We have almost continuous OBs,
 23 certainly for I think the CPU and the COP that we don't
 24 have continuous. Could you, through the Lonmin attorneys
 25 arrange that we get hard copy of all five of those OBs just

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1 for 9 to 16 August 2012?
 2 MR BOTES: Will do so, Mr Chairman.
 3 MR CHASKALSON SC: Then we also found
 4 some update emails that you had sent out while you were in
 5 the SAPS JOC and if we can hand in as exhibits quadruple E
 6 – Chair I'm just looking because my own numbering seems to
 7 be – I seem to have missed one and –
 8 CHAIRPERSON: We have 18 and then we have
 9 18A, that's the last one I recorded.
 10 MR CHASKALSON SC: Chair, this hard copy
 11 should be 19 which we didn't give a number to. 18A was the
 12 screenshot. So the hard copy of the log becomes 19 and
 13 then as 20.1 if we could have the security update that you
 14 issued at 7:15am from the SAPS JOC on the 16th of August.
 15 And 20.2 the security update that you issued at 9:33. If
 16 we can just call up those two emails.
 17 CHAIRPERSON: Are they in this bundle, Mr
 18 Chaskalson?
 19 MR CHASKALSON SC: They should be. Yes
 20 if you go to the end of the log sheet there is the 7:15
 21 email which has now been called onto the screen. I wonder
 22 if we could make the font bigger so that people in the
 23 audience could – no it is legible, it's my eyes. And the
 24 one at 7:15 says no-one at the koppie at the moment.
 25 Buses are running, normal at EPL, no buses running at

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1 Karee, we've engaged with Hannes, roads are clean to
 2 operations. No other marches or groups were monitoring the
 3 situation. And if we can go to – that's 20.1 and 20.2 at
 4 9:33. " A group of about 300 is gathering at the koppie.
 5 No other group and marches on the property, roads clear for
 6 deliveries and services. We're monitoring the situation,
 7 we'll keep you updated." Now these were updates that you
 8 issued, can you just explain to the Commission what the
 9 system was for the issue of these update emails?
 10 MR BOTES: Mr Chairman, at that stage I
 11 did not have any facility myself to send out emails or SMSs
 12 to the management of Lonmin to update them with the
 13 scenario happening across the property. And I sent that to
 14 Amanda and they had a system at EDM, Emergency Disaster
 15 control room where they sent out the SMSs to Lonmin
 16 management that update them with the situation. We made
 17 use of this function because it's very difficult to phone
 18 everybody, to alert everybody when something happens, so we
 19 made use of the system. So I sent these to Amanda that she
 20 can arrange to be sent out.
 21 CHAIRPERSON: Tell me where did this
 22 information come from? The first one EEEE20.1 says no-one
 23 at the koppie at the moment and this one says about 300.
 24 Now was that something that you ascertained by someone
 25 flying over in a helicopter or did someone observe it from

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1 a tower nearby or how exactly was this information
 2 obtained?
 3 MR BOTES: Mr Chairman, it was viewed
 4 with cameras in the morning at that time. The camera that
 5 we used, the same cameras that we used to monitor the
 6 situation when the police exercise took place, the same
 7 angle, but because the sun is at the back of the camera
 8 your picture view of the koppie is much clearer in the
 9 morning than in the afternoon where the sun is very low and
 10 the rays is inside the lens.
 11 MR CHASKALSON SC: So from in JOC you
 12 could control the CCTV cameras to identify or to focus on
 13 the koppie.
 14 MR BOTES: That's correct, Mr Chair.
 15 MR CHASKALSON SC: And did you yourself
 16 establish that there were no strikers on the koppie at
 17 7:15?
 18 MR BOTES: That's correct, Mr Chair.
 19 MR CHASKALSON SC: Now while we're still
 20 in the JOC -
 21 CHAIRPERSON: I take it similar
 22 information is available for all the preceding days.
 23 MR BOTES: That's correct, Mr Chair.
 24 CHAIRPERSON: So if one wants to know how
 25 many people were on the koppie at various times, on earlier

