

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 265

29 JULY 2014

PAGES 33390 TO 33592



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1 [PROCEEDINGS ON 29 JULY 2014]
 2 [09:08] CHAIRPERSON: The Commission resumes. I
 3 understand that Mr Chaskalson and the witness have been
 4 talking about the time correlations, which is why we're
 5 late this morning. Has that now been sorted out, Mr
 6 Chaskalson?
 7 MR CHASKALSON SC: We're about to find
 8 out, Chairperson. Maybe –
 9 CHAIRPERSON: [Microphone off, inaudible]
 10 MR CHASKALSON SC: - start there, Mr
 11 Botes. I don't know if you had an opportunity last night
 12 to check time correlations and whether you are satisfied
 13 with my particular correlations on FLIR and Rowland
 14 Headgear.
 15 MR BOTES: Mr Chairman, yes, I did the
 16 homework that was requested and I agree that my reference
 17 time that I used to check the variations on the cameras is
 18 not the same as the eTV reference that the evidence leaders
 19 have conducted and I accept their version of the
 20 correlation of the timeslots.
 21 MR CHASKALSON SC: And informally you
 22 informed me to avoid this sort of problem going forward how
 23 Lonmin are now doing it is that all times are now going to
 24 be synchronised onto – all cameras are now going to be
 25 synchronised onto the same computer clock time, so they

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1 will all be operating on the same time.
 2 MR BOTES: Ja, that's correct, Mr
 3 Chairman. All the different recorders are then updated
 4 daily by one centralised updating clock engine.
 5 CHAIRPERSON: Well, I hope the computer
 6 time is going to be the exact time as at 30 degrees east.
 7 MR BOTES: That's correct, Mr Chairman.
 8 CROSS-EXAMINATION BY MR CHASKALSON SC (CONTD.):
 9 Mr Botes, I want to continue with a few remaining
 10 clarificatory questions and the first flows from paragraph
 11 46 of your statement, AAAA39. It's at page 79 of your
 12 bundle of statements, and I don't think it necessary to go
 13 there because it's a simple question. There you say that
 14 once you'd moved into the SAPS JOC permanently on 14 August
 15 there was always a representative from management on a
 16 rotating basis with you. Now do you recall who the
 17 management rep in the JOC was on Tuesday and then on
 18 Wednesday and then on Thursday?
 19 MR BOTES: Mr Chairman, no, I cannot
 20 recall, but there was a type of a roster set up by the
 21 senior management of that group and I cannot recall
 22 specifically who the person was.
 23 MR CHASKALSON SC: We saw a roster –
 24 CHAIRPERSON: [Microphone off, inaudible]
 25 was it, or I can understand you might have difficulty

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1 remembering who was the person on Tuesday and who was the
 2 person on Wednesday, but can you not remember what, who the
 3 people were who made up the management representatives on
 4 that rotating basis in the JOC?
 5 MR BOTES: Mr Chairman, it was senior
 6 management from the different shaft operations which they
 7 allowed into the JOC that if there's anything happened in
 8 the field and in our operations where there's any threat to
 9 the operations then I can speak directly do that senior
 10 management and we can make decisions on behalf of Lonmin
 11 whether to evacuate a site or whatever the case may be. So
 12 it is senior management from different operations. I can
 13 recall Charl Klopper, I can recall Gerhard van Rensburg,
 14 Grant Webber. There's various people that were in there
 15 different times of the day during dayshift and nightshift.
 16 CHAIRPERSON: I can understand it's
 17 difficult for you to remember who was there on a particular
 18 day at a particular time, but I think you've given us the,
 19 I'm not sure if it's a complete list but you've given us
 20 the names of the people who were doing that duty on that
 21 rotating basis. Is that right?
 22 MR BOTES: It's correct. I can try to
 23 get a previous email or a communication from our history to
 24 establish what, who the persons were on what particular
 25 day.

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1 MR CHASKALSON SC: Thanks, Mr Botes, if
 2 you could that would assist us. Then in your first
 3 supplementary statement of 3 July, that's EEEE8 –
 4 CHAIRPERSON: Page?
 5 MR CHASKALSON SC: It's the annexure page
 6 and that would be 94. You've marked the positions of the
 7 FLIR camera and the Rowland Headgear 241 camera.
 8 MR BOTES: That's correct, Mr Chair.
 9 MR CHASKALSON SC: Now as I understand it
 10 the Rowland Headgear camera was a fixed camera. It's in a
 11 fixed position. I mean when I say fixed, it can rotate but
 12 it's in a fixed position, it can be moved.
 13 MR BOTES: That's correct, Mr Chair.
 14 MR CHASKALSON SC: But our understanding
 15 is that the FLIR was in fact mounted on a mobile trailer.
 16 MR BOTES: That's correct, Mr Chair.
 17 MR CHASKALSON SC: And we have a
 18 photograph, and I'm sorry, I haven't shown it to you, which
 19 was an oversight on my part, but we think we have
 20 identified the FLIR camera on an aerial photograph and if
 21 we can just quickly put it up for you. It will be the
 22 presentation in our bundle, which will become EEEE20, and
 23 although – I'll get a page reference –
 24 CHAIRPERSON: [Microphone off, inaudible]
 25 got EEEE20. In fact you've got EEEE20.1 and 20.2.

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1 MR CHASKALSON SC: Then it will be –
 2 CHAIRPERSON: Is that right, Ms Pillay?
 3 This will be 21, will it, this one?
 4 MS PILLAY: [Microphone off, inaudible]
 5 CHAIRPERSON: Yes.
 6 MR CHASKALSON SC: 21 then, and if we can
 7 just call it up, it's Lieutenant-Colonel Vermaak's
 8 photograph JJJ10.4533 and if you look at the screen, in
 9 fact the one behind you will be better resolution, Mr
 10 Botes. If you look at the screen, we marked an area that
 11 we blow up and then if we, can we go to the next page which
 12 blows up that area and is that the FLIR camera that we've
 13 circled?
 14 MR BOTES: That's the FLIR camera, Mr
 15 Chairman.
 16 MR CHASKALSON SC: And that was just,
 17 that was approximately 15 minutes before the operation
 18 began, so that would have been the position of the FLIR
 19 camera when you were seeing its images in the JOC.
 20 MR BOTES: Mr Chairman, I could not see
 21 the images of that camera in the JOC. There was an
 22 operator with that camera, so at the time from the 9th until
 23 it is deployed there that camera was controlled by an
 24 operator on the site. We did not have a link to our JOC
 25 control room where we sat and I only received the footage

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1 afterwards after the incident took place when we start
 2 gathering all the evidence. So there was no direct link to
 3 the control room that we can view that camera.
 4 MR CHASKALSON SC: So while you were in
 5 the JOC you were looking at Rowland Headgear. Were there
 6 any other cameras that you looked at while the operation
 7 was live?
 8 MR BOTES: Mr Chairman, there was a
 9 camera at Attack Services' offices, which is next to the
 10 stadium, but due to the distance and of course the height
 11 of that camera we could not use it and we mainly used the
 12 Rowland Headgear camera.
 13 MR CHASKALSON SC: Then moving to a –
 14 CHAIRPERSON: I'm sorry, while we're busy
 15 marking exhibits, I see we've got in your bundle page 68
 16 and 69 are what we're busy with at the moment, 68 is the
 17 main photograph as it were, and 69 is the enlarged one. So
 18 I take it both, the first one, the ordinary one, your page
 19 68 of your bundle is EEEE21.1 I take it, and page 69 is
 20 EEEE21.2. Is that right?
 21 MR CHASKALSON SC: Yes, Chairperson.
 22 Then back to AAAA39, your bundle at page 70, paragraph 10,
 23 you speak about a conversation between yourself and Mr
 24 Sinclair on the 11th of August and you said he asked you,
 25 and I quote, "to take charge of security personnel at an

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1 operations level," and you agreed.
 2 MR BOTES: That's correct, Mr Chairman.
 3 Only difference is in my final supplementary statement made
 4 on item number 11 –
 5 CHAIRPERSON: That's page 95.
 6 MR BOTES: That's correct, Mr Chairman.
 7 It wasn't on the Saturday the 11th, it was Friday the 10th.
 8 MR CHASKALSON SC: Thank you. Now what
 9 did it entail to be in charge of security personnel at an
 10 operations level? What were your responsibilities?
 11 MR BOTES: Mr Chairman, at that stage it
 12 was to take charge of the ground personnel deployed at
 13 Rowland Crossing where we engaged with the striking groups
 14 where they stopped people from going to work. So that
 15 means it's to take a responsibility for those guys and if
 16 there's any further actions to be taken I would take charge
 17 of those people and that was only for the Friday night
 18 before everything went out of hand on the Sunday when they
 19 killed our security colleagues.
 20 CHAIRPERSON: What time did Mr Sinclair
 21 telephone you on Friday the 10th of August? I take it, it
 22 was in the evening. You say, you start off by saying, "I
 23 wasn't scheduled to work on Saturday 11 August." So that
 24 of course is irrelevant for what we're now busy with. I
 25 take it, it's correct you weren't scheduled to work on the

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1 Saturday, but it's not relevant for what appears in the
 2 rest of para 10. You say, "At approximately 18h00 I was
 3 telephonically contacted by Sinclair." Is that correct for
 4 Friday night?
 5 MR BOTES: That's correct, Mr Chairman,
 6 on Friday about 18h00 he phoned me.
 7 CHAIRPERSON: Now this operations level,
 8 this level, so-called operations level as you call it, that
 9 was related to dealing with the strike. Is that right?
 10 MR BOTES: It is to deal with the
 11 conflict. It's to deal with the riotous behaviour of the
 12 striking group.
 13 CHAIRPERSON: Yes, when was the first
 14 riotous behaviour that you were talking about?
 15 MR BOTES: It, he called me out because
 16 of the threat which was imminent that the group were
 17 gathering at the koppie and that is why he called me out to
 18 come and assist.
 19 CHAIRPERSON: No, I'm sorry, that's not
 20 the evidence that we've heard so far. The evidence so far
 21 is that the group gathered at the koppie on the Saturday
 22 after the incident near the NUM office. I haven't heard
 23 any evidence so far – or if I did I've forgotten it, but I
 24 haven't heard any evidence that I can recall that people
 25 were on the koppie on the Friday night. Is that correct?

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1 MR BOTES: Mr Chairman, I cannot say
 2 specifically on the koppie, but there was people, there was
 3 a lot of people - I can also not say how many because it
 4 was in the darkness – in the area in the field towards the
 5 koppie. So it is not specific at the koppie but it was,
 6 people were gathering in there, in that area.
 7 CHAIRPERSON: Alright, so you've revised
 8 that answer then. What time did nightshift start?
 9 MR BOTES: The nightshift started at
 10 21h00.
 11 CHAIRPERSON: That 21h00.
 12 MR BOTES: 9 o'clock.
 13 CHAIRPERSON: So you were called an hour
 14 before the nightshift was due to start?
 15 MR BOTES: Earlier. It is about four
 16 hours –
 17 CHAIRPERSON: Oh, sorry, 6 o'clock. You
 18 were phoned at 18h00. That's 6 o'clock.
 19 MR BOTES: That's correct, Mr Chairman.
 20 CHAIRPERSON: Yes. Now I take it that
 21 was based upon the fact that as the group or the leaders
 22 left the, what they call the time office, the LPD, they
 23 said that they would see to it that people didn't report
 24 for nightshift. Is that, was that what caused the clash or
 25 was it more complicated than that?

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1 MR BOTES: Well, the whole purpose for us
 2 to deploy our security forces is to protect the people who
 3 wants to go to work and that is why we were deployed at
 4 Rowland Crossing and so we found people coming out of that
 5 area, marching towards that area and we tried to stop them.
 6 CHAIRPERSON: You know, Mr Botes, I'm
 7 afraid you've now lost me completely. If one goes on to
 8 paragraph 11 –
 9 MR BOTES: Yes.
 10 CHAIRPERSON: - on page 70, there you're
 11 clearly talking about something that happened on the
 12 Saturday because you say, "During our telephone
 13 conversation Sinclair informed me he'd been told there'd
 14 been a clash between the striking employees and members of
 15 NUM. He also told me a large group of striking employees
 16 had congregated at the koppie at Wonderkop." That's what
 17 you said earlier, which you revised when I reminded you
 18 they hadn't gone to the koppie on the Friday. But there
 19 also hadn't been a clash. The clash, well unless there's
 20 another clash that we know nothing about, but the clash
 21 we've heard about was on the Saturday morning at the NUM
 22 office.
 23 MR BOTES: That's correct –
 24 CHAIRPERSON: But you say here in
 25 paragraph 11 that during the telephone conversation you had

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1 when you were asked to take charge of security personnel at
 2 an operations level, you say that was on the Friday night.
 3 So, but this was this conversation that you're talking
 4 about, that doesn't make sense. So what's the true
 5 position, Mr Botes?
 6 MR BOTES: Mr Chairman, I agree to you
 7 and that is why I made a supplementary statement, which is
 8 page 95, and to correct that. I realised that my dates was
 9 screwed and I corrected that and in my supplementary
 10 statement I said I only heard of the clash on the Saturday
 11 and the briefing which I attended, but on the Friday night
 12 I was called out for this intervention that we allow the
 13 people to go to work.
 14 CHAIRPERSON: Yes, yes, I understand
 15 that. It's one thing to say I've got my dates wrong. It's
 16 another thing to say I was asked to take charge of the
 17 security personnel at operations level on the Friday night
 18 and in the course of a telephone conversation when I was
 19 asked to do that certain things were said, when clearly
 20 that telephone conversation must – didn't that telephone
 21 conversation take place on the Saturday, or did you
 22 actually see Mr Sinclair face to face on the Saturday?
 23 MR BOTES: Mr Chairman, it was, the
 24 conversation took place on the Friday evening to request me
 25 to take charge of the operations, but I, when making this

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1 statement I was not clear of my facts when did it happen
 2 and what was said to me, but working through the evidence
 3 and working through the job sheets I realised that I made
 4 mistakes and I corrected that through my supplementary
 5 statement and I said in that that I was only informed of
 6 the clash on the Saturday when I attend the briefing
 7 session.
 8 CHAIRPERSON: You still haven't answered
 9 my question. The question I asked you was this information
 10 that you got, that you set out in paragraph 11, did you get
 11 that information in the course of the telephone
 12 conversation on the Saturday from Mr Sinclair, or did you
 13 get it from him in the course of a discussion you had on a
 14 face-to-face basis?
 15 MR BOTES: I got it from him on a
 16 personal interview during the briefing session at, on
 17 Saturday.
 18 CHAIRPERSON: I see, thank you.
 19 MR CHASKALSON SC: While we're on
 20 briefing sessions with Mr Sinclair, we've learned of a
 21 debriefing session after the march to the LPD offices at
 22 about 2 o'clock on the Friday. Did you attend that at –
 23 MR BOTES: No, Mr Chairman, I wasn't
 24 assigned at that unit yet. I was only called at 18h00 that
 25 evening.

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1 MR CHASKALSON SC: So you observed what
 2 was happening at the march but you didn't attend the
 3 debrief session afterwards?
 4 MR BOTES: That's correct, because my
 5 office is situated when the march took place where I worked
 6 previously.
 7 MR CHASKALSON SC: And sorry, just to
 8 clarify, the assignment that you speak of in paragraph –
 9 sorry, not the assignment, the instruction from Sinclair at
 10 paragraph 10, when he gave that instruction to you was that
 11 just for the evening of the 10th or did you then understand
 12 that you were going to be in charge at operations level
 13 going forward for as long as the strike ran?
 14 MR BOTES: I understood it that we, only
 15 for the night of the 10th and then we make a decision
 16 afterwards when I left at round about 12 o'clock that night
 17 that I will come back the next day at 2 o'clock for a
 18 briefing session and to look at the situation for further
 19 deployment and planning.
 20 MR CHASKALSON SC: Then we've seen in a
 21 number of statements that Mr Sinclair was the official
 22 liaison between SAPS and Lonmin from the Lonmin side. We
 23 know from your statement that you were the liaison person
 24 inside the SAPS JOC. How did those two relationships work?
 25 What was your responsibility in terms of liaison and what

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1 was Mr Sinclair's responsibility?
 2 MR BOTES: Mr Chairman, between SAPS
 3 senior management and outside the JOC where it liaises with
 4 the commissioner and senior management he was the liaising
 5 officer outside and if there's any request outside the JOC
 6 for extra organising of emergency services, ambulances,
 7 etcetera, he would handle it. Everything inside the JOC
 8 pertaining to information the JOC needed for their planning
 9 I would supply that and submit that and if I need something
 10 which I cannot do from inside the JOC I would speak to
 11 Graham and he will get maps or whatever the case may be
 12 from outside to support me inside the JOC.
 13 [09:28] MR CHASKALSON SC: Thank you. Then my
 14 last clarificatory question. In AAAA39, page 79, paragraph
 15 44 you describe General Annandale as being in overall
 16 charge of the SAPS JOC.
 17 MR BOTES: That's correct, Mr Chair.
 18 MR CHASKALSON SC: Now from your
 19 observations in the JOC from 14 to 16 August did you see
 20 General Annandale as being the man who was in overall
 21 command of the SAPS operations that were taking place in
 22 Marikana?
 23 MR BOTES: Mr Chairman, that was my
 24 observation because he was the chairperson from all the
 25 JOCCOM meetings that was held. He discussed it, he gave

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1 the information, he ran the meetings and because of that
 2 fact I consider him as the person in charge because
 3 everything was done through him.
 4 MR CHASKALSON SC: And what about General
 5 Mpembe? Was he not in overall charge as far as you could
 6 see?
 7 MR BOTES: Mr Chairman, not inside the
 8 JOC maybe outside. Part of the operations were planning
 9 outside, but he had attended the JOCCOM's meetings, but he
 10 wasn't in charge, he wasn't the chairperson of that
 11 meetings.
 12 CHAIRPERSON: What role, if any, did he
 13 play in the JOC?
 14 MR BOTES: I missed that.
 15 CHAIRPERSON: What role, if any, did
 16 General Mpembe play in the JOC?
 17 MR BOTES: If there's any information his
 18 involvement which I consider was about his people, his
 19 deployment outside and not for the planning inside of the
 20 JOC himself.
 21 MR CHASKALSON SC: What do you mean his
 22 people? The North West SAPS people.
 23 MR BOTES: The deployment of the SAPS
 24 people from North West Province.
 25 MR CHASKALSON SC: Thanks then, Mr Botes,

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1 I'm now going to move over to ask you some questions about
 2 the incident on the 12th and for this if we can go back to
 3 the Google Earth exhibit which you prepared which is of the
 4 event on the 12th. It's EEEE15. So if we can call up
 5 EEEE15 on Google Earth. And while the image is being
 6 called up maybe if I can just a few clarificatory questions
 7 past you. And if we can tag – first can you maximise? I
 8 don't think tag everything, just maximise that zoom in and
 9 on that left-hand key as it were if you can just open up
 10 the – yes and I think un-tag everything and we'll go
 11 through vehicle by vehicle to see how the different
 12 vehicles moved and what was actually happening. If we can
 13 identify the vehicles. The first tag is route of Lavina.
 14 Now the Lavina was the vehicle driven by Mr Fundi and Mr
 15 Mabelane, is that correct?
 16 MR BOTES: That's correct, Mr Chair.
 17 MR CHASKALSON SC: The second one is
 18 route of VW Polo, that's the vehicle driven by Mr Masibi
 19 and Mr Malumele, is that correct?
 20 MR BOTES: I understood so.
 21 MR CHASKALSON SC: Then we have Hilux 1,
 22 route of Hilux 1, that was Mr Motlogeloa and Mr Dibakoane,
 23 are you able to confirm that?
 24 MR BOTES: I wasn't aware of that.
 25 MR CHASKALSON SC: Okay, we can confirm

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1 all of these from the statements, so just for the purposes
 2 of this exercise let me run through them. Then Hilux
 3 number 2 was Mr Rantuku and Mr Rantesi and the Nissan hard
 4 body which is the last vehicle was the rescue vehicle
 5 driven by Mr van Roy. Now the rescue vehicle, is that like
 6 a mine ambulance?
 7 MR BOTES: Mr Chairman, no it's a road
 8 safety vehicle which is used to do road blocks and road
 9 traffic violations.
 10 MR CHASKALSON SC: Okay and before we
 11 start running the Google Earth if we can quickly look at
 12 the Hilux 1 entries, open them up and if you can just –
 13 what's happened with the Hilux 1 is that there's been an
 14 erroneous labelling. So you'll see that it jumps from the
 15 entries from 9:50 onwards, 9:49 jumps to 10:50. We've
 16 checked the original source, that's just a labelling error,
 17 so in fact what says 10:50 that's the 9:50 and 9:51, you've
 18 got the right records, you've got the wrong labels.
 19 CHAIRPERSON: I take it, it becomes
 20 correct once it gets to 10 o'clock. So it's got 9:49 and
 21 then followed by 10:50 which is really 9:50 then it goes
 22 all the way down to what's called 10:59 which is really
 23 9:59 I take it. And the next one is 10 o'clock, that
 24 really is 10 o'clock followed by 10:04 which I take it is
 25 also 10:04. Is that correct?

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1 MR CHASKALSON SC: That's correct,
 2 Chairperson. We've prepared a corrected version with
 3 correct labels and we'll print out some hard copies of that
 4 when we are doing hard copy exhibits to assist the
 5 Commission. And there are really two ways of looking at
 6 this Google Earth presentation to understand what happened
 7 on the 12th. The first is to take it vehicle by vehicle and
 8 to see which way each vehicle moved, where and when and
 9 then to take snapshots at a particular time so you can see
 10 what the situation was at a particular time. If we can
 11 start with the vehicles and for this exercise what I'd like
 12 us to do is to start with Mr Fundi and Mabelane's Nissan
 13 Lavina and if we can go back up on the key, a little bit
 14 higher up above Volkswagen Polo and open up route of
 15 Lavina. And click first on 9:48 which appears to be the
 16 point at which Mr Fundi and Mabelane responded to the call.
 17 And we see that position quite a long way marked at 9:48
 18 quite a long way to the east of Wonderkop hostel.
 19 MR BOTES: That's correct, Mr Chair.
 20 MR CHASKALSON SC: Then they are
 21 responding to a call which is presumable the call in
 22 relation to the attack on Mr Vorster and Mr Louw and by
 23 9:51, if we click 9:51 they had now moved all the way to a
 24 position very close the boom gates. Can we zoom in just so
 25 that we can see where we are? Now you didn't have any

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1 intermediate readings on your vehicle tracking between 9:50
 2 and 9:51 that you're aware of.
 3 MR BOTES: Mr Chairman, no there could
 4 be, but I did not plot every report from the scene, but
 5 what I gathered is that they drove from the eastern side,
 6 past the Andrew Saffy hospital and entered the hostel on
 7 the eastern side driving through it up to where they
 8 stopped next to the kitchen.
 9 MR CHASKALSON SC: And this is the point
 10 at which they stopped and that's as the label says.
 11 MR BOTES: That's correct.
 12 MR CHASKALSON SC: I don't know if you
 13 have a – that's very close to the entry boom gate of the
 14 hostel. I don't have a pointer, but I wonder if you could
 15 just point out the – maybe we can just describe it because
 16 the boom gate as I understand it is just across the road at
 17 the point at which the long, white, vertical building comes
 18 to the road.
 19 MR BOTES: There's the western gate where
 20 the boom gate is.
 21 MR CHASKALSON SC: Maybe when we print
 22 out the hard copy –
 23 CHAIRPERSON: What you showed us was what
 24 Mr Chaskalson described. The long, white, vertical
 25 building and at the foot of that building there's of course

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1 a road and that's the point you say was the western gate
 2 and that's where the boom gate was.
 3 MR BOTES: That's correct, Mr Chairman.
 4 CHAIRPERSON: They'll plot it on the hard
 5 copy and we'll get it in due course.
 6 MR BOTES: Thank you, Mr Chair.
 7 CHAIRPERSON: I'd be grateful if you'd me
 8 a favour and not use that too much in your evidence because
 9 if every time I have to describe what you point out and it
 10 becomes quite interesting for the witness to do that. But
 11 I'd be grateful if you'd refrain as much as possible.
 12 MR BOTES: Sure, Mr Chair.
 13 MR CHASKALSON SC: I won't ask you to do
 14 that again, Mr Botes, I apologise. What we then see is we
 15 then see Mr Mabelane and Mr Fundi starting to retreat,
 16 presumably in the face of the crowd of strikers. So if we
 17 go a minute later to 9:52 they have now gone backwards.
 18 MR BOTES: That's correct, Mr Chair.
 19 MR CHASKALSON SC: And they're now –
 20 CHAIRPERSON: They didn't reverse because
 21 they went in an easterly direction and stopped at the point
 22 which is indicated, the place where they were at 9:52.
 23 MR CHASKALSON SC: Yes, Chair. Ja I
 24 suspect they wouldn't have reversed, no they wouldn't have
 25 when we look at the orientation of their vehicle

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1 ultimately. Another minute later, 9:53, sorry not 9:53,
 2 9:55 where they have eventually stopped, three minutes
 3 later and for that if we can scroll out a little bit, zoom
 4 out a little bit because we've got to go to the right. And
 5 by 9:53 they had retreated to the position where eventually
 6 they were murdered.
 7 CHAIRPERSON: That's 9:55.
 8 MR CHASKALSON SC: 9:55.
 9 CHAIRPERSON: That's at the eastern end
 10 of that loop that we described previously. The road which
 11 runs from west to east intersects with the main
 12 thoroughfare going up, I think past the Saffy hospital on
 13 the right side. And just before that section there's a
 14 loop and they stopped on the right-hand, eastern side of
 15 the loop.
 16 MR CHASKALSON SC: And I see that at 10
 17 o'clock the vehicle tracker reflects that the ignition was
 18 switched on.
 19 MR BOTES: Mr Chairman, that's correct.
 20 I think the last position of the ignition switch on is a
 21 bit different from the previous one, but that is the only
 22 history that the tracking system showed me is 10 o'clock
 23 the last one before the vehicle was burnt out.
 24 MR CHASKALSON SC: And 10 o'clock is very
 25 close to the position of 9:55, so it seems that somebody

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1 tried to switch on the ignition at that point, at 10
 2 o'clock.
 3 MR BOTES: Mr Chairman, I assume it is
 4 Frans and Dasson themselves trying to escape.
 5 MR CHASKALSON SC: That was what I was
 6 going to put to you next.
 7 MR BOTES: Correct.
 8 MR CHASKALSON SC: So that is the
 9 movement of Mr Mabelane and Mr Fundi's vehicle. We will
 10 print out the hard copy of this and make this available.
 11 If we can then blank that and move to the next vehicle
 12 which is the Volkswagen Polo. And again if we can start at
 13 9:51 and the starting position of the Polo where it
 14 responds and it is inside the Wonderkop complex when the
 15 ignition gets switched on.
 16 MR BOTES: Mr Chairman, it's outside the
 17 Wonderkop hostel complex, it is in a tar road passing
 18 Andrew Saffy hospital.
 19 MR CHASKALSON SC: I stand corrected.
 20 Sorry can we just scroll that up and go to the next entry
 21 when it responds, 9:51? So at 9:52, let's click the first
 22 9:52, it's now moved into the hostel complex and it's
 23 turning left up to move in the direction where Mr Fundi and
 24 Mabelane are ahead of it.
 25 MR BOTES: That's correct, Mr Chair.

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1 MR CHASKALSON SC: And where they're
 2 going to confront the strikers coming from the opposite
 3 direction, coming from the west.
 4 MR BOTES: That's correct.
 5 MR CHASKALSON SC: 9:52 again and another
 6 reading a little later at 9:52, it's halfway or
 7 approximately halfway up that road. 9:53, can we just zoom
 8 in? 9:53 is a little bit ahead. 9:52 is approximately, if
 9 I have my bearings right, just past the Schagen workshops.
 10 Is that correct?
 11 MR BOTES: Mr Chairman, just before the
 12 Schagen workshops.
 13 MR CHASKALSON SC: Okay.
 14 CHAIRPERSON: Can I interrupt a moment
 15 just to save time? That road that runs up from the bottom
 16 right-hand corner of the photograph diagonally to the top
 17 of the photograph, what's that called?
 18 MR BOTES: That's the Main Road from the
 19 lower road –
 20 CHAIRPERSON: It's just called the Main
 21 Road, it hasn't got another name?
 22 MR BOTES: It is the Main Road towards
 23 the Wonderkop village.
 24 CHAIRPERSON: So it's called the Main
 25 Road.

