

# 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 267

31 JULY 2014

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<p style="text-align: right;">Page 33814</p> <p>1 [PROCEEDINGS ON 31 JULY 2014]  2 [09:17] CHAIRPERSON: The Commission resumes. We  3 had some housekeeping to attend to this morning which is  4 why we're not starting at the scheduled time. I'm sorry,  5 apologise to those who waited in vain for us to start at 9  6 o'clock. Mr Sinclair, you're still under oath.  7 GRAEME MILLER SINCLAIR: [s.u.o.]  8 CHAIRPERSON: Mr Bham.  9 EXAMINATION BY MR BHAM SC (CONTD.):  10 Thank you, Mr Commissioner. Mr Sinclair, you still have  11 your witness statement in front of you, do you?  12 MR SINCLAIR: Yes, Mr Chairman, I do.  13 MR BHAM SC: Before we go into your  14 witness statement and just for the assistance of the  15 Commission, there have been a few acronyms used about  16 various units within Lonmin Security Division. There's  17 been a reference to the TRU, the TPU and the SIU. Could  18 you explain to the Commission what those acronyms stand for  19 and what those units deal with? So the first one is the  20 TRU.  21 MR SINCLAIR: Mr Chairman, TRU is our  22 Lonmin Mining Security Tactical Response Unit and they  23 would deal with issues out of the normal units' operations.  24 As an example we have banks on our property at the hostels  25 and that and if there were issues to deal with banks,</p>	<p style="text-align: right;">Page 33816</p> <p>1 CHAIRPERSON: You say one additional  2 team. What's a team? How many people –  3 MR SINCLAIR: A team is two people in a  4 vehicle –  5 CHAIRPERSON: I see.  6 MR SINCLAIR: - in a vehicle there would  7 be those on dayshift – oh sorry, two on dayshift and one on  8 nightshift, and then there was also a Dog Unit provided by  9 the contractors that would be attached to the Tactical  10 Response Team.  11 CHAIRPERSON: I see, thank you.  12 COMMISSIONER HEMRAJ: And what equipment  13 does the TRU carry?  14 MR SINCLAIR: Sorry, Ma'am –  15 COMMISSIONER HEMRAJ: What equipment –  16 MR SINCLAIR: - I'm a bit hard of  17 hearing.  18 COMMISSIONER HEMRAJ: What equipment do  19 they have? What kind of firearms do the TRU have?  20 MR SINCLAIR: The TRU would have the  21 standard issue – if you're asking the firearms, standard  22 issue firearms, side arms, they would have the shotguns  23 with rubber and – I'm not an expert in the types that they  24 have. I have experts to deal with that, but they would  25 have the appropriate, the shotguns and they would be, we</p>
<p style="text-align: right;">Page 33815</p> <p>1 because you need a different kind of security for that,  2 they would deal with those type of issues. Copper theft,  3 they spend a lot of time, were trained to go underground,  4 etcetera, on copper theft, etcetera.  5 COMMISSIONER HEMRAJ: And nothing related  6 to strike activity?  7 MR SINCLAIR: They were also trained in  8 crowd control and backing up the Crime Prevention Unit, the  9 CPU unit, who were out roving on the ground. So they would  10 be in response to assist them if required.  11 CHAIRPERSON: How many members were in  12 the TRU?  13 MR SINCLAIR: Say again, Sir?  14 CHAIRPERSON: How many members were in  15 the TRU?  16 MR SINCLAIR: In the TRU I, if I recall  17 correctly I have six permanent members and then I also have  18 some, we are, we have a contract with one of the security  19 companies, I also have some of their members contracted in  20 with the same level and skills that would work with them,  21 and it –  22 CHAIRPERSON: About how many of them?  23 MR SINCLAIR: If I recall correctly there  24 are, there is one additional team on dayshift. I would  25 have to go back and just remember exactly –</p>	<p style="text-align: right;">Page 33817</p> <p>1 had a licence for a limited number of rifle –  2 CHAIRPERSON: R5s perhaps?  3 MR SINCLAIR: R5-type rifle, so I would  4 have to call Nick Louw or one of those people –  5 CHAIRPERSON: There was evidence –  6 MR SINCLAIR: - specific –  7 CHAIRPERSON: There was evidence about  8 rifles like R5s that didn't have the automatic facility.  9 MR SINCLAIR: We are not allowed to have  10 automatic. They are single fire, but they would be, they  11 would have access to those as well as one or two of the  12 other trained and licensed people who were allowed to would  13 also have access. So it wasn't just the TRU that had  14 access. For instance if there was an armed robbery at a  15 bank at the hostels they couldn't go in with rubber bullets  16 to deal with those type of crimes, so that's why that is  17 licensed for us to carry those if required, depending on  18 the circumstances.  19 CHAIRPERSON: So that's the TRU. The  20 next one, Mr Bham? What are you going to deal with?  21 MR BHAM SC: The CPU. The CPU which you  22 referred to [microphone off, inaudible]  23 MR SINCLAIR: Mr Chair, the CPU is the Crime  24 Prevention Unit. Those are the 24/7 teams that we have  25 responding to the guards, responding to incidents. They</p>

<p style="text-align: right;">Page 33818</p> <p>1 are driving, they are on the mine permanently. They cover 2 a 24/7 shift and they would be the teams that would do the 3 roving response and backup to access control bars, events, 4 or any other incidents that might be reported across the 5 company. 6 CHAIRPERSON: How many CPU members do you 7 have? 8 MR SINCLAIR: Sir, there were, there, in 9 the teams there is a CPU leader and he has his vehicle and 10 a backup with him and then there would be a minimum of 11 three units, one placed at each mine, and I also had some 12 contracting units, depending on our workload and our 13 requirements contracting units that we would bring in so 14 that we had two units out with the Crime Prevention – a 15 unit with each, at each mine with the Crime Prevention 16 Unit, so – 17 CHAIRPERSON: How many members per unit? 18 MR SINCLAIR: Sir, in each vehicle we 19 tried at all times to make sure that the vehicle with the 20 driver and his colleague, his partner. 21 CHAIRPERSON: So a unit is effectively 22 two people? 23 MR SINCLAIR: Two people is a unit in a 24 vehicle, Sir. 25 MR BHAM SC: And then finally the SIU.</p>	<p style="text-align: right;">Page 33820</p> <p>1 on them to provide manpower for those conditions, and that, 2 so we have that substantial contract with Protea Coin. 3 We then have access to other service, other 4 service providers in that field, G4S if required, but we 5 don't have them permanently on our property but we have 6 access to be able to requisition their services if we 7 needed them. Other security – then there are smaller 8 security companies. I know for instance in the Brits area 9 there is a company, I think they call themselves the PPS, 10 it's a security company that if we need a short-term or 11 some rapid response they would come on. They were used at 12 the process division during this, PPS were used at the 13 process division during this process at the – if I, I stand 14 corrected, but at the BMR Smelter. We have records of 15 where they were used, but they were used there. So, and I 16 think, to the best of my immediate recall those, Mr Chair, 17 are the prime security companies that we had access to and 18 used. 19 CHAIRPERSON: Now Protea we know had a 20 helicopter. 21 MR SINCLAIR: Say again, Sir? 22 CHAIRPERSON: Protea we know had a 23 helicopter. 24 MR SINCLAIR: Protea Coin have small 25 helicopters and I had the access to be able to utilise a</p>
<p style="text-align: right;">Page 33819</p> <p>1 MR SINCLAIR: The SIU is very similar to 2 the Tactical Response Unit, but it's in the process 3 division and they would be seconded to me – sorry, they are 4 the Security Intervention Unit, so instead of Security 5 Tactical Response it would be – and they are very, they are 6 in the same, well they respond the same, they have the same 7 type of equipment. It's just the one deals in the process 8 and the other was in mining. If we needed them they would 9 come. If that process needed TRU, TRU would go to them, 10 Sir. 11 MR BHAM SC: And then, Mr Sinclair, one 12 final question before we go back into your witness 13 statement. You have made reference to contract security 14 employees. Now with whom did Lonmin at Marikana contract 15 in relation to security and in what circumstances were such 16 contractors used or engaged? 17 MR SINCLAIR: Mr Chairman, we have a 18 substantial contract with Protea Coin Security for our 19 guarding, for our access. We also in that contract have 20 the facility to be able to draw in for instance as I've 21 explained, additional people to back up the Tactical 22 Response Units, to bring in dogs, they supplied Dog Units 23 if we required them, and if we had, for instance we decided 24 to do, because our roads are all open, if we decided to do 25 a series of roadblocks, road access control, we could call</p>	<p style="text-align: right;">Page 33821</p> <p>1 helicopter if I saw the need, or through, obviously through 2 my channels; I would have to go through my direct reports 3 on things like that – 4 CHAIRPERSON: Yes, what interested me was 5 you talked about security 24/7. 6 MR SINCLAIR: Yes, Sir. 7 CHAIRPERSON: Now presumably patrolling 8 was being done – 9 MR SINCLAIR: Yes, Sir. 10 CHAIRPERSON: - right through the day and 11 night, 24 hours – 12 MR SINCLAIR: Yes, Sir. 13 CHAIRPERSON: - to see if anything was 14 happening, anything was developing and so on. Did the, was 15 the helicopter used for that kind of thing on a regular 16 basis? 17 MR SINCLAIR: Sir, definitely. On, if I 18 recall correctly, on the Friday of this portion that we're 19 dealing with, these dates that we're dealing with, that the 20 helicopter had been – 21 CHAIRPERSON: That's the 10th – 22 MR SINCLAIR: They had used the Friday, 23 the 10th, Mr Chairman. 24 CHAIRPERSON: 10th of August. 25 MR SINCLAIR: If I recall correctly, and</p>

<p style="text-align: right;">Page 33822</p> <p>1 I'll have to go back to – we've got comprehensive records 2 of when they were there, but I'd have to go back. On the 3 Friday I know they – I know, I recall that the helicopter 4 had been brought in and based close to my office, we have a 5 landing zone, and it was used for observations. Because we 6 have so many remote areas around our shafts, between our 7 shafts, there are a lot of remote areas and it's very 8 difficult for our cameras or even our patrols to see that. 9 It's incredibly useful to have the helicopter to overfly if 10 we have a concern or we would like to see something. 11 CHAIRPERSON: And was overflying done? I 12 know the – 13 MR SINCLAIR: Definitely – 14 CHAIRPERSON: - Protea Coin helicopter 15 was also made available by Lonmin to the police for 16 certain – 17 MR SINCLAIR: No, Mr Chairman, may I – 18 CHAIRPERSON: No, it was on the 16th for 19 example where some members of the police service were taken 20 up because the police helicopters were already used, taken 21 up into the sky on the Thursday afternoon. But I'm not 22 concerned about that. From the period from the 10th 23 onwards – 24 MR SINCLAIR: Ja. 25 CHAIRPERSON: I'm not concerned about use</p>	<p style="text-align: right;">Page 33824</p> <p>1 MR SINCLAIR: Ja, so I had a single 2 helicopter, Mr Chair, that was under our control for 3 surveillance out to 3 Shaft at Eastern Plats, which is a 4 considerable distance away from us, and out to the Karee 5 areas and back and around. On the southern side 90% of 6 those operations after the Sunday morning when the police 7 came in, I had instructed that it was on the southern side 8 of the railway line and they would stay in the helicopter 9 they allocated me. Protea Coin had a second helicopter 10 that they had an arrangement with the police. I do not 11 know what – I was not involved in that, but there was 12 always a second helicopter there, but their management team 13 were in discussions with the police on that – 14 CHAIRPERSON: Okay, I understand that. I 15 was interested to know whether the helicopter at any stage 16 part of the surveillance on a regular basis would have 17 flown over the koppie, or the – in fact there are three 18 koppies, aren't there? 19 MR SINCLAIR: That's correct. Mr Chair, 20 my instructions were explicit and clear and I think, I 21 believe it was from the Monday morning because on Sunday we 22 still had a very limited police, but from the Monday 23 morning when General Mpembe and the teams moved in my 24 instructions were clear, we stay this side of the railway 25 line, do not interfere in the police operation at all.</p>
<p style="text-align: right;">Page 33823</p> <p>1 for the police. 2 MR SINCLAIR: Yes, Sir. 3 CHAIRPERSON: But did you have regular 4 flights done by the helicopters just to see what was going 5 on? 6 MR SINCLAIR: Very definitely so. On the 7 Friday, I'm sure it was on the Friday it started. On the 8 Saturday, on the Sunday, and then for the rest of the week 9 and we had a single helicopter. The security team at 10 Lonmin had a single helicopter designated to the security 11 team. It was under our control. It was our security, and 12 it was used in our operations and my instructions on that – 13 sorry, you said you don't want to deal with the 16th. My 14 instructions – 15 CHAIRPERSON: I'm interested in the 16 patrolling and the surveying and so on that was done. 17 MR SINCLAIR: Yes, and it was – 18 CHAIRPERSON: And what I said was I 19 didn't want you to go into the question – 20 MR SINCLAIR: Detail, yes. 21 CHAIRPERSON: - if it was made available 22 to the police service. I know it was on the Thursday for 23 example, but we had evidence about that. I'm interested in 24 other used of the helicopter during the period from the 10th 25 through to the 16th.</p>	<p style="text-align: right;">Page 33825</p> <p>1 That was my instructions and I know Mr Dirk Botes would 2 have carried that out, Sir. 3 CHAIRPERSON: I see. Alright, thank you. 4 COMMISSIONER HEMRAJ: Mr Sinclair, in the 5 event of your needing to escalate your danger levels to 6 anything but green, you would theoretically be able to pull 7 in the full complement of all these units and resources at 8 your command to protect your property and your employees? 9 MR SINCLAIR: As the manager of security 10 I had that authority and responsibility from Lonmin. I 11 would obviously brief my direct report and whoever I would 12 need to brief if I was making such a decision. 13 COMMISSIONER HEMRAJ: Thank you. 14 CHAIRPERSON: I think we must now ask Mr 15 Wesley to turn on the clock. I don't think this section 16 should be debited to Lonmin. 17 MR BHAM SC: Nonetheless, Mr Chairman, Mr 18 Sinclair, I'm not going to go through any further aspects 19 of the witness statement. What's there is there and is 20 self-explanatory. I would like to use the remaining time 21 for you to deal with the topic which is going to generate a 22 lot of interest and it's quite important that it gets a 23 full explanation. 24 Mr Sinclair, during the course of Mr Botes' 25 cross-examination an issue arose –</p>

<p style="text-align: right;">Page 33826</p> <p>1 MR SINCLAIR: Mr Chairman, sorry, may I 2 just ask, I'm hard at hearing. I wonder if – 3 CHAIRPERSON: May I say that the people 4 talking there in the background, if people want to have 5 conversations may I suggest they go outside? It's very 6 difficult for us to hear the evidence of the witness and 7 very difficult for the witness to hear us asking questions. 8 MR SINCLAIR: I apologise for my request 9 but I – 10 CHAIRPERSON: It's not your fault. No, 11 it's not your fault. No, I also had a problem with this 12 chatting that's going on. Part of the problem is if anyone 13 has got headphones not on his or her head and on the desk 14 so that we can hear the interpretation, that mustn't happen 15 either. It's very important we hear everything the witness 16 says and it's very important he hears everything that we 17 ask him and the counsel ask him as well. 18 MR SINCLAIR: Thank you. 19 CHAIRPERSON: Right, now that we've 20 sorted that out, Mr Bham, can we continue? 21 MR BHAM SC: Thank you, Mr Sinclair. Mr 22 Sinclair, during the course of Mr Botes' evidence and 23 cross-examination reference was made to the Lonmin 24 occurrence book. Reference was also made to two versions 25 of that occurrence book, the one version of which was</p>	<p style="text-align: right;">Page 33828</p> <p>1 Which, I think it is the sheets that you are referring to. 2 MR BHAM SC: It is, but just so that 3 you're not confused about it, Mr Chairman, may I ask if 4 exhibit XX2 can be put onto the screen? XX2.10, and 5 followed by EEEE19.2, which has the red lining, so the 6 witness is clear what I'm talking about. 7 MR CHASKALSON SC: Chair – 8 CHAIRPERSON: Yes, Mr Chaskalson? 9 MR CHASKALSON SC: We just had a report 10 that the sound through to the overflow translation room has 11 broken down and the translation as well, so maybe the 12 witness can have five minutes – 13 CHAIRPERSON: To collect his thoughts and 14 the other, those concerned with the sound to the overflow 15 room can sort it out. 16 MR CHASKALSON SC: Yes, Chair. 17 MR BHAM SC: What we will do in the 18 meantime, if it's okay, is just show to the witness 19 hardcopies of the documents – 20 CHAIRPERSON: Well, ja, I was going to 21 suggest that the hardcopies, I've got a copy of EEEE19, you 22 can borrow mine, and I'm sure someone else will have a copy 23 of the original one we got, just to – 24 MR SINCLAIR: Mr Chair, I'm very familiar 25 with that and if that's what you want me to answer on I am</p>
<p style="text-align: right;">Page 33827</p> <p>1 discovered by Lonmin and made no reference to the instances 2 where Lonmin security guards during the relevant period, 9 3 to 16 August, had discharged their firearms using rubber 4 bullets. The other version had those instances reported in 5 there in red lining. I think you know what I'm talking 6 about and I think the Commission knows what I'm talking 7 about. 8 I'm going to ask you in your own words, and I 9 don't want to lead you on this, to go carefully through the 10 circumstances in which the occurrence book system was first 11 implemented, who was responsible for its implementation and 12 ultimately responsible for its control, and explain how and 13 why the one version of the occurrence book made no 14 reference to those shooting instances – there were about 15 six of them – and the other one did make a reference to it. 16 As I said I don't want to lead you on that. I'm going to 17 ask you to testify fully to those matters in your own word 18 before the Commission. 19 MR SINCLAIR: Thank you, Mr Chair. Mr 20 Chair, I just want to gather my thoughts for a second on 21 what has been asked me so that I get it correct. 22 Mr Chairman, the first question was the – and I 23 just want to clarify, the occurrence books, are those the 24 hardcover books that the, that we have in emergency 25 operations and, or is it the sheets on that we have?</p>	<p style="text-align: right;">Page 33829</p> <p>1 comfortable with that, Sir. 2 CHAIRPERSON: Alright, well I hope we're 3 all comfortable when you're finished. Alright, we'll take 4 a five-minute adjournment. 5 [COMMISSION ADJOURNS COMMISSION RESUMES] 6 [09:59] CHAIRPERSON: The Commission resumes. Do 7 we now have an assurance that the sound system is working 8 to the overflow room and the interpretation is now being 9 able to be done? Is everything alright, can we proceed? 10 MR WESLEY: Chair, indications are that 11 we are ready to proceed. 12 CHAIRPERSON: Well, let's hope it lasts 13 all day. Thank you. You're still under oath, Mr Sinclair. 14 GRAEME MILLER SINCLAIR: (s.u.o.) 15 CHAIRPERSON: Mr Bham? 16 EXAMINATION BY MR BHAM SC (CONTD.): Mr 17 Sinclair, you now know what we're talking about. 18 MR SINCLAIR: Mr Chair, I believe so. 19 MR BHAM SC: Just to repeat, could you 20 tell us the circumstances in which the system of keeping 21 those records had come about and under whose control they 22 were? 23 MR SINCLAIR: Thank you. Mr Chair, I 24 would like to, just a short and not to delay the process, a 25 short thing that I think is important –</p>