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1 days from say the 12th onwards that material will be readily
 2 to hand.
 3 MR BOTES: Mr Chairman, not now because
 4 at the time when the incidents happened we exported those
 5 footages applicable to the incidents that we had. I cannot
 6 go back into the recording now for other events which
 7 wasn't exported and which is as evidence with the
 8 Commission.
 9 MR CHASKALSON SC: But, Mr Botes, would
 10 you not have on your server still the security update
 11 emails that were giving these reports to senior management?
 12 MR BOTES: Mr Chairman, I can check on my
 13 email communication and not on the footage to verify the
 14 facts.
 15 CHAIRPERSON: - where it was, but either
 16 on the footage or on the emails, but I mean it should be
 17 available somewhere I take it.
 18 MR BOTES: That's correct.
 19 COMMISSIONER HEMRAJ: The footage that's
 20 seen on the CCTV camera does that automatically record it?
 21 MR BOTES: All the footage of the cameras
 22 are recorded on the digital recorders and as your hard
 23 drive gets full it overrides your oldest history of the
 24 footage recorded. So it keeps it for a time and then it
 25 starts writing it off. So if you do not export it and

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1 capture it and save it in a separate DVD or external hard
 2 drive you lose those footages because it continues, records
 3 the cameras.
 4 COMMISSIONER HEMRAJ: And for about what
 5 period of time would it remain on the hard drive?
 6 MR BOTES: Mr Chairman, we noted that it
 7 varies from about 19 days to 35 days during the strike.
 8 COMMISSIONER HEMRAJ: Thank you.
 9 MR CHASKALSON SC: Maybe following from
 10 Commissioner Hemraj's questions I should go to some
 11 clarificatory questions of my own in that regard and it's a
 12 matter that you address in your first supplementary
 13 statement which is EEEE8. And it's paragraphs 6, 8 and 9
 14 that I'd like to understand in a bit more detail. They
 15 start on page 85 of your bundle.
 16 MR BOTES: Mr Chairman, can you just
 17 mention the item number of that affidavit?
 18 MR CHASKALSON SC: 6.
 19 MR BOTES: Thank you.
 20 MR CHASKALSON SC: On page 2.
 21 CHAIRPERSON: On your supplementary
 22 statement page 85 is item 10 of the bundle.
 23 MR CHASKALSON SC: It's item 10 of the
 24 bundle, oh sorry paragraph 6 of the affidavit EEEE8, page
 25 85, 86 of your bundle.

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1 MR BOTES: Paragraph 6.
 2 CHAIRPERSON: It's on page 86.
 3 MR CHASKALSON SC: Yes.
 4 CHAIRPERSON: 86 of the bundle.
 5 MR CHASKALSON SC: So it's 6, 8 and 9
 6 that I'm interested in. You say analogue system late
 7 upgrade in about 2007 to a digital recording system. The
 8 digital video recorders, DVRs and operating system used is
 9 the CAPEXA CCTV product. All cameras are linked to the
 10 DVRs which can accommodate 16 inputs which currently
 11 consist of some 515 cameras monitoring activities on the
 12 mine.
 13 MR BOTES: That's correct, Mr Chair.
 14 MR CHASKALSON SC: Then you talk about
 15 upgrading the DVRs in 7. Over the page in 8 and this
 16 address Commissioner Hemraj's question, the DVRs have a
 17 built in hard drive which store all images which are
 18 recorded. The cameras are recorded as long as there's
 19 movement in the view of the camera. As soon as the hard
 20 drives get full they start to override the old footage.
 21 Depending on the movement in front of all the cameras
 22 plugged into each individual DVR each recorder storage
 23 capacity will differ. Thus meaning the more movement is
 24 taking place in front the cameras used by the operators the
 25 less storage capacity is available. Lonmin's outsourced