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1 MR BOTES: That's correct.
 2 CHAIRPERSON: And the one at right
 3 angles, the one where the vehicle we're talking about at
 4 the moment went, has that got a name?
 5 MR BOTES: That is the entry to the
 6 Wonderkop hostel complex.
 7 CHAIRPERSON: It hasn't got a name
 8 though.
 9 MR BOTES: It is the Eastern Gate and the
 10 Western Gate. So the Eastern Gate, right of that loop is
 11 the Eastern Gate where you go into the hostel.
 12 CHAIRPERSON: So the road hasn't got a
 13 name.
 14 MR BOTES: No, Sir.
 15 CHAIRPERSON: That's very unfortunate,
 16 but never mind there's nothing we can do about it now.
 17 MR CHASKALSON SC: Chairperson, we're
 18 going to talk about these roads quite a lot, so maybe if we
 19 can describe them as the Main North South Road which is the
 20 road running broadly –
 21 CHAIRPERSON: That goes past the Saffy
 22 hospital.
 23 MR CHASKALSON SC: Yes.
 24 MR BOTES: That's correct, Mr Chair.
 25 CHAIRPERSON: So why don't we call it the

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| <p style="text-align: right;">Page 33414</p> <p>1 Saffy Hospital Road? And the other one goes past the 2 hostel or the kitchen of the hostel, we could call it the 3 Kitchen Road or the Schagen, it goes past the Schagen 4 workshop. So we can call it the Schagen Road then we know 5 what we're talking about. Isn't that right? 6 MR TIP SC: Mr Chairman, I was going to 7 try and contribute to this debate. 8 CHAIRPERSON: You contributed massively 9 yesterday perhaps you can have another go today. 10 MR TIP SC: I'd be very glad if I could. 11 A few days ago, at the end of last week I think, we 12 reminded the Commission of YY1 and 2 and Street A, Street 13 B, Street C, Street D and again just for consistency it may 14 be very convenient just to refer to them in the same way 15 rather than to seek to put different titles – 16 CHAIRPERSON: So what I call the Saffy 17 Hospital Road what's that called? 18 MR TIP SC: That's B, Street B. 19 CHAIRPERSON: And what I call the Schagen 20 Workshop Road, what's that? 21 MR TIP SC: Street A. 22 CHAIRPERSON: That's Street A, I see. 23 MR TIP SC: Yes those are the only two 24 that are really relevant for the present purpose. 25 CHAIRPERSON: I see, Mr Chaskalson, you</p> | <p style="text-align: right;">Page 33416</p> <p>1 with Road B turns into Road B, 9:50 by 9:50 has come to the 2 intersection with Road A and turns up into Road A. 9:51, 3 9:51 has reached the position approximately where Mr Fundi 4 and Mr Mabelane had initially stopped, near the boom gate 5 to the confront the strikers. And what we'll then is a 6 similar retreat. If we can carry on, 9:51. More or less 7 the same position 9:52, retreating a little bit. 9:55 has 8 stopped pretty close to the intersection of Roads A and B. 9 9:58 at the intersection, retreated further and 9:59 has 10 turned back into Road B and if we go to 10:00 we see that 11 the vehicle has now retreated further away along Road B. 12 And the process continues thereafter and if we can quickly 13 run the route of Hilux 2. 14 [09:48] I think - oh no, Hilux 2 have a different 15 pattern. Hilux 2 starts of with direction of Karee from 16 the west, and it seems if we follow Hilux 2 from the west, 17 that Hilux 2 was trying initially to get into the hostel 18 from the western side and then realised that that would be 19 impossible. So if we scroll forward to 9:54, that's the 20 Rowland intersection, is it not? 21 MR BOTES: That's correct. 22 MR CHASKALSON SC: Rowland Crossing. At 23 9:54 again, it turns left up to the north, presumably with 24 the intention of coming into the hostel at the boom gate 25 from the western direction, but then must have seen that</p> |
| <p style="text-align: right;">Page 33415</p> <p>1 can choose what name you're going to use, but as long as we 2 use a short, consistent name then we'll save a lot of time 3 I think. 4 MR CHASKALSON SC: Well I'll stick with A 5 and B. Mr Botes do you know which road we mean by A? 6 MR BOTES: A is the main road past Saffy. 7 MR CHASKALSON SC: No, no past Schagen. 8 MR BOTES: Okay A is past Schagen and B 9 is then the main road to Wonderkop. 10 MR CHASKALSON SC: That's it. 11 CHAIRPERSON: I think it's better if you 12 stick to Schagen and the hospital. 13 MR CHASKALSON SC: I'll keep going on A 14 and B and if we run into difficulties we'll descriptive 15 names. If we can then just click on 9:54 to see what 16 happens to the Polo vehicle. The Polo vehicle is now 17 retreating at 9:54 and at 9:54 ignition off is a little bit 18 further back from – and that is the position where the Polo 19 vehicle was eventually burnt out. 20 MR BOTES: That's correct, Mr Chair. 21 MR CHASKALSON SC: Okay if we can remove 22 the - the next vehicle is Hilux 1 which was Mr Motlogeloa 23 and Dibakoane and again if we can quickly run through this. 24 And we see again that the starting position is to the 25 south-east. If we go again 9:49 comes to the intersection</p> | <p style="text-align: right;">Page 33417</p> <p>1 that was not going to be possible, because it turns around, 2 9:56, and is back at the Rowland Crossing at 9:56 again, 3 and by that stage it had moved all the way round back up 4 road A to get into to support its colleagues and if we can 5 – 6 CHAIRPERSON: No, no, that's not right. 7 That road, I don' think if one joins the position of 8 vehicle at 9:54, or the position at 9:56, it looks as if it 9 didn't go along road B. Road B is the one with the loop, 10 it's the one to the south of that. 11 MR CHASKALSON SC: A little bit later, 12 it's still at 9:56, it's the next entry, it's heading 13 towards road B. 14 CHAIRPERSON: I see, I see. 15 MR CHASKALSON SC: So 9:56 is the – 16 CHAIRPERSON: Alright, you're right, I'm 17 wrong, I'm sorry. 18 MR CHASKALSON SC: If we go to 9:57, it's 19 now at the intersection of roads A and B, and at 9:57 where 20 it stops, it's just turned up into road A. 9:58, and it's 21 pretty much in the same position, so it ultimately wasn't 22 able to get to the colleagues before that they had 23 retreated all the way back to practically the intersection 24 of A and B, and if we carry on, we'll see it then withdraws 25 from that position. 9:58, it's gone back to the</p> |

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1 intersection. 9:58 stopped, it has retreated in a
 2 southerly direction down road A.
 3 MR BOTES: That's correct, Mr Chair.
 4 MR CHASKALSON SC: What we've done is we
 5 printed out up a number of screenshots that give a snapshot
 6 at a particular time of the vehicles, and each of these
 7 individual vehicles' movements will come in their own
 8 photographs. If we can call the Lavina of Mr Fundi and
 9 Mabelane quadruple E 15.1, the Polo of Mr Masebe and Mr
 10 Muller, 15.2. I don't want to call them up yet. The Hilux
 11 1, 15.3. Hilux 3, 15.4, and the rescue Nissan – oh sorry,
 12 we haven't done the rescue Nissan, because that is quite,
 13 that's also an interesting one. Can we quickly blank that,
 14 and run through to the rescue Nissan? And if we go to the
 15 west on the picture, we'll see that its starting point is
 16 to the southwest. The rescue Nissan responds to the call,
 17 and I presume it was responding to the call in relation to
 18 Mr Louw and –
 19 CHAIRPERSON: Not southwest, Mr
 20 Chaskalson, southeast.
 21 MR CHASKALSON SC: Southeast, I
 22 apologise. 9:49, it's at the – it's about to turn to right
 23 into road A. 9:50, it's reached pretty close to the boom
 24 gate, 9:51, it's at the same position as where Mr Fundi and
 25 Mabelane eventually stopped before they retreated.

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1 MR BOTES: That's correct.
 2 MR CHASKALSON SC: In fact, the rescue
 3 vehicle seems to have reached that position almost quicker
 4 than anybody else.
 5 MR BOTES: That's correct.
 6 MR CHASKALSON SC: And then we'll follow
 7 - we'll see a similar retreat, if we can just quickly run
 8 through 9:54, it's gone all the way back to the
 9 intersection, almost at the intersection of roads A and B –
 10 sorry, not so fast now. Can you clear back to 9:55? So at
 11 9:55 it is at the intersection of A and B. 9:58, it's
 12 moving a little bit south on road A – sorry, on road B.
 13 9:59, it's same sort of position. 10 o'clock, and by 10
 14 o'clock it's withdrawn entirely to the south.
 15 MR BOTES: That's correct, Mr Chair.
 16 MR CHASKALSON SC: The time snapshots
 17 confirm the same picture obviously, but what you – what's
 18 interesting to see is 9:51, which we've done time snapshots
 19 for 9:51, 9:52, 9:54, 9:58, 9:59, 10:00 and 10:06. If we
 20 can look at 9:51, quadruple E15.6, if that can just be
 21 called up onto the screen? And if we can just zoom in a
 22 little bit, so that we can see where the various vehicles
 23 are. So at 9:51, we see close the boom gates, there's the
 24 Lavina of Mr Fundi and Mabelane, there is the Hilux 1 of
 25 Motlogeloa and Mr Dibakoane, and there is the rescue

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1 vehicle, all just a short distance to the east of the boom
 2 gate.
 3 MR BOTES: That's correct.
 4 MR CHASKALSON SC: And that is the
 5 position where the security team first attempted – or was
 6 first stopped by the oncoming marchers.
 7 CHAIRPERSON: For the sake of
 8 understanding better, can you tell us where the oncoming
 9 marchers were at that stage, as far as you understand the
 10 position?
 11 MR BOTES: Mr Chairman –
 12 CHAIRPERSON: Which route did they
 13 follow?
 14 MR BOTES: I wasn't there on site –
 15 CHAIRPERSON: And I understand, but I
 16 take it you've ascertained subsequently.
 17 MR BOTES: I assume that on that road A
 18 going out to the west past the stadium, just south from the
 19 stadium, I assume they were approaching from that side.
 20 CHAIRPERSON: West, in other words?
 21 MR BOTES: From the west side.
 22 CHAIRPERSON: From the stadium's side?
 23 MR BOTES: From the stadium's side
 24 towards the western gate where the boom is, just underneath
 25 that long white, cream building.

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1 CHAIRPERSON: Thank you.
 2 MR CHASKALSON SC: And in fact they had
 3 already had the encounter with Mr Louw and Mr Vorster a
 4 little bit to the west of this picture, they were coming
 5 from that position.
 6 MR BOTES: As I understood, it's correct.
 7 MR CHASKALSON SC: Ja, that is certainly
 8 what the evidence says, and we'll see - and if you see in
 9 the bottom right-hand corner of the screen, you see that
 10 the Polo is switching on its ignition at this point in
 11 attempt to –
 12 MR BOTES: That's correct.
 13 MR CHASKALSON SC: - to get there.
 14 CHAIRPERSON: And that's in road A
 15 opposite the Saffy hospital.
 16 MR BOTES: That's correct, Mr Chairman.
 17 MR CHASKALSON SC: If we quickly, quickly
 18 skip to 9:52, which is 15.7, zoom in again. And by 9:52,
 19 the retreat of the security guards has begun, because the
 20 group of cars that was closer to the boom gate, has now
 21 moved back to the right on this picture. The Polo, which
 22 is coming from the other direction, has turned into road A.
 23 MR BOTES: And assume that he was still
 24 on his way to meet with Frans.
 25 MR CHASKALSON SC: Indeed. And the

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| <p style="text-align: right;">Page 33422</p> <p>1 Hardbody, which is the rescue vehicle, has gone further 2 back.</p> <p>3 MR BOTES: That's correct, Mr Chair.</p> <p>4 MR CHASKALSON SC: 9:54, and zoom in. By 5 9:54, the strikers have pushed – we can see the second 6 Hilux still trying to work out how to get into the scene in 7 the bottom left of the – around Rowland Crossing, but if we 8 go up to the top right of this image, we'll see that the 9 security vehicles, by 9:54, have moved east, and retreated 10 east, fairly close to the position where Mr Fundi and Mr 11 Mabelane are killed.</p> <p>12 MR BOTES: That's correct, Mr Chair.</p> <p>13 MR CHASKALSON SC: And if we can then – 14 we'll hand in the other exhibits, but if we can just take a 15 snapshot at 10 o'clock, which was EEE15.11, which is after 16 the event, we can see the Polo and the Lavina in their 17 positions where they were destroyed and where Mr Fundi and 18 Mr Mabelane were murdered, and the rest of the security 19 team has now retreated to the south.</p> <p>20 MR BOTES: That's correct.</p> <p>21 MR CHASKALSON SC: Thanks, Mr Botes. I 22 have a few further questions about the 12th. The first 23 flows from something Mr Motlogeloa's statement, XX2.20, I'm 24 not going to refer you to it, but he identifies four other 25 security guards, officers, Mr Sambo, Mr Mane, Mr Nthebo and</p> | <p style="text-align: right;">Page 33424</p> <p>1 MR CHASKALSON SC: Who drove the Mamba? 2 MR BOTES: One of the Protea drivers, and 3 there was also another crew member in the Mamba, except 4 myself and Vorster.</p> <p>5 MR CHASKALSON SC: And where did you pick 6 up the Mamba when you moved in? 7 MR BOTES: Mr Chairman, just on the 8 right-hand side of the stadium is the general offices of 9 tech services. I parked my private vehicle at the back of 10 the car park, and I met the Mamba in front of that road, in 11 front of the offices in the road.</p> <p>12 MR CHASKALSON SC: If we can just call up 13 a Google – actually, we don't, I mean, we know where back 14 of the stadium and tech services is from other evidence. 15 The ICAM report, which is currently exhibited as quadruple 16 D, at page 16, we'll get there in detail, I don't need to 17 call it up at this point, but it mentions mechanical 18 problems with armoured vehicles. Do you know anything 19 about that? 20 MR BOTES: Mr Chairman, yes, it was the 21 vehicle that I travelled in, and the driver had 22 difficulties to put in first gear, and we drove down, that 23 same vehicle down to where Frans and Hassan was laying, or 24 were trapped at that stage, according to the information I 25 got.</p> |
| <p style="text-align: right;">Page 33423</p> <p>1 Mr Matokwe who participated in this event. Do you know if 2 they were in different vehicles, or if they were in one or 3 other of the five vehicles that we've identified?</p> <p>4 MR BOTES: Mr Chairman, I did not have 5 personal interviews with them, so I cannot say if they were 6 in another vehicle, it's possible, and it's also possible 7 that the Mamba was already there with the team and 8 supporting them. I cannot vouch for that.</p> <p>9 MR CHASKALSON SC: We know from the ICAM 10 report that one of the comments made is that the armoured 11 vehicle was not there, and that was problem.</p> <p>12 MR BOTES: Okay.</p> <p>13 MR CHASKALSON SC: You say the Mamba, was 14 the Mamba the only armoured vehicle available? 15 MR BOTES: Mr Chairman, there was, at a 16 stage, there were other Protea Coin vehicles available on 17 Lonmin property, which were used by Graham in supporting 18 the normal operations and the strike.</p> <p>19 MR CHASKALSON SC: Do you know how many 20 armoured vehicles were available on the 12th? 21 MR BOTES: I cannot say that, Mr 22 Chairman.</p> <p>23 MR CHASKALSON SC: You eventually reached 24 the scene in the Mamba? 25 MR BOTES: That's correct, Mr Chair.</p> | <p style="text-align: right;">Page 33425</p> <p>1 MR CHASKALSON SC: And do you know if 2 those mechanical problems played any role in explaining why 3 the Mamba was not there in the first place? 4 MR BOTES: Mr Chairman, I cannot confirm 5 that, but I expect that.</p> <p>6 MR CHASKALSON SC: The ICamera report 7 also speaks about no radio communication between the Protea 8 Coin people in the armoured vehicles and the soft-skinned 9 security vehicles? Do you know about that? 10 MR BOTES: I cannot confirm it.</p> <p>11 COMMISSIONER HEMRAJ: May I just ask, Mr 12 Botes, who would be the person from Lonmin who'd be able to 13 tell us about why the Protea vehicles were not there and 14 what communication, what the system of communication was 15 between Protea and the security vehicles? Do you know. 16 MR BOTES: Mr Chairman, I assume it would 17 be Henry Blaauw and Graham, himself.</p> <p>18 COMMISSIONER HEMRAJ: Thank you.</p> <p>19 CHAIRPERSON: Mr Blaauw and/or Mr 20 Sinclair? 21 MR BOTES: Yes, correct.</p> <p>22 MR CHASKALSON SC: Now, there's some 23 footage of this incident on camera 218. We don't see 24 anything of the confrontation between the strikers and the 25 security guards in that footage.</p> |

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1 MR BOTES: That's correct, Mr Chair.
 2 MR CHASKALSON SC: I can understand we
 3 don't see anything in relation to the murder of Mr Fundi
 4 and Mr Mabelane, because that's a position that's secluded
 5 from camera 218, but that first apparent encounter between
 6 the strikers and the security guards near the boom gate,
 7 would that have been capable of being picked up on camera
 8 218?
 9 MR BOTES: Mr Chairman, no.
 10 MR CHASKALSON SC: No.
 11 MR BOTES: That's too far.
 12 MR CHASKALSON SC: And would it be
 13 capable of being picked up on other CCTV cameras? You've
 14 given me a plan of some of the CCTV cameras. The kitchen
 15 dome?
 16 MR BOTES: Mr Chairman, the kitchen dome
 17 was at that stage not working, and after, when I got
 18 involved and do reviewing and being involved in the JOC, I
 19 realised that the kitchen dome was not working at that
 20 stage, and that was the closest dome where the whole
 21 security crew stopped next to the kitchen, close to the
 22 western gate where they confront the striking group
 23 approaching.
 24 MR CHASKALSON SC: What about the
 25 technical services back dome?

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1 MR BOTES: Mr Chairman, in my view, it
 2 can get portions of that area, although it is behind that
 3 long building on the left-hand side, and so it can get a
 4 portion of that. So if the operators were alerted in time
 5 to monitor the situation, there would have been footage of
 6 that camera, but when we did reviewing of all the cameras,
 7 and there's also a camera next to the tavern, if operators
 8 used that effectively, there also would have been footage
 9 capturing events taking place.
 10 MR CHASKALSON SC: But to the best of
 11 your knowledge, there was no footage?
 12 MR BOTES: According to our reviewing, we
 13 could not find anything.
 14 MR CHASKALSON SC: But you didn't do the
 15 original viewing, that was done by the guy from CCU.
 16 MR BOTES: That was done by Danie
 17 Rossouw.
 18 MR CHASKALSON SC: Yes, and all you got
 19 was the product of Mr Rossouw. You see, I mean, the
 20 technical services back dome, from where its position is, I
 21 think would have had some view of the initial confrontation
 22 at the boom gate, but it would have had a perfect view of
 23 the confrontation of Mr Louw and Mr Vorster?
 24 MR BOTES: That's correct, Mr Chair.
 25 MR CHASKALSON SC: But we don't have any

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1 footage of that?
 2 MR BOTES: We don't have any footage of
 3 that.
 4 MR CHASKALSON SC: Now, Mr Botes, you
 5 describe the trauma of this incident in your statement, and
 6 you must have thought about it a great deal after the
 7 incident. I mean, it's a truly, on any account, it's a
 8 truly horrific incident that you had to witness and that
 9 involved the loss of your colleagues. We're interested in
 10 understanding why it happened and what sort of
 11 recommendations need to be made to prevent it happening
 12 again, and there is two sorts of questions that I want to
 13 ask you in this regard. The first flows from something you
 14 say in quadruple A39, page 74, paragraph 26. You say there
 15 that, in your view, the presence of SAPS at the mine over
 16 the period 10 to 12 August was inadequate, having regard to
 17 the developing situation. SAPS in fact had a plan for this
 18 period, which is exhibit W - sorry, exhibit U, not exhibit
 19 W. I wonder if you could - have you seen a copy of that
 20 plan?
 21 MR BOTES: No, Mr Chair.
 22 MR CHASKALSON SC: Oh, sorry, I thought
 23 that that's had been arranged. Mr Botes, I don't want us
 24 to -
 25 CHAIRPERSON: We're going to take the

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1 first adjournment round about half past ten, perhaps the
 2 witness could look at this document then.
 3 MR CHASKALSON SC: Yes.
 4 CHAIRPERSON: And you can cross-examine
 5 him on it after that.
 6 MR CHASKALSON SC: That is what I was
 7 going to suggest, Chair.
 8 CHAIRPERSON: Unless it's important for
 9 you.
 10 MR CHASKALSON SC: No, it's not at all.
 11 What I would want to - so what I'd ask you to do is to, in
 12 the tea adjournment, to look through that plan and if I can
 13 tell you now the questions that I'd like to you to consider
 14 in relation to it. Is if that plan had been implemented
 15 would that in your view have amounted to an adequate
 16 presence?
 17 [10:08] You talk about an inadequate presence in
 18 paragraph 26. If that plan had been implemented would that
 19 have been an adequate presence? And I'd also like you to
 20 express your view as a security officer with lengthy
 21 experience on whether you think, if that plan had been
 22 implemented, whether the deaths of Mr Fundi and Mr Mabelane
 23 in particular, I am not talking about other deaths, would
 24 likely have been prevented? But that's, I don't want you
 25 to answer off the top of your head, if you can look at tea

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1 time, but I have another question which relates to the ICAM
 2 report on similar lines, page 16 of the ICAM report, and I
 3 think at this stage we should call it up, BBB2, and BBBB2
 4 but I am told that the numbering is possibly incorrect.
 5 MS PILLAY: Chairperson, I just picked up
 6 from the transcript that the exhibit number DDD2 has been
 7 allocated to two different exhibits, the first one being
 8 the shooting report – shooting incident report of the 21st
 9 of August, so I would suggest that the ICAM report be given
 10 a new exhibit number, DDDD6, and that the original document
 11 be retained as DDDD2.
 12 CHAIRPERSON: That's -
 13 MR CHASKALSON SC: Chairperson, my
 14 concern is I think that the ICAM report is likely to have
 15 been referred to many more times in the evidence than the
 16 shooting report, so we should probably change the exhibit
 17 number of the shooting report, and not the ICAM report.
 18 CHAIRPERSON: What do you want the
 19 shooting report to be?
 20 MR CHASKALSON SC: The shooting report
 21 can be DDDD6.
 22 CHAIRPERSON: It will be so re-marked.
 23 MR CHASKALSON SC: If we can call up then
 24 DDDD2, and go to page 16, and there on page 16 – to begin
 25 with, Mr Botes, I presume you are familiar with this

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1 report?
 2 MR BOTES: Mr Chairman, no, I haven't
 3 read it, and I haven't seen it.
 4 MR CHASKALSON SC: Well, there really –
 5 you haven't ever seen it in your professional capacity at
 6 Lonmin, before this Commission?
 7 MR BOTES: Not this report.
 8 MR CHASKALSON SC: Which report have you
 9 seen?
 10 MR BOTES: Other ICAMs but not particular
 11 to this incident. I haven't seen this report prior to this
 12 morning.
 13 MR CHASKALSON SC: Okay, but it was also
 14 one of the documents that – I am pretty sure it was one of
 15 the documents, that I asked your legal team to, or I
 16 mentioned that I was going to be raising with you. Well,
 17 then maybe we can do two things, a series of, well, the
 18 ICAM report identifies a series of failings on the part of
 19 Lonmin in relation to this specific incident.
 20 MR BOTES: Correct.
 21 MR CHASKALSON SC: Which it say
 22 contributed to the incident. What I would ask you to do
 23 over the tea break, is to read through that and identify
 24 all of those which you think are unjustified, not the ones
 25 that you accept or feel neutrally about the ones that you

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1 say are unjustified, and to explain why they are
 2 unjustified.
 3 MR BOTES: If any.
 4 MR CHASKALSON SC: If any, yes, there may
 5 not be any.
 6 MR BOTES: Yes, Mr Chair.
 7 COMMISSIONER HEMRAJ: Did you participate
 8 in this process, this -
 9 MR BOTES: No, Mr Chairman, not.
 10 MR CHASKALSON SC: This is going to be
 11 quite a busy tea break for you, Mr Botes.
 12 CHAIRPERSON: There are some printing
 13 errors on there, there's an "inelegance department" which I
 14 take it is an "intelligence department," and there are a
 15 few others, but I take it we can silently correct them
 16 ourselves, I hope we can. "Insuffiance surveillance," is
 17 also – anyway, we don't have to worry about those.
 18 MR CHASKALSON SC: Mr Botes, if you can
 19 also look at page 17, which deals with the incident leading
 20 to the death of Mr Mabebe at K4.
 21 MR BOTES: Thank you.
 22 MR CHASKALSON SC: With the same
 23 approach.
 24 MR BOTES: Yes, I will do that.
 25 MR CHASKALSON SC: Chairperson, I am

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1 going to move on to a new topic now, and it may be a
 2 convenience point to take the tea break. What time is the
 3 tea break going to be?
 4 CHAIRPERSON: Normally, we try to take it
 5 after about an hour and a quarter, hour and a half but we
 6 started a little bit late, so the, the witness can also –
 7 MR CHASKALSON SC: If I have 15 minutes,
 8 then it may – yes. Can we call up DDDD18, which is the OB
 9 log, the Lonmin log and if we can go to the entries on 10
 10 August at 18:35, page 53 of the bundle. On my bundle, it
 11 says "53."
 12 CHAIRPERSON: The copy of your bundle was
 13 just paginated, anyway, it doesn't matter, my pagination is
 14 obviously wrong, but we will just concentrate on the
 15 evidence as –
 16 MR CHASKALSON SC: For this purpose, we
 17 can find the entries relatively easily because they are
 18 chronologically ordered. So, if we go to 18:35 on the 20th
 19 August, it says "PW reported that they fire about ten
 20 rounds to the commuters at number 4, that are aggressive
 21 and busy intimidate the people." 3 down, at 18:59, PW
 22 would be PW Botha, presumably.
 23 MR BOTES: That's correct, Mr Chairman.
 24 MR CHASKALSON SC: 18:59, "GK" which
 25 would be Mr Kellerman, "reported that commuters intimidate

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1 workers to go to work, they are using pangas and
 2 knobkierie, PW shot 15 rounds of rubber bullets at them.”
 3 And then at 20:10, “GK,” that’s Mr Kellerman, “reported
 4 that they shoot 10to 15 rounds of rubber bullets to
 5 commuters.” So we have three reports of Lonmin Security
 6 shooting rubber rounds and the reports at 18:35, 18:59 and
 7 20:10. Do you know if these relate to one incident that
 8 was reported three times, or three separate incidents or
 9 possibly two incidents, one of which was reported twice?
 10 MR BOTES: Mr Chairman, I arrived there
 11 at the Rowland Crossing probably after the incident which
 12 was report by 18:35 because me and Graham spent time only
 13 at the JOC first, when he called me out, at 18:00 hours, so
 14 I arrived there after this incident from PW and during the
 15 time of 18:59 I was present as well as 20:10.
 16 MR CHASKALSON SC: So you, you are saying
 17 that you witnessed two separate incidents at 18:59 and
 18 20:10 of shooting rubber rounds at people.
 19 MR BOTES: That’s correct, Mr Chairman.
 20 MR CHASKALSON SC: And in 18:59 it says,
 21 the report says, that “commuters intimidate workers to go
 22 to work, they are using pangas and knobkierie.” It’s not a
 23 very clear report, or was the complaints that people were –
 24 that – well, presumably NUM who was opposed to the strike,
 25 was trying to get people to work or is the complaint that

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1 it was commuters who were in favour of the strike, were
 2 trying to prevent people from going to work?
 3 MR BOTES: Mr Chairman, if you see these
 4 vehicles that want to pick up people in a hostel, because
 5 the buses stop at that stage, they refused to travel and to
 6 take workers to work, and there were other vehicles,
 7 commuters that, using the road as well as the people later
 8 that evening past eight o’clock, when that incident took
 9 place where people walked from the hostel complex on the
 10 walkway towards Rowland Crossing.
 11 MR CHASKALSON SC: I just need to
 12 clarify, so you understood this to be intimidation in
 13 support of the strike, not intimidation against the strike?
 14 MR BOTES: It is intimidation and to stop
 15 the people from going to work in support of the strike.
 16 MR CHASKALSON SC: Now, Mr Botes, the
 17 three entries that I’ve read to you, are not in the version
 18 of the log that was discovered by Lonmin and given to this
 19 Commission and made XX2.10, are you aware of that?
 20 MR BOTES: I am not aware of it.
 21 MR CHASKALSON SC: Well, maybe if we can
 22 call up XX10 – XX2.10. I think, jump ahead to page 26 and
 23 turn it around so that it’s correctly oriented and now we
 24 need to find to find the – go forward, lower down, lower
 25 down –

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1 CHAIRPERSON: 18:59 is a good place to
 2 look, because d –
 3 MR CHASKALSON SC: Sorry, we need to go
 4 further up, we are on the 11th, we need to be on the 10th.
 5 CHAIRPERSON: Yes.
 6 MR CHASKALSON SC: Yes, now if we compare
 7 the two, you’ve got one in front of you, and as has
 8 everybody else, and if we start at –
 9 CHAIRPERSON: Start at 18:35.
 10 MR CHASKALSON SC: - 18:30, 18:30 on the
 11 screen says “David on duty,” and that jumps to 18:55, “Alia
 12 off duty.” But if we go to the version that was prepared
 13 by Lonmin on the 27th, it goes – in between those two
 14 entries we see “PW reported that they fired about ten
 15 rounds to the commuters at number 4 that are aggressive and
 16 busy intimidate the people.” So that entry, was removed
 17 from this version. We got a little bit lower down and if
 18 we go to 18:57 on the screen, it says “GS reported that HB
 19 inform POPS and Marikana SAPS for back up,” that’s on our
 20 one as well. But if we look at ours, the next entry is
 21 18:59, “GK reported that commuters intimate workers to go
 22 to work, they are using pangas and knobkierie. PW shot 15
 23 rounds of rubber bullets at them” That’s not there. The
 24 next entry on ours is 18:55, “Allie off duty.” And sorry,
 25 19:31 Cam637 observed, that’s on the one on screen 2, if

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1 you go down a little bit, to –
 2 CHAIRPERSON: 20:10.
 3 MR CHASKALSON SC: - to 20:10, or where
 4 on our version, it says “GK reported they shot 10 to 15
 5 rounds of rubber bullets to commuters.” There’s nothing on
 6 the one that was discovered to the Commission.
 7 CHAIRPERSON: Were you there by that
 8 time, by that time, by 20:10, were you on site?
 9 MR BOTES: Mr Chairman, yes, I was on
 10 site.
 11 CHAIRPERSON: And did you witness – who
 12 is, forgive me, who is “GK?”
 13 MR BOTES: It’s Gian Kellerman.
 14 CHAIRPERSON: Mr Kellerman?
 15 MR BOTES: Mr Kellerman.
 16 CHAIRPERSON: Now did you witness Mr
 17 Kellerman, well, Mr Kellerman says, reported that they shot
 18 10 to 15 rounds –
 19 MR BOTES: Mr Chairman, I was –
 20 CHAIRPERSON: - was this stage rounds
 21 being fired?
 22 MR BOTES: Yes, I was present when they
 23 fired at the group in front of us.
 24 CHAIRPERSON: Did you deal with that in
 25 any of the statements that you made, you referred us to

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1 yesterday? Do you refer to that incident in any of the
 2 statements you made to which you referred us yesterday?
 3 MR BOTES: Mr Chairman, in my statement,
 4 I made note of when the security dispersed them at the
 5 Rowland Crossing, if we can go to the final supplementary
 6 statement of mine, page 95, paragraph 8.2 and also –
 7 CHAIRPERSON: I have got a problem with
 8 8.2, I have been puzzling about that, this is after you
 9 correct the mistake that was earlier, where you stated what
 10 happened on Friday, actually, sorry, where you say what
 11 happened, what you had said happened on Saturday, actually
 12 happened on Friday. And you then say, in 8.2, "The
 13 shooting events as described at Rowland Crossing also
 14 happened on Friday and not Saturday." Now where do we find
 15 that description of the shooting events at Rowland Crossing
 16 –
 17 MR BOTES: As all –
 18 CHAIRPERSON: - it is erroneous to say it
 19 happened on the Saturday, in fact it happened on the
 20 Friday.
 21 MR CHASKALSON SC: Mr Chairperson, in
 22 fairness to the witness some mention of it has been present
 23 from his very first witness statement.
 24 CHAIRPERSON: Yes, I am not saying –
 25 MR CHASKALSON SC: Page 27 paragraph 15

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1 of his bundle.
 2 CHAIRPERSON: I am not saying it's not
 3 there, I am saying, I asked him where it was. Because I
 4 was looking for it, I couldn't find it readily, but I am
 5 not saying it's not there.
 6 MR BOTES: Mr Chairman, on page 71, at
 7 paragraph 14 as well.
 8 MR CHASKALSON SC: And GGG19 at page 27
 9 paragraph 15.
 10 CHAIRPERSON: This is all a description
 11 of what happened, allegedly happened on Saturday? Now I
 12 don't know how much of what appears from paragraph 10 and
 13 following on page 70 really happened on Saturday, and how
 14 much happened on Friday, it's a little bit confusing to me.
 15 But perhaps that can be sorted out in due course.
 16 MR BOTES: Thank you, Mr Chairman.
 17 CHAIRPERSON: But you say you did mention
 18 it.
 19 MR BOTES: Yes, Mr Chairman.
 20 CHAIRPERSON: You didn't mention the
 21 number of rounds and so forth, but –
 22 MR BOTES: No, Mr Chairman.
 23 CHAIRPERSON: - but you did say that, as
 24 you put it, that Lonmin Security in 15, "Lonmin Security
 25 then fired rubber bullets at them." Now there were three