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1 CHAIRPERSON: Keep that short, obviously  
 2 you must do justice to what you're going to tell us but be  
 3 as brief as you can because, you know, time is a very  
 4 precious commodity.  
 5 MR SINCLAIR: I certainly will. So when  
 6 I explained yesterday, I was asked about the red, the  
 7 green, et cetera. We had a process and in that process,  
 8 when we moved – we had a normal operation, when we moved  
 9 into the other operations, an orange or a red operation, I  
 10 had previously on times like that made sure that certain  
 11 documentation in addition to our normal operations, was put  
 12 in place because we know that we are asked questions during  
 13 and before, during and after a situation so I made – these  
 14 particular documents I had discussed, I know definitely  
 15 with Henry Blou and Peter Drysdale who were my emergency  
 16 managers, to say we needed a thing that we, the three of us  
 17 and whatever - could quickly and effectively have a mind  
 18 jogger and refer back to without going through tedious  
 19 books and that sort of thing. So I put, I put these  
 20 documents in place in our infrastructure with my team and  
 21 the way it worked, if we went to an orange mode there would  
 22 be a CCTV camera in that room, there would be a supervisor  
 23 in that room, depending on the levels, and there would be a  
 24 junior official, a clerical person, a road safety person  
 25 that would be based at the computer where this spreadsheet

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1 – and as you can see, it's a simple Excel spreadsheet – was  
 2 put in the thing and that person's task would be to apply  
 3 his mind or her mind and listen, a call coming in, make an  
 4 entry, something happening on the TV that they notice, on  
 5 the CCTV they've noticed, make an entry. Myself, I had  
 6 phoned a manager or a person, I would walk in and say  
 7 please make an entry, so that we had a running log with a  
 8 mind jogger and that was the principle behind that. When  
 9 this situation started on the Thursday, I think we had  
 10 moved – well, on the Thursday in our security environment  
 11 we knew there was a potential so I believe that it would  
 12 have started an orange mode that night. This document  
 13 would probably have started then, I haven't looked. As I  
 14 say, I can't remember when it – and that document went  
 15 through. During the course of that process I would have  
 16 gone in and then from time to time say, is the log being  
 17 done, is this being done and this would have been one of  
 18 the things that I would have focused – because I would have  
 19 used it. I would have used it for our communications  
 20 department, they would have had questions from press and  
 21 whatever and I would use that document and if necessary I  
 22 would give it to them and that would then move into the  
 23 public sort of area so I was particular about what was in  
 24 these documents. I was there and it would go to our human  
 25 resources if they were dealing with labour people or

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1 whoever, so it would be in the public domain. And the  
 2 document went through and I didn't specifically, and it  
 3 wasn't there, it was a line item, just a brief description  
 4 line item. If there had been a specific incident that had  
 5 not – I knew that there was proper investigation papers,  
 6 there was proper documentation, there were proper  
 7 statements that we had that could back up that line item.  
 8 I then sometime after this complete incident was concluded,  
 9 would have systematically gone through everything that was  
 10 associated with this event, before or after and the  
 11 subsequent. Is the CCTV camera footage correctly, has it  
 12 been documented, has it been referenced, has it been put  
 13 away securely, I would have gone through and I went through  
 14 this document. I can explicitly recall going through and I  
 15 think it was twice I went through this document and the  
 16 first time I had a look and I said, guys, there's a whole  
 17 lot of entries that I think are missing in here, will  
 18 somebody go and check them? And they went off and I  
 19 remember explicitly on the changes that were made. The  
 20 document came back to me and it was captured. It was  
 21 captured on the initial thing and it was captured on my  
 22 systems because I would have a backup copy from them  
 23 because I'm a methodical person. And I went through it and  
 24 I called Henry and I can't remember who I had discussions  
 25 with, I remember Henry was there and I said, Henry, I want

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1 this checked because I'm not satisfied. There are spelling  
 2 mistakes and there's sort of wrong grammar that could be  
 3 thing – would you please go and collect a hard set of all  
 4 the occurrence books in emergency operations, in central  
 5 operations, make photocopies give them to my assistant  
 6 Amanda van der Merwe and I called her and I said, Amanda, I  
 7 want you to take these, I want you to get somebody to help  
 8 you with the documents, somebody reads on that date at that  
 9 time this happened there. If it is missing, please add it  
 10 in. Make sure you add it in, in a colour that I can see it  
 11 was an amendment outside of the original capture. She said  
 12 yes, ja, I said do you understand and she went through and  
 13 I was going through a few of the items to explain to her  
 14 what I think. I came across a couple of items. I remember  
 15 coming across a security, we were doing some security  
 16 copper interventions and that was recorded there and I  
 17 thought, I don't want this in here because it could  
 18 compromise our security intervention in the copper crimes  
 19 that were going on, because I know that this document would  
 20 go through to communications and HR and I said listen, take  
 21 those out and I noticed there is an entry and I can't  
 22 remember if it was one or two but I definitely noted that  
 23 there was an entry about firearms and I said the firearms  
 24 should not be in here either. And I don't know if I said  
 25 it to her but I certainly would have said it to Henry, this

<p style="text-align: right;">Page 33834</p> <p>1 should not be in here because our firearms are captured on  2 a detailed incident report, they are captured on a detailed  3 firearms, I think they call it a firearms report. Henry is  4 in charge of that, he knows the correct terminology and  5 that has now been reported to the police because every  6 incident is reported to the police and this is now a police  7 matter. So because this working document of ours would go  8 to – as an example, Mr Chair – communications and it would  9 go out, I didn't want anything, so I said take it out, if  10 anybody needs that type of information, if the mine, on the  11 crimes things or the police on that – they have the  12 details.</p> <p>13 I was also very confident in my men. Take it  14 out, it's not relevant to this document. We have  15 substantial documents and it is in the police records.  16 There is nothing, because the law compels us to have a fire  17 – I forget the terminology, is it firearms officer or  18 something. The law compels us to have one of those to do  19 this recording and there is a firearms officer at the SAPS  20 that we have to report these things to. So by law we have  21 to do it, if for no other reason. So I was very confident  22 that it was there. I gave the instruction for those couple  23 of line items to be taken out. I gave the instructions for  24 the document to be, the English and the – I'm not a very  25 good speller but for those to be done and specifically for</p>	<p style="text-align: right;">Page 33836</p> <p>1 MR SINCLAIR: Absolutely, that was a  2 possibility. The call could have been misdirected to the  3 emergency control centre which is located right ext-door –  4 COMMISSIONER HEMRAJ: And sorry to  5 interrupt you but where would those have been recorded,  6 those reports?  7 MR SINCLAIR: That, they would have  8 diverted those calls and I hope they did it diligently,  9 diverted those calls to this centre because this, we had an  10 anomaly going on out of the ordinary day to day, so they  11 would have gone – and they were fairly well-versed with  12 this. However, please understand my comment that I had a  13 junior operator, a clerk person who was familiar with our  14 systems, doing that recording and doing that, so something  15 could have been missed. That's why I had diligently gone  16 through and said please go back to see that they are cross-  17 referenced.  18 COMMISSIONER HEMRAJ: And the hard set of  19 occurrence books that you talk about in emergency and  20 security, what does that relate to?  21 MR SINCLAIR: Just your question again  22 please, ma'am?  23 COMMISSIONER HEMRAJ: You said there  24 would be a hard set of the occurrence books in emergency  25 and security department. What would those relate to?</p>
<p style="text-align: right;">Page 33835</p> <p>1 that reason, knowing well that I had substantial records if  2 I was ever asked about anything like that, that I had  3 substantial and accurate records that could correctly  4 reflect and it was already with the SAPS, sir. So I would  5 like to – I think that is the questions I was asked. I  6 don't know if there's any other thing that I haven't  7 answered but definitely that was on my instructions, nobody  8 else's instructions. It was my department, I had to manage  9 that document, it was our internal work, sir.</p> <p>10 COMMISSIONER HEMRAJ: Can I just  11 understand? You say that this document was being captured  12 as the calls came in. At what location would that be?  13 MR SINCLAIR: That was in – where my  14 office space was, I had a little meeting room that we  15 called our information centre or I think it's been referred  16 to as a JOC. I call it the information centre where we  17 would have the special CCTV for an orange and a red mode,  18 we had a special telephone system outside our normal  19 telephone systems there and we have a special computer  20 there that would be capturing this, in the orange and the  21 red modes of our operation, madam.</p> <p>22 COMMISSIONER HEMRAJ: But by the same  23 token would there be other centres where reports would be  24 coming in that would not come in at the same time to your  25 information centre?</p>	<p style="text-align: right;">Page 33837</p> <p>1 MR SINCLAIR: In emergency operations  2 there is a hard copy, there is a book, it's a thick book  3 that they write from start to finish. Anything that comes  4 in they've got certain information they need to record.  5 There are other electronic documents that need to be  6 recorded. In the central operations control room there is  7 also that type. In the alarm control room there is also an  8 occurrence book that would relate more to alarms, so they  9 would be specifically there and if something was  10 incorrectly directed it should have been directed to the  11 correct facility, ma'am.</p> <p>12 COMMISSIONER HEMRAJ: So how many sets of  13 occurrence books would we need to have recourse to if we  14 were trying to trace and let's say report on these –  15 MR SINCLAIR: Mr Chair, to my, to the  16 best of my belief it would be, if you required them, the  17 emergency control room, it would be the alarm control room  18 would have had one but that would've been specifically  19 about alarms and that type of thing.</p> <p>20 COMMISSIONER HEMRAJ: How many did you –  21 MR SINCLAIR: So there would be three.  22 Sorry, and then over this period there was an occurrence  23 book in the JOC at the table, I think Dirk Botes explained,  24 where the camera, where our camera staff were working.  25 They had an occurrence book there, ma'am, so there should</p>

<p style="text-align: right;">Page 33838</p> <p>1 be actually four, to the best of my belief.  2 COMMISSIONER HEMRAJ: Thank you, Mr  3 Sinclair.  4 MR BHAM SC: Thank you, Mr Commissioner,  5 I have no further questions.  6 CHAIRPERSON: Thank you. Ms Pillay, are  7 you going to cross-examine first?  8 MS PILLAY: I am, thank you, Chair.  9 CHAIRPERSON: Yes.  10 MS PILLAY: Chair, before I begin with my  11 cross-examination if we can get through some of the  12 housekeeping, there are four new exhibits which we will  13 rely on.  14 CHAIRPERSON: Yes.  15 MS PILLAY: And these are part of the  16 consolidated bundle, Chair, you would find them from page  17 376.  18 CHAIRPERSON: Yes. Well, I take it we'll  19 call them – using FFFF rubric.  20 MS PILLAY: That's correct, Chair.  21 CHAIRPERSON: So FFFF – the bundle has  22 got many documents we have already, that have already got  23 exhibit numbers but this morning we were handed some extra  24 material which we inserted into our bundle and there's  25 other stuff that I saw when we left the chamber because of</p>	<p style="text-align: right;">Page 33840</p> <p>1 MS PILLAY: And the memorandum can be  2 found at page 378 of the bundle.  3 CHAIRPERSON: So it's bundle page 378?  4 MS PILLAY: 378.  5 CHAIRPERSON: What's the date of the  6 memorandum?  7 MS PILLAY: It's the 20th of December  8 2011.  9 CHAIRPERSON: Alright, so it's FFFF3,  10 memorandum to Mr Sinclair from Mr Kent and bundle 378 dated  11 20/12/2012 – 2011, is it? 20/12/2011?  12 MS PILLAY: 2011. 20th of December 2011.  13 CHAIRPERSON: Thank you.  14 MS PILLAY: The third document, Chair, is  15 a memorandum from Jakes Kruger to Jacques Erasmus. It's at  16 page 379 of the bundle and it's dated 25th of September  17 2012.  18 CHAIRPERSON: 25 December. Sorry,  19 September?  20 MS PILLAY: September.  21 CHAIRPERSON: 25 September 2012.  22 MS PILLAY: That's correct, Chair.  23 CHAIRPERSON: After the events that we're  24 busy with.  25 MS PILLAY: And that's at page 379 of the</p>
<p style="text-align: right;">Page 33839</p> <p>1 the problem with the, in connection with the other – I  2 don't know if those have been put in the bundle yet but  3 anyway, tell me what they are, we'll write them in and  4 start –  5 MS PILLAY: Chair, the first document is  6 an e-mail from Henry Blou to Mr Sinclair.  7 CHAIRPERSON: Sorry, that'll be FFFF2,  8 will it?  9 MS PILLAY: Dated 25th August at FFFF2.  10 CHAIRPERSON: So you say that's e-mail  11 from who to whom?  12 MS PILLAY: Henry Blou to Mr Sinclair  13 dated 25 August 2011 and that's at page 376 of your bundle  14 –  15 CHAIRPERSON: It's bundle page 376. 3,  16 is it? 376, 276?  17 MS PILLAY: 376.  18 CHAIRPERSON: 3, thank you. It's FFFF2,  19 e-mail from Mr Blou to the witness dated 22 August 2011.  20 MS PILLAY: That's correct.  21 CHAIRPERSON: That's bundle 376, yes.  22 And then the next one will be FFFF3, will it?  23 MS PILLAY: FFFF3, Chair, is the  24 memorandum to Mr Sinclair from Albert Kent.  25 CHAIRPERSON: Yes?</p>	<p style="text-align: right;">Page 33841</p> <p>1 bundle.  2 CHAIRPERSON: Yes, so FFFF4, memorandum  3 from J Kruger to Jacques Erasmus, bundle 379 dated  4 25/9/2012.  5 MS PILLAY: That's correct, Chair.  6 CHAIRPERSON: Is there any other document  7 you want to –  8 MS PILLAY: The final document, Chair, is  9 at page 381 of the bundle.  10 CHAIRPERSON: Yes?  11 MS PILLAY: It's a document headed  12 "Emergency procedures for Marikana" dated 21 September  13 2006.  14 CHAIRPERSON: Sorry, "Emergency  15 procedures for Marikana."  16 MS PILLAY: And it's an annexure to the  17 ICAM report.  18 CHAIRPERSON: So it's "Emergency  19 procedures for Marikana" dated what? You did give the  20 date.  21 MS PILLAY: 21 September.  22 CHAIRPERSON: Yes?  23 MS PILLAY: 2006.  24 CHAIRPERSON: Annexure to ICAM report.  25 MS PILLAY: The ICAM report.</p>



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1 COMMISSIONER HEMRAJ: Ms Pillay, the copy  
 2 we have is completely illegible. Can you help us with  
 3 another copy?  
 4 MS PILLAY: Commissioner Hemraj, we do  
 5 apologise. We've been trying very hard during the course  
 6 of yesterday to get a clearer version but we're really  
 7 struggling and we'll carry on trying to do that.  
 8 COMMISSIONER HEMRAJ: We just can't read  
 9 it at all.  
 10 MS PILLAY: Yes, the electronic version  
 11 is slightly clearer, so if we can make the electronic  
 12 version available.  
 13 CHAIRPERSON: I imagine that, one would  
 14 assume that Lonmin would have a legible copy somewhere so  
 15 I'm sure they can help us.  
 16 MS PILLAY: Chair, we will work on  
 17 getting either colour copies or getting electronic copies  
 18 available to you.  
 19 CHAIRPERSON: Thank you. Alright, so  
 20 let's just get – so it's FFFF2 to FFFF5. The first is this  
 21 e-mail in bundle 376. The second is a memorandum, bundle  
 22 378. The fourth is, the third one at FFFF4 is a memorandum  
 23 at B379, bundle 379 and the last one FFFF5 is "Emergency  
 24 procedures," bundle 381.  
 25 MS PILLAY: That's correct.

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1 CROSS-EXAMINATION BY MS PILLAY: Good  
 2 morning, Mr Sinclair.  
 3 MR SINCLAIR: Sorry. Good morning,  
 4 ma'am.  
 5 MS PILLAY: If we can begin, Mr Sinclair,  
 6 with the issue around the occurrence book and if I can ask  
 7 for EEEE19.1 to be put up on the screen?  
 8 MR SINCLAIR: Do I find it in here?  
 9 MS PILLAY: You do have it in your  
 10 bundle. Now as you'll agree, Mr Sinclair, that an  
 11 occurrence book is a contemporaneous document which  
 12 essentially serves as a record of all occurrences reported  
 13 to the control room, isn't that correct?  
 14 MR SINCLAIR: That, that is the principle  
 15 behind it, yes.  
 16 MS PILLAY: That's correct, and what we  
 17 see in EEEE19, the version that's on the screen, is a  
 18 contemporaneous record of everything that transpired in  
 19 that period which was reported to the control room.  
 20 MR SINCLAIR: I believe I have answered  
 21 that to say I cannot guarantee that everything has been  
 22 captured and I have explained that to – sorry, Mr Chair, I  
 23 have explained, I think I've explained that maybe not  
 24 everything is captured but certainly that is the broad-  
 25 based principle behind on these.