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1 etcetera – outsourced the operation to ML Asset management
 2 who operate the video surveillance on a 24 hour basis. Two
 3 additional decentralised control rooms where two operators
 4 are working per shift to monitor alarms and to monitor
 5 asset monitoring. Now if I can just clarify some questions
 6 I had on these paragraphs. You say all cameras are linked
 7 to the DVRs which can accommodate 16 inputs which currently
 8 consist of some 515 cameras monitoring activities on the
 9 mine. Does mean that all 515 cameras are recorded 16 per
 10 DVR?
 11 MR BOTES: Mr Chairman, yes. There's 16,
 12 the 16 inputs is 16 cameras a DVR can accommodate, so we
 13 have multiple recorders which is situated at different
 14 areas and the cameras closest to that recorder are plugged
 15 into a recorder, 16 cameras maximum to a recorder. So in
 16 total we have, I think out of my head, we had about 35
 17 recorders to accommodate the 515 cameras.
 18 MR CHASKALSON SC: I did the arithmetic
 19 and worked you'd need at least 33. Now your control room
 20 operates differently from the DVRs. Each DVR is recording
 21 16 designated cameras, but in your control room you sit in
 22 front of a monitor and you can choose which camera you want
 23 to look at.
 24 MR BOTES: That's correct, Mr Chair.
 25 MR CHASKALSON SC: And you can jump

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1 between cameras to get a better view of what you're
 2 watching as it unfolds.
 3 MR BOTES: That's correct, Mr Chair, the
 4 reviewing is done from the recorder and not directly from
 5 the camera. So the camera is linked from the camera
 6 directly into the recorder, it is immediately recorded and
 7 then you can do viewing or reviewing from the hard drive
 8 and not directly from the camera. So it's immediately
 9 recorded onto the hard drive and there you can do live
 10 viewing as it records or you can do history reviewing, then
 11 you reverse and it is still continuing recording as you do
 12 reviewing.
 13 MR CHASKALSON SC: So if you sit in the
 14 control room you can nominate any one of the 515 cameras
 15 that you want to look at.
 16 MR BOTES: That's correct, Mr Chair.
 17 MR CHASKALSON SC: And on the recording
 18 the basic principle is that it's movement activated, so if
 19 there is movement in front of the lens of the camera it
 20 starts recording.
 21 MR BOTES: That's correct, Mr Chair.
 22 MR CHASKALSON SC: But the system's not
 23 entirely passive as I understand it. If you sit in the
 24 control room and there's something that you want to look at
 25 are you in a position to direct a camera, because they

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1 rotate, in a particular direction and to make sure that it
 2 starts recording?
 3 MR BOTES: Mr Chairman, the example you
 4 are using if you have a zone camera, POZ which you can
 5 control and move if nothing is moving in front of that view
 6 of that camera it is not recording. The moment you move it
 7 your whole pixel is moving and then it immediately starts
 8 recording until it is stable at another area and there's no
 9 other movements in front of it.
 10 MR CHASKALSON SC: So as soon as you –
 11 that stands to reason. As soon as you move the camera the
 12 lens sees a moving image and it starts recording and you
 13 have the control from the control room to move the camera.
 14 MR BOTES: That's correct, Mr Chair. Not
 15 all the cameras, only a certain number of cameras are
 16 controlled cameras, the rest are fixed passive cameras.
 17 MR CHASKALSON SC: Now you mentioned in
 18 paragraph 9 that your control room is operated on a 24 hour
 19 basis, that there's video surveillance on a 24 hour basis.
 20 How does CCTV work at night, do the cameras pick up images?
 21 What quality light do you need before the cameras pick up
 22 images?
 23 MR BOTES: Mr Chairman, you need quite,
 24 very good lighting, illumination and a Hi-lux that you can
 25 have clear view of a picture that is similar that you

1 expect during the day. And because it is a lot of money to
 2 install lights anywhere on a shaft operations because of
 3 the openness and the big operation we have it's just
 4 impossible to install those lights. Inside your offices,
 5 inside the crush areas where normal people operations are
 6 working inside your plants there is normal lights
 7 adequately for our operators to work in. In those
 8 circumstances you have night footages.
 9 [15:42] But if you have a camera on the outside on a pole
 10 which is in a dark area and a high mast is 200 metres from
 11 it you will have not good images on those.