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1 incidents according to the full version of the OB that we
 2 have, which were not in the version we were originally
 3 given. Did you describe all three incidents in your
 4 statement, whether as having happened on Friday or Saturday
 5 is not relevant at the moment, did you describe all three
 6 incidents?
 7 MR BOTES: Mr Chairman, no, I only
 8 described the one in my statement.
 9 CHAIRPERSON: Were you present when any
 10 of the others took place?
 11 MR BOTES: I was present with the second
 12 and the last incident, the 20 -
 13 CHAIRPERSON: Why didn't you mention both
 14 of them, and why do you only mention one?
 15 MR BOTES: I might have left that out, Mr
 16 Chairman.
 17 CHAIRPERSON: You might have, or did you?
 18 MR BOTES: I did.
 19 CHAIRPERSON: You left it out, by why?
 20 MR BOTES: I did leave it out, I probably
 21 forgot about it.
 22 CHAIRPERSON: It wasn't important enough
 23 to remember I take it.
 24 MR CHASKALSON SC: You see, Mr Botes, I
 25 am interested in the difference between the version of the

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1 log that we were given by Lonmin and the version of the log
 2 that Lonmin prepared on the – or that Lonmin had saved on
 3 the 27th of August because there are other entries that are
 4 missing, and if I can take you to the next one, it is 11
 5 August 2012, it's page 54 of my paginated bundle and it's
 6 903. So if we can scroll down on – let's scroll down to
 7 902 on 11 August where it says – now this is a version that
 8 was given to the Commission, "PW reported that Colonel
 9 Merafe and Captain" – no, no, sorry, I want to which we
 10 have up on the screen. We jump from 902 which it says "PW
 11 reported that Colonel Merafe and Captain Safika asked for
 12 assistance to 908 Frans reports a person being shot inside
 13 the hostel next to Schagen offices." Now if we go back to
 14 the Lonmin document, which, and we go down to 902, we see
 15 that sandwiched in between those two entries is "eight
 16 rubber rounds shot to disperse a mob opposite the NUM
 17 offices. Two SAPS constables available to assist." Now
 18 that suggests Lonmin Security were present at the NUM
 19 offices, and shot rubber rounds in the confrontation
 20 between the strikers and the NUM members at the NUM
 21 offices. Are you aware of that?
 22 [10:27] MR BOTES: Mr Chairman, according to
 23 this, yes, it sounds like that. I cannot say whether they
 24 were on site, I wasn't there at the time, but there's
 25 clearly a difference between the version I have here and

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1 the one which is on the screen, which is totally different,
 2 where it was taken out.
 3 MR CHASKALSON SC: You don't know why it
 4 was taken out?
 5 MR BOTES: Mr Chairman, no, because this
 6 log sheet was compiled in the Lonmin JOC whilst I was
 7 present in the SAPS JOC, so I wasn't in charge of these
 8 operators working at the Lonmin JOC, although I was in
 9 charge of the SAP JOC, representing Lonmin, but the people
 10 here reported to Graham Sinclair and he had to account and
 11 explain why these should, was removed at the time or
 12 afterwards.
 13 CHAIRPERSON: Sorry, I don't understand.
 14 This is an account of what happened, an entry relating to
 15 what happened on the Saturday morning the 11th just after 9
 16 o'clock in the morning. Now there wasn't a SAP JOC by
 17 then, was there?
 18 MR BOTES: But I –
 19 CHAIRPERSON: Where were you?
 20 MR BOTES: During that time –
 21 CHAIRPERSON: I mean what you told us
 22 originally in your statement that you weren't scheduled to
 23 work on Saturday –
 24 MR BOTES: Ja.
 25 CHAIRPERSON: - and approximately 6

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1 o'clock the evening you got this phone call. That
 2 apparently isn't right, but what exactly, were you on duty
 3 on Saturday?
 4 MR BOTES: I was not. I was, during this
 5 time of the incident I was at my house.
 6 CHAIRPERSON: Yes, I thought you weren't
 7 there.
 8 MR BOTES: No –
 9 CHAIRPERSON: So to be fair to you, you
 10 don't, from your own knowledge you don't know what
 11 happened.
 12 MR BOTES: I wasn't there, so I cannot
 13 say what happened.
 14 CHAIRPERSON: Ja, but the point that
 15 concerns us is who is responsible for editing the OB, the
 16 Lonmin OB, deleting certain references to rubber rounds and
 17 so on being fired by Lonmin people, and then putting before
 18 us an OB which was censored and abbreviated and didn't
 19 contain this material? Who is responsible for that? Can
 20 you help us on that?
 21 MR BOTES: Mr Chairman, the person
 22 compiling this log sheet sat in Graham's boardroom
 23 compiling this sheet and they reported to Graham. During
 24 that time I wasn't in charge of the log sheets and those
 25 operators. I was called on Friday night to assist and I

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1 went home at 12 o'clock the night and arrange I come in at
 2 2 o'clock. So in between this incident happened and why
 3 there's alterations made on the initial sheets I cannot say
 4 why.
 5 CHAIRPERSON: The question of course is
 6 when the alterations were made. I take it this 9:03 entry
 7 we're looking at now was made more or less
 8 contemporaneously, just after 9:03 on the Saturday
 9 morning –
 10 MR CHASKALSON SC: Chair, I might be of
 11 assistance here because the version of the file that is
 12 pre-alteration that we have is dated 27 August. So the
 13 alterations would have to have been made after 27 August.
 14 CHAIRPERSON: That's what I was concerned
 15 with. So that entry, the eight rubber rounds entry, 9:03,
 16 was more or less contemporaneous entry I would assume. But
 17 someone thereafter the 27th of August deleted it. Now we
 18 want to know who that person is and why. It sounds from
 19 what you tell us, to be fair to you, you can't assist us
 20 and you don't know who it was.
 21 MR BOTES: I cannot.
 22 CHAIRPERSON: Mr Chaskalson, it's now
 23 half past 10. When it's convenient tell me and we'll take
 24 the first comfort break.
 25 MR CHASKALSON SC: Chair, in two minutes

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1 I can just round off –
 2 CHAIRPERSON: No, no, I'm saying you just
 3 tell me when it's convenient for me to take the comfort
 4 break and I'll take it.
 5 MR CHASKALSON SC: You see, there are
 6 another set of entries that have been removed as well and
 7 for that we need to go to the 13th of August. If we can
 8 scroll down on – at this stage let's just stick with the
 9 document on screen, all the way down to 13 August at 14:32,
 10 and there in red you'll see, "Geon Kellerman called and
 11 informed us one of the mobsters were shot with a rubber
 12 bullet and they need an ambulance. Peter Drysdale said as
 13 soon as we have an ambo available we'll send one," and two
 14 down, "Geon Kellerman called and said the group at Karee 3
 15 dispersed and ran towards K4 and mining security went after
 16 them. 20 shots were fired and one person was arrested and
 17 shot with rubber bullet."
 18 If you compare XX2.10 you'll see that those two
 19 entries in red have also been removed, and in fact if you
 20 do an overall comparison of the two you will see that all
 21 evidence of Lonmin shooting at strikers appears to have
 22 been removed from the log that was given to us by Lonmin as
 23 their logbook, and that's – I mean you said that you can't
 24 help us with that, but we would like very much some help on
 25 that front. We will take it up with other witnesses from

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1 Lonmin.
 2 MR BOTES: Thank you, Mr Chairman.
 3 MR CHASKALSON SC: Chair, I am now going
 4 to move to a separate issue, so it may be a convenient
 5 point to take the tea adjournment.
 6 CHAIRPERSON: Thank you, Mr Chaskalson,
 7 we'll take the first comfort break for quarter of an hour
 8 at this stage.
 9 [COMMISSION ADJOURNS COMMISSION RESUMES]
 10 [10:54] CHAIRPERSON: The Commission resumes.
 11 You're still under oath, Mr Botes.
 12 DIRK CORNELIUS BOTES: [s.u.o.]
 13 CHAIRPERSON: Mr Chaskalson.
 14 CROSS-EXAMINATION BY MR CHASKALSON SC (CONTD.):
 15 Mr Botes, I asked you to read through those two pages of
 16 the ICAM report during the tea adjournment. I am in fact
 17 going to get to the incidents, so maybe if you can answer –
 18 I don't need you to answer now, we'll ask you for your
 19 comment on those analyses or criticisms of Lonmin in the
 20 report at a later stage, and maybe if we can move then to
 21 what happened at the K4 Shaft on the night of the 12th. Now
 22 after what happened on the morning of the 12th you must have
 23 known that you were dealing with strikers who were violent
 24 and well organised. That's correct, Mr Chair.
 25 MR CHASKALSON SC: Were any plans put in

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1 place after the events of the morning of the 12th to ensure
 2 that employees could come to work safe from attack by
 3 strikers?
 4 MR BOTES: Mr Chairman, I understood from
 5 Graham that additional guarding personnel were deployed at
 6 all the shaft operations to have more visibility and
 7 awareness from the employees that they can go safely to
 8 work.
 9 MR CHASKALSON SC: When you say
 10 additional guarding employees, is this a question - I mean
 11 the number of employees, is that a question that you can
 12 answer or must we put it to Mr Sinclair?
 13 MR BOTES: Mr Graham can verify the
 14 numbers and also where they were posted and deployed.
 15 MR CHASKALSON SC: Do you know if any
 16 arrangement was in place with management that if you
 17 couldn't ensure the safety of employees and contractors
 18 with any confidence that they would be informed not to come
 19 to work? Do you know if there was an arrangement of that
 20 sort?
 21 MR BOTES: Mr Chairman, not during this
 22 time of the incident of K4, I wasn't aware of that
 23 arrangement, but after I went into the JOC, take control of
 24 the JOC, we made arrangements and sent out messages when it
 25 is, when there's a threat on the roads and people cannot

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1 attend to work we redirect them to other locations to
 2 report for duty.
 3 MR CHASKALSON SC: Now when was that
 4 system put in place?
 5 MR BOTES: That was only after, since the
 6 Tuesday, onwards until the strike ended.
 7 MR CHASKALSON SC: Tuesday the 14th?
 8 MR BOTES: That's correct, Mr Chairman.
 9 MR CHASKALSON SC: And was a system of
 10 that nature not considered appropriate in the immediate
 11 aftermath of what had happened on the morning of the 12th?
 12 MR BOTES: Mr Chairman, we did not expect
 13 that attack at K4 should take place because of the killings
 14 that took place on Frans and Hassan. We were still busy at
 15 the crime scene and we were still monitoring the crime
 16 scene whilst the police were investigating and taking over
 17 the scene and we remained at that area purely because of
 18 the group that attack Hassan and Frans went back to the
 19 koppie and we did not envisage that they would go across to
 20 the western side and attack K4 Shaft.
 21 MR CHASKALSON SC: Did you envisage that
 22 they might attack any other shafts?
 23 MR BOTES: Afterwards, after that attack
 24 yes, and we therefore placed, and we got more riot vehicles
 25 across the property and deployed them at high-risk shafts

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1 and where we can monitor any groups marching towards any
 2 operations.
 3 MR CHASKALSON SC: No, but in the
 4 immediate aftermath of the events of the morning did you
 5 not think that there was a risk that some shafts might be
 6 attacked later that day or in the evening when the next
 7 shift came on?
 8 MR BOTES: Mr Chairman, we monitored the
 9 shafts individually where people normally come on duty and
 10 the high-risk areas were K3, which is across the hostel
 11 from the mine, and also Eastern Plats Saffy Shaft which is
 12 across from Eastern Plats Hostel, so all the shafts closest
 13 to the hostels we monitored those and which is close to the
 14 villages like Bapong, Eastern Plats 2 Shaft, the Eastern
 15 Plats 3 Shafts, where people can immediately be intimidated
 16 walking from home to the shaft. We monitored those areas,
 17 but we did not expect K4 to be attacked.
 18 MR CHASKALSON SC: The Eastern Plats
 19 areas that you were monitoring, where are they in relation
 20 to where Mr Langa was killed?
 21 MR BOTES: It is just south, the Saffy
 22 Shaft complex is just south from the Eastern Platinum
 23 Hostel complex and Mr Langa was killed just north from the
 24 hostel towards Segwaelane.
 25 MR CHASKALSON SC: And your monitoring at

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1 Eastern Plats was exactly where? Were you monitoring the
 2 shaft area itself?
 3 MR BOTES: It was basically between the
 4 hostel and the shaft area and also between Eastern Plats 3
 5 Shaft and 2 Shaft from Bapong and Modderspruit. That was
 6 normally the previous high-risk areas identified in the
 7 previous strikes we had and the unemployment strikes we had
 8 where they intimidated people going to work. We did not
 9 expect people to be killed walking from Segwaelane towards
 10 the shaft operations.
 11 MR CHASKALSON SC: To come back to the K4
 12 incident, you've looked at page 17 of the ICAM report. Is
 13 there anything on page 17 that you think is unjustified?
 14 MR BOTES: Mr Chairman, yes, if you look
 15 under the task environmental conditions, the second block
 16 from the bottom where it says "Poor planning not to have
 17 enough firearms available to issue to protection services
 18 employees," Lonmin's core business is not to issue the
 19 security personnel with firearms and to have a private army
 20 at hand. We have certain members who is issued with
 21 firearms due to the execution of their duties, but we do
 22 not arm guarding units at the shaft operations with any
 23 firearms. So those people who normally would carry
 24 firearms, they had firearms and so the comment made here
 25 is, I would say is not 100% correct.

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1 MR CHASKALSON SC: And beyond that are
 2 there, do you take issue with any of this analysis?
 3 MR BOTES: The second block, the
 4 following block on that comment I made, not enough firearms
 5 issued during emergency situations; we have a number of
 6 people who is trained specifically for firearms due to the
 7 execution of their normal functions and duties and those
 8 guys go for training and they can carry firearms. The rest
 9 of the workforce do not carry firearms on the property,
 10 like the guarding unit that was deployed at the shaft
 11 operations.
 12 MR CHASKALSON SC: The criticism seems to
 13 be slightly different, if I understand it correctly,
 14 because if one moves to the right, to the next block, it
 15 says "Hardus Louw and H van Rooyen responded to K4 Shaft
 16 with only one firearm between them." So it seems to me
 17 that the people who responded to the emergency call had
 18 only one firearm between them.
 19 MR BOTES: Mr Chairman, I agree 100% with
 20 that. If the comment previously, in the previous blocks
 21 were made specifically to Hardus Louw and Hannes van
 22 Rooyen, I agree 100% with that. They should have been
 23 issued and planned to have their firearms with them
 24 responding to emergency situation.
 25 MR CHASKALSON SC: There's another

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1 comment relating to the death of Mr Mabebe, or possibly
 2 relevant to the death of Mr Mabebe that interests me. It's
 3 the, in the column on the extreme right, the second block,
 4 "Lack of information received at ENDM on initially call
 5 made and only dispatched BEA paramedic instead of ALS
 6 paramedic." Now if I understand what that's saying is in
 7 view of the nature of the injuries sustained by presumably
 8 Mr Mabebe, who died in hospital shortly after this attack,
 9 the – a BEA is a basic emergency care practitioner and an
 10 ALS is an advanced life support emergency practitioner. So
 11 because the severity of the injuries wasn't communicated an
 12 insufficiently trained emergency practitioner was sent to
 13 the scene. Do you know anything about this?
 14 MR BOTES: Mr Chairman, no, that falls
 15 under Graham Sinclair and Peter Drysdale.
 16 MR CHASKALSON SC: Mr Botes, there's
 17 another issue which perturbs me about the K4 incident and
 18 that's the absence of footage of this, of the actual
 19 incident itself as opposed to the damage that was caused in
 20 the incident, and in this regard if I can take you to what
 21 I think is, or it will now become EEEE22, the statement of
 22 Mr Maleka who was the man on duty in the control room at
 23 the time. Can we call up EEEE22? It's a simple enough
 24 point; maybe we don't need it on the screen.
 25 Paragraph 3 Mr Maleka says the following in

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1 relation to this incident, "I then saw the mine strikers
 2 were already inside the premises. I saw the mine strikers
 3 busy assaulting an unknown male who was standing at the
 4 turnstile. I have seen this on the CCTV footage. I was
 5 then busy trying to help, phoning for Mr Sefika to contact
 6 SAPS and despatch them to K4."
 7 Paragraph 4, "I then saw on the CCTV footage that
 8 there was smoke all over the parking area." Now why did we
 9 never get this CCTV footage? It seems that the attack was
 10 actually captured on CCTV.
 11 MR BOTES: Mr Chairman, from taking over
 12 the JOC functions I wasn't aware that there was any cameras
 13 working at K4 Shaft and on our system, which is integrated
 14 with the security system, there were no cameras footage
 15 available. I know some operations and some shafts install
 16 operational cameras or process cameras into the shaft
 17 operations linked to their control rooms, like the
 18 ventilation vans where they have a camera to monitor when
 19 the alarm goes off on instrumentation side and to see what
 20 is happening at that places. So I do not know this person.
 21 Also I do not know, he's employed by EOSU, I do not know
 22 that company. So he is not a normal ML operator working
 23 for Lonmin and had access to the Lonmin Security CCTV
 24 equipment. My knowledge to K4 at the time was that there
 25 were no cameras available at K4 Shaft and all of them were

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1 defective and not working at the time.
 2 MR CHASKALSON SC: But I'm not fully
 3 understanding your question. Are you suggestion that there
 4 were some CCTV footage set up by a contracted company on
 5 Lonmin premises which wasn't integrated into the Lonmin
 6 system and which Lonmin doesn't know about?
 7 MR BOTES: I'm certainly not aware of
 8 this and I can find out, but I'm certainly not aware of any
 9 cameras that I had access from the JOC to look at K4 Shaft
 10 during the time period 9 to 16 August.
 11 COMMISSIONER HEMRAJ: There are cameras
 12 at every shaft, aren't there, Mr Botes?
 13 MR BOTES: There were cameras installed
 14 at K4 Shaft which I installed there personally during 2007,
 15 maybe earlier, but I understood that it didn't work because
 16 there was fibre backbone problems between the last
 17 concentrator on the way to K4 Shaft.
 18 COMMISSIONER HEMRAJ: Were enquiries made
 19 when the information was available that there was an attack
 20 at the K4 Shaft? Was there any enquiry made about any
 21 footage that might be available, if the cameras might have
 22 been repaired in your absence?
 23 MR BOTES: Mr Chairman, because I wasn't
 24 aware of other cameras available at that area where
 25 somebody can see it, I did not request anybody to go and

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1 get that footage for us of the incidents that happened. I
 2 just wasn't aware of other cameras working in that area.
 3 MR CHASKALSON SC: And the K4 parking
 4 dome camera, was that off-line?
 5 MR BOTES: That was off-line.
 6 MR CHASKALSON SC: We have one, we've
 7 come across a document which seems to be a record of faults
 8 and maintenance instructions issued by Lonmin in 2012. It
 9 is a huge spreadsheet, so it's not feasible to print it all
 10 out, but I wonder if we could call it up on screen in
 11 electronic form? It will be exhibit EEEE23. It's a
 12 spreadsheet called 2012 –
 13 CHAIRPERSON: I'm sorry, I've lost track.
 14 What is 22?
 15 MR CHASKALSON SC: 22 is the statement of
 16 Mr Maleka.
 17 CHAIRPERSON: I see. Yes, I didn't write
 18 that down. I'm sorry. So it's just as well it had come up
 19 so soon that I realised that there was a mistake. So
 20 EEEE23 is? How do I describe it?
 21 MR CHASKALSON SC: A spreadsheet entitled
 22 "2012 FY Progress Report" FY –
 23 CHAIRPERSON: "2012 FY Progress Report"?
 24 Is that enough for my description?
 25 MR CHASKALSON SC: That's good enough.

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1 CHAIRPERSON: Alright, okay, so EEEE23 is
 2 spreadsheet entitled "2012 FY Progress Report." You're
 3 still busy with K4, are you, at the moment?
 4 MR BOTES: Yes, we are, and this
 5 spreadsheet – well firstly, are you familiar with this
 6 spreadsheet? Do you know what it is? Have you seen it
 7 before?
 8 MR BOTES: Mr Chairman, it looks like a
 9 spreadsheet handled by the technicians department, which is
 10 a service provider, IES, a company called IES, that they
 11 can fix cameras which were defective. So there's a job
 12 card being raised at the specific date and a specific
 13 camera number at a place and then a technician is assigned
 14 to go and fix it. That is what I gather from that
 15 spreadsheet.
 16 MR CHASKALSON SC: Now who other than IES
 17 does the fixing of cameras?
 18 MR BOTES: It is only IES.
 19 MR CHASKALSON SC: Because you see we
 20 went through this job card for August, with the spreadsheet
 21 for August 2012. The easiest way of dealing with it is if
 22 I can ask that we can click on the tab "short description,"
 23 column M – sorry, column H. Click on that tab, just
 24 underneath it where the arrow is, and highlight – first
 25 unclick "select all" and highlight everything relating to a

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1 camera. Go down, camera, camera 419, camera 446, camera
 2 301, camera 402, camera 416, etcetera, and that will tell
 3 us all of the jobs that were issued to IES in relation to
 4 cameras in August 2012.
 5 Now we didn't find in any of these jobs anything
 6 relating to the kitchen dome at Wonderkop Hostel and it
 7 wasn't clear to us that the – we need to get the – do you
 8 know the number offhand of the K4 parking dome?
 9 MR BOTES: Mr Chairman, no.
 10 MR CHASKALSON SC: I think this
 11 spreadsheet may bear you, assist you in relation to – yes,
 12 if one looks at the last entry, 223, K4, it says "K4 Shaft
 13 parking" and it says, "Fixed and focus" –
 14 CHAIRPERSON: We'll have to scroll to the
 15 right of the screen –
 16 MR CHASKALSON SC: Scroll to the right.
 17 "Fixed and focussed camera 484." But that was a job that
 18 was done only on the 28th of August. Sorry the 27th August.
 19 MR BOTES: That's correct, I know that Mr
 20 Chairman.
 21 [11:13] MR CHASKALSON SC: And the job
 22 requisition was sent out only on the 27th of August. We see
 23 that from column G. So is it possible that this camera
 24 would have sat broken for two weeks before a job
 25 requisition would have been issued for it?

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1 MR BOTES: Mr Chairman, I cannot comment
 2 on that because I wasn't working at that unit. There's a
 3 lot of sub-standard performances on both the control room
 4 and IES after I took over last year in July and I fixed
 5 Wonderkop kitchen myself because there was a whole cable,
 6 feeder cable damaged due to upgrade of the hostel complex.
 7 So it might be that cameras were taken off line which has
 8 serious damages and needs much expenditure to fix it and
 9 they haven't put it onto the daily check request and fix it
 10 immediately as it goes off.
 11 MR CHASKALSON SC: You see there's a –
 12 sorry I've maybe drawn your attention to an entry that's
 13 too late because we see on the 24th of August there was
 14 another K4 shaft parking job performed and that is
 15 described as "Reposition the camera to gates, camera 484
 16 fault." Is it possible that this is the fault that's
 17 explained here since the footage 12 days previously?
 18 MR BOTES: Mr Chairman, it's not the
 19 screen there.
 20 MR CHASKALSON SC: Scroll up, if we can
 21 scroll up and maybe move to the right, further to the
 22 right, further to the right and scroll down. Keep
 23 scrolling down, sorry scroll up at this point, keep
 24 scrolling, keep scrolling.
 25 MR BOTES: There it is, line 14.

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1 Reposition camera –
 2 MR CHASKALSON SC: Reposition the camera
 3 to the gate 484 and if we go back across on this one,
 4 scroll left then, the job card on that was issued on the
 5 24th of August. That seems to be the first job card issued
 6 in respect of camera 484 in the K4 parking.
 7 MR BOTES: I know that, I know that, ja.
 8 I cannot say we had no footage and I cannot – I must go
 9 back and investigate it and to give you answers on this. I
 10 cannot remember that I had access to that camera to use it
 11 during my time in the JOC.
 12 MR CHASKALSON SC: And I think while
 13 you're doing that exercise bear in mind that there is no
 14 record of any job card being issued on the Wonderkop
 15 kitchen dome camera in August or indeed in July. And if
 16 you can explain that to us as well, I appreciate you can't
 17 do it now. I want to move now to the 11th –
 18 CHAIRPERSON: Are you moving away from
 19 K4?
 20 MR CHASKALSON SC: I am moving away from
 21 K4.
 22 CHAIRPERSON: Altogether?
 23 MR CHASKALSON SC: I am.
 24 CHAIRPERSON: You told us you didn't
 25 anticipate any kind of attack on K4, do I understand you

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1 correctly?
 2 MR BOTES: That's correct.
 3 CHAIRPERSON: The attack took place on
 4 the night of the 12th.
 5 MR BOTES: That's correct, Mr Chair.
 6 CHAIRPERSON: Now there had been threats,
 7 I think, by the strikers on the 10th that they would see to
 8 it that there wouldn't be any night shifts. Do you
 9 remember that? That was on the 10th and that in fact caused
 10 you people to take steps to try to combat that.
 11 MR BOTES: That's correct, Mr Chair.
 12 CHAIRPERSON: You did so on the 10th
 13 MR BOTES: That's correct.
 14 CHAIRPERSON: Now surely if they were
 15 going to stop the night shifts it wouldn't have been
 16 confined to certain shafts, wouldn't it have been certainly
 17 foreseeable, that it was possible that they would endeavour
 18 to stop the night shift at K4 as well?
 19 MR BOTES: Mr Chairman, yes it was
 20 possible, but we did not envisage that they would attack K4
 21 shaft because that is the furthest shaft north-west from
 22 where the koppie is situated and we just didn't foresee
 23 that they would attack that shaft. All the other shaft
 24 operations are close to the hostels and we focused on those
 25 shafts and not on K4.

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1 CHAIRPERSON: Tell me how far is K3 from
 2 K4?
 3 MR BOTES: It's about 4 kilometres north
 4 from K3.
 5 CHAIRPERSON: I see. Well if one looks
 6 at the occurrence book, it doesn't matter which version one
 7 looks at, you can look at the abbreviated version or the
 8 full version, but on the 10th of August at 21:43 I see
 9 there's an entry "Central OPS reported that people are
 10 gathering and closed the road at K4." That was already on
 11 the night of the 10th, the Friday night of the 10th 21:43.
 12 And then there is another entry on the morning of the 11th
 13 at 8:30, Willie Stemmett at K4 reports he received
 14 information from the control room that there were a few
 15 commuters that wanted to disturb the shaft. And then at
 16 8:54 on the 11th emergency OPS reports a group of people
 17 standing at the bridge between K3 and K4, motive unknown
 18 and then again the same day 11 August, 9:38 alleged march
 19 at K4 area, S1 despatched. And then there's another one on
 20 the 11th 13:02, that's just after 1 o'clock in the
 21 afternoon, report from Tim at 20:47 that a group of people
 22 behind the Wonderkop sub-station are moving towards K3/K4,
 23 PW informed. So there certainly were reports which I would
 24 have thought suggested that K4 was also in the vizier as it
 25 were of the people who were minded to enforce the

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1 unprotected strike by violence if necessary. And we see
 2 from what happened on the Sunday morning the kind of
 3 customers you were dealing with, the lengths to which they
 4 were prepared to go, to murder people if necessary in order
 5 to achieve their ends or to prevent people who tried to
 6 stop them from achieving their end. So I must say I would
 7 like your comment on this. This is obviously a prima facie
 8 view, but it does look as if there were signs visible for
 9 all to see that you're dealing with, well obviously not all
 10 the strikers, but you're dealing with some people at least
 11 who were dangerous people, who were prepared to stop almost
 12 literally at nothing in order to see to it that the
 13 unprotected strike was enforced. And K4 certainly is
 14 mentioned in despatches to some extent. So surely it was
 15 something that should have been seriously considered.
 16 Would you agree with that, perhaps that's just a
 17 retrospective comment, but are you able to deal with that
 18 point I'm putting to you?
 19 MR BOTES: Mr Chairman, as I said because
 20 K4 is far north from K3 and the access routes towards K4 is
 21 past K3 which we monitored. And if vehicles or taxis and
 22 vehicles go towards K4 we would have monitored those people
 23 coming from the hostel and expected an attack from the
 24 hostel, not through the village from the koppie going
 25 through the village, through the veld, over the spruit

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1 towards K4. We didn't expect any attack from that side.
 2 If there was problems we would have expected that from the
 3 Karee hostel, from that area and not from via the koppie,
 4 over that area from the eastern side.
 5 CHAIRPERSON: But tell me what happened.
 6 Do you know the route that the people who committed the
 7 attacks on the Sunday night at K4, do you know what route
 8 the followed and where they came from?
 9 MR BOTES: We do not know the route, but
 10 we expected that they went from the koppie through the RDP
 11 houses over to the K4, exactly the same what they did on
 12 the Monday when we also got information that they want to
 13 attack K4 again when we intercept and the police stopped
 14 them. They also took the same route from the koppie
 15 through the RDP houses, the same route and then we
 16 intervened and stopped them.
 17 CHAIRPERSON: You see what concerns me, I
 18 understand the point about the route and I understand the
 19 point about the distance and I know also that hindsight is
 20 20/20 but that's not so easy before the event to predict
 21 what will happen or what may happen. But there appeared to
 22 have been a genuine desire on the part of the strikers to
 23 stop the night shifts generally to enforce this unprotected
 24 strike. And so surely it must have crossed the mind of
 25 somebody that okay we'd better do something about K4,

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1 particularly because we now hear the cameras weren't
 2 working. I mean how regularly are these cameras checked?
 3 MR BOTES: They're supposed to be checked
 4 twice a day, Mr Chairman.
 5 CHAIRPERSON: So somebody should have
 6 known for as long as the camera wasn't working then it
 7 wasn't working and even if it was at the remoter end of
 8 foreseeability, an attack, efficient, well working,
 9 operating cameras would have been desirable as a first line
 10 of defence wouldn't it ?
 11 MR BOTES: I agree with you, Mr Chairman.
 12 It would have helped a lot if we have camera surveillance,
 13 but we didn't expect any attack from where it happened. We
 14 covered the area between from the Karee hostel towards K4
 15 that we cover and monitor those access routes towards K4.
 16 COMMISSIONER HEMRAJ: Mr Botes, the
 17 security personnel at the gate of K4 shaft they had
 18 absolutely no means to defend themselves. They didn't have
 19 firearms at all. They just seemed to have cell phones with
 20 them.
 21 MR BOTES: Mr Chairman, I agree with that
 22 comment 100% and it is a concern to deploy a normal
 23 guarding unit, a guard there at the place without any
 24 protection for himself or anything that he can protect
 25 others, I 100% agree with that.