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1 MS PILLAY: And while you say that not  
 2 everything is captured we can be rest assured that what is  
 3 captures is what transpired?  
 4 [10:18] MR SINCLAIR: Mr Chair, I have not read  
 5 item for item, so for me to say that is 100% exact, but I  
 6 believe that it is captured in a fair way. If I could put  
 7 it that way, Mr Chair.  
 8 MS PILLAY: I'm satisfied with that, Mr  
 9 Sinclair, so we're clear that EEEE19 is a fair capturing of  
 10 what transpired.  
 11 MR SINCLAIR: I believe so.  
 12 MS PILLAY: Now if we can just take two  
 13 steps back, Mr Sinclair and just to turn back to exhibit  
 14 XX2.10 and you will recall this is the version of this  
 15 document that was discovered by Lonmin through its  
 16 discovery process before this Commission. Isn't that  
 17 correct?  
 18 MR SINCLAIR: I believe so.  
 19 MS PILLAY: Yes this is the document that  
 20 Lonmin put forward as the RDO Karee occurrence book and  
 21 which it discovered to this Commission.  
 22 MR SINCLAIR: I understand that to be  
 23 correct. I think it is correct.  
 24 MS PILLAY: And this was the version of  
 25 the occurrence book that this Commission was working with

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1 for a while until the evidence leaders requested the hard  
 2 drive of Colonel Scott, Mr Sinclair and discovered a  
 3 different version of this occurrence book. Isn't that  
 4 correct?  
 5 MR SINCLAIR: I don't know, I cannot say  
 6 whether that was from Mr Scott or where, but the version  
 7 that you showed me I believe was there, if you say you  
 8 discovered it there I accept that.  
 9 MS PILLAY: Well that's what I'm putting  
 10 to you is that EEEE19.1 is the version of the occurrence  
 11 book that the evidence leaders found on the hard drive of  
 12 Colonel Scott and this occurred late last year, in August  
 13 or September of last year.  
 14 MR SINCLAIR: I hear you, Ma'am. Sorry I  
 15 hear you, Mr Chair.  
 16 MS PILLAY: So until August or September  
 17 last year the Commission was under the impression that this  
 18 was the correct version of the contemporaneous document and  
 19 it was only in August or September last year as a result of  
 20 the evidence leaders investigating and inspecting Colonel  
 21 Scott's hard drive that we found a different version of the  
 22 occurrence book. You accept that.  
 23 MR SINCLAIR: You're informing me of  
 24 that. I accept your information.  
 25 MS PILLAY: Now, Mr Sinclair, I must put

<p style="text-align: right;">Page 33846</p> <p>1 to you that there is another copy of exhibit EEEE19.1  2 that's found its way to the Commission and that's as an  3 annexure to the ICAM report. Are you aware of that?  4 MR SINCLAIR: It's certainly a version of  5 this report, it could have been called by the ICAM team  6 because it was, as I have explained, it was a document that  7 was available. So they could have called for it, yes.  8 MS PILLAY: Just to be clear on this, Mr  9 Sinclair, what clearly transpired because EEEE19.1 and if  10 we could have that version up on the screen, just to be  11 clear, EEEE19.1 is an annexure to the ICAM report. Do you  12 accept that?  13 MR SINCLAIR: I hear what you say and if  14 that is your evidence then yes.  15 MS PILLAY: So in the course of the ICAM  16 team conducting their investigation and producing their  17 report when they used the Lonmin Karee RDO occurrence book  18 this is the document which they worked on.  19 MR SINCLAIR: If that is what you're  20 telling me then they would have used it.  21 MS PILLAY: Because that is what is  22 annexed as the Lonmin Karee RDO occurrence book to the ICAM  23 report.  24 MR SINCLAIR: I personally never looked  25 to see if it was, but if that's what I'm told then I accept</p>	<p style="text-align: right;">Page 33848</p> <p>1 by Lonmin, but because of procedure which Ms Pillay will  2 explain to you.  3 MS PILLAY: And what transpired, Mr  4 Sinclair, is that the ICAM report was only produced before  5 the Commission when it was specifically requested by the  6 evidence leaders who came to learn of the existence of the  7 ICAM report. Do you accept that?  8 MR SINCLAIR: I accept that, ja.  9 CHAIRPERSON: Were you informed of that?  10 Were you told during the course of development, proceedings  11 before this Commission – were you told that the ICAM report  12 had been requested by the evidence leaders or do you hear  13 this for this time from Ms Pillay?  14 MR SINCLAIR: I hear this version that it  15 had not been discovered for the first time. I was asked, I  16 think it was a couple of weeks ago, where is the ICAM  17 report, but I can't recall who asked me. So that's the  18 sort of first time that it came to my attention that it was  19 required.  20 MS PILLAY: So, Mr Sinclair, can I put to  21 you what net effect is of what I've just described to you?  22 And that is the following. Until August or September last  23 year the version of the occurrence book which this  24 Commission was working with was the version which had very  25 significant deletions from it and those deletions made at</p>
<p style="text-align: right;">Page 33847</p> <p>1 MS PILLAY: But is of interest to us, Mr  2 Sinclair, is how the ICAM report eventually came before  3 this Commission. Are you aware that the ICAM report was  4 not discovered by Lonmin of its own accord?  5 MR SINCLAIR: When you say not discovered  6 by Lonmin –  7 MS PILLAY: Through –  8 CHAIRPERSON: The procedure – the parties  9 had to make – we have a procedure here at the Commission  10 based on the practise in courts. In a civil case various  11 parties in the case have to what we call discover which  12 means disclose, make available copies of their documents.  13 And that applied to the Commission, various parties had to  14 make their relevant documents available. The ICAM report  15 is obviously material to our work and that was a document  16 which should have been as we say discovered. It should  17 have been disclosed by Lonmin and it wasn't initially.  18 Lonmin discovered certain, when I use the discover you're  19 going to say I'm using technical means. Lonmin discovered  20 certain documents and certain document which should have  21 been discovered weren't.  22 MR SINCLAIR: Yes, Sir.  23 CHAIRPERSON: And among those documents  24 that should have been discovered was the ICAM report. We  25 only got that, not because it was given to us voluntarily</p>	<p style="text-align: right;">Page 33849</p> <p>1 your instance.  2 MR SINCLAIR: Yes sorry –  3 MS PILLAY: And had it not been for two  4 processes that instigated and initiated by the evidence  5 leaders, the one being the investigation of Colonel Scott's  6 hard drive and the second being the evidence leaders  7 calling for the ICAM report, this version EEEE19.1 would  8 not have been before the Commission.  9 MR SINCLAIR: Mr Chair, I don't think I  10 can really comment on that, what was put in and what wasn't  11 and what was discovered and what wasn't because whatever I  12 was ever asked for was certainly always made available. So  13 for me personally to comment on that I think it would be  14 incorrect of me, Sir.  15 CHAIRPERSON: May I ask you this?  16 Various statements were prepared from time to time by  17 Lonmin and made available to the Commission.  18 MR SINCLAIR: Yes, Sir.  19 CHAIRPERSON: One of them was a statement  20 by Mr Botes, in fact various statements, but he made a  21 statement very earlier on in October I think it was 2012.  22 Now were you shown these statements, did you read them?  23 MR SINCLAIR: Mr Chairman, I knew  24 statements would be taken. I think they were available to  25 me, I don't recall ever reading anybody's statement. I</p>

<p style="text-align: right;">Page 33850</p> <p>1 don't believe there was any need for me to read anybody's 2 statements. That was the legal teams were dealing with the 3 process, they had recorded, I know they would come to my 4 office and say we need so and so and so for statements. 5 And I would say fine go ahead, but maybe I should have paid 6 attention, but certainly I don't recall reading anybody's 7 statement, Mr Chair. 8 CHAIRPERSON: Did you have discussions 9 with Mr Botes or other colleagues, but Mr Botes 10 particularly because he was obviously very much involved? 11 MR SINCLAIR: Yes, Sir. 12 CHAIRPERSON: Did you have discussions 13 with him in October of 2012, discussing, going over what 14 had happened? 15 MR SINCLAIR: Mr Chair, I would have had 16 discussions with my teams if something had taken place that 17 I needed to manager. If something had happened I would 18 have called them and said guys let's review this, what 19 happened, where does this go. That would have been 20 expected of me by the management team to have those 21 discussions to see what went right, were there problem 22 areas, what did we need to sort out. So I would have had 23 continuous, ongoing discussions as the manager of that 24 team. Those are the discussions I would have had, Mr 25 Chair, that's the way I operate.</p>	<p style="text-align: right;">Page 33852</p> <p>1 the version and I would have said please go ahead and go 2 and get them. What version they took, the police had 3 access to these versions, I think you've clearly said to me 4 that you obtained a version from Mr Scott and I clearly 5 defined that when I was telling you my role where this is a 6 public document and it could go. And I was very careful of 7 what was in the public document, particularly in relation 8 to a police investigation. Once it has been given to the 9 police and it is in their thing on investigation I had to 10 be extremely careful of making sure that we were not 11 jeopardising the investigation or doing that. And if I 12 may, just for clarity on my thing behind that. There had 13 been photographs and I'm not 100% sure of the outcome of 14 the inquiry, but there had been photographs, graphic 15 photographs of an incident and it was very unpleasant 16 photographs that went viral. We know that they must have 17 disseminated somewhere, I instituted an investigation to go 18 and see, so I was very aware that – when I went and gave 19 that instruction it was completely focused on I don't 20 believe that is correct, take it out and leave it in the 21 correct format. And make sure that that is available for 22 the police investigation and that's what I know about this. 23 If there is a version that is this and there's a version – 24 and in fact I think you can see at the top, Mr Chair, if 25 you see the top you'll see a date and a revision and I</p>
<p style="text-align: right;">Page 33851</p> <p>1 MS PILLAY: You would have been advised 2 by those under your command or reporting to you of 3 incidents as and when they occurred. 4 MR SINCLAIR: If they deemed it there and 5 then necessary I would have been immediately advised 6 otherwise I would have been advised a little later and we 7 have a system, we have an SMS and we have other systems 8 that I could see and manage what was going on and ask when 9 I was required. I had responsible people working with me 10 that got on with the job. 11 MS PILLAY: You see, Mr Sinclair, I've 12 got a difficulty with that explanation and can I tell you 13 what it is? 14 MR SINCLAIR: Yes, Ma'am. 15 MS PILLAY: When SAPS is given a version 16 of the occurrence book, they're given the complete version 17 clearly because that's found in Colonel Scott's hard drive. 18 When the ICAM investigators are given a version of the 19 occurrence book they're given the complete version clearly 20 because that's an annexure to the ICAM report, but when 21 this Commission is given a version of the occurrence book 22 we are given a reduced version which contains deletions at 23 your instance or deletions made at your instance. 24 MR SINCLAIR: Ma'am, I'm very clear on 25 what you say. The ICAMs would have gone and said we need</p>	<p style="text-align: right;">Page 33853</p> <p>1 never, ever went and checked on is it this version, is it 2 the latest version, is it the what version. But the 3 revisions are very clearly there. 4 CHAIRPERSON: That's if we got this 5 document, we never got this document. I mean I can 6 understand your saying you don't want things to get into 7 the public domain, there can be problems and so forth. 8 MR SINCLAIR: Yes, Sir. 9 CHAIRPERSON: I understand that. I can 10 also understand you saying that you told the police 11 already, but we, the Commission required full disclosure. 12 It wasn't enough for you to rely on the police to draw our 13 attention to the fact that the OB we got was incomplete. 14 As a matter of fact they didn't tell us. You had a duty to 15 make full disclosure to us, not to rely on the police to 16 disclose the bits that you'd held back. I mean can you 17 justify your conduct? 18 MR SINCLAIR: Mr Chair, in my view 19 disclosure – when the Lonmin legal team came and requested 20 we need this, we need that I believe that anything I was 21 asked for or anything I believed should be tabled was 22 tabled with – I believe that that was correctly done. I 23 didn't go onto a check list to check myself had I forgotten 24 anything, but I certainly believe that anything that should 25 have been, for instance the video material, I made it very</p>

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1 clear, we had absolute video material. Please be aware of  
 2 this. I definitely, to our legal team said we have a log  
 3 sheet, I didn't say to them go and look at the version, go  
 4 there, but this is our latest. We have a log sheet this is  
 5 it, so I definitely would have gone and made sure that if I  
 6 should have produced something that I would have done that,  
 7 Sir.

8 CHAIRPERSON: I take you're not  
 9 suggesting that your legal team were responsible for the  
 10 fact that we got the abbreviated log book and not the  
 11 complete one. And the complete one been given to the  
 12 police and given to ICAM. Knowing your legal team as I do,  
 13 I'm absolutely certain that they certainly wouldn't have  
 14 withheld the completely one if it had been given to them.  
 15 So the only inference I can draw prima facie anyway at this  
 16 stage is that they weren't shown the complete one initially  
 17 because if they had been they would have given it to us.  
 18 So the question then arises is why was the complete log  
 19 book withheld from your own legal team?

20 MR SINCLAIR: In my view, Mr Chair, in my  
 21 view when the adjustments had been done I believe that that  
 22 is what is was given to them. If it was not given it was  
 23 not any intention on my part to – I believe that they were  
 24 given the complete view. If I and it could have been me  
 25 admitted to say listen that was taken out and this was

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1 taken out because there were many things that I did. I  
 2 might have not remembered to tell them, it would not have  
 3 been intentional because anything I did I certainly shared  
 4 with – whenever I was requested and more when I was  
 5 required to, Sir.

6 CHAIRPERSON: What I think Ms Pillay is  
 7 asking you and I know what your answer is, how come there  
 8 was this full disclosure to the police and to – because it  
 9 was on Colonel Scott's hard drive, computer. There was  
 10 full disclosure to ICAM but there doesn't to have been full  
 11 disclosure to your legal team or to us. Is there an  
 12 explanation for that?

13 MR SINCLAIR: Mr Chair, when you say a  
 14 full disclosure –

15 CHAIRPERSON: By full disclosure I mean  
 16 the full log book including the bits that you deleted. The  
 17 full log book was given to the police because it was on  
 18 Colonel Scott's hard drive, the full version was given tot  
 19 he ICAM team because it's an annexure to their report. It  
 20 doesn't appear to have been given to your legal team  
 21 because if it had been I'm sure they would have given it to  
 22 us knowing them. It simply wasn't given to us. So is  
 23 there an explanation?

24 MR SINCLAIR: Mr Chair, my honest belief  
 25 is that the documents in their entirety were given to the

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1 legal team. If there was a slipup, I had instituted and  
 2 said please go and correct the spellings, change it into  
 3 red, there's a thing, do this, do that. Take that out and  
 4 I believe that those were the documents were given. If I  
 5 omitted to say this had been adjusted because remember our  
 6 occurrence books are the hard – the main occurrence books  
 7 are the hard - this was Henry Blaauw and my reminder  
 8 document that the ICAM could have used for that. I think  
 9 Dirk would have given them to Colonel Scott, for what  
 10 reason I don't know. So this was our reminder and this was  
 11 not, in my opinion and even as I sit here today, Sir,  
 12 within my opinion this was not the important document, this  
 13 is a one line document. The occurrence books, the  
 14 handwritten where there's more detail is a more substantial  
 15 – I don't even know as I sit here whether those occurrence  
 16 books have been given. But certainly the legal team would  
 17 have known about them.

18 [10:38] Whether they focussed on it to say we need that,  
 19 I don't know.

20 MS PILLAY: Mr Sinclair, just to test  
 21 your explanation, maybe we should look at the actual  
 22 deletions to understand exactly what it is that we're  
 23 talking about and the precise nature of the information  
 24 that was deleted. Now if I could ask you to go to the  
 25 entry at 18:35 on the 10th of August, that's the first

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1 deletion that we see, and you'll see it states, "PW  
 2 reported that they fire about 10 rounds to the commuters at  
 3 4," I suppose that's number 4, "that are aggressive and  
 4 busy intimidate the people." That's the first deletion  
 5 that we see.

6 If we can then go to the second deletion, which  
 7 is at 18:59 on the same day, "GK reported that commuters  
 8 intimidate workers to go to work. They are using pangas  
 9 and knobkieries. PW shot 15 rounds of rubber bullets at  
 10 them." Again a shooting related insertion.

11 The next deletion is at 20:35, "GK reported that  
 12 they shot 10 to 15 rounds of rubber bullets to commuters."  
 13 The next deletion we see at 9:03 on the 11th and  
 14 it's "Eight rubber rounds shot to disperse a mob opposite  
 15 the NUM offices, two SAPS constables available to assist."  
 16 We then see a prolonged period where there are no  
 17 deletions. The next deletion is on the 13th of August at  
 18 14:32 –

19 CHAIRPERSON: I'm sorry, Ms Pillay,  
 20 before we get there, what about the 12th of August? There's  
 21 an entry in red on yellow, I don't know what that's about.  
 22 Is that also a deletion? I haven't compared that with the  
 23 document we were given originally.