12 MR CHASKALSON SC: There's two separate
 13 questions really. The first is the quality of the image,
 14 you've answered that. But the second is will the cameras
 15 nevertheless pick up movement albeit blurry images, image
 16 movement and record when there is movement in front of
 17 them?

18 MR BOTES: Mr Chairman, if it's in such a
 19 way that the camera can pick up movement it will record but
 20 if it's too dark it will not record.

21 MR CHASKALSON SC: You see one of the
 22 issues, I mean by way of example is if we go back to
 23 EEEE18A which is that still image of the body of the, of
 24 the scene of the body of Mr Langa. If Mr Langa was killed
 25 by a large group of people who had actually moved into the

1 area in a small crowd as it were would that camera have
 2 picked up the movement of, I forget what the number of
 3 people is in the version, but they, say a hundred people.
 4 A 100 people moving at night in a group, I've given the
 5 wrong exhibit number I'm afraid its 18A, quadruple 18A, the
 6 screen shot of the camera. So that's the scene that one
 7 sees by day. Now if a crowd of that size had coming moving
 8 into that scene would that have triggered a movement
 9 response from the camera?

10 MR BOTES: Mr Chairman, if I knew there
 11 was people in that area specifically and I turned the dome,
 12 that dome is inside the Eastern Plats hostel complex, if I
 13 turn that dome to that specific area where those people are
 14 standing during night time those area is completely dark
 15 and it wouldn't have picked up anybody. Because its
 16 completely dark.

17 MR CHASKALSON SC: It wouldn't, so if it
 18 was just pointing in that direction and the group moved
 19 through there it would be to dark for the movement to
 20 register?

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

22 CHAIRPERSON: It depends on the moonlight
 23 surely?

24 MR BOTES: Not really even if its full
 25 moon, it needs much more light illumination to detect any

1 movement.

2 MR CHASKALSON SC: And did you do any
 3 searches of this camera over the preceding 24 hours when
 4 this body was found to see if anything had been recorded?

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

6 MR CHASKALSON SC: And there was nothing
 7 on the –

8 MR BOTES: There was nothing on that
 9 specific camera and we have also apart from that camera we
 10 have three domes inside Eastern Plats Hostel, all three
 11 were reviewed and to see if we can pick up anything.

12 MR CHASKALSON SC: Now in an earlier
 13 statement, in EEEE5 at paragraph 8 you talk about the time
 14 that you store on a hard drive and you say ordinarily the
 15 hard drive can accommodate 45 to 90 days of footage before
 16 it starts overwriting itself. But because of the increased
 17 activity in the week of the strike that was down to 19 to
 18 35 days?

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

20 MR CHASKALSON SC: Now does that amount
 21 have to be cut 16 different ways or is it when you say 19
 22 to 35 days, is it 19 to 35 days for each individual camera
 23 or 19 to 35 days in total divided by the 16 different
 24 cameras that each DVR records?

25 MR BOTES: Mr Chairman, no its the total

1 duration available on a hard drive and that includes all
 2 the cameras. So if it means I have 10 fixed cameras onto
 3 the hard drive and five dome cameras where normal
 4 operations those five dome cameras are not used regularly
 5 and 24/7 to follow people and to try and pick up things.
 6 So it is more stagnate it would not record but because the
 7 operator's focus on areas to monitor activities and
 8 continuously following people, using those cameras
 9 effectively it continuously records. Normal operations we
 10 would not have used it.

11 MR CHASKALSON SC: I understand that
 12 distinction. But I'm just clarifying what you mean by 45
 13 to 90.

14 MR BOTES: For all the cameras on the
 15 hard drive.

16 MR CHASKALSON SC: So that means if
 17 you've got ten cameras, you've got and each of them is
 18 recording exactly the same amount of time in nine days time
 19 you'd reach your 90 days or are you saying that it, you'd
 20 only reach your 90 days in 90 days time?