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1 COMMISSIONER HEMRAJ: And is this across
 2 the board at all the shafts?
 3 MR BOTES: That's across the board on all
 4 the shafts where Graham increased the number of guarding at
 5 the shaft operation which wasn't adequate.
 6 MR CHASKALSON SC: Mr Botes, I'm just
 7 conscious of time, so I'm probably not going to get back to
 8 the 12th, so maybe if we could just look at the ICAM report
 9 analysis of the 12th now and your comments on what is
 10 indicated on page 16.
 11 MR BOTES: Mr Chairman, if you look at
 12 the second column, the fourth block from the bottom –
 13 MR CHASKALSON SC: Sorry, Mr Botes, just
 14 to clarify, my question or statement may have been a bit
 15 misleading. Again I only want you to respond to criticisms
 16 in this report that you feel are unjustified.
 17 MR BOTES: That is the fourth block from
 18 the bottom in the second column. Historically when we had
 19 any riots or marches or strikes on Lonmin property since my
 20 15 years and there was a march taking place to any
 21 operations, to any shaft where they are dissatisfied with
 22 any working conditions, salaries, whatever the case may be
 23 and security, the normal security guys go before such a
 24 group and we indicated that we want to engage with them
 25 they always respected the security guys and always sent out

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1 representatives out of that group to speak to the security
 2 guys and to tell them what is happening. We had in the
 3 past where they pushed past us, but they never attacked us.
 4 So the judgment call here from Frans making the decision to
 5 engage with the people, try to stop them I wouldn't say it
 6 is 100% correct to say it was a poor judgment because they
 7 were used to do that. They were used to do this, but my
 8 opinion was that this crowd just totally disrespect any
 9 person that came into their way to the NUM offices.
 10 COMMISSIONER HEMRAJ: Are you saying that
 11 such a large crowd is not unusual?
 12 MR BOTES: Such a large crowd wasn't
 13 unusual at Lonmin property and we handled many such crowds
 14 in the past.
 15 MR CHASKALSON SC: Can I put a
 16 distinguishing feature in this particular case, I could
 17 understand that observation from you if it was in respect
 18 of Mr Louw and Mr Voster. But if one bears in mind the
 19 sequence of events Mr Fundi and Mabelane were called in
 20 after that crowd had already attacked Mr Louw and Mr Voster
 21 and at a time when they knew that that taken place.
 22 MR BOTES: That is my comment on the
 23 second block following this one. We're not sure if that
 24 message got through to Frans that they knew Martin and
 25 Dewald was attacked. So if they knew then it's not

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1 justified then this comment is justified. If they did not
 2 knew this comment is not justified.
 3 MR CHASKALSON SC: Of course if they
 4 didn't know there'd be a different comment which is that
 5 communications failed them very badly.
 6 MR BOTES: Correct, Mr Chair.
 7 COMMISSIONER HEMRAJ: Mr Louw told us
 8 that he did communicate to someone or the other that they
 9 should not engage the crowd. I just don't know what he
 10 communicated to the control room, Mr Chairperson, I –
 11 MR CHASKALSON SC: My recollection is it
 12 was the control room, but I can't say that I – that's my
 13 recollection, but it may not be accurate. It's from behind
 14 me it's confirmed that that is correct. And, Mr Botes, any
 15 other comments on this page that you feel are unjustified?
 16 MR BOTES: No, I agree with the document,
 17 Mr Chairman.
 18 MR CHASKALSON SC: If we can then go the
 19 11th –
 20 CHAIRPERSON: Yes I'm sorry to interrupt.
 21 Before you move on I see from one of the statements that Mr
 22 Louw made, the very first one in our bundle, the
 23 handwritten one. I'm not sure what the exhibit number is,
 24 he describes the incident on the 12th, how they were
 25 attacked and so forth and they got into their vehicle and

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1 drove away and he said the car was damaged, broken windows
 2 and so on. He then says "We then contacted our manager
 3 Gerrie Miles so he can bring, it looks like, the main power
 4 and to inform him what had happened. I'm not quite sure
 5 what that means but he certainly does say that as they were
 6 driving away – again in his other statement which is the
 7 original Lonmin statement, page 10 of their bundle, he
 8 talks about how they drove away. The vehicle was severely
 9 damaged, "I informed emergency OPS what had transpired and
 10 called Gerrie Miles informing him as to what had happened."
 11 So there was a communication immediately it happened. And
 12 then he says on the way back to the Wonderkop hostel we
 13 informed that Mr Mabelane and Mr Fundi had been attacked
 14 inside the hostel area. But the point is that he certainly
 15 communicated as was his duty, he communicated to emergency
 16 OPS apparently and to Mr Miles, but surely they should have
 17 done something to ensure that what ultimately happened
 18 wouldn't happen by informing all the people concerned of
 19 the dangers and given the appropriate instructions.
 20 MR BOTES: Mr Chairman, I agree with
 21 that. If such a call would be made it is expected from
 22 that operator to alert then Frans and Fundi about the risk
 23 and to not encounter them and stop them. So I do not know
 24 if that message got through to them.
 25 MR CHASKALSON SC: If we can go to the

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1 11th and the first thing that I want to put to you, I mean
 2 you weren't present at the confrontation between NUM and
 3 AMCU, so I need to put to you that from all the evidence of
 4 parties who were present it's clear where this
 5 confrontation took place. It took place on road, I forget
 6 which is A and which B now, road A, road A more or less
 7 sort of in front of the MTN – between the intersection and
 8 the NUM offices, between the intersection with road B and
 9 the NUM offices. It was on road A pretty close to the NUM
 10 offices. Now if we go to your Google Earth file which is –
 11 and if we can call that one up, it is EEEE14. The Google
 12 Earth description that you produced of this event and was
 13 given to the Commission. Can we call up EEEE15?
 14 [11:33] And if we can just blank – oh no, sorry, can we
 15 just blank all the existing marked – I think I have the
 16 wrong number. It's EEE14, EEE14, the clash with NUM and
 17 striking miners. Ja, and can we just tag now the – let's
 18 tag first how you've described it. First tag the NUM
 19 office. Now you've in fact marked the NUM office in the
 20 incorrect position. Can we just zoom in a bit so that we
 21 can see where the NUM office is marked? So the correct
 22 position of the NUM office is the red-roofed building – ja,
 23 it's being indicated now, it's the red-roofed building
 24 diagonally down to the southwest of where you had marked
 25 the NUM office.

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| <p style="text-align: right;">Page 33470</p> <p>1 MR BOTES: Mr Chairman, I agree to that.</p> <p>2 MR CHASKALSON SC: Then if we tag the box</p> <p>3 saying "Group march towards NUM offices," you have the</p> <p>4 marchers reaching a point around the Schagen workshops, but</p> <p>5 no further. You have a march from the koppie which ends</p> <p>6 roughly at the Schagen workshops.</p> <p>7 CHAIRPERSON: They're still in Road B.</p> <p>8 They haven't gone to Road A.</p> <p>9 MR CHASKALSON SC: Road B. They don't</p> <p>10 make it to Road A.</p> <p>11 MR BOTES: No, they're in Road A, not in</p> <p>12 B.</p> <p>13 MR CHASKALSON SC: Yes, they don't make</p> <p>14 it to Road A.</p> <p>15 MR BOTES: They don't make it to Road B.</p> <p>16 CHAIRPERSON: No, you see if people had</p> <p>17 kept the [inaudible] you wouldn't have a problem. Schagen</p> <p>18 Road is Road B. Hospital Road is Road A. The road below</p> <p>19 is Rowland Road, it goes to Rowland Crossing. It's not</p> <p>20 entirely road, but nevertheless we call it Rowland Road.</p> <p>21 If we use that terminology we won't get confused. What Mr</p> <p>22 Chaskalson is putting to you is your tagging of the march</p> <p>23 by the strikers on the Saturday morning stops in Schagen</p> <p>24 Road just before that loop. In fact the evidence is that</p> <p>25 they went to the intersection of Hospital Road, they turned</p> | <p style="text-align: right;">Page 33472</p> <p>1 11th. Some of them have been addressed. The first is there</p> <p>2 appears to have been a deliberate, well it appears to have</p> <p>3 been a deliberate attempt to hide the fact from the</p> <p>4 Commission that Lonmin Security fired rubber bullets at the</p> <p>5 NUM offices on the 11th.</p> <p>6 MR VAN AS: Sorry, Mr Chairperson –</p> <p>7 CHAIRPERSON: Yes, Mr Van As?</p> <p>8 MR VAN AS: The security officers who</p> <p>9 were present, or at least one of them was in the witness</p> <p>10 box yesterday, this version wasn't put to them that rubber</p> <p>11 bullets were fired.</p> <p>12 CHAIRPERSON: Well, I'm not sure at what</p> <p>13 point it became clear; presumably when the unabbreviated</p> <p>14 version of the Lonmin occurrence book came to hand and was</p> <p>15 studied, but there we have an entry in the Lonmin</p> <p>16 occurrence book, unabbreviated version which, and the</p> <p>17 witness himself conceded that that's what that entry means.</p> <p>18 MR VAN AS: That may be so, Mr</p> <p>19 Chairperson, but the direct evidence before the Commission</p> <p>20 at the moment is that there were two Lonmin security guards</p> <p>21 there. Mr Ramatlola was specifically asked whether there</p> <p>22 were any other Lonmin security guards present and he no and</p> <p>23 he also testified, he was also asked "Did you discharge</p> <p>24 your weapon?" and he said no. So at best there's a</p> <p>25 recording in an occurrence book that Lonmin security guards</p> |
| <p style="text-align: right;">Page 33471</p> <p>1 left, went in a northerly direction and proceeded up to</p> <p>2 fairly close to that red-roofed building, which is in fact</p> <p>3 the NUM office. You accept that that's correct?</p> <p>4 MR BOTES: I understand, Mr Chairman.</p> <p>5 This drawing, or this indications on the Google Earth was</p> <p>6 purely done on hearsay evidence and my discussion with a</p> <p>7 person and he indicated to me that NUM were marching from</p> <p>8 the NUM office towards the eastern gate and entered the</p> <p>9 eastern gate and at the bus terminal the clash took place</p> <p>10 and I merely indicated that on Google Earth for my own</p> <p>11 reference and not as evidence to the Commission.</p> <p>12 MR CHASKALSON SC: Who gave you that</p> <p>13 information?</p> <p>14 MR BOTES: I think it was PW Botha.</p> <p>15 MR CHASKALSON SC: Because that is how</p> <p>16 it's described here, so if we click the next box you'll see</p> <p>17 that it's described that the NUM people, NUM members come</p> <p>18 out of the NUM office, or what you've marked as the NUM</p> <p>19 office, and advance to the point near the Schagen workshops</p> <p>20 where the clash takes place. So that's what you understood</p> <p>21 to be the place.</p> <p>22 MR BOTES: That is what I understood, Mr</p> <p>23 Chairman.</p> <p>24 MR CHASKALSON SC: Okay, we've identified</p> <p>25 the errors. My concern, I have a lot of concerns about the</p> | <p style="text-align: right;">Page 33473</p> <p>1 discharged eight rounds of bullets.</p> <p>2 CHAIRPERSON: Yes, that's right, and</p> <p>3 that's what Mr Chaskalson is putting to the witness.</p> <p>4 MR VAN AS: No, he's putting it that it</p> <p>5 was concealed from the Commission that Lonmin security</p> <p>6 guards in fact discharged eight rubber bullets –</p> <p>7 CHAIRPERSON: Well, what was concealed</p> <p>8 from the Commission – let's not go into that now. What was</p> <p>9 concealed from the Commission, that there was a full</p> <p>10 version of the OB, the Lonmin OB not put before us. We</p> <p>11 were given an abbreviated one. That entry and other</p> <p>12 entries were deleted from it. These are matters presumably</p> <p>13 which will be explained, if they can be, in due course, but</p> <p>14 that's the basis upon which the questions are being put.</p> <p>15 So I think I'll allow Mr Chaskalson to proceed, but</p> <p>16 obviously it must be done on a basis which has regard to</p> <p>17 the kind of concerns that you've mentioned.</p> <p>18 MR VAN AS: Thank you, Mr Chairperson.</p> <p>19 MR CHASKALSON SC: My first concern then</p> <p>20 is the removal of the entry in the occurrence book relating</p> <p>21 to the firing of rubber rounds at the NUM offices during</p> <p>22 this clash. My second concern is we have no footage of it,</p> <p>23 and this I find very, very difficult to understand, and let</p> <p>24 me put my concerns to you. In the first instance we know</p> <p>25 that the scene where the clash actually took place is</p> |

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|---|--|
| <p style="text-align: right;">Page 33474</p> <p>1 directly in the view of camera 218. We have footage of 2 that very position on camera 218 the next day in exhibit 3 Y1, and in fact on that day as well in exhibit X1 because 4 it shows the NUM members coming back to the NUM offices in 5 exhibit X1. So the camera was in, the camera had a view of 6 these proceedings. We know that the camera is movement 7 operated. It's hard to imagine that the movement of a 8 crowd of a hundred or more strikers from Wonderkop along 9 the road directly across the southern view of the camera 10 and then turning left towards the NUM offices directly 11 across the eastern view of the camera wouldn't have been 12 picked up by the camera. Can you imagine a situation in 13 which a movement of a crowd that big would not have 14 triggered the operation of the camera? Can you imagine it? 15 Can you explain that?</p> <p>16 MR BOTES: Mr Chairman, yes, I can just 17 put more clarity on this. The persons who responded on the 18 12th to intervene with the alleged so-called information 19 that they got that the striking group is going to attack 20 NUM, one of those persons were Frans who was in charge of 21 the control room and for the surveillance operators. So 22 one would expect that he should have shared that 23 information to his operators that reports to him and that 24 he tasked them to make use of all the cameras to monitor 25 the situation. Obviously that didn't happen because</p> | <p style="text-align: right;">Page 33476</p> <p>1 Saturday?</p> <p>2 MR BOTES: No, I understood that from 3 Pieter Botha, PW Botha.</p> <p>4 CHAIRPERSON: I see. Well, Mr Julius 5 Motlogeloa who gave evidence before us told us certain 6 things that I'll put to you shortly, but before I do that I 7 must tell you the crowd, according to the evidence about 8 2 000 people – that's the evidence we've had from long ago 9 – so a reasonably alert operator I would imagine would have 10 been aware of a crowd of 2 000 people.</p> <p>11 What Mr Motlogeloa says, and I'm quoting from 12 ZZ4, but his evidence was the same, "On Saturday 11 August 13 they gathered at the same spot again." He's talking I 14 think about the protesters, the strikers. "David informed 15 me," David sounds like some kind of informant, we didn't, 16 for sensible reasons didn't go too deeply into that, "David 17 informed me that protesters have decided to destroy and 18 burn NUM offices at the hostel. At about 11 o'clock they 19 started singing and marching towards the hostel. I drove 20 towards the hostel in which I informed Mr Brown, the 21 chairperson of NUM at Rowland Shaft" - and he was actually 22 at the office according to the evidence – "that protesters 23 are coming to destroy and burn their offices. I advised 24 him to move out, vacate the offices to save their lives. 25 Mr Brown" - that's the nickname of the witness who gave</p> |
| <p style="text-align: right;">Page 33475</p> <p>1 there's no footage.</p> <p>2 On the 11th the same scenario took place. I do 3 not know if Frans had information before that that they're 4 going to attack NUM offices, but I do not know what other 5 evidence came out and who had the information of that, that 6 they can task the central OPS to do that. So if the 7 operator is not alerted to the fact that he must look at 8 the specific incident or a specific area the camera is not 9 automated to alert an operator that there is movement in 10 front of that camera. It doesn't pop up onto a monitor 11 automatically and say there's now movement. An operator 12 must be alerted and tasked do surveillance for me on this, 13 be aware that's going to happen, so monitor this area for 14 me from this time to that time, or whatever the case may 15 be. So if there's no footage available then obviously that 16 operator didn't use that camera to view in that specific 17 area to make sure there's footage.</p> <p>18 CHAIRPERSON: Does the operator have to 19 be alerted, or does the operator merely have to be alert?</p> <p>20 MR BOTES: He has to be alert to look at 21 a specific –</p> <p>22 CHAIRPERSON: Right, now let me tell you 23 what Mr Motlogeloa told us, but before we get there I want 24 to ask you this; who told you that the marchers, or 25 strikers only got as far as the Schagen workshop on the</p> | <p style="text-align: right;">Page 33477</p> <p>1 evidence, I think his name was Setelele – "Mr Brown and his 2 team stood outside their offices and said they are going 3 nowhere. The RDOs came singing, marching in the direction 4 of the hostel and they were more or less 2 000 in total. 5 They marched past the taxi rank and at a distance of 50 6 metres from the NUM office," and then he describes how the 7 NUM people attacked the protesters, and he says, "The RDOs 8 turned back," well they call them protesters, they're 9 really strikers, "The RDOs turned back and ran away. It 10 was chaos. Everyone was running for safety."</p> <p>11 And then comes this sentence; "The police 12 officials were not there and we were only 15 in total." So 13 according to him there were – the "we" I take it refers to 14 his colleagues and him, so appear to have been 15 people, 15 including Mr Motlogeloa, of security people from Lonmin. 16 The crowd, the strikers, who were 2 000 in total 17 approximately, got to within 50 metres of the NUM office.</p> <p>18 So you were totally misinformed as to the 19 essential facts, but if there was a crowd of 2 000 people 20 and if they got to 50 metres of the NUM office and there 21 was a reasonably alert operator, I would have expected him 22 to have picked that up and if his camera wasn't turned on, 23 to have turned it on, and if it was turned on but facing 24 the wrong direction, to put it in the right direction, and 25 I must tell you that in the light of the facts I've put to</p> |

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1 you, this is obviously a prima facie view and I'm sure
 2 there may well be a satisfactory explanation - and if there
 3 is I'd like to hear it - as to why there's no footage about
 4 that.

5 MR BOTES: Mr Chairman, I cannot say why
 6 there was no footage of that. I, if it happened that the
 7 mob, the 2 000 moved past the bus terminal and meets the T-
 8 junction where they turned left towards the union offices,
 9 the camera can view that area and if the operator used the
 10 camera there would have been sufficient footage of that
 11 incident, but doing a review and the feedback I got from
 12 Danie Rossouw, who captured all the images and footage for
 13 us, he said there was no footage of the 11th from where they
 14 attacked Dewald and Vorster on the western side towards the
 15 eastern side -

16 CHAIRPERSON: Well, that's on the
 17 previous -

18 MR BOTES: That's on -

19 CHAIRPERSON: That's the following day.

20 MR BOTES: That's on the following day.

21 CHAIRPERSON: Dewald and Vorster was on
 22 the Sunday, you see, on the Sunday.

23 MR BOTES: Ja.

24 CHAIRPERSON: We're interested in
 25 Saturday.

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1 MR BOTES: I'm referring to that.

2 CHAIRPERSON: Yes, yes, you're just
 3 referring to that as a place, I understand.

4 MR BOTES: Ja.

5 CHAIRPERSON: Not an event, I understand.

6 MR BOTES: So from what feedback I got
 7 from Danie is from the attack on Sunday as well as the NUM
 8 attack on Saturday there was no footage available which he
 9 could export files to give us evidence.

10 CHAIRPERSON: You would agree, I take it,
 11 but again with a prima facie view I'm putting to you, it's
 12 a bit odd?

13 MR BOTES: I agree with you. I 100%
 14 agree with you because it's a large group. The people
 15 should have been aware. We had a march on Friday and they
 16 should have been aware with 15 people reporting on duty and
 17 there's conversation on the radio at Wonderkop and people
 18 monitoring, surely those operators should have captured
 19 those. I share your sentiment on that and I'm also not
 20 happy for a fact that there's no footage of that.

21 COMMISSIONER HEMRAJ: Mr Botes, when a
 22 first report is received of for example a crowd marching,
 23 who would be responsible for alerting the camera operators
 24 to try and follow the movement of that crowd?

25 MR BOTES: Mr Chairman, it is so odd that

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1 there's a radio inside a control room, so if there's any
 2 conversations taking place in a control room the supervisor
 3 of that operators should tell the operators listen, there's
 4 the conversation, use that camera, look there, look there,
 5 look there, and monitor it and give feedback, continuous
 6 update back to the ground personnel from the control room,
 7 because that's why the control room is there; give them an
 8 update of how many people there is, what they see, where's
 9 the risk involved, where the people can be trapped,
 10 etcetera. That's the work of the operator and surely these
 11 people did not do their work.

12 COMMISSIONER HEMRAJ: And that lack must
 13 have then hampered the actual operation of the security
 14 officers in attending to that scene.

15 MR BOTES: Of course, Mr Chairman.

16 MR CHASKALSON SC: Mr Botes, there was
 17 another aspect of Mr Motlogeloa's evidence which was that
 18 the control room was well aware of the march. So -

19 MR BOTES: Ja.

20 MR CHASKALSON SC: - it makes it all the
 21 more difficult. You know -

22 MR BOTES: Ja, Mr Chairman, I cannot
 23 answer for the operators and for people who were supposed
 24 to do their job.

25 MR CHASKALSON SC: Do you know if there's

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1 been any internal inquiry, disciplinary inquiry by Lonmin
 2 in relation to this?

3 MR BOTES: Mr Chairman, I'm not aware of
 4 that because I only started working with this Lonmin team
 5 mining last year July, so after the strike I went back to
 6 my normal work and I wasn't involved with any other
 7 internal investigations towards substandard performance or
 8 the lack of performance, etcetera.

9 COMMISSIONER HEMRAJ: Sorry to interrupt
 10 you, Mr Chaskalson. Although the operator might not have
 11 seen it on the screen it would still have been recorded?
 12 If there was movement the camera would have recorded it?

13 MR BOTES: Mr Chairman, if - those
 14 cameras in the hostel are all PTZ cameras which they can
 15 pan and tilt, so if the operator leave it in an area where
 16 the group is not marching past it they will miss it, but if
 17 the camera was left at the taxi rank and without any
 18 operator's intervention, leave it there and the group
 19 marched past there, there would have been footage to that.

20 MR CHASKALSON SC: And it seems to me
 21 that if there's a default position for leaving the camera
 22 at the 281 taxi rank dome it would be designed to cover one
 23 of two places; Road A or Road B. If you're just going to
 24 leave it to pick up movement you're going to look at the
 25 roads. You're going to point it at the roads, to leave it.

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1 MR BOTES: Mr Chairman, those cameras
 2 have a setting that you can set up a camera when an
 3 operator does not use it for a certain period that it goes
 4 back to a default setting, which is a preset that you
 5 consider as a high-risk area. Those settings on those
 6 cameras were never set up, so if the operators leaves that
 7 camera to the moon, look for the sky, that is where the
 8 camera stays until the camera moves it again.
 9 CHAIRPERSON: But if you were wanting to
 10 set it as a default position the high-risk area, what Mr
 11 Chaskalson suggests to you is that the camera would either
 12 have been aimed at Road B, which I remind you is Schagen
 13 Road, or alternatively Road A, which I remind you is the
 14 Hospital Road, one of those two surely?
 15 MR BOTES: Mr Chairman, no, the operator
 16 can leave it any place. He can leave it there at the back
 17 of the village –
 18 CHAIRPERSON: No, no, no, I understand
 19 that.
 20 MR BOTES: Ja.
 21 CHAIRPERSON: But I'm asking a different
 22 question. High-risk area; you can point it to the moon if
 23 you like, but we're in the real world now. If you're
 24 setting it to a high-risk area, the two high-risk areas
 25 surely are the two roads that I've mentioned?

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1 MR BOTES: That's correct. The high-risk
 2 area which I consider, which is set up now, is the
 3 intersection at the taxi rank that you can cover both
 4 areas.
 5 [11:53] So if there's any armed robbery or anything had
 6 taken place for the future that at least you have footage
 7 if the operator didn't use it to view another area.
 8 CHAIRPERSON: It does seem rather odd, if
 9 I may put this to you, I'd just like to get your comment.
 10 Page 60 of the Lonmin bundle, one of your statements,
 11 paragraph 12 reads as follows, "It was found that on
 12 Saturday" – you having spoken about how Danie Rossouw was
 13 asked to export all footages and so on, you go on to say,
 14 "It was found that on Saturday 11 August no recordings were
 15 captured on the DVR during the clash between NUM and the
 16 marchers. The only footage which could be exported was
 17 after the clash took place when the NUM group returned to
 18 their office at the Wonderkop Hostel." Now we know where
 19 the NUM office was at the Wonderkop Hostel and so if the
 20 camera was facing there, or was capable of picking up
 21 people going back to the NUM office after the clash, it's
 22 rather strange that the same camera didn't pick up any
 23 footage earlier than that, on the same day, a few minutes
 24 before. Would you like to comment on that?
 25 MR BOTES: Mr Chairman, yes, I think that

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1 clip is part of the evidence in front of the Commission, so
 2 the operators, according to Danie the operators did not use
 3 that camera during the clash. Only after the clash they
 4 used it and they picked up the NUM group walking back from
 5 the intersection to their office. That's the only thing
 6 they picked up and which was available on the footage that
 7 we could export –
 8 CHAIRPERSON: No, no, I mean if they
 9 picked up that, it's difficult o understand how they
 10 couldn't pick up the earlier one. You know, indicates that
 11 they were certainly at their posts –
 12 MR BOTES: Ja.
 13 CHAIRPERSON: - when the NUM people were
 14 returning to their office, they were aiming their camera in
 15 that direction, apparently doing nothing before that.
 16 Alternatively they were, I mean there are a couple of
 17 possibilities, aren't there?
 18 MR BOTES: Ja.
 19 CHAIRPERSON: One is they didn't record
 20 it. Alternatively they did and for some reason which may
 21 have to be investigated further that recording wasn't
 22 exported, to use the word you use, or made available to
 23 you.
 24 MR BOTES: Mr Chairman –
 25 CHAIRPERSON: For some reason it may have

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1 been eliminated because it was embarrassing, but that's
 2 just something we can't make any positive findings about at
 3 this stage. It's something that bears investigation, does
 4 it not?
 5 MR BOTES: Mr Chairman, Danie had no
 6 reason to not export any footage to me and I take it, I
 7 accept the fact that he told me that there's no footage
 8 available. He would not say there's nothing but there is
 9 and hide it from somebody.
 10 CHAIRPERSON: No, all I'm asking you is
 11 would you agree with me that it's something that bears
 12 investigation, without accusing anybody of doing anything
 13 they shouldn't have done?
 14 MR BOTES: Mr Chairman, I agree with you.
 15 MR CHASKALSON SC: The footage to which
 16 Mr Botes was referring is before the Commission, it's X1.
 17 It's, as I put to him earlier that footage captures the
 18 exact position where the clash took place, except 15 to 20
 19 minutes after the clash took place. The version of the
 20 clash that was reported to you by PW Botha, if the clash
 21 had taken place where PW Botha informed you it had taken
 22 place, of course camera 218 wouldn't have been able to pick
 23 that up because there would be foliage blocking that view.
 24 Is that correct?
 25 MR BOTES: That's correct, Mr Chairman.

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1 That's the same place where Frans and Hassan were killed.
 2 MR CHASKALSON SC: So it does strike me
 3 as odd that you get given a version of the clash, which is
 4 an incorrect version, but which puts the clash in a place
 5 which would explain the absence of CCTV footage. Do you
 6 want to comment on that?
 7 MR BOTES: Mr Chairman, if I look at the
 8 footage that was recovered when the NUM people walked back
 9 to their office, what I view on that footage is that they
 10 walk from that eastern gate, from the intersection back to
 11 the office, so that means that what Pieter Botha told me is
 12 that the clash took place round about the bus terminus, so
 13 if the other group were on that Hospital Road then the
 14 camera would have picked them up also, but it seems to me
 15 that only when the NUM people walked back from the east
 16 gate towards their offices, that was captured and could
 17 have been exported.
 18 CHAIRPERSON: May I ask you a question
 19 linked to that, but not directly following from it. You
 20 obviously got, it appears you got a slightly inaccurate
 21 account of what happened and where things happened, but
 22 were you told – remember I read you what Mr Motlogeloa
 23 says, we were only 15 in total, there were no police
 24 officials there. Were you aware that 15 of your security
 25 people, according to this statement anyway which is in the

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1 police docket, were present at the scene at the relevant
 2 time?
 3 MR BOTES: I was not aware of that, Mr
 4 Chairman.
 5 CHAIRPERSON: I'm reminded that it's the
 6 time we normally take tea. We have been sitting for quite
 7 some time. Mr Chaskalson, I'm in your hands; when an
 8 appropriate stage is reached would you let me know?
 9 MR CHASKALSON SC: No, it is an
 10 appropriate stage, Chairperson.
 11 CHAIRPERSON: We take the tea
 12 adjournment. This time we must try to be back within 15
 13 minutes.
 14 [COMMISSION ADJOURNS COMMISSION RESUMES]
 15 [12:15] CHAIRPERSON: The Commission resumes. Mr
 16 Botes, you are still under oath. Mr Chaskalson, I believe
 17 you've got five minutes left, can you, will you use all the
 18 time, or may you donate something to me?
 19 MR CHASKALSON SC: Can I ask that they be
 20 suspended while Mr Botes reports the answer to an inquiry
 21 that –
 22 CHAIRPERSON: I'll ask the timekeeper to
 23 turn his watch on when Mr Botes has finished giving the
 24 report, he's now going to give us. Mr Botes, you've got a
 25 report to give us.