24 MS PILLAY: I apologise, Chair, that is a  
 25 deletion.

<p style="text-align: right;">Page 33858</p> <p>1 CHAIRPERSON: Ja, alright, we'll let's 2 [inaudible] - 3 MS PILLAY: It's at 9:30, "ELP S2 4 observed a group of people attacking Delta 2. They stopped 5 at the taxi rank. Two members were murdered. One was 6 stabbed and the other was set alight. Two security 7 vehicles were also burned down," and we see a comment on 8 the other column saying "Info to be added under mob attack, 9 murdering our members. Follow up and get details of 10 deceased." 11 MR SINCLAIR: I see it. Sorry, your last 12 part, Mr Chair? 13 MS PILLAY: It's more to the right of 14 this document, there's a comment that more information is 15 to be added to the occurrence book. Is that a comment 16 inserted by you? 17 MR SINCLAIR: No, Mr Chair, no comments 18 were inserted by me. Remember what I – may I talk or must 19 I, is there something else – 20 MS PILLAY: No, please explain. 21 MR SINCLAIR: Chair, no comments, I want 22 to be very clear, no comments were inserted. I went to my 23 PA and said please revise this document, please go through, 24 these are the things I want you to look at; add that in, 25 make sure it's an colour, take it out. If there is</p>	<p style="text-align: right;">Page 33860</p> <p>1 fine. I'm sure Ms Pillay will now want to move on to the 2 next question, but it's now quarter to 11, so when it's 3 convenient let me know and we'll take the first comfort 4 break, but I'm in your hands, Ms Pillay. 5 MS PILLAY: Chair, we've just got three 6 more deletions from this book – 7 CHAIRPERSON: Alright, okay. 8 MS PILLAY: - and then we can move on. 9 CHAIRPERSON: No, you will indicate when 10 we can take the adjournment. 11 MS PILLAY: If we can then move to the 12 next deletions, Mr Sinclair, it's on the 13th of August at 13 14:38 – sorry, at 14:32, "Kellerman called and informed us 14 one of the mobsters was shot with a rubber bullet and they 15 need an ambulance. Peter Drysdale said as soon as we have 16 an ambo available we will send one." 17 And a deletion again at 14:38, "Kellerman called 18 and said the group at Karee 3 dispersed and ran towards K4 19 and Mining Security went after them. 20 shots were fired 20 and one person was arrested. That shot was with rubber 21 bullet." 22 And then there's a last deletion, Mr Sinclair, 23 which is on the 27th of August and it's an interesting one 24 because it's the only deletion that's not related to 25 shooting by Lonmin Security. It's on the same document –</p>
<p style="text-align: right;">Page 33859</p> <p>1 anything that you are not certain about please come back to 2 me, but I would like this document corrected – not 3 corrected, I would like this document cleaned up so that it 4 is, because it will be used in public, as I have now found 5 out that it is, I didn't realise it had been used at the 6 ICAM but it was used at the ICAM and other places, and so 7 these deletions, she would have gone through and said I 8 think this is Graeme's instruction and take them out. Did 9 I go back and check those? No, I didn't. Did I ask her 10 what she exactly had deleted? No, I didn't, but I was – 11 CHAIRPERSON: [Microphone off, inaudible] 12 MR SINCLAIR: Sorry, Sir? 13 CHAIRPERSON: I told you time is 14 precious, Mr Sinclair. 15 MR SINCLAIR: Sorry, Sir. 16 CHAIRPERSON: You weren't asked about 17 that. What you were asked about was this entry in the 18 comments column, "Info to be added on the mob attack, 19 murdering our members." You say, your answer is you didn't 20 make that entry, that's if I understand you correctly. 21 MR SINCLAIR: I definitely didn't make 22 that. 23 CHAIRPERSON: Okay. 24 MR SINCLAIR: I don't know who made that. 25 CHAIRPERSON: You don't know. Okay, it's</p>	<p style="text-align: right;">Page 33861</p> <p>1 CHAIRPERSON: What's the date and time? 2 MS PILLAY: It's on the 27th of August 3 2012 and it's at 17:06. The insertion, Mr Sinclair, is, 4 "All ambulance calls to the villages must be authorised by 5 Mr Sinclair," and as I've said it before, it's the only 6 deletion we see that is not specifically related to 7 shooting by Lonmin Security. Can you explain why this was 8 deleted? 9 MR SINCLAIR: I haven't got the faintest 10 idea why Amanda van der Merwe would have deleted that. If 11 I had given that instruction I cannot recall why it would 12 have been deleted. 13 MS PILLAY: Mr Sinclair, you have just 14 testified that the deletions were made on your 15 instructions. 16 MR SINCLAIR: Yes. 17 MS PILLAY: And that you take full 18 responsibility for them. In that context I'm asking for an 19 explanation for this, out of the hundreds of insertions in 20 the occurrence book this particular one, what was the 21 reason for this deletion? 22 MR SINCLAIR: Mr Chair, I think to 23 clarify, I was clearing up this document. I gave 24 instructions that matters relating to the police or matter 25 that were under investigation or matters relating, as an</p>

<p style="text-align: right;">Page 33862</p> <p>1 example shootings, or matters relating to our security  2 operations would be removed because they were in a  3 substantial format available if anybody needed them  4 somewhere else. I never went through and said take this  5 out and take that out. If that was her interpretation when  6 she was sitting, going through with somebody, so I also  7 make it very clear that I never went back and asked what  8 have you taken out, so that I was – I was wrong, maybe I  9 should have gone back, and I certainly did not.</p> <p>10 CHAIRPERSON: So are you now saying that  11 you don't take responsibility for what was taken out; you  12 don't know what was taken out. It was your PA, you told  13 her to take things out but your PA exercised her discretion  14 as to what she can take out?</p> <p>15 MR SINCLAIR: No, Mr Chairman, I  16 clearly –</p> <p>17 CHAIRPERSON: Is that what you're saying?  18 Are you no longer taking responsibility?</p> <p>19 MR SINCLAIR: Mr Chairman, I take  20 responsibility for giving the instructions to go through,  21 check the spelling, check things, add in and remove – I  22 take responsibility for giving that instruction. I am  23 clearly stating that I never personally went and read  24 exactly what, take this document and that document to see  25 what was taken out. I never ever did that and I never paid</p>	<p style="text-align: right;">Page 33864</p> <p>1 were dealing with the deletions which we see on the 27th of  2 August and if we could just put up EEEE19.1, on the 27th of  3 August at 17:06. Can I ask, Mr Sinclair, was that  4 irrespective of whether you authorised the deletion or not,  5 was that a directive which applied at the time, that all  6 ambulance calls to the villages had to be authorised  7 through you?</p> <p>8 MR SINCLAIR: We have boundaries that we  9 can respond to, outside of those – within Lonmin. Outside  10 of those boundaries there was a second boundary that would  11 need mine or one of my seniors then, and in this time that  12 was imperative that we would be very careful because of  13 safety of the ambulance crews and outside of those  14 boundaries I would have needed permission from my direct  15 report.</p> <p>16 MS PILLAY: And the Wonderkop area where  17 the shooting took place, where scene 1 and scene 1 took  18 place, do they fall within those boundaries?</p> <p>19 MR SINCLAIR: The boundaries, the mine  20 boundary, have a look at the mine plan, there's only a  21 very, very small portion that is in the mine but it's in  22 open area. The other part of those would have been outside  23 of the boundaries.</p> <p>24 MS PILLAY: So emergency medical  25 assistance to scene 1 and to scene 2, if ambulances were to</p>
<p style="text-align: right;">Page 33863</p> <p>1 attention to it after that time.</p> <p>2 COMMISSIONER HEMRAJ: Was Ms Van der  3 Merwe assisted by anyone else in attending to these  4 deletions?</p> <p>5 MR SINCLAIR: When I gave her that  6 instruction she would have been assisted by whoever she  7 required, for instance when she had the two logbooks, the  8 hardcopy originally she was reading through and reading  9 lines through, she would have had the hardcopy and somebody  10 would have been helping her read because to read there and  11 read there would have been difficult. So she definitely,  12 whether it was all the time or time to time I am not sure.</p> <p>13 COMMISSIONER HEMRAJ: Thank you.</p> <p>14 MS PILLAY: Chair, I think this is going  15 to take a lot longer than I thought. If this is an  16 appropriate time to take the tea adjournment.</p> <p>17 CHAIRPERSON: Well, we'll take up this  18 part of the investigation refreshed by a cup of tea, which  19 we'll take in the next 15 minutes.</p> <p>20 [COMMISSION ADJOURNS COMMISSION RESUMES]  21 [11:12] CHAIRPERSON: The Commission resumes. Mr  22 Sinclair, you're still under oath. Ms Pillay?</p> <p>23 GRAEME MILLER SINCLAIR: (s.u.o.)  24 CROSS-EXAMINATION BY MS PILLAY (CONTD.):  25 Thank you, Chair. Mr Sinclair, before the tea break we</p>	<p style="text-align: right;">Page 33865</p> <p>1 be sent out would those calls have to go through you?</p> <p>2 MR SINCLAIR: Those calls would go  3 through, if the ambulance was sent out beyond, to a =  4 beyond the boundaries, they would have to be authorised by  5 myself, Henry Blou or Peter Drysdale. We had the authority  6 to authorise, yes, please respond and assist, whoever was  7 on duty. If it was a case of violence, there were specific  8 rules that the ambulance crew could go, for their safety  9 they had to be escorted, et cetera, so that was part of the  10 reason why we had those rules then to ensure.</p> <p>11 MS PILLAY: And on the 16th were you asked  12 to authorise the movement of ambulances to scene 1 and  13 scene 2.</p> <p>14 MR SINCLAIR: Just –</p> <p>15 MS PILLAY: On the 16th of August were you  16 asked to authorise any movement of ambulances to scene 1  17 and scene 2?</p> <p>18 MR SINCLAIR: I was not available when  19 that request came in.</p> <p>20 MS PILLAY: So the request did come in  21 but you were not available to authorise it?</p> <p>22 MR SINCLAIR: It would have been  23 authorised by either, whoever was in the JOC, I think it  24 was Dirk Botes or Henry Blou or Peter Drysdale. They would  25 have taken that responsibility to say under those</p>

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1 circumstances, respond.

2 MS PILLAY: Did you specifically defer

3 the request to any one of your subordinates?

4 MR SINCLAIR: Just please explain that, I

5 don't understand?

6 MS PILLAY: Once the request came in, you

7 said you were not available to attend to it. Did you defer

8 them to one of your subordinates or did they not reach you

9 at all?

10 MR SINCLAIR: I was, that afternoon I was

11 only reached well after, and I do not recall the time but

12 it was probably close to quarter to five was the first time

13 I was aware of that incident.

14 MS PILLAY: And when you say that

15 incident, you mean the shootings at scene 1 and scene 2?

16 MR SINCLAIR: The Thursday afternoon's,

17 whatever happened on the Thursday afternoon.

18 MS PILLAY: Alright, if we can then go

19 back to the deletions in EEEE19.1.

20 CHAIRPERSON: Are you going back to the

21 ones you've covered already?

22 MS PILLAY: Yes, I'm just going further –

23 CHAIRPERSON: There's one more that I

24 notice, I don't understand it. 29 August 2012, 17:40.

25 MS PILLAY: Can we have that deletion on

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1 the screen, please?

2 CHAIRPERSON: Why is that deleted, 29

3 September 2012, 17:40 "Warrant Officer Thobejane called and

4 requested 150 food parcels for court tomorrow. Dirk Botes

5 confirmed that the food parcels can be ordered for tomorrow

6 morning. Hannes Human informed by" and you go back to –

7 "Letitia van der Walt to order 150 food parcels extra for

8 tomorrow morning." Now why is that deleted?

9 MR SINCLAIR: I wouldn't have an idea why

10 that particular line – there was no reason for it to be

11 deleted. I wouldn't have an idea why that would've been

12 deleted. If I gave that instruction, I don't know.

13 CHAIRPERSON: Who were the food parcels

14 for, do you know?

15 MR SINCLAIR: The food parcels were for

16 our guards, people that were around, that we required

17 additional people –

18 CHAIRPERSON: Did you have 150 guards,

19 extra guards at the magistrate's court on -

20 MR SINCLAIR: That would have been food

21 parcels that would have been supplied. We supplied food

22 parcels also, we assisted with food parcels for any police

23 officers travelling long distances that were coming in, so

24 it could have been for that, it could have been for the

25 guards, it could have been for our own staff.

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1 CHAIRPERSON: But you see, that being so

2 I can't understand why that entry was deleted. It's not

3 related to the reasons you gave previously for deleting the

4 other entry. In terms of -

5 MR SINCLAIR: I –

6 CHAIRPERSON: Sorry, let me put the

7 question.

8 MR SINCLAIR: Sorry, sir.

9 CHAIRPERSON: It's not related to the

10 reasons you gave and explained essentially, as I understand

11 it, to your professional assistant as to why certain

12 entries should be deleted. It's extraneous to all that so

13 it doesn't make sense, can you help me?

14 MR MPOFU: Chairperson, sorry, before the

15 witness answers. I can't see it on – what is the date?

16 CHAIRPERSON: The 29th –

17 MR MPOFU: Of August?

18 CHAIRPERSON: 29th August, ja.

19 MR MPOFU: Thank you.

20 CHAIRPERSON: Anyway you've heard my

21 question and I explained to you that I'm a little bit

22 puzzled, so I'd be grateful if you could help me out of my

23 state of be-puzzlement.

24 MR SINCLAIR: Mr Chair, I cannot explain

25 why that particular line would have been deleted. It

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1 wasn't significant. Certainly I have explained, though,

2 the other lines and I listened to your comments very

3 clearly that those shouldn't, in your opinion should have

4 been left in. If I –

5 CHAIRPERSON: I mean it's not, you know,

6 my opinion. I haven't got an opinion on whether they

7 should be left in –

8 MR SINCLAIR: Sorry.

9 CHAIRPERSON: So you've told us this was

10 basic instructions you gave to your PA.

11 MR SINCLAIR: Yes.

12 CHAIRPERSON: And it didn't seem to fit

13 in with those instructions. That was the only reason I

14 asked the question.

15 MR SINCLAIR: Ja.

16 CHAIRPERSON: Whether an entry should

17 have been made at all initially is not –

18 MR SINCLAIR: I can't explain why that

19 would have been, why that would have been deleted. I can't

20 explain why that particular one would have been deleted.

21 CHAIRPERSON: Alright thank you, thank

22 you.

23 MS PILLAY: Mr Sinclair, as I understand

24 your evidence, the primary reason for the deletions was

25 that there were ongoing police investigations and you

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1 didn't want to affect those investigations with this  
 2 information in the occurrence books.  
 3 MR SINCLAIR: My view, my view when I  
 4 briefly looked through this document was, there was a one  
 5 line of a statement, it certainly is not comprehensive, it  
 6 certainly doesn't relate and that would be going into the  
 7 public domain. Take it out, if somebody wants it there is  
 8 a relevant and careful document. I also made these  
 9 documents – I was asked through, I still quite don't  
 10 understand the discovery there but I definitely informed  
 11 the legal teams that I had this and it might be  
 12 advantageous to them to use this document to assist them in  
 13 what they required to do. So I definitely had that  
 14 discussion with my legal team, with the legal people that  
 15 would stop at my office or made phone calls, that I had  
 16 this and in fact I think it was also e-mailed to them if  
 17 I, I think. I would have very clearly stated, now to which  
 18 person in the legal team because there were several that  
 19 would communicate with me, I clearly stated that this, I am  
 20 including, I am including information in that could be  
 21 useful to you. I don't believe that I said I am excluding  
 22 that information. I don't believe I said that. Rightly or  
 23 wrongly, I don't believe I said that to my legal team but  
 24 certainly they were aware of the documents, they were aware  
 25 that I had changed or added and that that was there. Does

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1 that answer your question, Mr Chair?  
 2 MS PILLAY: Mr Sinclair, I'm –  
 3 CHAIRPERSON: I don't know that you can  
 4 ask us that but if Ms Pillay thinks it isn't an adequate  
 5 answer she'll ask a follow-up question.  
 6 MS PILLAY: Thank you, Chair.  
 7 CHAIRPERSON: Your job is to answer  
 8 questions, Ms Pillay's job is to ask them.  
 9 MR SINCLAIR: Sorry, Mr Chair, I thought  
 10 I had to address it through the Chair, my apologies.  
 11 MS PILLAY: If you can then just be clear  
 12 and I think I would advise you to consider your answer  
 13 before you give it, is your testimony before this  
 14 Commission that you gave your legal team EEEE19.1, that  
 15 version of the occurrence book at all times and especially  
 16 before they made discovery to this Commission?  
 17 MR SINCLAIR: Mr Chair, I gave or caused  
 18 to be given a format of this document and I want to, I'm  
 19 trying to just be, I'm trying to be very – I've been  
 20 cautioned, I'm just trying to be – a format of this  
 21 document and to the legal team I said I have this log, it  
 22 is a brief description, we have our correct and handwritten  
 23 logs but here is a document that might be of use to you.  
 24 Which one, was it the one that went to the ICAM, was it the  
 25 one that was on Scott's computer, was it the one that

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1 Amanda adjusted? As I sit here now I cannot say it was  
 2 that one or this one but certainly I gave them this  
 3 document and I said very clearly it could be useful, if  
 4 there's – it's a concurrent log that Henry and I use, it  
 5 might be useful for you in your process that you are taking  
 6 forward.  
 7 CHAIRPERSON: Can I ask you a question  
 8 flowing from that before Ms Pillay continues?  
 9 MR SINCLAIR: Yes.  
 10 CHAIRPERSON: We know that Lonmin  
 11 received a subpoena under section 205 of the Criminal  
 12 Procedure Act, asking for disclosure to the police of a  
 13 whole lot of documentation relating to the shootings and  
 14 what went before them and so forth.  
 15 MR SINCLAIR: Yes, sir.  
 16 CHAIRPERSON: And we know that that  
 17 subpoena was complied with.  
 18 MR SINCLAIR: Yes, sir.  
 19 CHAIRPERSON: Now what I don't know,  
 20 maybe the evidence leaders do, is, was this log in its  
 21 complete form part of the material that was handed over to  
 22 the police in terms of compliance with that subpoena?  
 23 MR CHASKALSON SC: Chairperson, I can, I  
 24 think, answer that because the version of the log that we  
 25 found on Colonel Scott's hard drive was together with other

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1 documents that had been obtained from Lonmin under section  
 2 205 –  
 3 CHAIRPERSON: I suspected as much. Now  
 4 did your attorneys assist you in complying with that  
 5 section 205 subpoena or was that done in house, as it  
 6 were, the preparation of the documents and handing over the  
 7 documents to the police, was that done in house or was that  
 8 handled by the attorneys?  
 9 MR SINCLAIR: I don't know about the  
 10 subpoena but I do know that I was, that firstly my  
 11 management team had said the attorneys will be contacting  
 12 you, they require information and definitely the attorneys  
 13 did contact via telephone, via e-mail and personally at our  
 14 offices requesting information that they wanted.  
 15 MS PILLAY: Chair, I believe Mr Bham  
 16 wants to say something.  
 17 MR BHAM SC: Thank you, Mr Chairman, I  
 18 just want to record a specific instruction I have from my  
 19 instructing attorney that the document which was discovered  
 20 on behalf of through Cliffe Dekker was XX2.10 and that was  
 21 the document they received and nothing more than that.  
 22 CHAIRPERSON: Your attorney says they got  
 23 XX?  
 24 MR BHAM SC: They got XX2, not –  
 25 CHAIRPERSON: Yes, well, I've indicated