21 MR BOTES: Mr Chairman, the recording is
 22 not taking place in segments per camera. It is taking a
 23 frame from each camera and it is recorded. When you play
 24 it back or see it live it takes all those individual frames
 25 and put it together that you can have a live stream. So

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1 whatever frames is coming in, no matter from which camera
 2 it reaches your 19 days or 35 days when its busy. When
 3 it's quite and there's no movement in front of it, it can
 4 extend it to three months.
 5 MR CHASKALSON SC: I just think we're
 6 maybe talking passed each other. Let me ask the question
 7 in a different way. To save the stuff you have to download
 8 within 90 days or do you have to download within 10 days,
 9 in an ordinary situation, not in a high pressure situation?
 10 MR BOTES: In an ordinary situation you
 11 can download between –
 12 MR CHASKALSON SC: 45 to –
 13 MR BOTES: 45 days or 30 days then you
 14 can still have images available.
 15 MR CHASKALSON SC: All images of that –
 16 MR BOTES: All images.
 17 MR CHASKALSON SC: Okay.
 18 CHAIRPERSON: Do I understand you
 19 correctly assuming you have a period of a holiday when
 20 there's nobody there, when the wind doesn't blow, there's
 21 hardly any activity of any kind you can then, because
 22 there's so little movement there's so little recording then
 23 you can use it for 90 days effectively before it starts
 24 recording over and starting all over again, is that right?
 25 MR BOTES: That's correct.

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1 CHAIRPERSON: In a period where there are
 2 marches up and down all day every day and there's a lot of
 3 wind and all sorts of other activity t here you'd be lucky
 4 if you get more than the 20 days worth before you get the
 5 over recording or recording, is that –
 6 MR BOTES: That's correct, Mr Chair, it
 7 depends from the activity on all those cameras at a time.
 8 MR CHASKALSON SC: Now in that same
 9 affidavit. I think it's a different 27 February, no in
 10 that same 27 February affidavit –
 11 CHAIRPERSON: Paragraph?
 12 MR CHASKALSON SC: Paragraph 8.
 13 CHAIRPERSON: No that one –
 14 MR CHASKALSON SC: No, no, sorry.
 15 CHAIRPERSON: That's 4 December–
 16 MR CHASKALSON SC: It's 4 December.
 17 EEEE4 paragraph 8 round about page –
 18 CHAIRPERSON: It's item 5 of the bundle
 19 and we're looking at pages 54 and following. Is that
 20 right?
 21 MR CHASKALSON SC: No, I'm lost.
 22 CHAIRPERSON: The affidavit is the 4th of
 23 December is item 5 and it's pages 54 to 56.
 24 MR CHASKALSON SC: Ja, it is sorry. I
 25 was wrong its item 6 EEEE5 at page –

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1 CHAIRPERSON: Its pages 59 and following.
 2 MR CHASKALSON SC: Yes.
 3 CHAIRPERSON: Which is the paragraph
 4 you're looking at?
 5 MR CHASKALSON SC: Paragraph 11.
 6 CHAIRPERSON: That's page 60.
 7 MR CHASKALSON SC: "I instructed our CCTV
 8 technician Danie Rossouw to export all footages available
 9 from all DVRs of incidents reported to the joint
 10 operational centre. This footage was exported to an
 11 external drive in my possession which was made available to
 12 all parties. Lonmin legal team, SAPS and evidence
 13 leaders". Now do I understand by this that it was Mr
 14 Rossouw who decided what was going to be relevant and what
 15 wasn't going to be relevant to save and to copy to this
 16 Commission.
 17 CHAIRPERSON: It's not what it says. It
 18 says to export all footages available from all DVRs. It
 19 doesn't seem to suggest that he had any discretion at all.
 20 MR CHASKALSON SC: Of incidents, events
 21 reported to the joint operational centre.
 22 CHAIRPERSON: Yes, as long as it reported
 23 to the joint operational centre it's prima facie its
 24 covered, am I right?
 25 MR BOTES: Mr Chairman, yes it means that