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1 MR BOTES: Yes, Mr Chairman, with regards
 2 to the statement made by the control-room operator from K4
 3 shaft. I just clarified with Danie Rossouw now, there are
 4 cameras installed for shaft operations which is not
 5 integrated into the security equipment, so we cannot view
 6 it, and I wasn't aware of those cameras. So I did not
 7 enquire myself or ask, task Danie to go and get that
 8 footage for us. So –
 9 CHAIRPERSON: Is it still available or
 10 has it been taped over, as it were?
 11 MR BOTES: Mr Chairman, I will go and
 12 find out and see if that footage was captured and saved
 13 somewhere.
 14 CHAIRPERSON: Thank you very much.
 15 MR CHASKALSON SC: Then, Mr Botes, I'd
 16 like us to go to a different topic which is the emergency
 17 incident report that you – well, that reflects your call on
 18 the 16th of August. It will be exhibit EEEE23 –
 19 CHAIRPERSON: 24.
 20 MR CHASKALSON SC: 24?
 21 CHAIRPERSON: 23 is the spreadsheet
 22 entitled "2012 FY progress report." So EEEE24, what is it?
 23 MR CHASKALSON SC: It is an emergency
 24 incident report from the 16th of August. If we can call it
 25 up, I think it may have been incorrectly numbered here,

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1 that's it, thank you. Now the time reflected – this is the
 2 report of a call that you made according to the report on
 3 radio to the Lonmin emergency incident control room as it
 4 were.
 5 CHAIRPERSON: I am sorry, Mr Chaskalson,
 6 is this a document which is 73 in your bundle?
 7 MR CHASKALSON SC: It is, Chairperson.
 8 CHAIRPERSON: Thank you. It's now on the
 9 screen.
 10 MR CHASKALSON SC: And at 16:16 someone
 11 called Elizabeth at the emergency and disaster management
 12 control room logged a call from you and if we go to the
 13 bottom of that page, what she logged was, "ECC received a
 14 radio call from Dirk Botes, who was at the scene of the
 15 unrest. It was reported that there was a shoot out between
 16 the SAPS and the angry protesters. Ambulances from
 17 Rustenburg, Hartebees and Brits were called in for
 18 assistance." And in fact, if we turn two pages – three
 19 pages, to page 76, which is a log sheet –
 20 CHAIRPERSON: Is that an exhibit as well,
 21 Mr Chaskalson?
 22 MR CHASKALSON SC: It's all part of the
 23 same exhibit.
 24 CHAIRPERSON: It's all part of EEEE24 so
 25 it's –

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1 MR CHASKALSON SC: 24.4. "Sierra Jack
 2 informed us that Mr Dirk Botes requesting Brits Ambulance
 3 and Rustenburg Ambulance to come on," I am not sure what
 4 that – can you read that? S-A, come on site, sorry. "And
 5 also our ambulance to come back to base." So you were
 6 calling for ambulances from Rustenburg, Hartebees, Brits
 7 and your own ambulance to come back to base, and that was a
 8 16:16. Do you know where Lonmin ambulance was that had to
 9 come back to base?
 10 MR BOTES: Mr Chairman, I assume they
 11 already took some patients to the hospital or the Lonmin
 12 ambulances were called out somewhere else which I was not
 13 aware of. I requested them to – they must come back to
 14 base.
 15 MR CHASKALSON SC: And where is base?
 16 MR BOTES: The base is at the EDM offices
 17 where the Lonmin JOC is, just behind our JOC control room
 18 was the EDM emergency base for where 9W1 use as the base.
 19 MR CHASKALSON SC: So it was in
 20 Middlekraal.
 21 MR BOTES: That's correct, Mr Chairman.
 22 CHAIRPERSON: If one looks at the
 23 document which is the bundle on page 74, that's in EDM call
 24 centre handover, that's how it's headed, at the very foot
 25 of the page, the last entry, it's "34 by P4 PTS, and 78 by

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1 injured PTS." I take it "PTS" stands for "patients," I
 2 presume.
 3 MR BOTES: That is correct, Mr Chairman.
 4 CHAIRPERSON: "Taken to ASMH," that's
 5 Andrew Saffy Hospital.
 6 MR BOTES: Yes.
 7 CHAIRPERSON: That's recorded as being at
 8 16:16. Does that refer to the deceased persons and the
 9 injured people being taken by ambulance?
 10 MR BOTES: Mr Chairman, yes, it referred
 11 to the deceased persons, which are referred to as P4s and
 12 injured are the 78 but the time on that 16:16 is the time
 13 probably of my call, and not when the people were taken
 14 already to hospital.
 15 CHAIRPERSON: Yes, it must so.
 16 MR BOTES: That's correct, yes.
 17 MR CHASKALSON SC: Now, if I understand
 18 the interaction between yourself and SAPS in relation to
 19 Lonmin's support for the operation, you had already
 20 arranged in the morning that ambulances would be available
 21 – ambulances and paramedics would be available during the
 22 course of the day. Is that correct?
 23 MR BOTES: Mr Chairman, it wasn't me,
 24 Graham arranged that, it was already something that he
 25 arranged that we have additional ambulance services on site

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1 due to the fact on the attack on the security guys on the
 2 Sunday, and also on the police on Monday.
 3 MR CHASKALSON SC: But there were a batch
 4 of medics and ambulances under the control of General
 5 Naidoo during the operation.
 6 MR BOTES: That's correct. Those
 7 ambulances were assigned to the police and as I understood
 8 it, they would be deployed at forward holding 1.1 and
 9 forward holding point 2 and be there on standby, until
 10 after the dispersing of the crowd to see what happened, if
 11 they are needed.
 12 MR CHASKALSON SC: So the calls for
 13 ambulances that you were making at 16:16 were calls for new
 14 ambulances as it were, ambulances over and above those that
 15 were under the control of Major-General Naidoo?
 16 MR BOTES: That's correct, Mr Chairman.
 17 MR CHASKALSON SC: And by 16:16, you knew
 18 that you needed more ambulances than had originally been
 19 provided to Major-General Naidoo.
 20 MR BOTES: Mr Chairman, if I made a call
 21 to emergency ops to request that, and then I would have
 22 knew of that.
 23 MR CHASKALSON SC: So he must have known
 24 that you were dealing with a very serious situation.
 25 MR BOTES: Must have known, I agree to

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1 that, Mr Chairman.
 2 MR CHASKALSON SC: How did you know that?
 3 MR BOTES: Mr Chairman, I cannot recall
 4 how did the message get through to me, and who gave it to
 5 me, but I think it came through the police radio that the
 6 bodies are down, and they need ambulances, and because the
 7 urgency and the message I got from Colonel Vermaak, I
 8 cannot recall who it was, that there's many people been
 9 shot which means my assessment was then I have to alert the
 10 supporting towns in the area that they can send us more
 11 ambulances.
 12 CHAIRPERSON: So where did you get the
 13 information from?
 14 MR BOTES: Mr Chairman, I cannot recall –
 15 CHAIRPERSON: Did you hear it over the
 16 radio or did someone specifically ask you or how did it
 17 work?
 18 MR BOTES: I cannot specifically recall
 19 if it was Brigadier Pretorius requesting me that or if I
 20 heard it on the police radio, I cannot specifically recall
 21 and say "we need extra ambulances." I cannot recall that
 22 because it was chaos in the JOC.
 23 CHAIRPERSON: I've got an idea that
 24 Brigadier Pretorius deals with this in one of his
 25 statements, but that can be called up quickly. Your time

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1 is up though, Mr Chaskalson, but if you want to round off
 2 this point, which is obviously an important one, you may do
 3 so. Presumably that will shorten the cross-examination of
 4 some of your colleagues.
 5 MR CHASKALSON SC: Could I have another
 6 sort of five minutes for that purpose, Chairperson?
 7 CHAIRPERSON: Without creating a
 8 precedent, I grant it to you. Perhaps Mr Wesley or
 9 somebody could quickly look, or Ms Pillay, to see whether
 10 we can find this in Adv – sorry in Brigadier Pretorius's
 11 statement. I think her last statement or second-last
 12 statement dealt with the question of what she did, but it
 13 may or may not be necessary to put it to the witness.
 14 MR CHASKALSON SC: Would this step have
 15 been a step that you look on your own initiative or would
 16 you have waited for a request from SAPS before you called
 17 for additional ambulances?
 18 MR BOTES: Mr Chairman, because I did not
 19 have visuals at the place where the action took place,
 20 where the engagement took place, I could not see for
 21 myself, so I assumed somebody requested me to ask for extra
 22 ambulances. I cannot recall exactly who, but I assume that
 23 was Brigadier Pretorius.
 24 CHAIRPERSON: Is the person who really
 25 would have done it, if it was done by anybody.

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1 MR BOTES: That's correct, Mr Chairman,
 2 she was in charge of the police in communications and their
 3 radio operators.
 4 MR CHASKALSON SC: And you see, we have a
 5 copy of the SMS that Brigadier Pretorius sent to IPID at
 6 three minutes past four, and reads as follows, "Having
 7 operation at Wonderkop, bad, bodies. Please prepare your
 8 members as going to be bad." So Brigadier Pretorius had a
 9 sense of what you were dealing with by three minutes past
 10 four. That's when her SMS was sent. That's possibly a
 11 little bit before. Your call for ambulances only went out
 12 12 minutes after this. Can you explain that?
 13 MR BOTES: Mr Chairman, maybe she
 14 received a phone call from somebody on the ground where the
 15 engagement took place and she was fully updated with what
 16 ensued at the scene. I could not see there and I relied on
 17 them to guide me and to give assistance. So I assumed that
 18 that is the time when she requested that, I wouldn't delay
 19 purposely when I get the request and say organise more
 20 ambulances. Then I would respond immediately.
 21 CHAIRPERSON: How many ambulances had you
 22 made available? You said you made ambulances available to
 23 the police, and they were at forward holding area 1, I
 24 think you said, and forward holding area 2 I think. How
 25 many ambulances had you made available?

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1 MR BOTES: Mr Chairman, I cannot recall
 2 because I wasn't in charge and in control of those
 3 ambulances. It was arranged by Graham. I cannot recall
 4 how many were deployed –
 5 CHAIRPERSON: Certainly it was some.
 6 MR BOTES: I assume there were some, if I
 7 can guess probably five ambulances per forward holding
 8 point.
 9 CHAIRPERSON: I am not sure if that's
 10 accurate but anyway, thank you for your guess. But I would
 11 suspect that the probable reason although I suppose I
 12 shouldn't guess, but the probable reason for the time lag
 13 between 16:03 or 4, and 16:16 was, it was presumably
 14 expected that the ambulances you had made available would
 15 both go to the relevant place and do the job and it must
 16 have been realised that there was a problem hence you then
 17 sought to get other ambulances which would in any event
 18 have taken time to come, the ones that you called for.
 19 MR BOTES: That is 100% correct, your
 20 assumption, Sir.
 21 COMMISSIONER HEMRAJ: Were there any
 22 medical personnel at the JOC itself or outside the JOC?
 23 MR BOTES: There were no medical
 24 representatives in the JOC itself, only myself from Lonmin
 25 and the surveillance operators and –

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1 COMMISSIONER HEMRAJ: Were there any –
 2 sorry to interrupt you.
 3 MR BOTES: Sure?
 4 COMMISSIONER HEMRAJ: Were there any
 5 ambulances with medical personnel outside the JOC or in
 6 close proximity to the JOC?
 7 MR BOTES: I cannot say that, probably if
 8 everybody were deployed, I do not know if ambulances were
 9 held back at the base.
 10 COMMISSIONER HEMRAJ: I see, thank you.
 11 MR CHASKALSON SC: Chairperson, the issue
 12 is in fact traversed in a statement of Brigadier Pretorius
 13 which hasn't yet been made an exhibit and I think in –
 14 CHAIRPERSON: Put it in now then, if it
 15 will help and advance the discussion.
 16 MR CHASKALSON SC: It's MMM22 I am told.
 17 CHAIRPERSON: It is in, I thought it was.
 18 MR CHASKALSON SC: It is, ja.
 19 CHAIRPERSON: So just put it up on the
 20 screen, let's have a look and see what she said.
 21 MR CHASKALSON SC: In paragraph –
 22 CHAIRPERSON: It may help to trigger the
 23 memory on the part of the witness.
 24 MR BOTES: Thank you, Mr Chair.
 25 MR CHASKALSON SC: 4.1.13.

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1 CHAIRPERSON: You've gone past 4.1.13,
 2 let's go back to 4.1.13. What she says, let us actually
 3 take the previous paragraph first, 4.1.12, "After my
 4 conversation with Captain Loest," Captain Loest was on the
 5 scene, he phoned and spoke to her and told her what
 6 happened, some of what had happened. "I telephoned Major-
 7 General Naidoo to request him to send the medical personnel
 8 allotted to his group to forward holding area 1 to assist
 9 at the kraal, where Captain Loest was. Major-General
 10 Naidoo didn't answer his cell phone." We've heard his
 11 evidence, he was busy with something else. Then 4.1.13
 12 goes on to say, so she tried to get hold of Naidoo, sonder
 13 sukses, "I requested Mr Botes of Lonmin," she says in
 14 4.1.13, "who was inside the JOC for assistance with
 15 additional medical personnel to be sent to the kraal. I
 16 asked him for additional medical personnel as I knew Major-
 17 General Naidoo only had three medical personnel with him,
 18 and from the conversation with Captain Loest it would seem
 19 that would not be adequate as he indicated there were
 20 numerous persons injured. Mr Botes was not sure about the
 21 location as he knew about the koppie where the strikers
 22 were gathering for the past few days and not a kraal. I
 23 phoned Captain Loest, the time 16:08 according to my cell
 24 phone records, he explained the location of the kraal which
 25 I conveyed to Mr Botes." And there's a reference to their

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1 occurrence book which doesn't appear to be abbreviate in
 2 this way. "Minutes later Mr Botes reported to me that
 3 medical personnel from the area of the JOC were on their
 4 way to Captain Loest's location." So does that help you to
 5 recall back the memory of what happened?
 6 MR BOTES: That's possible, Mr Chairman.
 7 That's how it could happen, but I am not sure that at the
 8 time the operator in the emergency ops captured her correct
 9 time because I see the time there requested to myself was
 10 at 16:05.
 11 CHAIRPERSON: No, no, no, she spoke to
 12 IPID about 16:05. She then phoned – you indicated you
 13 didn't know where the ambulance had to go, so they then got
 14 hold of Loest and asked him where it was, and he told her,
 15 and this was then conveyed to you. So it sounds as if you
 16 only after that, after 16:08 then set about trying to get
 17 ambulances to go to the scene and explain where exactly
 18 they had to go and so on. The OB entry relates to 16:05,
 19 where it's recorded that Brigadier Pretorius told you what
 20 the problem was, but we know from what she says that after
 21 she told you, you obviously said to her, where must they
 22 go? And it wasn't – they talk about a kraal, and you and
 23 your force knew what was happening at the koppie. So then
 24 she had to go back to Loest to find out where exactly it
 25 was, so that all, time was ticking by while all those

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1 things were happening. That seems the explanation.
 2 MR CHASKALSON SC: Chair, I think there
 3 is a more prosaic explanation, that OB entry at 16:05 is
 4 the point at which they stopped recording times and it's
 5 the entry with everything from basically 16:05 to 16:40
 6 almost, with that long OB entry 1018, so that precise time
 7 would not be an accurate time.
 8 MR BOTES: Thank you, Mr Chair.
 9 CHAIRPERSON: That certainly does make
 10 sense because she says she phoned Loest at 16:08 so it must
 11 have been after 16:08 actually, yes, I see. So the mystery
 12 would appear provisionally it has been solved.
 13 MR BOTES: Yes, I understand, Mr Chair.
 14 MR CHASKALSON SC: And just two questions
 15 to round this off, Brigadier Pretorius says that you
 16 reported that medical personnel from the area of the JOC
 17 were on their way to Captain Loest's location. Does that
 18 ring true to you because what the call reports is a call
 19 for -
 20 MR BOTES: Additional.
 21 MR CHASKALSON SC: - additional medical
 22 personnel.
 23 MR BOTES: Mr Chairman, if I would
 24 request any ambulances to be sent to the scene, I would
 25 have asked the operator and to send ambulances immediately

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1 out and with reference to the entry made on the emergency
 2 ops saying that the ambulances were out, and I requested
 3 them to return to base immediately, then that would be the
 4 case.
 5 [12:35] That the ambulances are on their way, so if I
 6 refer there to the forward holding ambulances or additional
 7 ambulances, I cannot give clarity on that now. But I
 8 assume when the operator told me ambulances are all out,
 9 then I would have requested get them back to base and send
 10 them out immediately.
 11 MR CHASKALSON SC: And maybe just to
 12 round this off, if I can refer you to the Lonmin RDO OB
 13 log, it's – I've just lost the exhibit number. EEEE18.1,
 14 there it's recorded at 16:15, whoever was in the Lonmin
 15 control room, "Dirk Botes requested that Rustenburg and
 16 Brits provincial ambulances to report on site at
 17 Middelkraal. Emergency Ops 1 already did." So by 16:15
 18 you were calling in large numbers of ambulances. EEEE19.1,
 19 not 18.1.
 20 MR BOTES: I note that, Mr Chairman.
 21 MR CHASKALSON SC: Chairperson, I've
 22 reached the end of my time allocation.
 23 CHAIRPERSON: And gone a bit over it.
 24 Yes, thank you, Mr Chaskalson. Before we turn the clock on
 25 to Mr Tip, Adv Hemraj wants to ask a question.

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1 COMMISSIONER HEMRAJ: Mr Botes, the
 2 birdshot used by you, was that your private ammunition?
 3 MR BOTES: Please repeat the –
 4 COMMISSIONER HEMRAJ: The birdshot that
 5 you used.
 6 MR BOTES: The birdshot was my private
 7 ammunition which I took from home because I was told that
 8 our security guards were trapped and it's useless to attend
 9 to a scene, try to rescue our members with rubber bullets
 10 that's been issued to me the previous day.
 11 COMMISSIONER HEMRAJ: Do you know if any
 12 of the other of Lonmin Security personnel had birdshot in
 13 their possession?
 14 MR BOTES: No, Mr Chairman.
 15 COMMISSIONER HEMRAJ: You do not know, or
 16 they did not have?
 17 MR BOTES: I do not know.
 18 COMMISSIONER HEMRAJ: Do not, thank you.
 19 You mention in your statement on page 71 that you heard
 20 five shots being fired on the 10th and you relayed that to a
 21 body being found many days later. Was any investigation at
 22 all done surrounding those five shots at the time that it
 23 happened, or soon thereafter?
 24 MR BOTES: Mr Chairman, thereafter I
 25 worked very closely with Captain Van der Merwe from the

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1 investigation task team, tried to establish this
 2 expectation from us that the person was shot in Nkaneng
 3 that evening and we never got a body with five shots in it.
 4 So that is why I withdrew it in my final supplementary
 5 statement, page 95.
 6 COMMISSIONER HEMRAJ: And then there's
 7 also mention in one of the dockets, I think it's CAS –
 8 CHAIRPERSON: Are you moving on to
 9 something else?
 10 COMMISSIONER HEMRAJ: Yes.
 11 CHAIRPERSON: I'd just like to ask a
 12 question about that before Adv Hemraj continues. There was
 13 a body found, someone who died of unnatural causes, right,
 14 and you had heard shots and the amount of wounds this body
 15 had seemed to fit the number of shots you heard, but being
 16 an unnatural death there would have had to have been an
 17 inquest at the very least. So an inquest docket would have
 18 had to have been opened, but I take it you don't know
 19 anything about that. Were you contacted, or Lonmin
 20 contacted in any way and asked for assistance in regard to
 21 the inquest?
 22 MR BOTES: Mr Chairman, as I mentioned I
 23 spoke to Captain Van der Merwe. There were two bodies
 24 found at Karee, the one was found, he was nearly decomposed
 25 and he was found round about the Tuesday, Wednesday, and he

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1 was nearly decomposed but the autopsy report showed that he
 2 drowned.
 3 CHAIRPERSON: There was another body with
 4 bullet wounds, wasn't there?
 5 MR BOTES: There was another one found in
 6 Karee with bullet wounds, but it is not what we expected.
 7 CHAIRPERSON: How do you mean it wasn't
 8 what you expected?
 9 MR BOTES: No.
 10 CHAIRPERSON: I see.
 11 MR BOTES: Because that person had, I
 12 think he had one or two shots in him and we expected to
 13 have a body with five rounds in him.
 14 CHAIRPERSON: Ja, some of the shots could
 15 have missed, you know. But anyway, do you know whether
 16 there was an inquest done? There must have been –
 17 MR BOTES: There must be –
 18 CHAIRPERSON: But what I what to know is
 19 were you people contacted about an inquest investigation
 20 into that body?
 21 MR BOTES: Mr Chairman, all the bodies
 22 during that period went to Phokeng Mortuary where the task
 23 team handled all bodies and handled all inquest and
 24 investigations.
 25 CHAIRPERSON: I see, the task team being

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1 the?
 2 MR BOTES: The police task team.
 3 CHAIRPERSON: The police task team.
 4 MR BOTES: The investigation task team.
 5 CHAIRPERSON: I see, so we must ask
 6 assistance from the police in that regard.
 7 MR BOTES: Correct, Mr Chairman.
 8 CHAIRPERSON: Thank you.
 9 COMMISSIONER HEMRAJ: There's a docket
 10 CAS69/8/2012 which refers to two incidents on the evening
 11 of the 10th of August. In the one it's alleged that there
 12 were five shots fired near Rowland Shaft and a person was
 13 shot in the head, and the second incident was near the
 14 stadium where it's alleged that shots were fired from a
 15 Lonmin Security vehicle and two people were shot. Do you
 16 have any knowledge of these incidents?
 17 MR BOTES: Mr Chairman, the one at
 18 Rowland Shaft could be the evening when we dispersed the
 19 people at Rowland Shaft with the rubber bullets, so one
 20 person could have been shot in the head with a rubber
 21 bullet, but I'm not aware of the person that was shot at
 22 the stadium.
 23 COMMISSIONER HEMRAJ: Yes, thank you.
 24 CHAIRPERSON: Mr Tip, are there any
 25 questions left for you to ask?

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1 MR TIP SC: Thank you, Mr Chair. I have
 2 been given two hours, but thanks to the invaluable input of
 3 my learned friend Mr Chaskalson I can happily assure you
 4 that I'll abbreviate it dramatically, and there are various
 5 topics that I'd thought to raise with Mr Botes that will be
 6 better reserved for Mr Sinclair when he comes. I do have a
 7 few topics to deal with, but hopefully be concluded by
 8 lunch.
 9 Perhaps before I put any questions to Mr Botes it
 10 may be helpful, Mr Chair, for me to just address briefly
 11 one aspect of the debate that had arisen earlier concerning
 12 the portion of Mr Motlogeloa's evidence where he says that
 13 "There were 15 of us in total." Thank you, Chair –
 14 CHAIRPERSON: [Microphone off, inaudible]
 15 handed some statements. We now got them.
 16 MR TIP SC: Yes.
 17 CHAIRPERSON: Do you want to mark them as
 18 exhibits now so as to speed up your cross-examination?
 19 You've handed us two statements, one by shaft mine overseer
 20 called Cornelius Lubbe and another by Gloria Bothman who
 21 was a security officer of Protea Coin at Marikana. Do you
 22 want to mark them as exhibits now?
 23 MR TIP SC: Chair, they might as well.
 24 As it happens I'm going to take them up, those are amongst
 25 the matters I'll take up with Mr Sinclair but once they are

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1 before you then it would be just as well to have them
 2 entered properly.
 3 CHAIRPERSON: Alright, so they'll be, the
 4 first one will be EEEE25 and that will be the statement of
 5 Mr Lubbe, and the second one will be EEEE26 and that will
 6 be the statement of Gloria Bothman. So it's actually
 7 Nonsekolo, I beg your pardon, she's Nonsekolo Gloria
 8 Bothman. Alright, we've marked them, you can carry on.
 9 MR TIP SC: Chair, perhaps whilst we are
 10 doing this, there is a third statement that we had set out
 11 in our schedule of potential documents, being the statement
 12 of Mr Janse van Vuuren. Again it relates to K4 and we'll
 13 keep that over, but it might as well be propitious to put
 14 that in as well.
 15 CHAIRPERSON: Alright, I haven't got a
 16 copy yet but – oh, I've been handed one now. We'll mark it
 17 EEEE27, Hermanus Andries Janse van Vuuren. Right, now the
 18 homework has been done, Mr Wesley can set his watch.
 19 MR TIP SC: Thank you, Chair. I had said
 20 that there was just one aspect relating to the evidence of
 21 Mr Motlogeloa which was debated previously this morning,
 22 earlier this morning, and that is his reference to there
 23 being 15 of us in total on the 11th of August. I didn't
 24 take it up with him because I had understood, perhaps
 25 incorrectly, that that was a reference to the total

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1 complement of the people on the shift on that day and I
 2 thought that I should just place on record that the
 3 evidence that we presented certainly dealt with two Lonmin
 4 Security persons only, and I may add that that has been the
 5 position and my instructions throughout, but if there is a
 6 need for that to be clarified then perhaps my learned
 7 friend for Lonmin could put it to Mr Motlogeloa and clarify
 8 it.
 9 MR VAN AS: That was my understanding as
 10 well, Mr Chairperson.
 11 CHAIRPERSON: [Microphone off, inaudible]
 12 chance to cross-examine, to re-examine, you can deal with
 13 it.
 14 MR VAN AS: Thank you.
 15 MR TIP SC: And then the second matter is
 16 also something that will be swifter if I just place on
 17 record, there was some discussion about the filming, or the
 18 fact that CCTV footage exists of the NUM group returning to
 19 the office on the 11th of September. There was a suggestion
 20 that that might have been from further up the road and
 21 that, Street A near Schagen workshop, and that that was
 22 where the clash took place. The record is clear already,
 23 evidence has been presented that the clash was at the NUM
 24 office. After the clash the NUM people there had chased
 25 the strikers up the road and what is filmed there is

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1 perhaps something of a relieved return to the office. That
 2 is near Street C. It's at the very corner where you go
 3 around from Street B to Street C and therefore absolutely
 4 at the location where the clash itself had taken place
 5 earlier –
 6 CHAIRPERSON: C being a street going off
 7 to the right, as one comes up what you called Street A,
 8 what I call Hospital Street –
 9 MR TIP SC: Hospital Street.
 10 CHAIRPERSON: As you, just before you get
 11 to the NUM office, I think just before you get to the
 12 police substation actually there's a street that goes off
 13 to the right and that's called Street C and we won't give
 14 it a name unless we have to.
 15 MR TIP SC: That's the very one –
 16 CHAIRPERSON: Yes.
 17 MR TIP SC: - and then Street D, that
 18 road leads off again to a short road on the other side of
 19 the NUM office.
 20 CHAIRPERSON: It's now being demonstrated
 21 to us on the screen –
 22 MR TIP SC: It is being displayed.
 23 CHAIRPERSON: - so Street D being a
 24 street, a short street which runs parallel with what you
 25 call Street B and what I call Hospital Street, on the

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1 eastern side of the NUM office and the satellite police
 2 station.
 3 CROSS-EXAMINATION BY MR TIP SC: Thank
 4 you, Chair, then those are the preliminary matters. Mr
 5 Botes, as you've heard a number of the questions that I
 6 thought I'd be putting to you today I won't, but there are
 7 a few aspects that I believe that your assistance will be
 8 of value to us.
 9 First of all I want to deal generally with the
 10 ordinary operation of the control room, to which there has
 11 been repeated reference in the course of the evidence here,
 12 and specifically to try to populate that notion of control
 13 room with people. Now we understand from what we've
 14 already heard, Mr Botes, that there is a large number of
 15 television monitors that are displayed at any one time
 16 within the control room. Correct?
 17 MR BOTES: Mr Chairman, if the question
 18 is referred to the central operations control room, yes,
 19 there's a large number of operators displayed, but I think
 20 during the time there were only four operators in that
 21 control room. The other two worked at then the Lonmin JOC
 22 before I moved them over to the SAPS JOC.
 23 MR TIP SC: Well, let's just be precise
 24 about the dates because for the moment I'm particularly
 25 interested in only the 11th and the 12th of August, not

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1 after that date. So let's talk about the morning of 11
 2 September – I beg your pardon, 11 August. Had the Lonmin
 3 JOC been set up already?
 4 MR BOTES: By Saturday afternoon 2
 5 o'clock when I arrived there for the briefing session the
 6 Lonmin JOC was already set up with two operators in the
 7 JOC, and then a person updated the log sheet.
 8 MR TIP SC: Alright, well let's accept
 9 for a moment that there were four operators in the central
 10 control room, and that is indeed the one that I am
 11 interested in. Would that be the usual number, or would
 12 there ordinarily be more than that?
 13 MR BOTES: Mr Chairman, the number
 14 normally required there is six, but they withdraw two of
 15 them to come and work in the JOC.
 16 MR TIP SC: Is it also so that there is a
 17 head operator – I don't know what the person's title would
 18 be, but a person who performs a kind of overall monitoring
 19 function of what is to be seen on the various screens?
 20 MR BOTES: Mr Chairman, no, you have your
 21 operators that work in each area on each mine. Normal
 22 operations you have two operators per mine, so that's the
 23 three mines, and then you have your supervisors overseeing
 24 those performances. Apart from them we have two operators
 25 who only handle alarms and they are not linked to any CCTV

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1 monitors or cameras. They only receive alarms coming in,
 2 building alarms, fence alarms, all those type of alarms
 3 which is outside the control room environment, it's in a
 4 separate room.
 5 MR TIP SC: Alright, let us look at a
 6 practical situation such as the one that we dealt with in
 7 these events, and again it will be convenient to look at
 8 the morning of 11 August first of all. A report is
 9 received within the central control room that there is a
 10 gathering of persons who are intending to burn the NUM
 11 office. Does that go into the central control room?
 12 MR BOTES: One would expect that if the
 13 ground personnel or any management team or a day manager,
 14 as they call it in these documents, if he received such a
 15 call that he conveyed that message to the control room that
 16 they are aware of the threat.
 17 MR TIP SC: Alright, so in the control
 18 room you have persons who are watching screens. Are there
 19 different persons who receive radio messages of that kind?
 20 MR BOTES: The supervisor receives the
 21 radio messages, as well as the telephone calls, as well as
 22 the operators handling the alarms, they also have access to
 23 the radio, as well as the alarm system and telephones. But
 24 the other operators monitoring the camera surveillance has
 25 no access to the telephones or a radio, although they can

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1 hear a radio in the same room where the supervisor is
 2 sitting.
 3 MR TIP SC: So the supervisor is I take
 4 it in a position where if he or she receives a radio
 5 message that there is an incident taking place or brewing,
 6 that supervisor can give appropriate directions to the
 7 relevant camera operators to focus on a particular area and
 8 to ensure that all the events are recorded?
 9 MR BOTES: Mr Chairman, I agree that's
 10 what's supposed to happen.
 11 MR TIP SC: And the supervisor who
 12 receives a radio call of an emergency kind, what would be
 13 expected of that person? Is he or she of a rank to make
 14 decisions about further deployments or must it be relayed
 15 elsewhere in the command structure? What actually happens
 16 with a radio message of that kind?
 17 MR BOTES: Mr Chairman, the purpose of
 18 that supervisor is to direct and instruct the operator to
 19 do the surveillance as requested and if they see anything
 20 that might have happened or ensue from the monitoring or
 21 from the march or anything, it is that supervisor's
 22 responsibility to update the person who tasked him from the
 23 ground, update him with information that they can make
 24 informed decisions.
 25 MR TIP SC: I'd like what you've said to

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1 be expanded a bit, but I'm going to do it again I think
 2 perhaps most usefully by referring again to a specific
 3 instance, and that comes from the 12th of August. I'm going
 4 to ask just for convenience that we get a portion of the
 5 evidence of Mr Dewald Louw on screen. Day 262, at page
 6 33081, beginning at line 20. You of course know that Mr
 7 Dewald Louw has already given evidence in these proceedings
 8 and I will ask you one or two questions about that shortly.
 9 [12:54] But at this portion and there are others that
 10 related, but this will be sufficient. "Yes now in
 11 particular at the stage that you were making radio
 12 broadcasts you were on your radio and I think you said that
 13 you were calling the emergency control room trying to get
 14 backup and you conveyed the warning that you described that
 15 other personnel should not try to stop this group because
 16 of the level of aggression." Mr Louw, "That's correct,
 17 Sir." I continue "Would that be into the same control
 18 facility that would maintain this occurrence book?" Mr
 19 Louw "Ja that would go to the same control facility whether
 20 it was mentioned in the occurrence book I'm not quite sure
 21 of." And we can pause there. Now there are two important
 22 aspects, Mr Botes, that I'll be glad to get help on. The
 23 first is that Mr Louw had described the fact that he had
 24 broadcast an important message which was a direct result of
 25 the fact that he and Mr Vorster had very nearly lost their

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1 lives, you're aware of all of that.
 2 MR BOTES: I'm aware of that, Mr
 3 Chairman.
 4 MR TIP SC: And the messages for all
 5 other Lonmin security personnel do not engage, these people
 6 are too dangerous, correct?
 7 MR BOTES: That's correct, Mr Chairman.
 8 MR TIP SC: Now what we need to know, Mr
 9 Botes, is what ought to have happened upon receipt of that
 10 radio message in the control room?
 11 MR BOTES: Mr Chairman, the receiver of
 12 that call was supposed to alert all the other ground
 13 personnel in the hostel, alert them of the fact of the
 14 situation, the level of aggression and also if nobody has
 15 any radio with him that they can translate or transfer a
 16 message to that person they were supposed to phone those
 17 people. According to me that Lavina had a mobile radio
 18 installed in that, I do not know if that as functional. So
 19 I cannot say if the operator did phone in or did translate
 20 this message over from Louw towards the people on the
 21 ground, but that was what he's supposed to do.
 22 MR TIP SC: Yes let us just get a full
 23 picture of what is supposed to happen. Then we'll look at
 24 what apparently happened or didn't happen. The supervisor
 25 would have a very, very serious responsibility and duty

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1 immediately to ensure the effective communication of a
 2 message of that kind to all personnel as you said.
 3 MR BOTES: That's correct, Mr Chair.
 4 MR TIP SC: And would that supervisor
 5 also have a duty to exercise a judgment about whether that
 6 information ought not to be escalated up the command chain?
 7 MR BOTES: Mr Chairman, as requested by
 8 Dewald Louw that that operator must also alert Mr Miles, so
 9 that is Dewald's manager and alert him of the fact and to
 10 bring in more manpower. So he was also supposed to get
 11 that message over to Kallie Miles and tell him what
 12 happened and also what was the request.
 13 MR TIP SC: All right now even if a
 14 person in the position such as the one Mr Louw was in on
 15 that morning doesn't make a specific request that something
 16 should be relayed to Mr Miles would the supervisor in the
 17 control room not in any event be under a duty to escalate
 18 that information up the command chain? This is critically
 19 important to information is it not, Mr Botes?
 20 MR BOTES: It is, Mr Chairman and if I
 21 would see the functions of the operators and that
 22 supervisor in the emergency JOC, if that request came
 23 through he should have tasked the operators to look at the
 24 area where this group is gathering and where Dewald and
 25 Vorster were just attacked. Viewing that circumstances and

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1 viewing that events and viewing the magnitude of the
 2 gathering it is his duty to inform Kallie Miles of all the
 3 facts around that incident, all the marching towards the
 4 hostel now and update him with the relevant information
 5 that he can make decisions on what to do.
 6 MR TIP SC: Well can you tell us whether
 7 that was in fact done on the morning of the 12th of August?
 8 MR BOTES: Mr Chairman, I cannot because
 9 I wasn't there.
 10 MR TIP SC: No, but you're a very senior
 11 person in this security establishment and we know that
 12 these events have been analysed in ICAM and investigated
 13 from top to toe. Surely you can tell us whether Mr Miles
 14 actually received that information and whether he did
 15 anything about it.
 16 MR BOTES: Mr Miles received such
 17 information because he phoned me to respond in the meantime
 18 whilst he's responding from Rustenburg. So he did receive
 19 the information. I cannot say if the other people received
 20 the right information that they can follow suit and make
 21 the same decisions what was given to Mr Miles.
 22 MR TIP SC: And can you tell us whether
 23 Mr Miles received that information directly, that is
 24 without any delay whatsoever upon the message having been
 25 sent into central control room by Mr Louw.