<p style="text-align: right;">Page 33874</p> <p>1 to the witness that knowing you and knowing your colleagues 2 and your instructing attorney, I don't for a moment believe 3 that they would have not given us this document if it had 4 passed across their desks. I think it's – 5 MR BHAM SC: - important that I place it 6 on record. 7 CHAIRPERSON: And that's been confirmed 8 now by what you say. 9 MR BHAM SC: I've got a specific 10 instruction to place it on record. 11 CHAIRPERSON: But perhaps you could also 12 get instructions, because the witness can't help us on 13 this, whether what was given to the police under 205 was 14 done in house, as it were, by Lonmin or whether that was 15 handled by the attorneys. 16 MR BHAM SC: I'll take an instruction and 17 come back to you on that. 18 MS PILLAY: So Mr Sinclair, you've heard 19 your attorneys place on record that they were never given 20 the undeleted version of the OB book before, definitely 21 before discovery was made. 22 MR SINCLAIR: If that is what they were 23 saying, I will repeat what I have said. I made it very 24 clear on numerous occasions and was it to that particular 25 person or that particular person, I said we have, if there</p>	<p style="text-align: right;">Page 33876</p> <p>1 deletions contained very important information. 2 MR SINCLAIR: Rightly or wrongly as we 3 sit here, I hear exactly what you are putting to me. In my 4 time when I made these decisions, take those out because we 5 have them somewhere else, I honestly did not believe it was 6 important. However, I did not want to conceal anything and 7 it was available in a format. If that was a wrong decision 8 then I was wrong and I accept that it was a wrong decision 9 in light of what you are asking me and putting to me today 10 and I accept it was a wrong decision if that is where I 11 should be and I am now wiser as to that issue. 12 [11:31] But I believe I was very clear on doing what I 13 did and for that reason. 14 MS PILLAY: Mr Sinclair, let's test that 15 evidence, and can I ask that we go to the deletion on the 16 11th at 9:03. We see the deletion, Mr Sinclair, states, 17 "Eight rubber rounds shot to disperse a mob opposite the 18 NUM offices. Two SAPS constables available to assist." Do 19 you see that? 20 MR SINCLAIR: I see it, Ma'am. 21 MS PILLAY: Now in what other format, Mr 22 Sinclair, does information exist relating to that specific 23 shooting incident? 24 MR SINCLAIR: I have personally not gone 25 and seen in what other format, but – I just want to, if I</p>
<p style="text-align: right;">Page 33875</p> <p>1 was a query on something else I said I'm sure it will be in 2 this and the other log books. I specifically made it clear 3 that I am adding in, for instance the video clips and there 4 is a version that is added in with reference to which video 5 clips and I haven't seen that, so there were those 6 versions. Now what they took, I didn't pay attention. I 7 don't, for whatever reason I didn't pay attention to this 8 document with this change or that – 9 MS PILLAY: Mr Sinclair, let's address 10 the deletions and not the additions. Did you specifically 11 inform your attorneys that you had made deletions from the 12 contemporaneous documents? 13 MR SINCLAIR: I have already clearly said 14 that I don't believe that I said to them, I said I've added 15 in, I don't believe that I said I have removed – well, I 16 said I have gone through the documents and checked the 17 items against those. I'm very sure that I would have said 18 that to them, the documents, here is the – whether it was 19 this one or that one, at this point in time I cannot recall 20 which of them but I definitely said that I have added in. 21 Whether I said I've taken out, I would not be honest in 22 saying that now because I can't remember whether I said 23 that or if I didn't say it. It wasn't important to me. 24 MS PILLAY: Well – 25 COMMISSIONER HEMRAJ: Sorry, but the</p>	<p style="text-align: right;">Page 33877</p> <p>1 can just get my, after your caution I just want to make 2 sure that I'm saying the right thing. It should exist in 3 the hard, in the large OB handwritten books and it should 4 exist in the shooting reports and the incident report that 5 followed, and it should be at the police. For instance two 6 constables were available to assist, that they would have 7 been reported to do. It should be in those. 8 MS PILLAY: Mr Sinclair, your testimony 9 is that you removed these because they do exist. So I'm 10 asking you as a matter of fact where do we find other 11 record of the shooting recorded in 9:03? 12 MR SINCLAIR: Other records I believe are 13 in the shooting reports, are in the incident reports and 14 could also be in the occurrence, in the handwritten 15 occurrence reports, Ma'am – Sir, sorry. 16 COMMISSIONER HEMRAJ: The handwritten 17 occurrence book kept at which centre? 18 MR SINCLAIR: I would not be able to 19 answer which occurrence book it would have been written 20 into. It depends who took that, and if it was written 21 into, but I believe it would have been. Central Operations 22 would have been the most likely centre that it would be at. 23 MS PILLAY: Now Mr Sinclair, the evidence 24 leaders were provided with a number of documents by Lonmin. 25 We were assured that we were given all of the relevant</p>

<p style="text-align: right;">Page 33878</p> <p>1 shooting incident reports and I'm putting to you that we 2 are not in possession of a shooting incident report 3 relating to that particular shooting incident. 4 MR SINCLAIR: Mr Chair, I was never asked 5 to go and specifically get the shooting reports. I don't 6 know who the request went to. So it is very difficult for 7 me to answer if that particular one has not been made 8 available. 9 MS PILLAY: So is your testimony that a 10 shooting incident report for that particular incident does 11 exist and that we were just not given a copy of it? 12 MR SINCLAIR: Mr Chairman, to my belief 13 and our process a shooting incident for that incident 14 should exist. Where it is, as I sit here I cannot say and 15 it should be available. 16 MS PILLAY: And further Mr Sinclair, we 17 were given the handwritten versions of the different 18 occurrence books and my colleagues have gone carefully 19 through the handwritten versions and they indicate that 20 there is nothing related to that particular shooting 21 incident in the handwritten occurrence book. 22 MR SINCLAIR: Could I just have a look at 23 the date of that, please? 24 MS PILLAY: It's on the 11th – 25 CHAIRPERSON: The 11th, it's the Saturday.</p>	<p style="text-align: right;">Page 33880</p> <p>1 part. I believe what I have tabled with you to be 2 absolutely true. I have no reason to remove information. 3 The reason I did is what I have explained, believing, not 4 every time personally checking that those records, but I 5 believe that what I put is absolutely correct and that was 6 my reason for doing it. And I further state that in view 7 of this Commission now with what I've heard this morning it 8 is the view that that should not have been taken out of 9 this report because this was a, this would become a crucial 10 report, then I made an incorrect decision. 11 CHAIRPERSON: No, the point is more 12 complicated than that. You could have taken it out of your 13 internal records as much as you liked, but what was given 14 to this Commission – 15 MR SINCLAIR: Yes. 16 CHAIRPERSON: - should not have been an 17 edited, abbreviated, abridged, censored report, which is in 18 fact what happened, and we've been told by your counsel 19 that the other document, the censored one, was the one that 20 was given to them. So they should have been given this so 21 that they could represent you people adequately in the full 22 knowledge of the facts. Now Ms Pillay, are you going to 23 deal with, as part of this, part of the cross-examination 24 with paragraph 30 of his affidavit FFFF1, page 96? Because 25 it is linked. If you're going to do it I won't ask</p>
<p style="text-align: right;">Page 33879</p> <p>1 MR SINCLAIR: On the Saturday – 2 CHAIRPERSON: This is the Saturday. You 3 remember there was an incident when some strikers went to 4 the NUM office and there was – 5 MR SINCLAIR: Yes. 6 CHAIRPERSON: There is some discrepancy 7 in the documents as to where the engagements between NUM 8 people and the strikers took place, but the evidence seems 9 to be it was very close to the NUM office, about 50 metres 10 away. But anyway, it was on the Saturday and this entry 11 relates to that. 12 MR SINCLAIR: Mr Chairperson, I haven't 13 gone through those logbooks, so I cannot say whether it's 14 true, but I believe the evidence leaders have. In my 15 opinion it should be in the Central Operations incident 16 book, or in the incident book that was in the information 17 centre at my office. It should – whether it is or not I 18 cannot say. 19 MS PILLAY: Mr Sinclair, I'm putting to 20 you as a fact that it's not recorded there, and further 21 that the net effect of your intervention by deleting for 22 example this insertion in the occurrence book is to remove 23 all trace that this shooting incident took place. 24 MR SINCLAIR: Mr Chair, I can assure this 25 Commission that there was absolutely no intention on my</p>	<p style="text-align: right;">Page 33881</p> <p>1 questions about it. 2 MS PILLAY: Chair, I'm happy for you to 3 ask the question. I haven't looked at it. 4 CHAIRPERSON: [Microphone off, inaudible] 5 for me to do it. You can do it, I don't want to take over 6 your cross-examination. I've every confidence in your 7 ability to cross-examine. 8 MS PILLAY: I wasn't going to deal with 9 that now, Chair. 10 CHAIRPERSON: Do you want me to do it? 11 MS PILLAY: Yes, please. 12 CHAIRPERSON: Your statement is FFFF1 and 13 the internal number is page 96, as far as I can see, 14 paragraph 30. Have you got that in front of you? 15 MR SINCLAIR: Is that my statement? 16 CHAIRPERSON: Your statement, yes. 17 MR SINCLAIR: Yes, Sir. 18 CHAIRPERSON: Have you got it in front of 19 you? 20 MR SINCLAIR: I have. I believe I have, 21 Sir. 22 CHAIRPERSON: Alright, now let's look at 23 that paragraph together – 24 MR SINCLAIR: Which paragraph, Sir? 25 CHAIRPERSON: 30, Saturday 11 August.</p>

<p style="text-align: right;">Page 33882</p> <p>1 MR SINCLAIR: Yes, Sir.</p> <p>2 CHAIRPERSON: "Mining Security had</p> <p>3 received information there would be a march by the crowd to</p> <p>4 the NUM offices at Wonderkop situated at the mine, on that</p> <p>5 day. We received information that the crowd who had by</p> <p>6 then gathered outside the Wonderkop Stadium were intent on</p> <p>7 burning down NUM offices. I received reports of injury to</p> <p>8 workers who had allegedly been part of the crowd, during a</p> <p>9 standoff between the marchers and NUM. I went to inspect</p> <p>10 and found two injured workers. I was accompanied by</p> <p>11 security personnel and medical personnel. We rendered</p> <p>12 medical support, took the injured workers to Lonmin</p> <p>13 Hospital."</p> <p>14 Now those two injured persons are in fact dealt</p> <p>15 with in the logbook. There's one entry at 9 o'clock,</p> <p>16 "Frans Mabelane reports a person shot at Wonderkop Hostel</p> <p>17 Block C5, Room 5. Medics 1 despatched," and then there's a</p> <p>18 reference further down to someone who was found at the</p> <p>19 Schagen office at 9:08, "Frans reports a person being shot</p> <p>20 inside the hostel next to Schagen offices."</p> <p>21 Those two people were the injured people you</p> <p>22 talked about, but there's no mention in your affidavit,</p> <p>23 statement, paragraph 30, of this other information which is</p> <p>24 very relevant to understand what precisely happened at the</p> <p>25 NUM offices and what the involvement not just of the NUM</p>	<p style="text-align: right;">Page 33884</p> <p>1 CHAIRPERSON: No, you can't take that</p> <p>2 further and I understand.</p> <p>3 MR SINCLAIR: That's right.</p> <p>4 COMMISSIONER HEMRAJ: Just to go back to</p> <p>5 a previous point that Ms Pillay was dealing with; you gave</p> <p>6 the instruction to delete because you were confident that</p> <p>7 that information was contained somewhere else, in a</p> <p>8 handwritten occurrence book. That's what you told us</p> <p>9 earlier today.</p> <p>10 MR SINCLAIR: In, I believed it would</p> <p>11 have been recorded, without personally checking it, and</p> <p>12 that because there was a shooting incident there would be</p> <p>13 an accurate shooting report and a shooting incident report</p> <p>14 and it would have been passed on to the people. I, that is</p> <p>15 what I firmly believed.</p> <p>16 COMMISSIONER HEMRAJ: Upon whom would it</p> <p>17 have fallen to check that there is in fact such an entry</p> <p>18 and that the information is captured somewhere in a</p> <p>19 handwritten occurrence book before it is deleted?</p> <p>20 MR SINCLAIR: Could you just – I missed</p> <p>21 the first part.</p> <p>22 COMMISSIONER HEMRAJ: Yes, upon whom</p> <p>23 would it fall to ensure and check that this information,</p> <p>24 this important information about a shooting is captured in</p> <p>25 a handwritten occurrence book somewhere before it is</p>
<p style="text-align: right;">Page 33883</p> <p>1 officials and the strikers was, but also what the</p> <p>2 involvement was of Lonmin staff. Can you explain that to</p> <p>3 us?</p> <p>4 MR SINCLAIR: Mr Chairman, I have stated</p> <p>5 where I moved in, got involved. I didn't believe I, when I</p> <p>6 made my statement I was aware that statements would be made</p> <p>7 by the security team members that were there and they would</p> <p>8 detail, they had more information and more accurate</p> <p>9 information they would detail and that's why I limited my</p> <p>10 statement to that, believing that that is what was</p> <p>11 required.</p> <p>12 CHAIRPERSON: Do you know whether the</p> <p>13 security officials of Lonmin mentioned the firing of these</p> <p>14 eight rubber rounds in their statements?</p> <p>15 MR SINCLAIR: I do not know.</p> <p>16 CHAIRPERSON: Not as far as I know, and</p> <p>17 obviously I don't know everything. There are a lot of</p> <p>18 things that I hope to discover before the end of the</p> <p>19 Commission, but I've never seen any statement – the</p> <p>20 statements that are before us make no mention of that, from</p> <p>21 the two Lonmin officials who were there. They don't</p> <p>22 mention shooting off any rubber rounds or anything.</p> <p>23 Anyway, you obviously can't take that further.</p> <p>24 MR SINCLAIR: I cannot – I cannot comment</p> <p>25 on that, Sir.</p>	<p style="text-align: right;">Page 33885</p> <p>1 deleted from this log?</p> <p>2 MR SINCLAIR: In hindsight, in hindsight</p> <p>3 it would be – I should have personally checked that was</p> <p>4 there, which I did not.</p> <p>5 COMMISSIONER HEMRAJ: At the time did it</p> <p>6 fall upon anyone to do such a check before it was deleted?</p> <p>7 MR SINCLAIR: In, I never, it, I never,</p> <p>8 it never occurred to me to take that stand. I, and I have</p> <p>9 clearly stated that I took that stand and if it is now,</p> <p>10 because I see the importance of it, if I had thought –</p> <p>11 remember at that stage we were already under tremendous</p> <p>12 pressure, we had been. There were times when these were</p> <p>13 happening. So I definitely didn't say bring that to me, I</p> <p>14 want to check it is there. I definitely didn't do that.</p> <p>15 MS PILLAY: And do you know, Mr Sinclair,</p> <p>16 whether there is a police investigation into the shooting</p> <p>17 that's referred to here?</p> <p>18 MR SINCLAIR: Into this –</p> <p>19 MS PILLAY: By Lonmin Security.</p> <p>20 MR SINCLAIR: In this specific shooting?</p> <p>21 MS PILLAY: Into the conduct by Lonmin</p> <p>22 Security referred to in this particular deletion.</p> <p>23 MR SINCLAIR: I cannot answer that. I do</p> <p>24 not know.</p> <p>25 MS PILLAY: So you are not aware of a</p>

<p style="text-align: right;">Page 33886</p> <p>1 criminal investigation by SAPS into this deletion, the 2 shooting which is the subject of this deletion? 3 MR SINCLAIR: I, as we sit here now I am 4 not aware of – I am not, I cannot categorically state that 5 there is an investigation ongoing. 6 MS PILLAY: Now may I ask you, Mr 7 Sinclair, and given what we have covered this morning, is 8 there any other documentary/photographic/video evidence 9 which is relevant to the work of this Commission and which 10 you have kept away from this Commission for one reason or 11 the other? 12 MR SINCLAIR: Mr Chair, I will clearly 13 state that I firstly have not deliberately kept anything 14 away from the Commission and I'm very, very categoric about 15 that. Is there anything that could further assist the 16 Commission that I might be aware of now as I sit here? I 17 would have to think carefully, and if there is I will 18 certainly come forward and table it. 19 MS PILLAY: And in terms of your 20 involvement in the events covered by this Commission's 21 terms of reference have you, Mr Sinclair, given an open and 22 forthright account of the extent of your involvement in the 23 events? 24 MR SINCLAIR: Mr Chair, as I sit here I 25 believe I have. I believe that it is correct and I am of</p>	<p style="text-align: right;">Page 33888</p> <p>1 MS PILLAY: We are. 2 MR SINCLAIR: When this operation, they 3 moved, the SAPS complete team moved firstly on the Sunday 4 and utilised my information room, which I was not 5 comfortable with, so by the Monday I moved them to a 6 location next to my office. I saw them every day. I 7 talked with them every day. I have already put before you 8 that I had developed with Henry Blaauw and others a 9 knowledge of who was responsible for what, where, and I 10 definitely had many conversations formally, informally, and 11 knowing them, I would greet them by their names or their 12 ranks. So yes, I definitely know many of them. They 13 definitely know me. 14 MS PILLAY: It goes further than that, Mr 15 Sinclair, doesn't it? We have had – and I'm going to list 16 the witnesses who have testified before this Commission – 17 MR SINCLAIR: Ja. 18 MS PILLAY: - and we have had them 19 testify to quite significant events involving you, which 20 you do not deal with at all in your statement. Now can you 21 explain that? 22 CHAIRPERSON: You must put the events to 23 him, he can't be expected to answer in vacuo as it were. 24 [11:51] MS PILLAY: Let me do that, Chair, and we 25 can start with the National Commissioner.</p>
<p style="text-align: right;">Page 33887</p> <p>1 that opinion, yes. 2 MS PILLAY: Now you say in paragraph 2 of 3 FFFF1, which is your statement, you state that issues to be 4 addressed in the statement is your involvement in and 5 observations during the period. Do you see that? 6 MR SINCLAIR: I see that statement. 7 MS PILLAY: And are you satisfied that 8 your statement, together with your evidence-in-chief thus 9 far is a full account of your involvement in the events? 10 MR SINCLAIR: Mr Chairman, to my belief I 11 believe I have made what is required of me from our legal 12 teams to put before the Commission and here at the 13 Commission. I believe that that is correct, and I 14 certainly hope I am right, but I believe that that is 15 correct, Mr Chairman. 16 MS PILLAY: Well, Mr Sinclair, let me 17 begin with your interaction with SAPS. We have had, over 18 the past almost two years we have had senior SAPS members 19 appearing before this Commission and almost all of the very 20 senior members of SAPS have testified to having close 21 interaction and significant interaction with you during the 22 relevant period. 23 MR SINCLAIR: Mr Chair, when the SAPS 24 operation – are we specifically talking about this period 25 9th to the 16th?</p>	<p style="text-align: right;">Page 33889</p> <p>1 MR SINCLAIR: Yes. 2 MS PILLAY: Now it's true, isn't it, Mr 3 Sinclair, that you met, you were part of a meeting with the 4 National Commissioner on the 13th of August after the 5 incident at the railway line, isn't that correct? 6 MR SINCLAIR: I was introduced and I was 7 where the National Commissioner was on – if she was at the 8 office, I was there. 9 MS PILLAY: And you were part of a 10 meeting with her on the 13th after the incident at the 11 railway line. 12 MR SINCLAIR: Do you – I don't recall, I 13 don't – 14 CHAIRPERSON: She had a meeting with you 15 people. 16 MR SINCLAIR: Ja. 17 CHAIRPERSON: She came there after the 18 killing of the two policemen and the killing of the three 19 strikers – 20 MR SINCLAIR: I don't – 21 CHAIRPERSON: - at the railway line on 22 the Monday afternoon. 23 MR SINCLAIR: Yes, sir. 24 CHAIRPERSON: And she says she went 25 there, I think she brought with her the Provincial</p>