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1 all the incidents where activities took place and where we
 2 need evidence for exhibits afterwards it was taken from the
 3 log sheet and also from the incidents that we are aware of
 4 and he was requested that that particular footage be
 5 exported to the external hard drives.
 6 CHAIRPERSON: The only limit was that
 7 these had to be incidents or events reported to the JOC?
 8 MR BOTES: To the JOC.
 9 CHAIRPERSON: And he didn't have a
 10 discretion as to what to report or what not to report to
 11 the JOC, someone else did that apparently?
 12 MR BOTES: Ja.
 13 CHAIRPERSON: But everything that had
 14 been reported to the JOC was available and he had to deal
 15 with it.
 16 MR BOTES: He had to –
 17 CHAIRPERSON: He tells you what you say
 18 in paragraph –
 19 MR BOTES: He had to deal with specific
 20 incidents that we task him and say that incident on the 10th
 21 capture that for us, on the 11th, the 12th. So we gave him
 22 specific incidents that he had to export for us.
 23 CHAIRPERSON: It's not exactly what para
 24 11 says. Para 11 does say you people chose what to be
 25 done. It says you instructed him to export all footages

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1 available from all DVRs of incidents/events reported to the
 2 JOC. So if they had been reported to the JOC then they
 3 were among the footages available from all DVRs and those
 4 ones he had to export? Is that right, that's what it says?
 5 MR BOTES: Ja, I see that as well. It
 6 says, Mr Chairman, but we gave him specific incidents to
 7 export.
 8 CHAIRPERSON: You actually chose to
 9 select as it were?
 10 MR BOTES: Correct.
 11 CHAIRPERSON: Some of the footages which
 12 you thought were relevant?
 13 MR BOTES: Which is relevant to the
 14 incidents that happened.
 15 CHAIRPERSON: Ja, I see. So what
 16 happened to the other ones, the ones you didn't select?
 17 MR BOTES: Those were override and we
 18 lost those footages.
 19 CHAIRPERSON: I see.
 20 MR CHASKALSON SC: Again I need clarity
 21 on this arrangement. Did you actually choose footage or
 22 did you choose incidents and ask him to find the footage?
 23 MR BOTES: We choose incidents, we choose
 24 incidents and he had to export those specific incidents
 25 which is applicable and which was available on cameras to

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1 the external hard drives.
 2 CHAIRPERSON: What were the criteria on
 3 which the choice was made as to which incidents were to be
 4 dealt with in this way?
 5 MR BOTES: The criteria was based on an
 6 incidents reported to us which we view that we need footage
 7 for any exhibits afterwards, any footage for any evidence
 8 if we want to identify suspects, identify groups, identify
 9 leaders, identify incidents that happened, like the
 10 killings or the car burnings. Those type of things we
 11 identify that he must review on all the different cameras
 12 available that area and all available footage from all the
 13 cameras must be exported.
 14 CHAIRPERSON: So some incidents obviously
 15 wouldn't be dealt with in this way. Because you didn't
 16 instruct him to do so? If you didn't think it relevant
 17 then it wasn't done?
 18 MR BOTES: Then we leave it.
 19 MR CHASKALSON SC: Do you have, would you
 20 have instructed him by email, would you have a copy of your
 21 instructions to him so we can see which incidents
 22 specifically he was asked to gather footage for?
 23 MR BOTES: Mr Chairman, no he worked
 24 daily with us early in the morning and we went off late.
 25 So he was the only technician assigned to us that worked

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1 with us. There was a daily communication, verbal
 2 communication to him. I do not have any email instructions
 3 to him. So it was a daily communication to him updating
 4 him on the incidents that happened and he sat in the Lonmin
 5 JOC exporting the footage from there.
 6 CHAIRPERSON: At the beginning of each
 7 day would you tell him the incidents he must work on that
 8 day or would you be with him all the time and tell him
 9 which incidents to use?
 10 MR BOTES: Mr Chairman, as the incidents
 11 occurred then he is notified and he made notes of that that
 12 what he should export and what –
 13 CHAIRPERSON: So he would effectively
 14 made notes, whether they still exist is another matter.
 15 But in order to make sure he got everything down that you
 16 wanted him, he would have made notes of those, would he?
 17 MR BOTES: I assume so, yes.
 18 COMMISSIONER HEMRAJ: Do you have a list
 19 of these incidents?
 20 MR BOTES: No, I do not have a list.
 21 MR CHASKALSON SC: And when was the
 22 Lonmin JOC established?
 23 MR BOTES: Mr Chair, when I started, when
 24 I came out on a Friday night it was already established.
 25 So I do not know when was it established because I did not