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1 MR BOTES: Mr Chairman, I cannot because
 2 I did not conduct myself an investigation with regards to
 3 that and to scrutinise the sequence of events that lead up
 4 to the non-performance of the operators. I wasn't there
 5 myself and I was still in the JOC, responsible until the
 6 strike ended.
 7 CHAIRPERSON: We can possibly take the
 8 lunch adjournment now, just remind me what exactly is the
 9 point you're busy with, make sure I understand it fully?
 10 MR TIP SC: The point that I'm busy with
 11 right now is the role of Mr Miles in ordinary practise and
 12 specifically on the 12th of August in response to the
 13 important message from Mr –
 14 CHAIRPERSON: I thought that's what you
 15 were busy with and I would remind before we take the
 16 adjournment that according to Mr Louw's evidence and his
 17 statement as they were escaping from the scene where they'd
 18 been attacked he says he informed – and he describes how
 19 their vehicle was damaged. He says "I informed the
 20 emergency OPS" I read it earlier today "I informed
 21 emergency OPS what had transpired and called Kallie Miles
 22 informing him of what had happened." So it wasn't even
 23 necessary for central OPS people to tell Mr Miles. Mr Louw
 24 himself phoned Mr Miles in person as it were on the 12th and
 25 told him what had happened and he then goes on to say "We

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1 returned to our office to - So Mr Miles definitely knew,
 2 according to Mr Louw shortly after Mr Voster and Mr Louw
 3 made their escape.
 4 MR TIP SC: Thank you, Chair.
 5 CHAIRPERSON: That's a point you can take
 6 up further when we resume.
 7 MR TIP SC: Yes perhaps just so that Mr
 8 Botes will lull on this over lunch, why I'm pursuing it in
 9 this way, Mr Chair, is that Mr Louw made two radio calls.
 10 The one was a general call to say we have just been
 11 attacked and my understanding of his evidence is that he
 12 relayed that to Mr Miles. He then made a second radio
 13 call, perhaps having had 30 seconds of reflection which was
 14 to the effect of do not engage these people. And it's that
 15 second possibly discreet aspect that I'm pursuing. Mr
 16 Botes.
 17 CHAIRPERSON: All right you've got that
 18 point, you will take it under advisement during the lunch
 19 hour. Sorry lunch is three quarters of an hour actually
 20 and we will try to resume just after quarter to two.
 21 MR WESLEY: Chair, before we, sorry,
 22 Chair. Before we adjourn, Chair, I've been remiss in
 23 announcing the time allocations and perhaps it's best to do
 24 it now so the parties at least know what's happening this
 25 afternoon and tomorrow morning. Following NUM and Mrs

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1 Fundi who had been allocated two hours the South African
 2 Police Service have 45 minutes. AMCU 90 minutes. The
 3 families 90 minutes and the injured and arrested 90
 4 minutes. Then there'll be 15 minutes re-examination.
 5 CHAIRPERSON: Well there are certain
 6 counsel representing some of the parties who have been
 7 mentioned that are not here yet, but if they come I hope
 8 they're told what's happened in the meanwhile so they don't
 9 ask questions that indicate ignorance of what's happening
 10 this morning. We'll now take the lunch adjournment.
 11 [COMMISSION ADJOURNES COMMISSION RESUMES]
 12 [13:51] CHAIRPERSON: The Commission resumes. Mr
 13 Botes, you are still under oath. Mr Tip.
 14 MR TIP SC: Yes, Mr Chairman.
 15 CHAIRPERSON: Mr Tip, how much longer are
 16 you likely to be? I know it's difficult to estimate.
 17 MR TIP SC: Approximately 15 to 20
 18 minutes, Chair.
 19 CHAIRPERSON: Now Mr Wesley, whose
 20 scheduled – I understand the Police were supposed to cross-
 21 examine today, aren't able to do so because Mr Semenya is
 22 ill. So who is after the police, Mr Wesley?
 23 MR WESLEY: Chair, after SAPS, it was
 24 number 3, then there's AMCU, the families and then the
 25 injured and arrested parties.

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1 CHAIRPERSON: AMCU doesn't appear to be
 2 here. Ms Hurst?
 3 MS HURST: Mr Chair, as far as I am aware
 4 Mr Gotz is on his way but if he doesn't get here, then the
 5 families will cross-examine next.
 6 CHAIRPERSON: And Mr Mpofu is here and he
 7 will cross-examine then. So the order is AMCU, the
 8 families, IAPs.
 9 MR WESLEY: That's correct, Chair.
 10 CHAIRPERSON: But if –
 11 MR WESLEY: Subject to changes about who
 12 is here.
 13 CHAIRPERSON: Mr Mpofu is here, and he's
 14 ready to cross-examine if he has to.
 15 MR WESLEY: Yes.
 16 CHAIRPERSON: Is that right, Mr Mpofu?
 17 MR MPOFU: Chair, let's cross the bridge
 18 when we get to it.
 19 CHAIRPERSON: Yes, alright, this bridge-
 20 crossing is quite an interesting exercise. Mr Tip, carry
 21 on.
 22 MR TIP SC: Thank you, Mr Chair. Mr
 23 Botes, just before lunch, I had asked you or two questions
 24 on the topic of what should ordinarily happen in the
 25 control room environment if a report of a real emergency is

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1 received by the superintendent. Do you recall that, what
 2 should happen?
 3 MR BOTES: Mr Chairman, as I mentioned
 4 that person should activate the operators to use the camera
 5 surveillance equipment, to use and monitor and view the
 6 activities what's taking place on the ground. That
 7 supervisor must also give feedback if there's anything he
 8 can spot which is not under the knowledge of the ground
 9 personnel, inform them of any risk or threats, and convey
 10 messages from the control room to the person in charge on
 11 the ground that he can make decisions.
 12 MR TIP SC: Well, what you've just
 13 described, Mr Botes, is a closed circuit, that is from the
 14 people on the ground, the people who are in charge of the
 15 camera operation, and the superintendent, is that the way
 16 that you see it?
 17 MR BOTES: That's correct, Mr Chairman,
 18 and if there's any decisions to be made, to call out
 19 reinforcements and to alert other people, activate other
 20 people, that superintendent on the ground make the
 21 decisions and not the supervisor in the control room.
 22 MR TIP SC: Well, you've got the – you've
 23 got a situation where the superintendent is in the control
 24 room, the supervisor, who receives information that there
 25 is a very, very serious situation on hand, are you saying

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1 that that supervisor has no responsibility to escalate it
 2 from within the control room to the next person up the
 3 line, in this case, say Mr Miles.
 4 MR BOTES: Mr Chairman, if a request was
 5 made to the control room to inform a manager, then that
 6 person would do it, but if there is no request made that
 7 decision lies with the person in charge on the ground.
 8 MR TIP SC: And that's the ordinary
 9 practice?
 10 MR BOTES: That's correct, Mr Chairman.
 11 MR TIP SC: And you say that that applied
 12 also in the situation on the morning of the 12th of August,
 13 where Mr Louw radios in to this very same control room,
 14 says that they have been attacked, they've nearly lost
 15 their lives, and radios in again to say, nobody must engage
 16 with these people.
 17 MR BOTES: Mr Chairman, I mentioned then
 18 it is the responsibility of that supervisor then to alert
 19 all ground personnel to make sure all of them receive the
 20 message and if people do not have radios, then he must
 21 phone them.
 22 MR TIP SC: Right. Now, all of that
 23 presumably would be a matter of record, what is done, is
 24 that correct?
 25 MR BOTES: Not necessarily making records

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1 of, in an occurrence book but certainly there must be a
 2 reference made after request, and who was informed. So
 3 it's not always possible to make a reference of all
 4 conversations but there should be a record of a request,
 5 and who was informed and what is the further request from
 6 the person who is informed.
 7 COMMISSIONER HEMRAJ: And where would
 8 that be recorded?
 9 MR BOTES: Normally they made an
 10 occurrence book entry into it, and what is supposed to
 11 happen on the log sheet.
 12 COMMISSIONER HEMRAJ: And the
 13 communications, radio communications, are those recorded at
 14 all?
 15 MR BOTES: I thought it was recorded,
 16 when I started the strike, and later learned after the
 17 strike that it is not recorded.
 18 COMMISSIONER HEMRAJ: I am sorry to have
 19 interrupted you, Mr Chair.
 20 MR TIP SC: Thank you, Commissioner. Let
 21 me take you to the Lonmin log, the version that is in your
 22 bundle and that is, if you would go to the entry at 09:29
 23 on the 12th of August, perhaps we could get that up on the
 24 screen, 12th of August. Now you will see there, Mr Botes,
 25 that at 09:29 there is an entry, evidently a report has

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1 been received, "Mob at the Wonderkop koppie move direction
 2 Nkaneng."
 3 MR BOTES: That's correct, Mr Chairman.
 4 MR TIP SC: Then there is an entry which
 5 purports to be at 09:30 "POPF 2 observe the group of people
 6 attacking Delta 2. They stopped at the taxi rank, two
 7 members who were murdered, two security vehicles were also
 8 burnt down." There may be something more, it's clipped off
 9 at the end. Now do you see that as well?
 10 MR BOTES: I see that, Mr Chairman.
 11 MR TIP SC: There's a little more, it
 12 doesn't affect it, now Mr Botes, that entry has been
 13 highlighted in yellow. The print is in red, that entry was
 14 clearly added at some later stage and I will tell you why I
 15 say that, because –
 16 CHAIRPERSON: Added or was it possibly
 17 deleted from -
 18 MR TIP SC: No added. I will tell you
 19 why, you have had a good look at that, well, let me before
 20 we leave that, just if we can move back to the left-hand
 21 margin, you will see that the next entry on that day is
 22 11:20 and it has a report from a certain Midbank bus
 23 driver, it deals with something different. Do you see
 24 that?
 25 MR BOTES: I see that, Sir.

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1 MR TIP SC: Do you see that?
 2 MR BOTES: Yes.
 3 MR TIP SC: Yes, alright. Now what – why
 4 I say that that entry at 09:30 was added if we could now
 5 have XX2 on the screen. Also at about, I think it's about
 6 page 27, do you see there, this is the, as you already know
 7 from earlier cross-examination, Mr Botes, this is the log
 8 sheet that was originally provided to this Commission. Do
 9 you recall that?
 10 MR BOTES: I recall that, Mr Chairman.
 11 MR TIP SC: Yes, and you will see there
 12 that there's the entry at 09:29 that the mob at the
 13 Wonderkop koppie moved in the direction of Nkaneng. There
 14 is no entry for 09:30.
 15 MR BOTES: I know that, Mr Chairman.
 16 MR TIP SC: The next one is 11:20. Now I
 17 am not going to spend time on why that entry at 09:30 was
 18 added, I am really concerned more with the fact that there
 19 is not a single entry of any report, of any action from
 20 within the control room in respect of that entire incident,
 21 the tragic incident on the 12th of August, on which two of
 22 your men lost their lives. Do you see that?
 23 MR BOTES: Mr Chairman, I know that.
 24 MR TIP SC: Well, did you –
 25 CHAIRPERSON: Can I interrupt for a

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1 moment?
 2 MR TIP SC: Yes, Chair.
 3 CHAIRPERSON: Mr Chaskalson, what is the
 4 situation in relation to the, what I call the unabridged
 5 Lonmin occurrence book. You presented it to us, extracts
 6 from it in your bundle. Did that come from Lonmin
 7 computer.
 8 MR CHASKALSON SC: Yes, it does. Well,
 9 the author on that document is said to be, described as
 10 Lonmin.
 11 CHAIRPERSON: And what is the time at
 12 which it was saved?
 13 MR CHASKALSON SC: 27th of August.
 14 CHAIRPERSON: And the one that we got
 15 earlier on in the days of the Commission, the one that Mr
 16 Tip is now referring to, which doesn't contain these
 17 entries, was it earlier than the 27th of August?
 18 MR CHASKALSON SC: We don't know what the
 19 original spreadsheet file said but it was furnished to us
 20 in Lonmin's discovery which I think was either in October
 21 or November 2012.
 22 CHAIRPERSON: So the point that concerns
 23 me is, Mr Tip, understandably is assuming that the entry in
 24 red was one that was added. There's of course another
 25 inference, it was deleted. Do we know which of the two is

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1 correct? The witness obviously can't say.
 2 MR CHASKALSON SC: Well, we can't say for
 3 certain, but it does seem to me more likely that it was
 4 deleted rather than added. But it's possible that what we
 5 have printed out here on the discovered document is a
 6 version that predates 27th of August. It is possible, but
 7 unlikely.
 8 MR TIP SC: Be that as it may, Mr Botes,
 9 were you perhaps –
 10 CHAIRPERSON: Sorry, Mr Tip, just to make
 11 one last point.
 12 MR CHASKALSON SC: Sorry, Chair, I can in
 13 fact answer that categorically, it's deleted because the
 14 version that we have on the screen continues through to
 15 October, so the events, if one scrolls all the way down, it
 16 records events in October, so it had to be prepared -
 17 CHAIRPERSON: Yes, well, there's a
 18 further point, and that is even if the entry had been
 19 added, the one that's in red had been added, it was added
 20 before the 27th of August, is it? And we were only given
 21 the Lonmin OB that's before us as an exhibit in October.
 22 So if the document had been revised and added to one would
 23 have expected Lonmin acting as honourable participants in
 24 the Commission, to have given us the up to date version in
 25 October, and not an older one which was being superseded by

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1 additional entries. But in any event, you say that the,
 2 you sound from what you say, you are going to argue at the
 3 end that what happened was, this is an entry that was
 4 deleted rather than added.
 5 MR CHASKALSON SC: Yes. We are now
 6 certain of that.
 7 CHAIRPERSON: I interrupted you, Mr Tip,
 8 I thought I'd save you a bit of time if there was clarity
 9 on that if clarity could be obtained.
 10 MR TIP SC: Well, it's not the key aspect
 11 of what I want to take up with Mr Botes. There is a bit of
 12 a mystery that remains, certainly for me. But Mr Botes,
 13 you know that Mr Louw was here last week as a witness and
 14 the questions that I referred you to earlier on screen,
 15 were put to him on Thursday.
 16 MR BOTES: That's correct, Mr Chairman.
 17 MR TIP SC: And he was specifically asked
 18 questions about the fact that there were no entries at all
 19 in this log. He expressed surprise, and we indicated that
 20 we would take them up, take the issue up. Were you
 21 informed of that?
 22 MR BOTES: I wasn't informed of that, but
 23 as previous questions from the evidence leaders I admit
 24 that these sheets are not 100% correct as it's supposed to
 25 be and I also mentioned yesterday I think, I gave all the

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1 occurrence books to Amanda van der Merwe and I asked her to
 2 update this log sheet as accurate as possible from all the
 3 OBs we got, so this sheet is not up to date 100% correct.
 4 CHAIRPERSON: Where did you get – you did
 5 tell us, but I can't remember who told us the date, but
 6 whether you told us yesterday, can you tell me now, when
 7 did you give all those OBs to her and ask her to update the
 8 OB, the occurrence book?
 9 MR BOTES: Mr Chairman, it was after the
 10 strike, after the people went back to work, I requested her
 11 to take all the occurrence books and update and go through
 12 all the occurrence books and all entries that we made in
 13 the occurrence book by the CCTV operators, which is not in
 14 here, she must update this.
 15 CHAIRPERSON: That was in September, was
 16 it?
 17 MR BOTES: That was in –
 18 CHAIRPERSON: September 2012.
 19 MR BOTES: October, yes. End of
 20 September, October.
 21 CHAIRPERSON: End of September, beginning
 22 October.
 23 MR BOTES: Correct.
 24 CHAIRPERSON: Presumably before this
 25 document, the one on the screen now, was given to the

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1 Commission.
 2 MR TIP SC: Then, Mr Botes, let me
 3 present to you the same concern that I raised with Mr Louw
 4 last week, and it's the following, he transmits on his
 5 radio into our emergency control centre that in his
 6 judgment having just experienced the very close shave with
 7 death, he and Mr Vorster, in his judgment do not engage
 8 with these people, they are too dangerous, that is intended
 9 to guide all Lonmin security personnel that morning in
 10 relation to this crowd, correct?
 11 MR BOTES: That is correct, Mr Chair.
 12 MR TIP SC: But we know that there was an
 13 engagement and that two security members lost their lives.
 14 MR BOTES: That is correct, Mr Chair.
 15 MR TIP SC: Now, I want to re-posit a
 16 question which I put to you earlier, there must have been a
 17 very keen investigation within Lonmin of what happened to
 18 lead to the loss of these lives, correct?
 19 MR BOTES: That's correct, Mr Chair.
 20 MR TIP SC: And the fact of Mr Louw
 21 having made this appeal urgently on his radio, would surely
 22 have been an important part of that investigation.
 23 MR BOTES: Mr Chairman, when any serious
 24 incidents like this happen, there's normally the ICAM and
 25 that is why the ICAM was conducted to establish what's the

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1 root causes that contributed to the death of Fundi and
 2 Frans, and then there should be actions coming out an ICAM,
 3 what needs to be followed and be concluded into that ICAM.
 4 MR TIP SC: We know the general pattern,
 5 I am really putting to you something very specific here. I
 6 want to know whether Lonmin investigated the fact that
 7 there was this warning from Mr Louw in order to determine
 8 why it wasn't given effect to. Correct?
 9 MR BOTES: That's correct, Mr Chair.
 10 MR TIP SC: Yes?
 11 MR BOTES: And I cannot say what
 12 transpired out of the ICAM, what actions were taken
 13 because that's part of the investigation, and so I cannot
 14 say what came out of this and what, who were held
 15 responsible for the not relaying messages or what causes
 16 too the event of the deaths.
 17 MR TIP SC: Mr Botes, I don't want to
 18 spend time putting questions to you, if you can't give
 19 specific answers. Is Mr Sinclair the person who should
 20 answer to these particular questions?
 21 MR BOTES: That's correct, Mr Chairman.
 22 He is, he was the head of the security department and it
 23 was his responsibility to follow this through, to make sure
 24 that adequate control measures is put in place to prevent a
 25 reoccurrence in the future.

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1 MR TIP SC: I am going to leave it for Mr
 2 Sinclair. I just want to clarify with you, if you would,
 3 just what the precise command structure was. You told us
 4 that when Mr Sinclair telephoned you on now the Friday, you
 5 believe, you were to take charge of the security operations
 6 – well, security at an operational level.
 7 MR BOTES: That's correct, Mr Chairman,
 8 and that was the Friday night, and up to the stage where
 9 our colleagues were killed and on the Monday morning I was
 10 tasked to take over their job, and not the operations any
 11 longer.
 12 [14:11] MR TIP SC: That's fine, thank you. And
 13 you also when you described that in your statement, you
 14 said that you assisted Mr Kallie Miles and Mr Henry Blaauw
 15 in your capacity as the operations manager at the time.
 16 MR BOTES: That's correct, Mr Chair.
 17 MR TIP SC: Yes, now I just want to get
 18 the lines of authority clear, if you don't mind. Mr Louw
 19 pointed out to the Commission that the security
 20 establishment essentially comprises two divisions. The one
 21 is related to operations, or rather processing, and the
 22 other is concerned principally with mining operations.
 23 MR BOTES: That's correct, Mr Chair.
 24 MR TIP SC: And he showed us that there
 25 were two lines of command. The one was from Mr Sinclair

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1 through Mr Blaauw to two others, in this case you would
 2 have been the next one in the line, correct?
 3 MR BOTES: No, Mr Chair, I did not work
 4 for Graham Sinclair at the time. I worked at a different
 5 department.
 6 MR TIP SC: Yes, I'm talking about this
 7 particular period.
 8 MR BOTES: From the Friday night until
 9 Monday morning I was operational in charge.
 10 MR TIP SC: Yes.
 11 MR BOTES: That's correct.
 12 MR TIP SC: I'm really just concerned
 13 with those days for the moment. Now the line of command
 14 for the security personnel in the position of Mr Mabelane,
 15 Mr Fundi and the others, what was it?
 16 MR BOTES: They reported directly to
 17 Henry and also upwards then to Graham.
 18 CHAIRPERSON: Henry being Mr Blaauw?
 19 MR BOTES: Henry, Mr Blaauw.
 20 MR TIP SC: And what would have been your
 21 role in the command structure on those days?
 22 MR BOTES: Mr Chairman, Hassan and Frans
 23 were not part of the, we call it a strike first responders.
 24 It is people that are specifically drawn off their normal
 25 duties and they are the crime, the strike first responders,

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1 and those people are the Geon Kellerman, the PW Botha,
 2 Kallie and his team who came in to assist us and also
 3 Albert Kent and his team. Albert Kent is in charge of the
 4 TRU, the Tactical Response Unit, and they fill in as the
 5 strike first responders. Hassan and Fundi were at that
 6 stage busy with their normal operations. From the Friday
 7 evening they had been put on shift for that day to monitor
 8 the situation whilst Botha and Kellerman worked through the
 9 night on the Friday night.
 10 MR TIP SC: So who on those days would
 11 have been the person to give instructions to Mr Mabelane
 12 and his crew?
 13 MR BOTES: I did not see Frans or Hassan
 14 on the Friday night, so I did not give them instructions,
 15 so that must have come from Graham or Henry Blaauw.
 16 MR TIP SC: Yes, my question was, let me
 17 put it perhaps more clearly, it was, who would have been
 18 the person to give them instructions? It's not a question
 19 of who gave them instructions. In other words what was the
 20 effective line of command on the 11th and 12th of August in
 21 relation to Mr Mabelane, Mr Fundi, and the other officers?
 22 MR BOTES: I assume that is Henry Blaauw
 23 because they report directly to him.
 24 MR TIP SC: And then what was your
 25 position in that? Because in your statement you've told us

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1 that after Sinclair had spoken to you, you became the
 2 operations manager, reporting, or assisting – as you put
 3 it, but I presume it means reporting – to both Kallie Miles
 4 and to Henry Blaauw.
 5 MR BOTES: Mr Chairman, from Friday night
 6 6 o'clock till 12 o'clock I was in charge, in command of
 7 the people on duty at the time. A decision was made that
 8 we put people, keep people on duty until 6 o'clock and that
 9 I would go home till 2 o'clock the following day. During
 10 my time at my home I have no control of the people and not
 11 in command. So the persons staying behind on duty, they
 12 take command in my absence until I return to the mine.
 13 MR TIP SC: So are you saying that as at
 14 11 and 12 August you personally had no command position in
 15 respect of Mr Mabelane and Mr Fundi?
 16 MR BOTES: No, I did not.
 17 MR TIP SC: And if there were any
 18 messages or radio [inaudible] they would not have come to
 19 you even on those days?
 20 MR BOTES: Mr Chairman, no, at that stage
 21 they were not during the Friday evening there and they
 22 would then report to Henry Blaauw.
 23 MR TIP SC: Thank you. Mr Botes, the
 24 last topic I want to touch on, you have said to us earlier,
 25 particularly in response to questions from the Chairperson,

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1 that decisions had been made that you would not place
 2 security personnel at shafts such as K4 because it was too
 3 distant and you concentrated on putting people and
 4 monitoring systems at those shafts and workplaces that you
 5 thought were closer to the koppie and Wonderkop.
 6 MR BOTES: Mr Chairman, that's correct,
 7 and I also added that we put vehicles and people on route
 8 towards K4 Shaft to monitor if there's any other people
 9 going to K4 Shaft that pose a threat, at K3 Shaft.
 10 MR TIP SC: Alright, and I'm now quoting
 11 you. You said, "We didn't envisage that there might be a
 12 need for security at places like K4." Remember that?
 13 MR BOTES: That's correct, Mr Chair.
 14 MR TIP SC: Now what I want to know is
 15 just who the people are in what you refer to as "we." Who
 16 made those decisions? Let me ask you that in the first
 17 place. Who was the "we"?
 18 MR BOTES: Mr Chairman, that was myself
 19 and the people who were at the scene, the crime scene on
 20 the Sunday, that was Kallie Miles, myself, and Pieter
 21 Botha, Geon Kellerman, Koekemoer, those people. We did not
 22 envisage. Me in charge of that operation at the time and
 23 make sure that the police attend to the scene and conclude
 24 their investigations and forensic investigations.
 25 MR TIP SC: And the most senior person in

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1 the security establishment at that meeting, that
 2 discussion, was Mr Miles?
 3 MR BOTES: That was me.
 4 MR TIP SC: Sorry? You?
 5 MR BOTES: That was myself.
 6 MR TIP SC: I thought that you said that
 7 Mr Miles was there.
 8 MR BOTES: Ja, he was there.
 9 MR TIP SC: Well, then I fear that I
 10 haven't follow some of your earlier answers. Were you
 11 senior to Mr Miles?
 12 MR BOTES: Mr Chair, we are on the same
 13 level but because of Graham asked me to take charge of the
 14 situation I was in charge Sunday at the scene.
 15 MR TIP SC: Alright. Well, that doesn't
 16 affect the next question. In fact, it's more appropriate
 17 to put it to you. What I want to know is whether that
 18 group of persons whom you have now identified specifically
 19 considered whether K4 should receive attention as a place
 20 to be protected.
 21 MR BOTES: Mr Chairman, no, we haven't
 22 discussed it in such a way to say where we're going to
 23 place, put our focus in, because we focus at that stage
 24 with the crime scene. The police left there late, I think
 25 half past 8, nearly 9 o'clock when they concluded their

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1 investigations.
 2 MR TIP SC: Half past 8, 9 o'clock in the
 3 evening?
 4 MR BOTES: That's correct, Mr Chairman.
 5 MR TIP SC: Of Sunday evening?
 6 MR BOTES: That's correct, Mr Chairman.
 7 MR TIP SC: Mr Botes, well that raises a
 8 whole new dimension. I'm afraid I'll need a couple of
 9 minutes, Chair, if I may.
 10 CHAIRPERSON: You've got the time.
 11 MR TIP SC: Thank you.
 12 CHAIRPERSON: It's just you said you
 13 weren't going to use it, but you hadn't abandoned it
 14 finally.
 15 MR TIP SC: As long as it wasn't a
 16 deliberate waiver of time, Mr Botes. Mr Botes, the
 17 incident at K4, the one in which Mr Mabebe lost his life,
 18 took place at approximately 9PM on Sunday the 12th of
 19 August. You know that?
 20 MR BOTES: That's correct, Mr Chair.
 21 MR TIP SC: Now do I understand you to be
 22 saying that your group of senior security personnel were in
 23 fact only discussing at that stage, late in the evening,
 24 what you should do about protecting workplaces?
 25 MR BOTES: Mr Chairman, no. I earlier

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1 said –
 2 MR TIP SC: Explain.
 3 MR BOTES: I earlier said that Graham
 4 already reinforced all the shafts with additional guarding
 5 personnel, which was under his control, under his decision.
 6 My job was to look at the first crime responders and not
 7 protection of shafts, which was Graham's job.
 8 MR TIP SC: Well, then are we – is this a
 9 bit of a wild goose chase here? You'd given evidence about
 10 your group not envisaging that you would need to protect
 11 K4. Correct?
 12 MR BOTES: That's correct, Mr Chair.
 13 MR TIP SC: Are you now saying that
 14 actually it wasn't something that you gave attention to
 15 anyway?
 16 MR BOTES: Mr Chairman, we focussed at
 17 that stage where the mob is and where the threat was and
 18 that was at the koppie. The threat was at Wonderkop
 19 Hostel, not at any shaft.
 20 MR TIP SC: So is the position again that
 21 if we want to know what pre-emptive precautionary security
 22 measures Lonmin put in place immediately after the tragic
 23 events of the morning of the 12th of August, then we must
 24 speak to Mr Sinclair?
 25 MR BOTES: I mentioned that earlier as

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1 well and he should be able to tell us how many vehicles
 2 were brought in, how many personnel were deployed by him.
 3 It wasn't part of my call.
 4 MR TIP SC: He would be the person to
 5 tell us why there wasn't a single Lonmin security officer
 6 at K4 in other words?
 7 MR BOTES: Mr Chairman, we don't have
 8 Lonmin people at the shafts. We have only contracted
 9 personnel from Protea there.
 10 MR TIP SC: Yes.
 11 MR BOTES: On all the shafts.
 12 COMMISSIONER HEMRAJ: You said, so the
 13 personnel on guard at the gate to K4 Shaft would be Protea
 14 staff?
 15 MR BOTES: It would be Protea staff. It
 16 is additional staff that Graham contracted in. I do not
 17 know how many vehicles he brought in, how many personnel he
 18 brought in, but I know there was additional guarding units
 19 deployed at each shaft apart from the additional vehicles
 20 deployed at the operations at certain strategic points to
 21 monitor attacks to the shafts.
 22 MR TIP SC: Chair, thank you, the further
 23 questions as I indicated earlier that I might have put to
 24 Mr Botes will be put to Mr Sinclair. We've completed our
 25 questions. Thank you, Mr Botes.