<p style="text-align: right;">Page 33890</p> <p>1 Commissioner of Gauteng, Police Commissioner, Lieutenant- 2 General Petros and I think others as well and they had a 3 meeting with you, you and some of your colleagues and there 4 were extensive discussions. As far as I can remember it 5 was put to the police by your party, I'm not sure if it was 6 by you but by your group that you didn't know what was, who 7 was behind all this trouble, these were faceless people. 8 That was her evidence and then she questioned you further 9 about that and suggested things should be done in order to 10 put faces on the faceless people. Can you not remember 11 that discussion?</p> <p>12 MR SINCLAIR: Was that, may I ask was 13 that the meeting at the LPD Building?</p> <p>14 MS PILLAY: That's correct, yes.</p> <p>15 MR SINCLAIR: At the LPD Building when 16 higher, well, like the Commissioner would have arrived, Mr 17 Barnard Mokwena would facilitate that and I would have been 18 called in to sit there myself or Henry or both of us, by 19 Barnard Mokwena and certainly I would have been at that 20 meeting.</p> <p>21 CHAIRPERSON: It's not a question of you 22 would have been –</p> <p>23 MR SINCLAIR: I was at –</p> <p>24 CHAIRPERSON: The question is, were you 25 there?</p>	<p style="text-align: right;">Page 33892</p> <p>1 MR SINCLAIR: I and Henry were tasked to 2 liaison on many occasions between SAPS and Lonmin in 3 relation to security matters.</p> <p>4 MS PILLAY: And yet your statement 5 doesn't deal with that aspect at all and with your role as 6 a liaison between Lonmin and SAPS.</p> <p>7 MR SINCLAIR: My statement definitely 8 does not deal with any of that, Mr Chair.</p> <p>9 CHAIRPERSON: We know that, we've read 10 your statement.</p> <p>11 MR SINCLAIR: Yes.</p> <p>12 MS PILLAY: We know, Mr Sinclair, that 13 you met with Brigadier Calitz on the 12th of August and that 14 you shared information with him, yet your statement doesn't 15 mention that at all.</p> <p>16 MR SINCLAIR: That is correct.</p> <p>17 MS PILLAY: We know, Mr Sinclair, that 18 you were instrumental in arranging barbed wire for SAPS 19 prior to the implementation of the tactical phase on the 20 16th. We had testimony from General Annandale that he made 21 that request to you and that you were instrumental in 22 arranging the barbed wire, yet your statement doesn't deal 23 with that.</p> <p>24 MR SINCLAIR: Mr Chairman, I have not 25 included that in my statement. I was not instrumental and</p>
<p style="text-align: right;">Page 33891</p> <p>1 MR SINCLAIR: I was at that meeting.</p> <p>2 CHAIRPERSON: And according to her 3 evidence, National Commissioner Phiyega, you took part in 4 the discussion and you made certain allegations and perhaps 5 allegations is an unfair word, you imparted certain 6 information to her and there was a fairly detailed 7 discussion about it. I think that's what Ms Pillay is 8 putting to you. Am I right, Ms Pillay?</p> <p>9 MS PILLAY: That's correct, Chair.</p> <p>10 MR SINCLAIR: I don't – sorry.</p> <p>11 MS PILLAY: The question I'm addressing 12 for the moment, Mr Sinclair, is that your statement, 13 neither your statement nor your evidence in chief even 14 mentions that you were part of the meeting.</p> <p>15 MR SINCLAIR: When I made this statement 16 I – let me just see. When this statement was made, every 17 incident like that meeting and I had many meetings, with 18 her, I had many meetings with various people and I haven't 19 recorded every one of those meetings – any of those 20 meetings, I don't think, in any of my statements. So that 21 statement was there, that was there and I haven't recorded 22 it in my statement.</p> <p>23 MS PILLAY: We know, Mr Sinclair, that 24 you were appointed by Lonmin management as the liaison 25 between Lonmin and SAPS, isn't that correct?</p>	<p style="text-align: right;">Page 33893</p> <p>1 I want to be very clear, I was not instrumental in 2 arranging barbed wire for SAPS. I was – so I was 3 definitely not arranging barbed wire for SAPS, you know – 4 and it is not in my statement.</p> <p>5 MS PILLAY: But did General Annandale 6 make the request to you that SAPS needed additional barbed 7 wire?</p> <p>8 MR SINCLAIR: Mr Chair, I had assessed 9 with my emergency team after the K4 incident where, at 10 night, people were attacked when they were going into the – 11 I had assessed that we had vulnerable areas around the 12 mine. I had got my risk person to identify vulnerable 13 areas across the whole property and I said can we secure 14 those. I had then given instructions, I want you to go out 15 and go and source adequate barrier protection, whether it 16 is rolls, whether it is whatever. They came back to me and 17 said, we have managed to source, if I recall correctly, the 18 company was – I can't remember the company, irrelevant – I 19 gave the instruction, can you get that type? No, 20 eventually if I recall they could only get the six roll 21 things and I said bring it onto the property. It was 22 substantial, it was one and a half million rand or in that 23 order and that I intended using through my teams to secure 24 areas like that. When the SAPS were, and who it was, 25 whether it was the planners or whether it was Colonel</p>

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1 Annandale or whoever, General Annandale, when they were  
 2 doing their planning one of the conversations that – and I  
 3 was in the control room and out, and walking past was,  
 4 barbed wire was available and they knew I was bringing wire  
 5 onto the mine. There were requests and I very specifically  
 6 remember requests and I can't remember whether it was  
 7 Calitz or Annandale or whoever, that if they needed to use  
 8 barbed wire for their operation, would it be available. I  
 9 said I don't have a problem with that, however you would  
 10 have to replace it – because they had a difficulty in  
 11 sourcing it for whatever they needed to do and that I  
 12 believe was on the Monday or the Tuesday that that  
 13 conversation took place, that conversation took place. It  
 14 might have been – can we still use it, and definitely that  
 15 – so I had it, I had it dumped onto the field, my people  
 16 were using it where they needed to and I had made it  
 17 available if they needed it, on the understanding that it  
 18 would be replaced if they used it.

19 CHAIRPERSON: So the point basically is,  
 20 to sum up the exchange between you and Ms Pillay on this  
 21 point, it is correct that there was a conversation –

22 MR SINCLAIR: Yes.

23 CHAIRPERSON: - between you and the  
 24 police. They requested barbed wire, you indicated it  
 25 wouldn't be a problem, you could make it available on the

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1 basis that they had to replace it afterwards. Is that  
 2 right?

3 MR SINCLAIR: that's –

4 CHAIRPERSON: That's not mentioned in  
 5 your statement. That's the point –

6 MR SINCLAIR: It's not mentioned in my  
 7 statement –

8 CHAIRPERSON: Okay.

9 MR SINCLAIR: I definitely have not  
 10 mentioned that in my statement.

11 CHAIRPERSON: No, we know that. Yes,  
 12 okay. Yes, Ms Pillay, next point?

13 MS PILLAY: We know, Mr Sinclair, that  
 14 you briefed Colonel Scott when he arrived in Marikana, you  
 15 briefed him about the incidents leading up to the incident  
 16 at the railway line on the 13th and that you assisted him to  
 17 orientate himself with reference to a map of the area.

18 MR SINCLAIR: In my dealings, in the JOC  
 19 that had been set up away from my office, Scott would have  
 20 been there and whoever needed briefings that, for their  
 21 plans, I briefed various people. Scott probably, I don't  
 22 recall specifically briefing Scott on that day but if you  
 23 say that he has testified or you know that I did that, then  
 24 I accept that I briefed him. I would have briefed him  
 25 about our infrastructure, where our hostels are, where our

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1 roads are, where those type of things and I would have been  
 2 assisted, if I wasn't assisted then I definitely would have  
 3 been assisted by Dirk Botes to brief those, to pass on  
 4 those type of briefings. It was relevant to the police  
 5 operation.

6 CHAIRPERSON: Now that briefing you're  
 7 talking about, did that only take place in the JOC?

8 MR SINCLAIR: Those –

9 CHAIRPERSON: I'm interested particularly  
 10 in your dealings with Colonel Scott.

11 MR SINCLAIR: That briefing, I do not  
 12 recall whether that one – I had briefings with Scott and I  
 13 watched some of these things from time to time but that  
 14 particular briefing in all probability would have taken  
 15 place in the police JOC.

16 MS PILLAY: We know that you accompanied  
 17 Brigadier Calitz on the 13th in the helicopter and the  
 18 purpose of that helicopter trip was to direct General  
 19 Mpmembe to the area where the strikers were marching.

20 MR SINCLAIR: Mr Chair, with regard to  
 21 that specific thing and again that is – it's not in my  
 22 statement, that I wanted, I knew that the striking workers  
 23 were very close to the back of the K4, sorry, the K4  
 24 offices next to the railway line. I was getting  
 25 information, I wasn't comfortable with the video evidence

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1 that I could see of where they were. I summoned the Protea  
 2 Coin helicopter to be available for me. I wanted to do an  
 3 over-flight, I knew I had my people sitting on the bridge.  
 4 I wanted to be up so that I had a clear picture. I would  
 5 be asked questions and things from my management team.  
 6 When I was going out to the helicopter, Calitz was in the  
 7 area, I said I'm going out for an over-flight, can I come  
 8 with you? I said I don't have a problem with that, you can  
 9 come, and I flew up, I flew out over the incident with  
 10 Calitz in the helicopter. I returned back to – I was not  
 11 long out there, I could see the striking workers walking  
 12 back down the railway line. I could see clearly from  
 13 there, there was a police contingent of vehicles and if I  
 14 recall correctly it was significant, it was somewhere in  
 15 the order of 16 vehicles, big vehicles and that proceeding  
 16 to that area. I flew back to the JOC. I had achieved what  
 17 I needed to achieve to have an aerial view of what was  
 18 going on.

19 CHAIRPERSON: You deal with that in  
 20 paragraph 37 of your affidavit.

21 MR SINCLAIR: Do I?

22 CHAIRPERSON: FFFF1, page 98. You  
 23 mention that you undertook this aerial inspection. You  
 24 don't mention the fact that Brigadier Calitz went with you.

25 MR SINCLAIR: Certainly I don't mention

<p style="text-align: right;">Page 33898</p> <p>1 that in my statement, Mr Chair.</p> <p>2 MS PILLAY: Chair, I see it's 12 o'clock</p> <p>3 now. Would you like to take the comfort break?</p> <p>4 CHAIRPERSON: I think –</p> <p>5 MR SINCLAIR: Mr Chair, I'm in a very</p> <p>6 comfortable space. I'm good, I can carry on or –</p> <p>7 CHAIRPERSON: We do try to adjourn every</p> <p>8 hour and a quarter.</p> <p>9 MR SINCLAIR: Thank you, sir.</p> <p>10 CHAIRPERSON: We do try to adjourn every</p> <p>11 hour and a quarter, hour and a half, because we find it's</p> <p>12 not fair on cross-examiners, it's not fair on the witnesses</p> <p>13 either. Concentration, it is my experience and the</p> <p>14 experience I think generally of people involved in the law</p> <p>15 that if you go on much longer, the quality of the evidence</p> <p>16 may well fall away, not due to the witness's fault but to</p> <p>17 the fact that a short break is required. So we'll take the</p> <p>18 tea adjournment, it's quarter of an hour.</p> <p>19 MR SINCLAIR: Thank you, Mr Chair.</p> <p>20 [COMMISSION ADJOURNS COMMISSION RESUMES]</p> <p>21 [12:23] CHAIRPERSON: The Commission resumes. Mr</p> <p>22 Sinclair, you're still under oath.</p> <p>23 GRAEME MILLER SINCLAIR: [s.u.o.]</p> <p>24 CHAIRPERSON: Ms Pillay.</p> <p>25 CROSS-EXAMINATION BY MS PILLAY (CONTD.):</p>	<p style="text-align: right;">Page 33900</p> <p>1 explained to me at that time that there had been two</p> <p>2 fatalities on the Sunday with the mine security. We</p> <p>3 plotted that position and then he showed me the approximate</p> <p>4 positions of where the police had been attacked earlier</p> <p>5 that day and I plotted that as well on the Google map." Do</p> <p>6 you recall that discussion, Mr Sinclair?</p> <p>7 MR SINCLAIR: Yes, now that I see this I</p> <p>8 do recall it and if I could just say, if I appear to be</p> <p>9 vague please do not take it, I do not want to be vague. So</p> <p>10 I want to just make that statement, please. Thank you.</p> <p>11 MS PILLAY: If we can then put up day 131</p> <p>12 on the screen, please, and if we can go to 13381 – I</p> <p>13 apologise, 13882.</p> <p>14 CHAIRPERSON: Line?</p> <p>15 MS PILLAY: If we can go further down.</p> <p>16 I'm sorry, Chair, I'm just trying to find where the – I</p> <p>17 think the next page, 13383, towards the bottom of the page.</p> <p>18 I'm sorry, it is 81, 13381 from line 7.</p> <p>19 CHAIRPERSON: That doesn't look right,</p> <p>20 you know.</p> <p>21 COMMISSIONER HEMRAJ: Is it 13381?</p> <p>22 MS PILLAY: Sorry, it's 13381. That</p> <p>23 explains it. It's 13381.</p> <p>24 CHAIRPERSON: Yes, we're 500 pages ahead</p> <p>25 where we should be.</p>
<p style="text-align: right;">Page 33899</p> <p>1 Thank you, Chair. Mr Sinclair, in view of the fact that</p> <p>2 you were fairly vague about the extent to which you</p> <p>3 interacted with Colonel Scott in the run-up formulating the</p> <p>4 first part, the first version of his plan, I think we</p> <p>5 should look at the testimony of Colonel Scott and if I</p> <p>6 could ask that day 128 be put on the screen, please?</p> <p>7 CHAIRPERSON: Those who are having a</p> <p>8 conversation at the back, if you want to have a</p> <p>9 conversation please go outside and have it there. It's</p> <p>10 very difficult to concentrate on the evidence and the</p> <p>11 questions if there's a conversation going on in the same</p> <p>12 room. I don't want to ask people to leave. I'm sure they</p> <p>13 want to listen to the evidence, but then they must listen</p> <p>14 and not talk among themselves. What page, what line?</p> <p>15 MS PILLAY: It's page 13352.</p> <p>16 CHAIRPERSON: Now we've got that page on</p> <p>17 the screen. Perhaps they can enlarge that page and you can</p> <p>18 tell us the line we must look at.</p> <p>19 MS PILLAY: It's from line 1. "Mr</p> <p>20 Sinclair assisted me in orientating me to the environment</p> <p>21 as I myself didn't quite know where I was. It was dark.</p> <p>22 We looked firstly at the mine maps and then I took him to a</p> <p>23 Google map and we plotted specifically where we were,</p> <p>24 plotted where he said that the miners had been coming</p> <p>25 together, or the strikers. He showed me as well where and</p>	<p style="text-align: right;">Page 33901</p> <p>1 MS PILLAY: From line 7 onwards where Mr</p> <p>2 Semanya asks Colonel Scott, "And then you arranged with Mr</p> <p>3 Sinclair to print a large copy of the satellite photo of</p> <p>4 the area where the koppie was located and you gathered</p> <p>5 around the table in the JOC to discuss the options that are</p> <p>6 available to the police?" Colonel Scott, "That's right, it</p> <p>7 was a room adjacent, just off the JOC room itself." Do you</p> <p>8 recall this conversation with Colonel Scott?</p> <p>9 MR SINCLAIR: I, if it's there and</p> <p>10 documented it would have happened, yes. Sitting here right</p> <p>11 now I know that I had conversations with him and I</p> <p>12 definitely, if I had been asked for maps I definitely would</p> <p>13 have arranged for them and if I'd been asked to point</p> <p>14 things out on the maps, as this indicates, I'm very certain</p> <p>15 I would have done that, if this is his view. I don't</p> <p>16 personally recall it, but I would have done it. I accept</p> <p>17 that it was done.</p> <p>18 MS PILLAY: You see, Mr Sinclair, I find</p> <p>19 it strange that you don't have a clear recollection of this</p> <p>20 engagement with Colonel Scott because Colonel Scott's</p> <p>21 testimony was that you were actually very helpful to him in</p> <p>22 this early phase of preparing the initial plan and that in</p> <p>23 fact SAPS would have struggled without you. We see that</p> <p>24 towards the end of 13382 where Mr Semanya asks, "And you</p> <p>25 tell us that Mr Sinclair was present during some of the</p>