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1 work at the time for Graham. I was only called into assist
 2 on Friday night.
 3 MR CHASKALSON SC: And when was the
 4 instruction first given to Mr Rossouw because at the
 5 beginning you wouldn't have realised that this was going to
 6 be such an extraordinary period that you need an
 7 extraordinary system?
 8 MR BOTES: Mr Chairman, it happened since
 9 after the death of Frans and Hassan. We tasked him to
 10 available and make sure that we get all the evidence.
 11 MR CHASKALSON SC: And was there any
 12 other system beyond his selection for deciding what CCTV
 13 footage would be preserved?
 14 MR BOTES: Mr Chair, no he has access to
 15 all the cameras, all of the recorders and he can select any
 16 camera on any recorder to look at any event and to get all
 17 possible footage for us and export that for us.
 18 CHAIRPERSON: Now the operators on duty,
 19 they were watching continuously as things were happening,
 20 were they?
 21 MR BOTES: That's correct, Mr Chair.
 22 CHAIRPERSON: No one fell asleep at all,
 23 was supposed to fall asleep at any stage?
 24 MR BOTES: Mr Chairman, no they are used
 25 to work 12 hour shifts for many years and we relieve them

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1 every 12 hours.

2 CHAIRPERSON: Yes, I don't know whether

3 Mr Chaskalson deal with this later, I won't raise, ask you

4 about it now, but I must say I have great difficulty I

5 understanding how what you describe in para 13 could have

6 taken place. In light of what you've explained to us.

7 MR CHASKALSON SC: Chairperson, we will

8 get to that, to the specific incidents that are not covered

9 by footage later.

10 CHAIRPERSON: Para 13, if you don't want

11 to deal with para 13 now then obviously I won't take it

12 further. I'm in your hands.

13 MR CHASKALSON SC: I don't want to deal

14 with para 13 now because it requires a bit of detail. But

15 we've only got a couple of minutes left tonight. I wonder

16 if there are any clarificatory questions that can be

17 answered quickly. Ja, maybe if I can raise something with

18 you, and you can possibly consider it overnight because in

19 your statement of 3 July 2014, your first supplementary

20 EEEE8 at paragraph 24.

21 CHAIRPERSON: 85?

22 MR CHASKALSON SC: It starts at page 85

23 but the paragraph that I'm interested in is 24 which is on

24 page 91. You say "you've investigated the time variances

25 between the time on the various cameras and actual time and

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1 then you, so you can confirm certain variances and you do

2 that for camera 218, 482, 241 and the infrared cameras. I

3 haven't investigated the time variances of camera 218 or

4 camera 482. But have investigated the time variances of

5 the cameras that filmed the 16th which are 241 which is

6 Roland Head Gear and the infrared cameras" and I have to

7 put to you that your variances in respect of these cameras

8 are simply incorrect. It's not actually an issue that I

9 think is open for debate. But I want to put to you what I

10 say the correct variances are. 241, is 12 minutes, sorry

11 you say 241 is 12 minutes ahead of actual time. It's

12 actually 22 minutes and 29 seconds ahead of ETV time which

13 is our sort of proxy for actual time and the fleur which

14 you had a 3 minutes behind actual time is 5:22 ahead of ETV

15 time. So 241 is 22:29 ahead of ETV time, Flir is 5:22

16 ahead of ETV time and what I'd like you to do overnight is

17 just to go back to the variances and check the variances

18 that I've given you. I'm completely satisfied that they're

19 correct. I think the easiest way to do it is actually look

20 at internal variances between those two cameras because

21 approximately 17 minutes is the correct variation whereas

22 you've got a 15 minute variation. So I think you'll see

23 that the variances that you've got for them are not correct

24 and the correct ones are in JJJ37. But can I ask you to do

25 that overnight because I don't want to, I mean if we can

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1 reach agreement on it, it would be nice.