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1 MR BOTES: Thank you, Mr Chair.
 2 CHAIRPERSON: Mr Gotz, I see you've
 3 arrived. Are you going to cross-examine on behalf of AMCU?
 4 MR GOTZ: Chair, Ms Lewis will go before
 5 me.
 6 CHAIRPERSON: I thought she was going to
 7 cross-examine –
 8 MS LEWIS: Chair, in actual fact it's Ms
 9 Motloenya who'll be cross-examining on behalf of the
 10 family –
 11 CHAIRPERSON: Yes, my information was Ms
 12 Motloenya was going to cross-examine on behalf of the
 13 families.
 14 MS LEWIS: Indeed, Chair.
 15 CHAIRPERSON: So Ms Lewis's name has been
 16 wrongly brought into the picture.
 17 MR GOTZ: I apologise for that, Chair. I
 18 was under the –
 19 CHAIRPERSON: Apologise to her. You
 20 don't apologise to me. Ms Motloenya. You've got some
 21 documents [microphone off, inaudible]. Ms Motloenya, have
 22 you got some documents?
 23 MS MOTLOENYA: [Microphone off,
 24 inaudible]
 25 CHAIRPERSON: I'm told that certainly the

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1 front sheet is already an exhibit, I'm not sure about that,
 2 and so is the second.
 3 MS MOTLOENYA: Chair, we've only got one
 4 document which is going to be a new exhibit and –
 5 CHAIRPERSON: The document we've been
 6 handed –
 7 MS MOTLOENYA: Indeed, Chair.
 8 CHAIRPERSON: - I'm told is already an
 9 exhibit, but let's do what we normally do on these
 10 occasions and look to Ms Pillay for assistance. Is the
 11 document we've been handed already an exhibit?
 12 MS PILLAY: Chair, I haven't seen the
 13 document, so if you can tell me what it is.
 14 CHAIRPERSON: I'm sorry, it's unfair to
 15 ask you a question like that. I'm giving you the document.
 16 MS PILLAY: Chair, I think it is an
 17 exhibit already.
 18 CHAIRPERSON: I have seen this document,
 19 I must confess. Anyway, are you going to refer to it
 20 immediately or –
 21 MS MOTLOENYA: No, not immediately,
 22 Chair.
 23 CHAIRPERSON: Alright.
 24 MS MOTLOENYA: I can begin with the
 25 cross-examination and –

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1 CHAIRPERSON: Yes, it's –
 2 MS PILLAY: Chair, it's exhibit AAAA20.1
 3 and 20.2.
 4 CHAIRPERSON: Alright, so there you've
 5 got it. Thank you, Ms Pillay. So it is already an
 6 exhibit, we don't have to mark it again and cause confusion
 7 in the record. Could you immediately start your cross-
 8 examination? What's it – AAAA?
 9 MS PILLAY: 20.1, and the other, the
 10 second page is a different exhibit and I can give you the
 11 exhibit number now.
 12 CHAIRPERSON: Yes, the front sheet is
 13 AAAA20, is it?
 14 MS PILLAY: 20.1.
 15 CHAIRPERSON: 20.1, thank you, and the
 16 second document is a memorandum, Security control room duty
 17 roster –
 18 MS PILLAY: That was an exhibit during Mr
 19 Da Costa's testimony, Chair. I can give it to you. I'll
 20 find the exhibit number and give it –
 21 CHAIRPERSON: Alright, you'll give it to
 22 us in due course. Thank you.
 23 CROSS-EXAMINATION BY MS MOTLOENYA: Thank
 24 you, Chair. Mr Botes, good afternoon.
 25 MR BOTES: Good afternoon.

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1 MS MOTLOENYA: Mr Botes, I will be cross-
 2 examining you on behalf of the families of the three miners
 3 who were killed on the 13th and also 33 of the 34 miners who
 4 were killed on the 16th.
 5 MR BOTES: You're welcome, Mr Chair.
 6 MS MOTLOENYA: Now Mr Botes, if we might
 7 start with our first topic. I'd just like to deal with the
 8 issue regarding shotgun pellets that were used. Now Mr
 9 Botes, on the 16th, we know already that at least five
 10 people were shot with shotgun pellets at scene 1 on the 16th
 11 of August and at the outset I'd just like to refer you to
 12 exhibit VV10. Craig, if we can have exhibit VV10 up on the
 13 screen, please. I presume you've had the opportunity to
 14 look at this. It's a presentation that was prepared by the
 15 families and we had indicated that we'd be relying on this
 16 document before. Chair, I'm sure you've had opportunity to
 17 look at it beforehand.
 18 MR BOTES: No, this is the first time.
 19 CHAIRPERSON: I take it you told the
 20 police – sorry, I beg your pardon, you told Lonmin –
 21 MS MOTLOENYA: We had. We had.
 22 CHAIRPERSON: - that you were going to
 23 rely on this document when cross-examining the witness.
 24 MS MOTLOENYA: We had indeed.
 25 CHAIRPERSON: So you must complain to

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1 your handlers as it were, not to the cross-examiner, but
 2 anyway, we've seen this document before. I don't think
 3 it's too difficult to absorb quickly, so have a look at the
 4 relevant bits. If you need a bit of time to think about it
 5 let me know, but I think I know enough of you already to
 6 know that you'll understand it quite easily.
 7 MR BOTES: Thank you, Mr Chair.
 8 MS PILLAY: Chair, just to indicate that
 9 the memorandum is XXX11.
 10 CHAIRPERSON: So Mr Tokota had marked it
 11 correctly. Thank you very much.
 12 MS MOTLOENYA: Now Mr Botes, I'd like us
 13 to look at the second-last slide of this presentation.
 14 CHAIRPERSON: [Microphone off, inaudible]
 15 to bring you up to speed. That's the kraal where –
 16 MR BOTES: I see that.
 17 CHAIRPERSON: - what we call scene 1
 18 where the eight-second volley of shooting took place just
 19 before 4 o'clock on the Thursday afternoon the 16th.
 20 MR BOTES: Thank you, Mr Chair.
 21 CHAIRPERSON: And what you see there is
 22 vehicles, police vehicles, yellow rectangles and the red
 23 rectangles, and then there are some bodies which you can
 24 see there on the photograph. We also see a line of TRT
 25 people across the road, but what you are going to be

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1 particularly referred to are those five blue circles and Ms
 2 Motloenya will tell you what they're supposed to represent
 3 and take the cross-examination on from there.
 4 MR BOTES: Thank you, Mr Chair.
 5 CHAIRPERSON: Am I right, Ms Motloenya?
 6 MS MOTLOENYA: Indeed, Chair, thank you.
 7 Now Mr Botes, in short as the Chair has indicated it's a
 8 presentation and this presentation is an analysis of where
 9 it suggests that the shooters were on the 16th who might
 10 have used shotgun pellets. Now if you look at the blue
 11 dots that are indicated on that slide, that is where we
 12 will argue that it was the position of the shotgun victims
 13 on the 16th, and if you had had the opportunity to actually
 14 consider the presentation you would have seen that there
 15 are legends in there which suggest that we will argue that
 16 the people who might have used shotgun pellets, or who
 17 might have fired the shotgun pellets were inside Nyalas P5
 18 and P19. Do you see that?
 19 MR BOTES: I see, that, Mr Chair.
 20 MS MOTLOENYA: And you follow what I'm
 21 saying to you?
 22 MR BOTES: I follow what you say.
 23 CHAIRPERSON: It's not a question of
 24 arguing. The evidence indicates that the bodies marked by
 25 those blue dots, from the post mortem reports it's clear

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1 that there were shotgun pellets in the bodies of those
 2 people.
 3 MR BOTES: I understand that, Chair.
 4 CHAIRPERSON: And as you've been told the
 5 suggestion is that the shotgun pellets were probably fired
 6 from the two Nyalas which are represented by those two
 7 rectangles P5 and P19.
 8 MR BOTES: I understand.
 9 MS MOTLOENYA: Thank you, Chair. Now Mr
 10 Botes, the SAPS deny having issued shotgun pellets to any
 11 of their members on the 16th, and they also deny that any of
 12 the SAPS members fired shotgun pellets on the 16th. Now the
 13 families would like answers, or rather clarity as to how
 14 people like Mr Mdze were fired with shotgun pellets. Now
 15 Mr Botes, do Lonmin, from the evidence that you've given I
 16 just need clarity again, the Lonmin security officials are
 17 they issued with shotgun pellets?
 18 [14:31] MR BOTES: Mr Chairman, during this time
 19 no SSGs were issued in particular for the strike teams, my
 20 people that reported to me from the Friday. There were
 21 SSGs, Lonmin do have SSGs rounds which is in the armoury
 22 and it is controlled from the armoury and registers booked
 23 out to different units. At the time of between the 9th and
 24 the 16th from the mining registers which I assisted our
 25 legal team to go through the registers, we had 75 rounds

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1 available, at hand which were not in a safe or controlled
 2 in a armoury. So those 75 rounds were issued to the TRU,
 3 the Tactical Response Unit from Lonmin and there were also
 4 25 rounds issued to the crime prevention unit. The 25
 5 rounds of the crime prevention unit were withdrawn and
 6 booked back into the armoury by Geon Kellerman, he's the
 7 responsible person for those ammunition. He's the
 8 designated person for the mining division for security to
 9 handle all firearms and ammunition. The TRU –
 10 CHAIRPERSON: Sorry before you got to the
 11 TRU, when did Mr Kellerman take SSGs back and put them
 12 back in the armoury and book them in as it were? Do you
 13 remember that?
 14 MR BOTES: Mr Chairman, I cannot – I
 15 think it was round about November 2012.
 16 CHAIRPERSON: Oh I see, so it was after –
 17 it was long after the shootings at Marikana.
 18 MR BOTES: That's correct.
 19 CHAIRPERSON: If there were 25 out and 25
 20 went back in again then you would presumably say that none
 21 of them were fired because they were still available to be
 22 booked in, is that right?
 23 MR BOTES: That's correct, Mr Chairman.
 24 The 75 outstanding ammunition SSGs from the TRU on my
 25 inspection on the Monday morning, speaking to Albert Kent

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1 who's the team leader of that unit, he still had that 75
 2 rounds in his safe from the Tactical Response Unit. So
 3 that 75 rounds is accounted for. And then we have the SSGs
 4 which Kallie Miles controlled as a Lonmin designated
 5 firearms officer and I cannot respond on Kallie's behalf
 6 what was found and was booked out and what was booked back.
 7 But during this time no Lonmin security guy were issued
 8 with SSGs, we used AAAs but not SSGs during the time.
 9 COMMISSIONER HEMRAJ: You say they – I
 10 beg your pardon. You say they weren't issued with this,
 11 but had they'd been issued and in possession of it prior to
 12 this period commencing?
 13 MR BOTES: The unit, the Tactical
 14 Response Units were issued and not specifically for the
 15 strike. They were issued prior to that, long before that.
 16 MS MOTLOENYA: Mr Botes, can I just get
 17 clarity? What's the difference between SSGs and the AAAs?
 18 MR BOTES: It's the size of the pellets,
 19 your pellets from the AAAs are smaller than those of the
 20 SSGs, so it's the size of the pellet. And if you can
 21 inspect any type of ammunition you can distinguish on the
 22 pellet size what type of ammunition is it.
 23 MS MOTLOENYA: But they're both birdshot
 24 pellets.
 25 MR BOTES: No, Mr Chairman. Birdshot

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1 starts from number 1 up to number 9 and these are called
 2 buckshot and not birdshot.
 3 MS MOTLOENYA: And they're both shotgun
 4 pellets.
 5 MR BOTES: They are both shotgun
 6 cartridges.
 7 MS MOTLOENYA: Mr Botes, are you aware if
 8 there were any Lonmin security officials who might have
 9 been in the Nyalas on the 16th?
 10 MR BOTES: Mr Chairman, we were
 11 specifically instructed by General Annandale no security
 12 members will take part into this exercise. There were no
 13 security people deployed in any police vehicle and
 14 according to my assessment on all the security vehicles
 15 tracking units there were no vehicles at the koppie, scene
 16 1 or 2 during the time of the engagements with SAPS.
 17 MS MOTLOENYA: Is it possible for the
 18 Lonmin security to have given any of those pellets to the
 19 police?
 20 MR BOTES: Mr Chairman, it is possible.
 21 Any person can give pellets to any person, but we should
 22 account for that and the evidence and the facts should
 23 prevail of those facts of the control of ammunition.
 24 MS MOTLOENYA: Thank you, Mr Botes. Now
 25 I'd just like to deal with the issue, I pick up what

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1 Commissioner Hemraj has asked you about earlier regarding
 2 the protestors that were shot on the 10th of August. Can we
 3 just please turn to slide 6 of exhibit L? Slide 6. Now if
 4 you look at the first bullet it relates to what happened on
 5 – the police account of what happened on the 10th of August
 6 and it says "Protestors wounded, 2 persons during a clash
 7 of rival unions." Do you see that?
 8 MR BOTES: I see that, Mr Chairman.
 9 MS MOTLOENYA: Now I'd like us to turn to
 10 exhibit XX2.18.
 11 CHAIRPERSON: This point to be made I
 12 think is that the entry here "Protestors wounded, 2 persons
 13 during clash of rival unions" on the 10th of August is
 14 factually incorrect. Whether there was a clash of rival
 15 unions is a controversial question before us anyway, but
 16 the date's wrong. There are two things wrong about it
 17 actually apart from the rival unions point. Firstly it
 18 wasn't protestors, I prefer to call them strikers because
 19 I've never to find out what they were protesting about, but
 20 the evidence indicates that the wounding was done by NUM
 21 officials who were defending as they say, their office and
 22 they wounded two strikers who were taken to hospital. So
 23 that's one of the unfortunately many inaccuracies in
 24 exhibit L, but the date's wrong a well, it was the
 25 Saturday. I don't know where the five wounded persons were

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1 found, the three persons wounded during the march. Now
 2 when did that happen on the Saturday, we have no evidence
 3 about that either.
 4 MR CHASKALSON SC: Chairperson, I think
 5 the entry under the Friday is referring to – is in fact
 6 referring to the strikers who were shot by Lonmin security.
 7 CHAIRPERSON: That isn't clash of rival
 8 unions.
 9 MR CHASKALSON SC: Yes well –
 10 CHAIRPERSON: I see. So it's wrong in
 11 respect it says protestors wounded because you say it may
 12 refer to two people and there's a little bit of evidence
 13 about it, just a sniff of evidence about it at this stage
 14 that two people may well have been wounded by Lonmin
 15 security people in an entry which was later it would appear
 16 omitted from the OB that we saw. But you say that was
 17 presumably the Friday night. Thought it wouldn't have been
 18 protestors wounded two persons, it would have been Lonmin
 19 security people wounded two protestors/strikers. But then
 20 I'm puzzled by the entry on Saturday the 11th of August.
 21 Where were these five wounded persons found and who were
 22 the three persons wounded during the march? I mean it's a
 23 shambles this slide isn't it?
 24 MR CHASKALSON SC: The three persons
 25 wounded during the march were the two people, well I

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1 presume the two people who suffered gunshot wounds after
 2 the shooting outside the NUM offices and there may well
 3 have been a third person. We can check medical records of
 4 the Andrew - or check the emergency and disaster management
 5 logbook which will recall –
 6 CHAIRPERSON: Yes well I did request that
 7 an investigation should be made at the Saffy hospital to
 8 indicate all people who were taken there having suffered
 9 injuries of some kind so we can get details of that. But
 10 it's very awkward that we at stage of the proceedings have
 11 to speculate about what that entry means. I'm sorry, Mr
 12 Chaskalson, if you could throw any further light I would
 13 gratefully receive it. I'm sorry we're giving you a hard
 14 time, Ms Motloenya, but we're trying to – it may not appear
 15 as though we're actually trying to help you in your cross-
 16 examination.
 17 MS MOTLOENYA: Thank you, Chair. We do
 18 agree, Chair, that the first entry is inaccurate, but we
 19 are referring to the incident where the protestors were
 20 shot by the Lonmin security.
 21 CHAIRPERSON: Strikers or protestors?
 22 MS MOTLOENYA: Strikers.
 23 CHAIRPERSON: Okay that's what you're
 24 referring to, so now we know where you're going, now we can
 25 sit back and enjoy the cross-examination.

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1 MS MOTLOENYA: I'd referred you to
 2 exhibit XX2 and if we could go to page 80, typed page 80.
 3 Now, Mr Botes, this is a case docket, it's my cover
 4 CAS69/08 of 2012. Do you see that?
 5 MR BOTES: I see that, Mr Chair.
 6 MS MOTLOENYA: Now this is a statement by
 7 Mr Thando, Elias Mutengwane. Now this is – Mr Mutengwane
 8 said that he was at the Saffy shaft in Wonderkop. Now I
 9 just want to refer you to two paragraphs in this case
 10 docket, starting with the third paragraph which reads as
 11 follows. "On Friday 2012.08.10 at 18:15 I am walking
 12 towards Nkaneng passing Wonderkop stadium when one of
 13 Lonmin's security twin cab opened fire at us. The cab is
 14 yellow with lights on top." Do you see that?
 15 MR BOTES: I see that, Mr Chair.
 16 MS MOTLOENYA: And then the next
 17 paragraph reads as follows. "On the bakkie there was white
 18 men, I looked back to see what is happening, but I was shot
 19 on my left thigh and fell down injuring my forehead. The
 20 other guy I was walking with was also shot." Do you see
 21 that?
 22 MR BOTES: I see that, Mr Chair.
 23 MS MOTLOENYA: And then if we go to the
 24 next page, sorry if we can just go back up again. He then
 25 says he was taken to the Andrew Saffy hospital. Do you see

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1 that?
 2 MR BOTES: That's correct, Mr Chair.
 3 MS MOTLOENYA: Okay and then if we go to
 4 the next page, page 81. Now this is another case docket by
 5 Hululani which is made by Hululani Nhlomo. Now he says he
 6 was working at the Rowland shaft as a rock drill operator.
 7 I just want to refer you to – sorry if I can just find –
 8 the fourth paragraph on that page where he says "I only
 9 heard plus, minus five shots, shooting from the crowd of
 10 people who were there. All from the Lonmin security and I
 11 found myself on the ground and I found myself in hospital
 12 and I was shot on the head by a NUM person." Do you see
 13 that?
 14 MR BOTES: I see that, Mr Chair.
 15 MS MOTLOENYA: Now these are two people
 16 who say they were shot by Lonmin security, correct?
 17 MR BOTES: That's correct, Mr Chair.
 18 MS MOTLOENYA: Okay now earlier on
 19 Commissioner Hemraj had asked you a question relating to
 20 this specific statement and I just wanted to clarify
 21 certain points. Now you had testified that Mr Hululani
 22 Nhlomo was or the person who was shot with a rubber bullet
 23 –
 24 MR BOTES: That's correct.
 25 MS MOTLOENYA: Now I just want to know

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1 are you aware were you or are you aware that there was
 2 another person who claims that he was shot because you only
 3 testified that you know of Mr Hululani Nhlomo?
 4 MR BOTES: Mr Chairman, I said I suspect
 5 the person that was hit in a previous question, I suspect
 6 he was hit at the crowd where we were using rubber bullets
 7 at them. I did not know who the person was, but I said I
 8 suspect that person was hit by the rubber bullets fired by
 9 security.
 10 MS MOTLOENYA: Oh so you're not sure as a
 11 matter of fact that he was the person that was hit by the
 12 Lonmin security with rubber bullets?
 13 MR BOTES: No, Mr Chairman, because it
 14 was dark and there was a group of people where they
 15 protesting and dancing and threatening the people coming to
 16 work.
 17 COMMISSIONER HEMRAJ: You might also want
 18 to look at the medical report of Mr Mutengwane and the
 19 injury that's described as an entrance wound and shotgun
 20 injury and then measure that against the alleged shooting
 21 by rubber bullet.
 22 MS MOTLOENYA: I don't seem to have that
 23 with me right now, Commissioner Hemraj.
 24 COMMISSIONER HEMRAJ: It's in one of the
 25 dockets that was provided by SAPS.

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1 MS MOTLOENYA: I will have a look at it.
 2 COMMISSIONER HEMRAJ: It's in docket KR69
 3 of S. I know I handed a copy to Mr Wesley yesterday,
 4 perhaps he still has it. Has he given it back to me?
 5 CHAIRPERSON: While that's being talked
 6 about and looked for a previous statement that was put to
 7 you there was a description of someone being shot or the
 8 deponent actually, being shot from the back of a yellow
 9 vehicle he described it. Perhaps if you go back to that
 10 previous statement for a moment. The one that was on the
 11 screen a moment ago before the present one. You see the
 12 reference there he describes of how he was shot by one of
 13 the Lonmin security. I take it [inaudible] the Lonmin
 14 security twin cab opened fire at us he says. The cab is
 15 yellow with lights on top. Is that a description of a
 16 Lonmin vehicle?
 17 MR BOTES: Mr Chairman, no we do not have
 18 vehicles that have a yellow top. We have white vehicles
 19 which the bottom half of that body is navy blue and some of
 20 the other vehicles are pure white, no signage or anything
 21 on it.
 22 CHAIRPERSON: And do you have twin cab
 23 vehicles?
 24 MR BOTES: We had a double cab which is a
 25 Nissan which is white, there is no yellow on top.

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1 CHAIRPERSON: So insofar as a description
 2 of a vehicle you say it's not a description of a Lonmin
 3 vehicle.
 4 MR BOTES: No, Mr Chairman.
 5 COMMISSIONER HEMRAJ: What about the
 6 Protea Coin Vehicles, what colours are they?
 7 MR BOTES: Mr Chairman, the Protea Coin
 8 vehicles are all white and blue signage on top. It runs
 9 with a sign, it's angled to the top of the canopy, so the
 10 canopy is blue and there's a white bottom strip of the
 11 bakkie under at the bottom.
 12 CHAIRPERSON: What colour is a Mamba?
 13 MR BOTES: The Mamba was either brown or
 14 olive green. I cannot remember.
 15 CHAIRPERSON: All right.
 16 COMMISSIONER HEMRAJ: And any other
 17 contractors that were brought onto the site for security
 18 purposes? Would you know what kind of vehicles –
 19 MR BOTES: Mr Chairman, I cannot think of
 20 any contractors that fits that description of the yellow
 21 top.
 22 COMMISSIONER HEMRAJ: Thank you.
 23 MS MOTLOENYA: Mr Botes, we're still
 24 trying to sort out –
 25 CHAIRPERSON: The medical to which my

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1 colleague Advocate Hemraj referred has been handed to Ms
 2 Pillay I think and I don't know what's going to happen from
 3 now on –
 4 MS MOTLOENYA: We're trying to establish
 5 –
 6 CHAIRPERSON: It's got Commissioner
 7 Hemraj's notes on it which may be a source of awkwardness.
 8 But what do you want to know about the medical report.
 9 It's basically the description of the wound isn't it?
 10 MS MOTLOENYA: Mr, Chair we'll come back
 11 to this point. We'll come back to it after we've sorted
 12 out the document. Now, Mr Botes, you say that you were
 13 aware of these incidents, was it reported to you by the
 14 security personnel?
 15 MR BOTES: I was present at the crossing,
 16 at Rowland crossing where the security shot at people. I
 17 wasn't aware where this happened. According to those two
 18 statements the one next to the stadium on his way to
 19 Wonderkop but the other one is in the area described where
 20 we shot at people at the crossing. He was dropped at the
 21 crossing at Rowland shaft and then he walked, so it is in
 22 that area where we shot at people, I cannot say if he was
 23 one of them.
 24 MS MOTLOENYA: Mr Botes, is there a
 25 system within Lonmin where incidents like this are

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1 reported?
 2 MR BOTES: Mr Chairman, I assume all
 3 these incidents should have been reported onto the log
 4 sheet, the one where there's a lot of questions about the
 5 accuracy of it.
 6 MS MOTLOENYA: Okay and would something
 7 like this be ultimately reported to Mr Sinclair?
 8 MR BOTES: If that person comes forward
 9 to us we would open a case and then we will investigate it.
 10 MS MOTLOENYA: Okay. So, Mr Botes, other
 11 than the log sheet there is no other reporting system?
 12 [14:50] MR BOTES: Apart from the log sheet
 13 there's normal occurrence books which I earlier referred
 14 to, which was supposed to be updated to the log sheet and
 15 if a person opened a case with us, then we have another
 16 system that manages all cases reported to us.
 17 MS MOTLOENYA: So if it weren't reported
 18 or captured in the occurrence book, which occurrence book
 19 would it have been captured in?
 20 MR BOTES: It depends where the report
 21 was made. Was it made through the JOC or was it made
 22 through central Ops. If it was made by central Ops they
 23 should have captured it there, if it was made through the
 24 JOC, they would have captured it in the JOC.
 25 MS MOTLOENYA: Now, Mr Botes, if we can

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1 deal with another issue, I'd like you to look at exhibit, I
 2 think EEEE2, it's your statement, and if we could look at
 3 paragraph 46.
 4 MR BOTES: Which page is it?
 5 MS MOTLOENYA: It's paragraph 46, I am
 6 not sure what page it is in the bundle.
 7 MR BOTES: That's fine, I've got it.
 8 CHAIRPERSON: Referring to page 35 of the
 9 bundle.
 10 MR BOTES: I see that, Mr Chair.
 11 MS MOTLOENYA: Where at paragraph 46, you
 12 say, "Once I had moved into the SAPS JOC permanently on 14th
 13 of August 2012, there was always the representative from
 14 management with me. The two of us together would confer on
 15 making decisions regarding whether any area of business
 16 unit would have to be evacuated at any particular time for
 17 security reasons. We were not at any stage required to
 18 issue such an evacuation order." Now, Mr Botes, you say in
 19 your statement that the reason for having the
 20 representative from management was to help you decide
 21 which, when certain areas of Lonmin should be evacuated.
 22 Is that correct?
 23 MR BOTES: That's correct, Mr Chairman.
 24 MS MOTLOENYA: Now, Mr Botes, I just need
 25 you to help me understand something in relation to this.

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1 Now you are a senior and experienced person in issues of
 2 security, correct?
 3 MR BOTES: That is correct, Mr Chairman.
 4 MS MOTLOENYA: Now why was it necessary
 5 for you to have a representative from management to help
 6 you decide when it's necessary to evacuate an area of the
 7 operations.
 8 MR BOTES: Mr Chairman, the reason for
 9 that is because I am representing security, and those
 10 people who are on the list of XXX11 they are senior
 11 managers from individual shafts and operations who sits on
 12 Exco, so they basically represents Exco. I did not
 13 represent Exco as an operating level in my position, so I
 14 am not part of Exco and these people represent Lonmin Exco
 15 and then if we have to make any decision, we can make it
 16 immediately and then we can inform Exco and the rest of the
 17 management team what we have decided on.
 18 MS MOTLOENYA: So, a member of Exco had
 19 to be there, to make a decision relating to a security
 20 issue? Is that what you are saying?
 21 MR BOTES: That's correct, in conjunction
 22 with myself advising him and pointing out what are the
 23 risks and what are the threats and what's the possible
 24 consequences if something happened, and a shaft is
 25 attacked.

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1 CHAIRPERSON: Is that the only reason why
 2 you and the representative from management on a rotating
 3 basis were in the JOC?
 4 MR BOTES: That's correct.
 5 CHAIRPERSON: In -
 6 MR BOTES: That's correct. Instead of
 7 when something serious happened, I have to phone around and
 8 to get different opinions -
 9 CHAIRPERSON: I understand that reason.
 10 I am interested in something else. Was that the only
 11 reason why you – was that the only function you were
 12 performing, the only purpose that you were there for, in
 13 the police JOC, just to do that?
 14 MR BOTES: That was the only purpose of
 15 the Exco members to be there, and to see what's the
 16 situation and that we can make decisions.
 17 MS MOTLOENYA: Now Mr Botes, that seems
 18 to be inconsistent with what was said to be the purpose at
 19 the time of the events. If we can look at exhibit XXX11.
 20 And if we look at the second paragraph, now it's recorded
 21 in the memorandum as saying, "We believe that it is
 22 important to have a senior mining management present at the
 23 control room in order to influence decision making and to
 24 ensure that liaison takes place between security, SAPS and
 25 Lonmin executive management."

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1 MR BOTES: I know that, Mr Chair.
 2 MS MOTLOENYA: So the reason stated in
 3 the memorandum was to influence the decision making, do you
 4 see that?
 5 MR BOTES: I note the comment in the
 6 document.
 7 MS MOTLOENYA: No, Mr Botes, I put it to
 8 you that the reason that you are giving us and the reason
 9 that's recorded there, are different.
 10 MR BOTES: Mr Chairman –
 11 MS MOTLOENYA: And – sorry, if you would
 12 like to comment.
 13 MR BOTES: Mr Chairman, we cannot
 14 influence the police to make certain decisions and to make
 15 certain plans, how to plan their operation and how to
 16 execute their operation. We can advise them, we can assist
 17 them with information of layout plans of target areas, they
 18 might target, and we can help them with those, but we
 19 cannot influence them in their operational plan and how to
 20 execute it.
 21 MS MOTLOENYA: Mr Botes, the document
 22 speaks for itself. I would like to put something else to
 23 you that if it indeed was the intention of Lonmin to try
 24 and influence SAPS in decision making, that would have been
 25 unacceptable, do you want to comment?