<p style="text-align: right;">Page 33902</p> <p>1 planning that you were doing, providing you with 2 information which the security had at the time?" and 3 Colonel Scott, "Yes, he was actually very helpful to us. I 4 think without him being there we would have really 5 struggled. He gave us at that time as well when we went 6 into that planning circle quite a bit of information 7 regarding who, at that stage who I'm presuming he thought 8 the strikers were, how many they were, what their movements 9 were." So it appears, Mr Sinclair, that you played quite a 10 key role in the early formulation of the first plan. 11 MR SINCLAIR: Mr Chairman, that was on – 12 MR BHAM SC: Mr Chairman, sorry, may I 13 just – if one goes through the passages my learned friend 14 is going through, the assistance being referred to by 15 Colonel Scott is in the provision of information rather 16 than the formulation of the plan. So to suggest that that 17 relates to assistance in the formulation of the plan 18 doesn't accord with the evidence of Colonel Scott because 19 what he's talking about is the provision of information. 20 MS PILLAY: The provision of information, 21 Chair, which led to the formulation of the plan. 22 CHAIRPERSON: Yes, Mr Bham is making a 23 valid distinction, drawing a valid distinction between 24 giving information which was used for the purposes of 25 compiling the plan and the actual compiling of the plan.</p>	<p style="text-align: right;">Page 33904</p> <p>1 onto the Lonmin property to undertake a task that we could 2 not deal with and it was a vast task, it wasn't a small – 3 so definitely I would have been one of the people, Henry 4 would have been another one, and I can't remember who 5 assisted exactly with what, but definitely I believe that 6 of his statement to be very correct, that I would have 7 assisted him with that orientation information that they 8 required to whatever they needed to do. 9 MS PILLAY: In fact, Mr Sinclair, Colonel 10 Scott describes the information that you provided as 11 critical and we see that at page 13392. 12 MR SINCLAIR: I'm – sorry. 13 MS PILLAY: From line 7 onwards. Or 14 maybe I should pick up at the beginning of the sentence. 15 "It's just speaking to the strategy still which was derived 16 with Colonel Merafe and two others at that meeting, that 17 evening, and what was critical there was that Mr Sinclair 18 spoke to us and said but not the whole 3 000 remained at 19 the koppie overnight. The majority of them move away and 20 there's only a core group which do remain, and this gave 21 rise to an opportunistic plan or strategy." 22 MR SINCLAIR: I gave them – Mr Chairman, 23 I gave them information that I believed was the right thing 24 for them to have to deal and effectively try and solve the 25 – so yes, that information I believe was the right</p>
<p style="text-align: right;">Page 33903</p> <p>1 It's not suggested by Colonel Scott, and I didn't 2 understand you to suggest it either, that this witness had 3 taken, made suggestions as to what the plan should be. 4 He'd merely given the information, distinctive information 5 apparently, on the basis of which the plan was drawn up. 6 That's a correct distinction that Mr Bham makes and I don't 7 understand you to be challenging him. 8 MS PILLAY: Chair, we accept that 9 distinction and the questions to Mr Sinclair were done on 10 that very basis, that he played a central role in the 11 initial stages which led to the formulation of the plan. 12 MR SINCLAIR: Mr Chairman, definitely 13 when the police teams were moving in - I did not know Mr 14 Scott; he is one of the people that I did not know before 15 he had moved there. When the police teams were moving in 16 there it would have been whoever was saying listen, here 17 are the guys, can you please, they need to put a plan, an 18 orientation plan together so they know where they are and 19 what's going on and where they must deploy, where POPs 20 units should be, etcetera, and definitely I would have 21 assisted, I would have been assisted by other people of my 22 team if they needed something. For instance the printing, 23 I would have definitely assisted and say you don't have 24 printers and plotters set up, we have that, I can plot that 25 for you for you to orientate yourself. They were coming</p>	<p style="text-align: right;">Page 33905</p> <p>1 information to give them otherwise how were they going to 2 do their work? 3 CHAIRPERSON: That information was 4 correct, I take it. 5 MR SINCLAIR: I, that I, that about a 6 small portion remaining there, I can recall at the early 7 stages there used to be a small portion lying and the 8 majority would move out. So I would have given them that 9 information. 10 CHAIRPERSON: And where did you get that 11 information from? 12 MR SINCLAIR: I would have had it from 13 my, information from my teams about what's happening, 14 movement around. I would have had it, I would have had 15 visuals that I could have seen that movement taking place. 16 So it was information that I personally was familiar with, 17 our roads, our, where our roadblocks were, where our 18 hostels were. All of that would have been crucial to the 19 police and yes, I definitely would have had that 20 interaction. 21 MS PILLAY: And yet you make no mention 22 of that interaction which we see was critical for SAPS, you 23 make no mention of that in your statement to this 24 Commission. 25 MR SINCLAIR: Mr Chair, I see now my</p>



<p style="text-align: right;">Page 33906</p> <p>1 statement is what I believe I put in here. If I had been 2 requested to enlarge this I would certainly enlarge it. I 3 saw my legal team, I don't know whether they were allowed 4 to say to me no, but you need to enlarge this, but – 5 CHAIRPERSON: They would have been 6 allowed to do that. 7 MR SINCLAIR: And I saw the evidence 8 leader people that came and questioned, or came and took me 9 through things that they needed to know. At no point was I 10 said that I need to expand on those type of things, 11 otherwise I would have had no problem expanding on them, 12 but I believed that I put this before the Commission, that 13 is my overview to the Commission to assist the Commission. 14 That's where I am with my statement. 15 MS PILLAY: And we see at page 13409 of 16 this transcript that you offer SAPS the Protea Coin 17 helicopter to do a reconnaissance flight. 18 MR SINCLAIR: Mr Chair, I don't know who 19 put that to the Commission. I definitely did, in my doing 20 did, I personally did not offer Protea – SAPS a helicopter. 21 I had, and I have addressed that earlier, had the Protea 22 Coin helicopter for my use, for my team's use and Protea 23 Coin were there. The Protea Coin senior person, and I 24 believe it is Waal de Waal, I believe he offered the other 25 Protea Coin to the police. It had nothing to do with me.</p>	<p style="text-align: right;">Page 33908</p> <p>1 you would have done. We're interested in what you did do. 2 Remember I asked you earlier whether the briefing was 3 confined to things that took place in the JOC and you said 4 yes, and I now ask you did you take him around in your 5 vehicle, or would you simply have? Whatever that means. 6 MR SINCLAIR: Did I – I don't personally 7 remember taking him around in my vehicle. I could well 8 have taken him around, Sir. I certainly don't recall that. 9 Remember there were many trips that I undertook with many 10 people, so certainly if he says I did, he was the person 11 that – I will accept that that is a reasonable statement, 12 Sir. 13 MS PILLAY: Now Mr Sinclair, you were 14 part of a meeting with the Provincial Commissioner on the 15 13th of August before the incident at the railway line. 16 Isn't that correct? 17 MR SINCLAIR: That was early in the 18 morning, is that correct? 19 MS PILLAY: That's correct. 20 MR SINCLAIR: I don't recall when she 21 arrived or where, but if she had arrived I would have been 22 asked to be part of that briefing. 23 MS PILLAY: The question, Mr Sinclair, 24 is, were you part of the meeting with the Provincial 25 Commissioner on the morning of the 13th of August?</p>
<p style="text-align: right;">Page 33907</p> <p>1 MS PILLAY: So when Colonel Scott says to 2 us that during the orientation you offered the use of the 3 Protea Coin helicopter to him, then his testimony was 4 false? 5 MR SINCLAIR: Colonel Scott might have 6 understood that, that offer. I, if - let me just go one 7 step back to you with my answer. I might have said "We 8 have a Protea Coin helicopter if we need to use it for 9 orientation." Certainly I would have, if that's what he 10 says – and I cannot remember every word that I said, but 11 certainly I would have put that on the table. I had no 12 reason to not put something – I think it was a reasonable 13 thing to put on the table. That was the helicopter that my 14 teams were using. The other one I cannot speak for, sorry. 15 MS PILLAY: And finally, Mr Sinclair, we 16 know that not only were you part of the discussions at the 17 JOC in relation to the formulation, or the information 18 gathering which led to the formulation of the first plan, 19 but you actually drove Colonel Scott around to give him a 20 sense of the actual physical area. 21 MR SINCLAIR: Out of that plan I could – 22 I don't recall, I could well have driven him around. I 23 would have taken him out, I would have taken him up to the 24 four-way stop at Wonderkop. 25 CHAIRPERSON: We not interested in what</p>	<p style="text-align: right;">Page 33909</p> <p>1 MR SINCLAIR: Do you know – may I ask 2 where it took place, to assist me? 3 CHAIRPERSON: I think that's a fair 4 request. 5 MS PILLAY: It took place at Lonmin's 6 premises. 7 CHAIRPERSON: Lonmin premises, which - 8 where exactly? I think it was the LPD. 9 MR SINCLAIR: Mr Chair – 10 CHAIRPERSON: Or OPD. OPD. 11 MR SINCLAIR: If the Provincial 12 Commissioner had arrived and gone to OPD I would have been 13 part of that conversation – sorry, that meeting. I would 14 have been called in by our management team to be part of 15 that. Yes, I would have been called in. 16 MS PILLAY: And once again you don't deal 17 with this meeting in your statement. 18 MR SINCLAIR: I believe, Mr Chair, I have 19 explained my view was that this is where we were and I 20 haven't specifically mentioned that in my statement. 21 MS PILLAY: We know, Mr Sinclair, that 22 you were part of a meeting with the Provincial Commissioner 23 on the 14th of August. 24 MR SINCLAIR: I was part of their 25 meetings with the Provincial Commissioner and others and</p>

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1 yes, that's, if you know that I was there, yes I was there.  
 2 MS PILLAY: We know that you were there,  
 3 Mr Sinclair, because we have a transcript of that meeting -  
 4 it's JJJ192 - and there were very significant utterances  
 5 made by you at that meeting, which I'm sure other parties  
 6 will deal with in due course. The issue that I'm raising  
 7 with you is that there is no mention of that meeting and  
 8 your interaction with the Provincial Commissioner in your  
 9 statement either.  
 10 MR SINCLAIR: Mr Chair, I agree with that  
 11 and it is, if it is an omission on my part then I accept it  
 12 is an omission on my part, if that's what the Commission  
 13 would have required me to do.  
 14 MS PILLAY: It's true, isn't it, Mr  
 15 Sinclair, that you had a telephone conversation with the  
 16 Provincial Commissioner on the 15th of August?  
 17 MR SINCLAIR: Is that -  
 18 MS PILLAY: That's the day -  
 19 CHAIRPERSON: It is the Wednesday, the  
 20 day before the shooting.  
 21 MR SINCLAIR: Mr Chairman, I know that I  
 22 definitely had a telephone conversation with the Provincial  
 23 Commissioner on the Sunday - which was the 12th, was it? -  
 24 in the evening, because we were, I was in a space where we  
 25 needed things to be elevated and I would have had other

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1 telephone conversations with her. So I definitely had  
 2 telephone conversations with the Provincial Commissioner.  
 3 I -  
 4 MS PILLAY: But we've picked up from her  
 5 telephone records, Mr Sinclair, and we raised this with you  
 6 this morning, that there was a telephone conversation  
 7 between you and the Provincial Commissioner at -  
 8 MR SINCLAIR: I accept that.  
 9 MS PILLAY: - at just after 2 o'clock -  
 10 MR SINCLAIR: I accept that. I've seen -  
 11 MS PILLAY: - on the 15th of August.  
 12 MR SINCLAIR: I've seen the records. I  
 13 accept that.  
 14 MS PILLAY: Do you recall what that  
 15 conversation was about?  
 16 MR SINCLAIR: Mr Chairman, I can clearly  
 17 recall the Sunday conversation between I was in that stage  
 18 where I - that conversation I cannot recall what, or what  
 19 it was.  
 20 MS PILLAY: You see, Mr Sinclair, that  
 21 conversation is actually of extreme importance to the work  
 22 of this Commission -  
 23 MR SINCLAIR: That's okay.  
 24 MS PILLAY: And I'll explain to you why.  
 25 MR SINCLAIR: Yes.

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1 MS PILLAY: That conversation takes place  
 2 on the 15th of August and the evidence before this  
 3 Commission is that for the entire day on the 15th of August  
 4 the Provincial Commissioner was attending a meeting of the  
 5 National Management Forum of SAPS. Are you aware of that?  
 6 MR SINCLAIR: I am not really aware of  
 7 that, no.  
 8 [12:43] MS PILLAY: So if this telephone  
 9 conversation and it did take place just after 2 o'clock on  
 10 the 15th. It was a telephone conversation from the  
 11 Provincial Commissioner to you right in the middle of the  
 12 meeting of the National Management Forum.  
 13 CHAIRPERSON: Do I understand you to say  
 14 that the call was actually made by the Provincial  
 15 Commissioner to the witness? It wasn't the witness who  
 16 phoned her, it was she who phoned him, is that correct?  
 17 MS PILLAY: That's correct, Chair.  
 18 MR SINCLAIR: That's what I saw on the  
 19 records, but the call definitely took place and I will  
 20 apply my mind and see if I can recall what - I do not, as  
 21 I'm sitting here, recall what the conversation was. If it  
 22 does come back to me I will definitely share that  
 23 information with the Commission, Sir.  
 24 MS PILLAY: Mr Sinclair, for the better  
 25 part of this morning we have established that you were

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1 actually intricately involved in interacting with SAPS  
 2 during the operation at Marikana. Do you accept that?  
 3 MR SINCLAIR: Mr Chair, I was involved in  
 4 doing my job of making sure that the police were coming  
 5 onto the property and taking over the situation that we  
 6 couldn't do. So I had to communicate with people, I had to  
 7 instruct my people to communicate, I had to pass  
 8 information back to my management team. I was definitely  
 9 involved with the - just logistical information. A thing  
 10 like how many people are you bringing onto the property, we  
 11 don't know, it could be in excess. Have we got toilets.  
 12 We can't have people, masses of people coming on, so I  
 13 definitely was involved in aspects of dealing with various  
 14 levels of the police. And my teams were also involved in  
 15 that when the police were on to take over the operation.  
 16 MS PILLAY: Because what was happening at  
 17 the time, Mr Sinclair, was of extreme importance, not only  
 18 to you, but to Lonmin as a whole.  
 19 MR SINCLAIR: My Lonmin management that I  
 20 directly reported to were concerned, us as security and  
 21 emergency were no longer able to deal with that situation  
 22 and we needed the intervention of the SAPS. So definitely  
 23 they were concerned and they would what's happening, I  
 24 would orientate them. That there, get direction if they  
 25 needed to give me or whatever in that process of the SAPS

<p style="text-align: right;">Page 33914</p> <p>1 taking over this role, this massive role that had escalated 2 in an extremely short time. It had caught everybody by 3 surprise, for them to take over because we as Lonmin 4 security, Lonmin emergency and my managers were not able to 5 take the process forward. We just had no – we didn't have 6 the infrastructure, the thing or anything to take and deal 7 with that process. So we had to interact with the police. 8 MS PILLAY: And then you receive a call 9 from the Provincial Commissioner on the 15th and you expect 10 the Commission to believe that you are unable to remember 11 what that call was about. 12 CHAIRPERSON: May I ask a question? You 13 and the witness know the answer, but I don't. How long was 14 the conversation? 15 MS PILLAY: It was for around two 16 minutes, Chair. 17 CHAIRPERSON: Two. 18 MR SINCLAIR: Mr Chair, I put it to the 19 Commission as I'm sitting here, I do not recall the total 20 content of that - I'm going to apply my mind and yes – 21 CHAIRPERSON: The total content is one 22 thing, that means you can't remember everything, can you 23 remember anything? The call came through, did she have a 24 query, was she telling you something or can't you remember 25 anything?</p>	<p style="text-align: right;">Page 33916</p> <p>1 have made a note. And if you can't remember what the 2 conversation is about you can't say whether you would have 3 made a note or not would you? I'm not trying to be clever 4 but that is a fact isn't it? I think it would be rash in 5 saying – 6 MR SINCLAIR: I don't, as a rule, make 7 notes of those conversations when I'm walking around or 8 travelling around, I don't, as a rule, make notes of 9 conversations like that. I'm normally, I'm normally good 10 at remembering those types, I'm very bad at names, but I'm 11 normally good at remembering those types of things. And I 12 believe that I will remember what it was about. 13 CHAIRPERSON: Okay well thank you for 14 that, but if it had been something very important you 15 might, of course, have passed on the information to 16 somebody else like one of your superiors and so on at 17 Lonmin, probably by email. 18 MR SINCLAIR: I don't know if it would 19 have been by email but – 20 CHAIRPERSON: Well how would you have 21 passed – assuming she phoned up and said something very 22 important – 23 MR SINCLAIR: Certainly yes, if she'd 24 phoned there is a very, very likely chance that it was 25 important that I would have sensitised my immediate report,</p>
<p style="text-align: right;">Page 33915</p> <p>1 MR SINCLAIR: Mr Chair, I will recall it. 2 I know, that's the way I operate. I will recall it and as 3 soon as I do I will disseminate that information to your 4 team for the thing. Right now I would hate to say it was 5 this or that because I am blank on that call, Sir. 6 CHAIRPERSON: Do you make notes of 7 conversations, important conversations? 8 MR SINCLAIR: On conversations like that 9 – 10 CHAIRPERSON: Do you have a diary or 11 someone phones do you keep a note just for you know – you 12 talked earlier about jogging the memory and so on I 13 remember. 14 MR SINCLAIR: Yes, Sir. 15 CHAIRPERSON: So do you do that with 16 important conversations? 17 MR SINCLAIR: That conversation it would 18 have been – taken place I would not have taken a note of 19 that. The conversation for instance on Sunday I don't know 20 if it is in – remember the memory jogger thing that I do, I 21 don't know if that is in that record, but certainly I don't 22 take notes of those. 23 CHAIRPERSON: Well doesn't it depend on 24 what the conversation is about? If the conversation is 25 about something very important I think surely you would</p>	<p style="text-align: right;">Page 33917</p> <p>1 Mr Frank Rosa Bello or if I couldn't get hold of him I 2 would have sensitised Barnard Mokwena because he was 3 dealing with the HR. So certainly if it was important I 4 would – or if it was important for my own team I would have 5 told somebody in my team about it. 6 CHAIRPERSON: When you talk about 7 sensitising Mr Rosa Bello how would you have done it, would 8 you have done it by email or a telephone conversation or 9 what? 10 MR SINCLAIR: I would have probably 11 phoned him, Sir and that could be traced on the phone 12 records whether I had made a phone call immediately after 13 that to him. But that's how I would have operated, Sir. 14 COMMISSIONER HEMRAJ: Would you have made 15 notes of the meetings that you attended with the Provincial 16 Commissioner, the National Commissioner? 17 MR SINCLAIR: No, Ma'am, my normal modus 18 operandi I would go in and I would sit, often I was not 19 carrying my notebook. If I was carrying my notebook I 20 would have made notes, but if I wasn't carrying it I 21 wouldn't have made notes, I would have verbalised, moved on 22 and given instructions. 23 MS PILLAY: Could it be, Mr Sinclair, 24 that on the 15th of August at around quarter past two the 25 Provincial Commissioner was letting you know that SAPS</p>