2 MR BOTES: Mr Chairman, can I answer it?

3 CHAIRPERSON: You could answer but

4 shouldn't you go back and check first and answer tomorrow

5 morning?

6 MR BOTES: Mr Chairman, I cannot go back

7 and verify the variances now. Because since I started

8 working with the mining team last year July my role now is

9 to look after the surveillance system.

10 [16:01] So, I look after the system and since then I

11 synchronised all the DVRs to the computer system of the

12 mine network. They have a clocking device giving us the

13 time on the computers and I synchronise all the DVRs to

14 that. Doing this exercise I went myself personally through

15 the DVRs, look at the live view of the camera and I look

16 the time of this camera is now this and the time on the

17 computer is that and this is the variances I got at the

18 time. So according to my verification on added time that

19 is what I've done. So it was the computers on the mine's

20 network were relatively according to a synchronised time

21 because the whole network is synchronised. Our CCTV

22 systems were not synchronised towards a clocking device and

23 since I started there on July last year I've synchronised

24 all the DVRs to the network.

25 COMMISSIONER HEMRAJ: So your actual time

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1 is the time on Lonmin computerised data?

2 MR BOTES: That's correct.

3 MR CHASKALSON SC: But Mr Botes, two

4 questions – well, two responses. First question is when

5 did you do this exercise? Because of course if the clocks

6 don't keep proper time that, your variances may be correct

7 for the day that you did them, but wouldn't reflect what

8 the variances were on the 16th.

9 MR BOTES: Mr Chair, if I look at the

10 first initial statement of that, before I've submitted it

11 I've done it before I submitted that statement.

12 Specifically, and that –

13 MR CHASKALSON SC: So that would have

14 been in October 2012?

15 MR BOTES: That's correct, and that

16 statement was specifically written to give a variance and

17 explanation afterwards what was the time when things were

18 recorded, because normally when you go to give evidence to

19 a court and your time is not synchronised they query you on

20 that and that is why I did it.

21 MR CHASKALSON SC: But you did it for the

22 first time in October 2012, not in August 2012.

23 MR BOTES: Yes, October 2012.

24 MR CHASKALSON SC: Then in response to

25 your response to me, you can actually do the

1 synchronisation exercise much more complicated, but what
2 you need to do is you need to go back to those two cameras
3 and if you take my time differences you'll see the
4 identical scenes and you run the one camera and then you
5 run whatever the time difference between the two of them
6 are, 17 minutes and 7 seconds, you'll see that they're
7 showing the identical scenes, whereas if you run your time
8 difference, which is 15 minutes, you'll see they're showing
9 different scenes. So can I ask you to do that overnight so
10 that we can –

11 MR BOTES: Mr Chair, I cannot do that
12 because those footages is already lost and the only –

13 MR CHASKALSON SC: No, no –

14 MR BOTES: The only footage we have now
15 live on that recorders is those exported images on our
16 external hard drives.

17 MR CHASKALSON SC: If you ask your legal
18 team, they will have footage of the relevant period on the
19 16th of August and that's what we're interested in. So
20 that's what I'd ask you to do in relation to the time
21 differences.

22 MR BOTES: Mr Chair, I'll ask the legal
23 team.

24 CHAIRPERSON: You see, when you're under
25 cross-examination you can't normally talk to them about the

1 case. For this particular matter we'll give you permission
2 to do so and then permission to talk to you about that
3 matter.

4 MR BOTES: Thank you, Mr Chairman.

5 MR CHASKALSON SC: Chair, I've already
6 run past 4, so if we can take the adjournment at this
7 point.

8 CHAIRPERSON: Right, 9 o'clock tomorrow
9 morning. We'll adjourn.

10 [COMMISSION ADJOURNED]

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