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1 MR BOTES: Mr Chairman, if Lonmin people
 2 is put in there to influence SAPS, it is totally
 3 inappropriate and not correct.
 4 CHAIRPERSON: When it's convenient for
 5 you, we will take the tea adjournment, but we don't have to
 6 take it now, but when it's convenient please let me know
 7 and we will take the tea adjournment. You may wish to
 8 round off this point, or you may wish to take the
 9 adjournment now. I am in your hands.
 10 MS MOTLOENYA: It is convenient now,
 11 Chair.
 12 CHAIRPERSON: We will take the tea
 13 adjournment, quarter of an hour.
 14 [COMMISSION ADJOURNS COMMISSION RESUMES]
 15 [15:21] CHAIRPERSON: The Commission resumes. Mr
 16 Botes, you're still under oath.
 17 DIRK CORNELIUS BOTES: [s.u.o.]
 18 CHAIRPERSON: Ms Motloenya.
 19 CROSS-EXAMINATION BY MS MOTLOENYA (CONTD.):
 20 Thank you, Chair. Mr Botes, during the break we had
 21 opportunity to make copies of the medical report of Mr
 22 Mutengwane and I'd just like us to deal with it for a
 23 minute or two. Chair, it's a new document. I don't think
 24 it's part of the exhibits, if we could mark it as such.
 25 CHAIRPERSON: It will be EEEE28.

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1 MS MOTLOENYA: Thank you, Chair.
 2 CHAIRPERSON: Sorry, before you move on
 3 to that, you were busy with a point based on XXX11 and I'm
 4 not quite sure that you've rounded it off. XXX11 is a
 5 security control room duty register and the second
 6 paragraph of it was read to you. "We agree it is important
 7 to have a senior mining management presence at the control
 8 room" - now that's a reference to the JOC, is it?
 9 MR BOTES: That's correct, Mr Chair.
 10 CHAIRPERSON: - "in order to influence
 11 decision making." Now the only decisions that had to be
 12 made in the JOC surely would have been made by the police.
 13 Is that right? "To influence decision making." That's
 14 correct, isn't it?
 15 MR BOTES: Mr Chairman, we can read it in
 16 both ways. We can influence decision making based on
 17 security, what we should do, and also there's a, I see
 18 there's a comma, SAPS and Lonmin executive.
 19 CHAIRPERSON: That's the second part,
 20 "and to ensure that liaison takes place between security,
 21 SAPS and Lonmin executive management."
 22 MR BOTES: Correct.
 23 CHAIRPERSON: But the first part of the
 24 sentence, there are two clauses that follow, or two phrases
 25 actually that follow after the words "presence at the

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1 control room in order," it's "in order to, 1, influence
 2 decision making; and 2, to ensure liaison." Now the point
 3 that was put to you, and I don't know that you had an
 4 opportunity to answer it satisfactorily, was surely it
 5 would have been improper for any representative of Lonmin
 6 to endeavour to influence the decisions the police made?
 7 That's the point that was put to you, as I understood it.
 8 MS MOTLOENYA: It is, Chair.
 9 CHAIRPERSON: I'm not sure that I
 10 understood your answer properly, so I'd be grateful if you
 11 would give me an amplified answer so that I can follow it.
 12 MR BOTES: Mr Chairman, I said that
 13 Lonmin cannot put executives into the JOC that we can
 14 influence the police in how they should plan their
 15 operations and how they should execute it. This person was
 16 purely there to assist me in security that if we need to
 17 make decisions based on security risk to the operations,
 18 because I mentioned these guys are all executive members,
 19 not executive members of Lonmin head office but executive
 20 members of the mining team. So they each represent a
 21 mining operation and they should represent then the
 22 executive from a mining team if we need to make an urgent
 23 decision then we can make it and execute it instead of
 24 waiting for answers and calls to be made to certain
 25 executives.

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1 CHAIRPERSON: I don't know that
 2 "influence" is the right word in that context. I mean
 3 whose decision is going to be influenced? Were you going
 4 to make the decision which was going to be influenced by
 5 the management person, or was the management person's
 6 decision going to be influenced by you? I don't understand
 7 it at all.
 8 MR BOTES: Mr Chairman, the writer of
 9 this document is not, is GP from the mining team and I
 10 think his letter was purely there to assign people to the
 11 JOC that can assist us that we can make decisions and if
 12 there's any influencing to be made and me as the
 13 professional security person in the JOC should influence
 14 the management team on what is our course of action and not
 15 the other way around.
 16 CHAIRPERSON: Yes, thank you. Yes,
 17 sorry, you wanted to move on to your next point.
 18 MS MOTLOENYA: Thank you, Chair. Mr
 19 Botes, I had referred you to the document that we've just
 20 marked now as exhibit EEEE28, the medical report of Mr
 21 Mutengwane. Craig, if we can have that on the screen,
 22 please. Okay, Mr Botes, I'll continue in the meantime
 23 since you have a copy with you. Now if we look at point
 24 number 5 which records the clinical findings you'll see
 25 there that it says "Gunshot wound left thigh." You see

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1 that?

2 MR BOTES: I see that, Mr Chair.

3 MS MOTLOENYA: And if we go to the

4 conclusions at point 8, it's not quite legible but it says

5 "Gunshot wound on left thigh." It could say "no rubber

6 injury," I'm not quite sure about that, but it goes on to

7 say "X-ray, bullet retrieved." Do you see that?

8 COMMISSIONER HEMRAJ: Is it not vascular

9 injury?

10 MS MOTLOENYA: That could be it actually.

11 That could be it, thank you, Commissioner Hemraj. And at

12 the second line it refers to an "X-ray, bullet," it says

13 retrieved. Do you see that, Mr Botes?

14 MR BOTES: I can see that but I cannot

15 see the word "retrieved." It looks very difficult to say

16 what was written in there.

17 MS MOTLOENYA: Mr Botes, I'll argue that

18 it says "X-ray, bullet retrieved." Now this is the medical

19 report of the person who was, the striker who was shot by

20 Lonmin Security and the person who works at Rowland Shaft.

21 Do you see that?

22 MR BOTES: I see that, Mr Chair.

23 MS MOTLOENYA: The person that you had

24 testified that you think could have been shot by a rubber

25 bullet. Do you see that?

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1 MR BOTES: Mr Chairman, that's possible,

2 and if we, if they can give me the evidence of the bullet

3 that's been retrieved that I can see was that a rubber or

4 was it something else then I can explain it better, but I

5 cannot see that they say it is specifically a rubber bullet

6 or bullet pellets.

7 MS MOTLOENYA: But Mr Botes, it does say

8 "gunshot wound." Do you see that?

9 CHAIRPERSON: [Microphone off, inaudible]

10 MR BOTES: Mr Chairman, sometimes it

11 depends what angle a rubber can hit a specific part of your

12 body and it can create a wound.

13 CHAIRPERSON: [Microphone off, inaudible]

14 gunshot doesn't mean it was live ammunition. A shotgun can

15 be used to fire rubber pellets, so it would be a shotgun,

16 it would be a gunshot wound or – but even so, if it was

17 shot in circumstances which caused a wound and actually

18 entered – on the sketch there's an entrance wound, so once

19 even a rubber bullet enters the body of someone, depending

20 what part of the body it comes into contact with, it can

21 cause death, which is why the charge that was apparently

22 entered into the police register was a charge of attempted

23 murder.

24 COMMISSIONER HEMRAJ: Can I just ask Mr

25 Botes, when you say rubber bullet, you're talking about

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1 rubber bullets per se or are you talking about reduced

2 rubber or rubber balls or what are you talking about?

3 MR BOTES: Mr Chairman, I'm referring to

4 a rubber bullet that we are using. I do not know if that's

5 reduced or whatever the case may be. It is a normal

6 ammunition that we purchase and that we use.

7 CHAIRPERSON: Did you know that the

8 police don't use them anymore? The police issued

9 instructions the year before the events at Marikana, doing

10 away with rubber bullets because police experience was that

11 in certain circumstances serious injuries could be suffered

12 in consequence of their use and police then decided - they

13 even did away with birdshot – the police decided that only

14 rubber balls would be used. There's a little bit of

15 controversy about that, but that was an instruction issued

16 by the National Commissioner because of the problems they

17 had encountered with rubber bullets. Did you people not

18 know about that?

19 MR BOTES: I'm not aware of that, Mr

20 Chairman.

21 CHAIRPERSON: Oh, I see.

22 MS MOTLOENYA: Mr Botes, I know we have

23 moved on from this point. Can I just pick up something

24 else? If you can just confirm for me, Lonmin Security

25 vehicles are either Nissan or Toyota Twin Cab, right?

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1 MR BOTES: Mr Chairman, at the time when

2 this happened we still had Livinas, we had certain Toyota

3 Twin Cabs which were used by the CPU with blue under

4 signage, painting on the bottom half of the body, and our

5 first responders had the Livinas and Kallie and his team

6 had Toyota Hilux Double Cabs.

7 MS MOTLOENYA: Thank you.

8 MR BOTES: None of those had yellow cabs.

9 MS MOTLOENYA: Thank you, Mr Botes. If

10 we can then go back to the point that we were dealing with

11 before the tea break. So Mr Botes, after the surveillance

12 equipment was moved to the SAPS JOC you were based in the

13 SAPS JOC as well. Correct?

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

15 MS MOTLOENYA: Lieutenant-Colonel Scott

16 testified that either you or your alternate were in the

17 SAPS JOC at all times except when you were sleeping. Other

18 than that at all times you were in the JOC. The reference

19 to that would be, for record purposes, Chair, at day 142,

20 page 15526 at line 10.

21 CHAIRPERSON: I'm sure we don't have to

22 put it up on the screen –

23 MS MOTLOENYA: No, no, we don't have to

24 put it up. It's just for record –

25 CHAIRPERSON: It makes sense that that

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1 would have been the case, they were supposed – he says they
 2 were supposed to be there at all times and that’s what the
 3 notification, the duty roster says, so anyway, you’ve put
 4 it to him that that was confirmed by Colonel Scott that
 5 what was envisaged should happen, had happened, and there
 6 always was someone from Lonmin in attendance, except I
 7 suppose during the long hours of the night when people were
 8 sleeping.
 9 MS MOTLOENYA: Indeed, Chair. Now Mr
 10 Botes, as a result you knew what SAPS was doing in the JOC.
 11 Correct?
 12 MR BOTES: Mr Chairman, I could see what
 13 they’re planning to do and I could see, I see that they
 14 plan an operation, which took part in my presence. I also
 15 attended their daily JOCCOM meeting in the morning and in
 16 the afternoon and where we shared information what
 17 happened, what incidents were reported on Lonmin, we shared
 18 that information back to the meeting and then if there’s
 19 any further request from the police we would provide such
 20 assistance in helping them to plan their operation
 21 properly.
 22 MS MOTLOENYA: Now Mr Botes, from what
 23 you just said I put it to you that your presence in the JOC
 24 at all times, like you’re saying that you knew what they
 25 were planning, you knew about their changes in the plans,

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1 you attended meetings, you provided information to them,
 2 that that could have affected the kind of information that
 3 you provided to SAPS. Would you like to comment?
 4 MR BOTES: Mr Chairman, I’m not clear
 5 about the kind of information I provide, that that would
 6 differ if I know what’s going to happen, and if I know of a
 7 plan I do not know of all the changes they made to a plan.
 8 I saw a plan which they presented on to a proxy where they
 9 briefed the people afterwards. That’s the plan I saw. I
 10 wasn’t part of all the different versions of the plan. I
 11 saw a plan, and I cannot say if that was the final plan or
 12 a second plan or the third plan.
 13 CHAIRPERSON: You tell us in your
 14 statement that on the Thursday morning the 16th of August
 15 before the police held their formal briefing in the JOC you
 16 and two surveillance officers from ML Asset Management were
 17 asked to leave the JOC by General Annandale. Is that
 18 right?
 19 MR BOTES: That’s correct, Mr Chair.
 20 CHAIRPERSON: What time was that?
 21 MR BOTES: That was round about 1
 22 o’clock.
 23 CHAIRPERSON: That was in the afternoon?
 24 MR BOTES: In the afternoon, yes.
 25 CHAIRPERSON: Because I must say I got

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1 the impression from reading the affidavit that it was the
 2 early morning meeting, but you say so you did attend, there
 3 was a meeting at 6:30.
 4 MR BOTES: I attend –
 5 CHAIRPERSON: You attended that fully?
 6 MR BOTES: I attend that fully.
 7 CHAIRPERSON: Was that the meeting where
 8 they said that today was D-day and you weren’t going to –
 9 MR BOTES: That was the day where they
 10 decided that they have to act today.
 11 CHAIRPERSON: That’s right, and that’s
 12 what’s said at the 6:30 –
 13 MR BOTES: That’s correct, yes.
 14 CHAIRPERSON: That was said at the 6:30
 15 meeting, the one you attended. It must have been because
 16 you weren’t at the other one.
 17 MR BOTES: Excuse me, Sir?
 18 CHAIRPERSON: I said that was the
 19 meeting, the 6:30 meeting where they decided today is the
 20 day we’re going to have to act.
 21 MR BOTES: Commissioner, yes, it was said
 22 that this is the final day and we have to execute a plan.
 23 CHAIRPERSON: That’s right.
 24 MR BOTES: Ja.
 25 CHAIRPERSON: And so that was the 6:30

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1 meeting, and then, but you weren’t at the 1:30 meeting
 2 because you were asked to leave that.
 3 MR BOTES: That’s correct.
 4 CHAIRPERSON: And then were you absent
 5 from the whole meeting or did you attend part of it or did
 6 you come back before it was over? How did it work?
 7 MR BOTES: I was absent for the whole
 8 meeting until I was called back.
 9 CHAIRPERSON: And what happened when you
 10 came back?
 11 MR BOTES: I continue with my normal
 12 operations, put the surveillance operators back into their
 13 workstations and we continue with the normal monitoring of
 14 the koppie and the other areas.
 15 CHAIRPERSON: You see, in your statement
 16 at paragraph 51 on – it’s 51 on various ones, I’m using
 17 page 37 in the bundle, it’s not different from any of the
 18 others. What you say in para 51 is this, “On our return to
 19 the SAPS JOC General Annandale and Colonel Scott were busy
 20 briefing the unit commanders on the phases of the
 21 deployment and engagement instructions,” then you go on
 22 about that.
 23 MR BOTES: That’s correct, Mr Chair.
 24 CHAIRPERSON: Was that in the JOC?
 25 MR BOTES: Mr Chair, there was –

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1 CHAIRPERSON: That briefing that you're
 2 talking about –
 3 MR BOTES: Ja, there was –
 4 CHAIRPERSON: - did that take place in
 5 the JOC?
 6 MR BOTES: That's correct, Mr Chair.
 7 There was a private meeting held with General Mbombo and I
 8 think with General Phiyega when I was excused to leave and
 9 then afterwards there was a briefing taking place within
 10 the JOC –
 11 CHAIRPERSON: Mr Botes, I'm sorry,
 12 there's something seriously wrong with this evidence. You
 13 must forgive me but I've been here for nearly two years,
 14 I've heard a bit of the evidence about these meetings.
 15 General Phiyega wasn't there on the Thursday at the
 16 relevant time. The evidence is that General Mbombo was at
 17 the meeting at half past 1. She announced that we're
 18 going, the decision has been taken, we take action,
 19 etcetera, and she then left to go, as I understand her
 20 evidence, to go to the hospital to see one of the people
 21 who'd been injured on the Monday. They then had a
 22 discussion. The unit commanders weren't there. The unit
 23 commanders were out in the field and what then happened was
 24 when the meeting was over Brigadier Pretorius and Colonel
 25 Scott – he was then Lieutenant-Colonel Scott – then left

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1 and went out to the forward holding area 1 where the unit
 2 commanders were given their briefing instructions. But you
 3 say that was actually in the JOC and you say General
 4 Phiyega was there. There's something seriously wrong, Mr
 5 Botes.
 6 MR BOTES: Mr Chairman, what I can recall
 7 is that there was still commanders, although not unit
 8 commanders, there was still overall commanders of the
 9 different units in the JOC where the briefing was taking
 10 place.
 11 CHAIRPERSON: But that's not what your
 12 statement says. Your statement at para 51 says, "On our
 13 return to the SAPS JOC General Annandale and Colonel Scott
 14 were busy briefing the unit commanders." Now if you came
 15 back to the JOC at the end of the meeting that would have
 16 been about 2 o'clock I think on the evidence, and Brigadier
 17 – the unit commanders weren't there and Brigadier Calitz,
 18 who was the operational commander, wasn't there, and then
 19 Brigadier Pretorius and Lieutenant-Colonel Scott then left,
 20 went to the forward holding area 1 where they briefed the
 21 unit commanders, inter alia and also briefed, among the
 22 people briefed was Brigadier Calitz. As I say, General
 23 Phiyega wasn't there at all. So I'm afraid I don't
 24 understand your evidence at all. You must forgive me, but
 25 I think your memory is letting you down a bit. So

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1 perhaps –
 2 MR BOTES: It's the –
 3 CHAIRPERSON: - you could explain it to
 4 me so I can understand it.
 5 MR BOTES: Mr Chairman, it's possible,
 6 but I can remember at one stage a briefing took place in
 7 the JOC where I was present where they put the plan on the
 8 proxy where I could see it and what was the different
 9 stages of the plan, to execute the plan. I was present at
 10 this stage –
 11 CHAIRPERSON: That was the 1:30 meeting
 12 that you had to leave?
 13 MR BOTES: No –
 14 CHAIRPERSON: And then you came back to.
 15 [15:41] MR BOTES: No, I went back after I was
 16 called back.
 17 CHAIRPERSON: Yes, yes, I understand
 18 that, but this plan on the proxy and the stages and so on,
 19 that was then explained, when was that? Was that when you
 20 came, after you'd been asked to leave when you came back,
 21 or when was that?
 22 MR BOTES: I cannot now remember because
 23 of the variances –
 24 CHAIRPERSON: Ja, but the statement, you
 25 see the statement –

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1 MR BOTES: Ja.
 2 CHAIRPERSON: - you made, which I read,
 3 paragraph 51 –
 4 MR BOTES: Correct.
 5 CHAIRPERSON: I mean that's clearly
 6 wrong. That's not the evidence we've had at all and this
 7 is a statement you made, I'm quoting from the copy, I think
 8 there are earlier ones too but that, from the copy of the
 9 statement made on the 8th of November 2012. So I mean, was
 10 your memory letting you down already in November 2012?
 11 MR BOTES: Mr Chairman, I'm not hundred
 12 percent sure if I was called back at the end of the 1
 13 o'clock meeting where there was still briefing. I cannot
 14 hundred percent sure, so my memory has lost me there.
 15 CHAIRPERSON: The reason I ask you
 16 questions is I must confess when I read your statement last
 17 night I got the impression you were talking about the 6:30
 18 meeting because there were discussions at that meeting.
 19 According to the original notes taken from the minutes
 20 there was a discussion of certain things that were going to
 21 happen, although there wasn't an alternative, there wasn't
 22 a plan yet worked out how they were going to actually
 23 disarm the people but there were certain things that were
 24 discussed and the unit commanders, or some of them were
 25 present, Calitz for example, present at the time. So that

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1 was why I thought that you were talking about the 6 o'clock
 2 meeting, but you tell me I'm wrong, that it was actually
 3 the 1 o'clock meeting, then I don't understand paragraph
 4 52. I don't want to spend too much time on it, but it is
 5 something that puzzles me and I'd like to find the answer
 6 to it before we write the report.

7 MR BOTES: Mr Chairman, it could be
 8 possible that my memory has lost me there, that it was in
 9 the 6 o'clock meeting. I cannot remember.

10 MR CHASKALSON SC: Sorry to interrupt,
 11 but it struck me there may be another possibility. Were
 12 you at the briefing at Rowland Crossing, forward holding
 13 area 1? Because certainly the briefing instructions that
 14 you mention in that paragraph are briefing instructions
 15 that we are told were given there. Or was that conveyed on
 16 the radio?

17 MR BOTES: Mr Chairman, no, I wasn't at
 18 Rowland Crossing and with the briefing sessions taking
 19 place outside, I saw the plan on the proxy in the
 20 boardroom, in the JOC.

21 MS MOTLOENYA: Chair, you seem to have
 22 taken over the bulk of my cross, but before –

23 CHAIRPERSON: Accept my profuse
 24 apologies.

25 MS MOTLOENYA: Before we get to the 16th,

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1 Mr Botes, if we could just go back to the point that we
 2 were dealing with regarding your role in the JOC, that you
 3 were present at all time, you were aware of SAPS' plans and
 4 the changes in the plans, that you gave SAPS information as
 5 requested, that you attended JOCCOM meetings, we will argue
 6 that that was complete unacceptable and that it amounted to
 7 Lonmin being operationally involved in the SAPS operation.
 8 Would you like to comment?

9 MR BOTES: Mr Chairman, I disagree with
 10 that. My role was there to guide SAPS into information and
 11 provide adequate layout plans of the whole area because it
 12 did not only protect the operations there, they had their
 13 deployment across Lonmin and all the shafts and all the
 14 areas as well, so the layouts of the plan involved not only
 15 the execution of the plan on the 16th, but also protect the
 16 other installations as well on all the operations. So my
 17 involvement there is purely to advise and give SAPS
 18 information where to focus on that they can do their plan.

19 With regards to the 16th, my involvement cannot
 20 influence the police to execute their role, which is off
 21 the mine site and my involvement influence them and that I
 22 can prescribe them what to do to the benefits of Lonmin.

23 MS MOTLOENYA: Mr Botes, we still haven't
 24 gotten to the 16th. I'll give you an opportunity to deal
 25 with that. At present I'm dealing with your involvement

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1 and your role in the JOC. Now you just said that your role
 2 was to guide and advise SAPS. Why would it be Lonmin's
 3 role to guide and advise SAPS in their operations?

4 MR BOTES: Mr Chairman, as mentioned the
 5 guidance which I gave was regards to critical installations
 6 where they deployed people. The guidance is towards
 7 operations they do to protect the other installations which
 8 were exposed, like on the 13th when the group marched
 9 towards K4 Shaft and then eventually go to K3 Shaft, that,
 10 anything could have happened from there on that they can
 11 attack another shaft and the police deployed police members
 12 on all those operations. So that's the guidance and
 13 assistance I provide from a security point of view that we
 14 know the area and the people attending that from the police
 15 were reinforcements sent to Marikana across South Africa.
 16 They do not have a clue where any site is, where any
 17 installation is, and we had to guide them through any
 18 operations planning.

19 MS MOTLOENYA: Mr Botes, we'll argue that
 20 that explanation that you've just given would have been
 21 acceptable if you were outside of the JOC and not inside of
 22 the JOC where you were aware of every development in the
 23 SAPS plan.

24 MR BOTES: Mr Chairman, I beg to differ
 25 because a JOC is exactly what the name is; it's a joint

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1 operational centre and any JOC historically from any police
 2 activity, whether they support the petrol industry or a
 3 mining industry or anything where the police has to
 4 interact, a JOC is a joint operational centre where joint
 5 partnerships sit in, where your emergency services sit in,
 6 etcetera. That's a joint operational centre and that is,
 7 that was my role into the JOC, as a partner to the JOC,
 8 what it meant to be.

9 MS MOTLOENYA: Now Mr Botes, we'll leave
 10 that for argument. Can we deal with the 16th of August?
 11 Now the Chair has basically clarified some of the issues
 12 that the families were interested in, and specifically you
 13 just testified that you were at the 13:30 JOCCOM meeting.
 14 Is that correct?

15 MR VAN AS: The witness didn't say he was
 16 at the 13:30 JOCCOM meeting, Mr Chairperson.

17 CHAIRPERSON: [Microphone off, inaudible]
 18 the witness is now a little bit uncertain as to which one
 19 it was and I thought this accusing me of having clarified
 20 things is not an entirely accurate accusation in the
 21 circumstances because my questions were designed to
 22 indicate, or to ascertain whether the meeting he was
 23 excluded from was the early morning one or the afternoon
 24 one. He said it was the afternoon one. I challenged him
 25 and said it looked as if it was the morning one. The

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1 impression I got at the end of it all is he wasn't too
 2 sure, so perhaps you can ask him again. Am I right? In
 3 view of what I put to you about where the briefing was and
 4 the forward holding area 1 part you were no longer sure
 5 that the meeting that you were describing as being the one
 6 you were excluded from was the –
 7 MR BOTES: Mr Chairman, ja –
 8 CHAIRPERSON: - was the 1:30 one or the 6
 9 o'clock one? Am I correct?
 10 MR BOTES: Mr Chairman, the one where I
 11 was excluded there was when General Mbombo attended the
 12 meeting and that was round about 1 o'clock. I attended,
 13 and the one which I cannot remember is where they present
 14 the plan on the proxy and discuss that in the meeting,
 15 whether it was after the 1 o'clock meeting or in the 6
 16 o'clock meeting, I cannot remember that portion.
 17 CHAIRPERSON: The problem you see,
 18 related to your paragraph 51 on page 81 of the bundle where
 19 you said after you'd been excluded, on your return to the
 20 JOC General Annandale and Colonel Scott were briefing the
 21 unit commanders, and I put to you the unit commanders
 22 weren't there and the briefing didn't take place there
 23 after the 1 o'clock meeting, it took place at the forward
 24 holding area and you weren't there, that's why I said that
 25 that must have been the early meeting –

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1 MR BOTES: That's –
 2 CHAIRPERSON: - where there was some
 3 briefing that went on, but paragraph 51 is introduced by
 4 the words "On our return to the SAPS JOC," that's after the
 5 exclusion.
 6 MR BOTES: Ja, I see.
 7 CHAIRPERSON: So that's why if that's
 8 correct then the exclusion was the morning meeting as well,
 9 so that's why I still don't quite understand what exactly
 10 you're telling us on that.
 11 MR BOTES: No, Mr Chairman, I was at the
 12 morning meeting, but I was excluded from the meeting held
 13 with General Mbombo round about 1 o'clock.
 14 CHAIRPERSON: So the mistake, if there's
 15 a mistake, is really –
 16 MR BOTES: On the return.
 17 CHAIRPERSON: - on the phrase "On our
 18 return."
 19 MR BOTES: That's correct, Mr Chair.
 20 CHAIRPERSON: And the reference to the
 21 exclusion preceding that rather than following it.
 22 MR BOTES: That's correct, Mr Chairman.
 23 CHAIRPERSON: Okay.
 24 MS MOTLOENYA: Mr Botes, for the purposes
 25 of my discussion with you right now the time is not really

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1 important. What I want to know is that you say you
 2 remember being present when Major-General Annandale and
 3 Colonel Scott were explaining the plan and briefing the
 4 members. Correct?
 5 MR BOTES: That's correct, Mr Chair.
 6 MS MOTLOENYA: Now I want to know why was
 7 it that you were allowed to be present when the members
 8 were being briefed?
 9 MR BOTES: Mr Chairman, there was a lot
 10 of other decisions made as from the Tuesday and the
 11 Wednesday where I was involved in the JOC. I was part of
 12 the JOC as a partner in the JOC and if any decisions are to
 13 be made where the police deployment are deployed, then I
 14 would be aware of that, that I can alert my security
 15 personnel where the police are deployed. It is no use when
 16 the police go to an area and my people are not aware of
 17 that or they're going to do something and my people are not
 18 aware, and also the other way around, if the security guys
 19 are doing something and the police are not aware of that.
 20 That's is why I'm present while they make briefing sessions
 21 to the police members.
 22 MS MOTLOENYA: And you would have a
 23 detailed knowledge of what the plan was. Is that correct?
 24 MR BOTES: Mr Chairman, there wasn't a
 25 detailed knowledge, only what I observed on the proxy.

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1 CHAIRPERSON: [Microphone off, inaudible]
 2 paragraph 48.4 of your affidavit in the bundle at page 80,
 3 in fact also 48.3, but 48.4 was the one I was interested
 4 in. "There were times when I was asked for information
 5 about particular situations on the ground. In this regard
 6 I would provide factual information to SAPS, layout of
 7 hostels, number of residents, critical installations,
 8 access roads, etcetera. How to deal with that situation
 9 was a decision in the purview of the SAPS." Now I must say
 10 that makes sense. If they say we want to go here and you
 11 say well you can't go there because that road ends in a
 12 donga, I mean it happened to General Naidoo apparently on
 13 one occasion, but things like access roads was something
 14 that it was useful for them to know about and they didn't
 15 have the knowledge, so you could provide it.
 16 MR BOTES: That's correct, Mr Chairman.
 17 CHAIRPERSON: End result they didn't
 18 actually go into hostels, so they didn't actually need
 19 knowledge of layout of hostels or number of residents, but
 20 what you also talk about is critical installations, access
 21 roads, etcetera. Now these were matters which were
 22 relevant for them to know about, depending on what their
 23 decisions were, and they needed advice from someone who
 24 knew the lie of the land, as it were. Is that –
 25 MR BOTES: That's correct, Mr Chairman.

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1 They cannot properly plan and deploy their resources and
 2 their units if they do not have knowledge of the layout.
 3 Like an example of forward holding 2, they asked me what's
 4 the best way to get to there except from passing the koppie
 5 and driving past the koppie. So I directed them another
 6 route to get to forward holding point 2 without passing the
 7 koppie. So that kind of information is important for them
 8 to execute their plan, but for me is assistance and
 9 guidance to the police.
 10 MS MOTLOENYA: Mr Botes, you didn't need
 11 to be there present in the JOC to give that kind of
 12 guidance to the police when they were presenting their
 13 plan. Correct?
 14 MR BOTES: Mr Chairman, I had to be there
 15 and that's normal practice in any JOC, joint operational
 16 centre.
 17 MS MOTLOENYA: And you said that you
 18 didn't have a detailed knowledge of what the plan was, but
 19 you had as much knowledge as the other members that they
 20 were briefing. Is that not correct?
 21 MR BOTES: Mr Chairman, that's not
 22 correct because I wasn't part of all the briefing sessions
 23 where the police specifically executed and changed the
 24 plan, because the plan was only presented once which I saw.
 25 So all the previous versions I wasn't part of the planning

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1 CHAIRPERSON: Of course.
 2 MS MOTLOENYA: Chair, I think it's best
 3 that I start with the new topic tomorrow.
 4 CHAIRPERSON: I see. Alright, I was told
 5 you weren't going to be here tomorrow, but you obviously
 6 changed your plans. We will adjourn now until 9 o'clock
 7 tomorrow morning.
 8 [COMMISSION ADJOURNED]
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1 and the phases of that plan. So what I can witness here is
 2 what I saw. I cannot explain what the changes were before
 3 I saw the plan.
 4 CHAIRPERSON: Are you saying there was in
 5 effect a new plan on the Thursday?
 6 MR BOTES: Mr Chairman, I wouldn't know.
 7 It was a plan. I know there was alterations of the plan,
 8 but I do not have detailed, as alleged that I have detailed
 9 knowledge of the plan.
 10 MS MOTLOENYA: Mr Botes, you had the
 11 details of that briefing and I must give you an opportunity
 12 to comment on this, that we're going to argue that that
 13 amounted to an operational involvement by Lonmin in the
 14 SAPS operation on the 16th of August 2012. Would you like
 15 to comment?
 16 MR BOTES: Mr Chairman, as I said I saw
 17 the plan which was presented and I understood what was the
 18 phases of the plan because being experienced in the field I
 19 could see what was the plan and easily understood. So it
 20 is not difficult to understand when a plan is presented
 21 from a proxy to know what's the phases and what is the, how
 22 the people will engage into the people.
 23 MS MOTLOENYA: Mr Chair, we've reached
 24 our final topic. Might I just confer with my colleague
 25 on –

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