<p style="text-align: right;">Page 33918</p> <p>1 would move to the tactical phase the next day?</p> <p>2 MR SINCLAIR: I have asked for time just</p> <p>3 for me to try and I will consider whether that might be a</p> <p>4 mind jogger, it's come to me now that it could be a</p> <p>5 possibility. I'm going to consider that and if that is the</p> <p>6 case I will definitely let you know.</p> <p>7 MS PILLAY: Thank you, Mr Sinclair. We</p> <p>8 started this topic, Mr Sinclair, of your interaction with</p> <p>9 SAPS by me establishing with you that you have come to the</p> <p>10 Commission with clean hands and a full and forthright</p> <p>11 description of your involvement in the events of Marikana</p> <p>12 and yet we've seen from the past few hours that in fact</p> <p>13 there is a substantial body of information relating to your</p> <p>14 interaction with various SAPS officials that is not</p> <p>15 included in your statement. And that you have not, of your</p> <p>16 own accord, shared with this Commission. Can I ask you to</p> <p>17 respond to that?</p> <p>18 MR SINCLAIR: Mr Chair, I think for the</p> <p>19 record, that I have come to the Commission with clean hands</p> <p>20 and that these issues have been pointed out like the log</p> <p>21 sheets and these things and I think I have very clearly</p> <p>22 indicated that if I had been guided to be in more detail I</p> <p>23 certainly would have done that. And in retrospect now it's</p> <p>24 easy to go back and say well you should not have changed</p> <p>25 those things and I think I've dealt extensively –</p>	<p style="text-align: right;">Page 33920</p> <p>1 is. So definitely I would have done that if I had been</p> <p>2 requested.</p> <p>3 MS PILLAY: And Mr Sinclair, just a sweep</p> <p>4 up of the first issues which we began with today and that's</p> <p>5 the issue around the occurrence book entries. If I can ask</p> <p>6 that exhibit XX2.10 be put up on the screen and if we go</p> <p>7 right to the beginning of this document. Just extreme left</p> <p>8 and if we can zoom in on the top left-hand corner you will</p> <p>9 see there, Mr Sinclair, that the date on which the document</p> <p>10 was sintered was the 8th of October 2012. Do you see that?</p> <p>11 And the time was 14:55. Let me just remind you this is the</p> <p>12 deleted version.</p> <p>13 MR SINCLAIR: Okay.</p> <p>14 MS PILLAY: And in the middle of the page</p> <p>15 if we could ask the technician just to move slightly to the</p> <p>16 right. In the middle of the page you see the name of the</p> <p>17 directory. Do you see it ends with log sheet. Do you see</p> <p>18 that? Now if I could ask that exhibit EEEE19.1 be put up,</p> <p>19 sorry apologies, not that one. That's correct. Chair,</p> <p>20 this file is what was distributed in hard copy to you.</p> <p>21 It's the electronic version of what you see before you. So</p> <p>22 if we could open that document.</p> <p>23 CHAIRPERSON: I know I'm being tedious I</p> <p>24 apologise, but could we please see the document that we saw</p> <p>25 a moment ago? That's the heading of the other exhibit, the</p>
<p style="text-align: right;">Page 33919</p> <p>1 CHAIRPERSON: You're not being asked</p> <p>2 about that now. You're being asked about your interaction</p> <p>3 with various senior members of the SAPS which you didn't</p> <p>4 mention in your statement. And what Ms Pillay is putting</p> <p>5 to you as I understand her, whether it's correct or not is</p> <p>6 something we'll have to decide later, but what she's</p> <p>7 putting to you is that these were matters that it would</p> <p>8 have been expected of you to have mentioned in your</p> <p>9 statement if you were telling us all the material facts. I</p> <p>10 think that's your point, Ms Pillay isn't it?</p> <p>11 MS PILLAY: That's correct, Chair.</p> <p>12 CHAIRPERSON: So it doesn't help to tell</p> <p>13 us about the entries, we've gone over that ground already,</p> <p>14 but we're busy with the next point you see. So it would</p> <p>15 help us and I think frankly it would help you if you</p> <p>16 answered her question directly.</p> <p>17 MR SINCLAIR: Mr Chair, I have not put in</p> <p>18 my statements. If I had been sensitised that it was</p> <p>19 important prior to this I definitely would have had an</p> <p>20 inclusion of statement and gone and detailed it when I had</p> <p>21 interacted with your team who interviewed me my team. If</p> <p>22 it had been sensitised to I definitely would have sat back</p> <p>23 and gone and diligently found what did I do. And here as I</p> <p>24 am I am sharing openly with you what I believe and if</p> <p>25 something like that is pointed out to me I would say yes it</p>	<p style="text-align: right;">Page 33921</p> <p>1 earlier exhibit. A little bit to the right, I'd like to</p> <p>2 see the bit on the extreme left. Printed 8.10.2012, time</p> <p>3 14:55. Yes, thank you.</p> <p>4 MS PILLAY: That's correct, Chair.</p> <p>5 CHAIRPERSON: Thank you.</p> <p>6 MS PILLAY: And if we go to the</p> <p>7 electronic version of the document you have before you, to</p> <p>8 the extreme left corner.</p> <p>9 CHAIRPERSON: It's the same date 8th</p> <p>10 October 2012 but at 10:16.</p> <p>11 MS PILLAY: That's correct, Chair.</p> <p>12 CHAIRPERSON: So this document was in</p> <p>13 fact printed in the morning and the other one was printed</p> <p>14 early in the afternoon.</p> <p>15 MS PILLAY: At five to three in the</p> <p>16 afternoon, so what that means, Mr Sinclair, is that we can</p> <p>17 pinpoint with a fair degree of accuracy when the deletions</p> <p>18 were made on the document. Do you see that?</p> <p>19 MR SINCLAIR: I believe that could be</p> <p>20 correct.</p> <p>21 MS PILLAY: This becomes significant</p> <p>22 because in terms of our records the first discovery by</p> <p>23 Lonmin was made on the 15th of October and I'm sure my</p> <p>24 learned friend, Mr Bham will correct me if that's not</p> <p>25 correct. But according to our records Lonmin's discovery</p>

<p style="text-align: right;">Page 33922</p> <p>1 was made on the 15th of October 2012 which is shortly after 2 the date on which the deletions were made. Do you see 3 that? 4 MR SINCLAIR: Yes. 5 CHAIRPERSON: It's more serious than that 6 because obviously a decision's been taken that afternoon to 7 print the copy that's coming to us, to the Commission. So 8 early on the same day, in the morning the completed 9 uncensored document is printed and then apparently, 10 immediately thereafter for some reason the entries that 11 we've been talking about this morning and deleted and then 12 the document's reprinted with these things missing. Now it 13 is a bit awkward isn't it, I don't quite understand it. 14 Can you help me to understand, to get past the apparent 15 awkwardness of the two times that it had been put to? 16 MR SINCLAIR: Mr Chair, I will endeavour 17 to try. The first document in black and white. I do not 18 know who sent that document to – you said it was taken from 19 Scott, I don't know who sent it to him or how he got hold 20 of it. 21 MS PILLAY: Just a correction, Mr 22 Sinclair, the first document, the black and white version 23 that's the version that was discovered by Lonmin on the 15th 24 of October. 25 CHAIRPERSON: That's the one later in</p>	<p style="text-align: right;">Page 33924</p> <p>1 to be the case that the document they had passed onto us 2 was the one that they got and they didn't know about the 3 other one. That's what Mr Bham told us and if there's an 4 imminence of counsel appearing before you, an imminence of 5 attorneys, no question but we accept what they say. And I 6 don't think you would challenge that either, but the fuller 7 document, the complete document was printed in the morning 8 and then I don't know whether that's the one that got to 9 Scott, I don't know how Scott got his copy. But 10 thereafter, that same day, that afternoon deletions were 11 made, a shorter version is printed and that's the one that 12 was apparently passed onto the lawyers and via the lawyers 13 comes to us. Now that does take some explanation and it 14 may well be perfectly understandable, a valid explanation, 15 but I don't know what it is at the moment. 16 MR SINCLAIR: Mr Chair, what I can 17 comment on is the deleted document was not corrected in one 18 day. I know Amanda worked on it and if I recall correctly 19 she worked on it for many days. We first had to print the 20 books and then – and so it was definitely worked on days 21 and days before it was thing. 22 CHAIRPERSON: I'm sorry to interrupt you, 23 Mr Sinclair. I hope you don't think I'm being 24 discourteous, I don't mean to be, I'm just trying to save 25 time. I don't understand that because the document, the</p>
<p style="text-align: right;">Page 33923</p> <p>1 time, that's the one that was printed in the afternoon of 2 the 8th of October. We know this document we now have on 3 the screen was printed earlier the same day just after 4 quarter past ten. And that's the point you see that I must 5 confess I find a bit awkward, but there may be an 6 explanation and I'll be happy to hear it. 7 MR SINCLAIR: This is the corrected 8 document, this one. 9 MS PILLAY: This is the undeleted 10 version. 11 MR SINCLAIR: Is this the undeleted 12 version? 13 CHAIRPERSON: Yes that's the point. The 14 undeleted version is first, quarter past ten in the 15 morning. 16 MR SINCLAIR: Okay. 17 CHAIRPERSON: The deleted one, the 18 abbreviated censored one whatever adjective you prefer, I 19 presume you don't like the censored one, but the shorter 20 document that was printed about sometime after 2 o'clock in 21 the afternoon of the same day. 22 MR SINCLAIR: For the lawyers. 23 CHAIRPERSON: Well I don't know if it was 24 for the lawyers, it was the one we got, yes for the lawyers 25 I suppose. The lawyers have told us what I had suspected</p>	<p style="text-align: right;">Page 33925</p> <p>1 complete document is the one that's printed at quarter past 2 ten. 3 MR SINCLAIR: Yes. 4 CHAIRPERSON: The incomplete document the 5 one to use your words that's been worked on is printed 6 sometime after 2 o'clock. So it doesn't help to say that 7 she worked on it for days and days and days. What we know 8 on the objective evidence before us is at sixteen minutes 9 past ten on the morning of the 8th of October the complete 10 document was still in existence, it was printed and here it 11 is. And then at some time that afternoon, I can't remember 12 sometime after 2 o'clock the adjustments, workings on 13 whatever they are took place and we then got the shorter 14 version which went to the lawyers who passed it onto us. 15 And that's a bit awkward you know. As I say there may be 16 an explanation and you must please give it to us if you 17 can. Mr Sinclair, this is very important. 18 MR SINCLAIR: Yes, Sir. 19 CHAIRPERSON: It's now 1 o'clock and I 20 take it the point hasn't been put to you crisply before as 21 it has been by Ms Pillay. 22 [13:03] So I think it might be a good idea for us to take 23 the lunch adjournment now, resume at quarter to two. And 24 that gives you a chance to think about it and you may well 25 be able to help us. I get the impression, I don't want to</p>

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1 appear unkind, that you're not really able to help us. I'm  
 2 not suggesting that sinister –  
 3 MR SINCLAIR: I accept so.  
 4 CHAIRPERSON: - but if you can help us  
 5 this afternoon and be in a better position to give us a  
 6 helpful answer, that will be a good idea. So Ms Pillay,  
 7 with your permission can we take the lunch adjournment  
 8 until quarter to 2?  
 9 MS PILLAY: We can, Chair.  
 10 CHAIRPERSON: Permission granted. Or  
 11 permission received. Adjournment accorded.  
 12 MR SINCLAIR: Thank you, Sir.  
 13 [COMMISSION ADJOURNS COMMISSION RESUMES]  
 14 [13:51] CHAIRPERSON: The Commission resumes. Mr  
 15 Sinclair, you're still under oath.  
 16 GRAEME MILLER SINCLAIR: Thank you, Sir.  
 17 CHAIRPERSON: Ms Pillay.  
 18 CROSS-EXAMINATION BY MS PILLAY (CONTD.):  
 19 Thank you, Chair. Mr Sinclair, you testified earlier today  
 20 that you were a bit unclear about your, or your  
 21 recollection was a bit unclear about the telephone  
 22 conversation between you and the Provincial Commissioner on  
 23 the 15th of August at around quarter past 2. Do you recall  
 24 that?  
 25 MR SINCLAIR: I recall that and I said

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1 that I would try and remember.  
 2 MS PILLAY: And do you now have a clearer  
 3 recollection of what the telephone conversation was about?  
 4 MR SINCLAIR: Chair, could I – may I just  
 5 ask a question just to confirm what I think is the –  
 6 CHAIRPERSON: You normally can't, but ask  
 7 the question and I'll tell you whether you can ask it after  
 8 you've asked it.  
 9 MR SINCLAIR: Thank you, Sir. Sir, did  
 10 the Commissioner come to Lonmin after that conversation  
 11 that day or early the next day? Because that, because I  
 12 have no –  
 13 CHAIRPERSON: The Commissioner –  
 14 MR SINCLAIR: I have no answer –  
 15 CHAIRPERSON: The National Commissioner  
 16 didn't in fact come on the next day either. The National  
 17 Commissioner as I understand it –  
 18 MR SINCLAIR: No, no, the Provincial,  
 19 sorry.  
 20 CHAIRPERSON: Oh, Provincial. The  
 21 Provincial Commissioner yes, did come to Lonmin on the  
 22 morning of the 16th and she in fact addressed a press  
 23 conference at 9:30 and thereafter various things happened,  
 24 which you know about.  
 25 MR SINCLAIR: Yes.

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1 CHAIRPERSON: Does that answer your  
 2 question?  
 3 MR SINCLAIR: So I, my answer to the  
 4 telephone call that I recall in association with that was  
 5 that she had phoned me to say, "Graeme, I'm coming to the  
 6 mine." She would have either asked me if she needed a  
 7 facility to deal with her people, would I be able – because  
 8 I would arrange that, or she would want to see our  
 9 management team and I would liaise that to the management  
 10 team. She will, so she would use me from time to time if  
 11 she needed that request to that, or even the generals, if  
 12 they needed to see the management team, that's why they  
 13 would contact me in principle to see that could I arrange a  
 14 facility for them to do their things, or could I arrange  
 15 for our management team to be available for them, and I  
 16 believe that is what that conversation was about, Sir.  
 17 MS PILLAY: Mr Sinclair, if I understand  
 18 your answer, have you tried by a process of deduction to  
 19 understand what the telephone call was about, or do you  
 20 have a clear recollection of what the telephone call was  
 21 about?  
 22 MR SINCLAIR: Mr Chairman, after I – I  
 23 was a little bit frustrated with me because I couldn't  
 24 immediately – I thought about it and I thought I recall  
 25 that those, that was her conversations with me and that

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1 conversation, I am of the opinion that that conversation  
 2 that afternoon would have been to arrange a facility or,  
 3 because that's what we spoke about when she contacted me.  
 4 CHAIRPERSON: It sounds, to be fair, as  
 5 if it's a bit of a guess, but not necessarily a sinister  
 6 sort of guess. You're basing it upon the kind of phone  
 7 calls she normally made to you, and I suppose to be fair  
 8 the fact that it was only a two-minute call anyway, so  
 9 those two facts together, do they lead you to advance a  
 10 theory, which may probably be correct, or do they help you  
 11 to say you now remember this is what happened?  
 12 MR SINCLAIR: It made me, it's a – I  
 13 will, I do not recall a hundred percent, it's a theory, but  
 14 based on the Friday, sorry, the Sunday call when I phoned  
 15 her in my displeasure of the response, that I'm very clear  
 16 about. That could would have been based – that's why  
 17 that's the things that I dealt with her, so it's based on  
 18 what my traditional dealings with her was, Mr Commissioner.  
 19 Thank you, Sir.  
 20 MS PILLAY: Chair, we are given to  
 21 understand that Mr Mpofu is not available tomorrow to  
 22 cross-examine Mr Sinclair and we've agreed that we would  
 23 interpose him, as it were, and allow him to complete his  
 24 cross-examination today.  
 25 CHAIRPERSON: Yes, well we've given him

<p style="text-align: right;">Page 33930</p> <p>1 an hour, but I did tell him when he came to see me at  2 lunchtime that I was prepared to extend it by an extra  3 quarter of an hour. So if you start now, it's 5 to 2, so  4 you'll go through to 3 when we take the tea adjournment and  5 then when we resume you'll have 10 minutes after that if  6 you need them. So Mr Mpofo, I understand that you'd like  7 longer but I did explain to you that I haven't got any more  8 to give you.  9 MR MPOFU: Thank you. Thank you,  10 Chairperson. I understand that. I think just for the  11 record and according to my instructions we just have to  12 record that the, due to the importance of this witness the  13 time allocated is not adequate, but I did have that  14 discussion with you and it looks like nothing more can be  15 done.  16 CHAIRPERSON: Well, let's see what  17 happens when you cross-examine the witness.  18 CROSS-EXAMINATION BY MR MPOFU: Let's  19 see, yes. Good afternoon, Mr Sinclair.  20 MR SINCLAIR: Good afternoon, Sir.  21 MR MPOFU: Are you also a former  22 policeman like Mr Botes?  23 MR SINCLAIR: Just – I didn't hear your  24 question, Sir.  25 MR MPOFU: Pardon?</p>	<p style="text-align: right;">Page 33932</p> <p>1 MR SINCLAIR: Yes, Sir.  2 MR MPOFU: Yes, thanks. Now I'm going to  3 ask you, you've already answered the question I think the  4 Chairperson put to you, whether you kept a pocketbook or  5 not during this relevant period.  6 MR SINCLAIR: Mr Chair, I have, I don't  7 have pocketbooks. I had a book that I sometimes wrote in,  8 but I don't have pocketbooks.  9 CHAIRPERSON: I think Mr Mpofo is  10 interested in whether you kept a diary. A lot of us keep  11 diaries and we just write appointments and that sort of  12 thing in, but –  13 MR SINCLAIR: No –  14 CHAIRPERSON: But I asked you whether you  15 kept, made notes of conversations and so forth and you said  16 generally speaking you didn't.  17 MR SINCLAIR: Yes.  18 CHAIRPERSON: It's that answer he's  19 alluding to.  20 MR MPOFU: Yes.  21 MR SINCLAIR: Ja, so I would if I was in  22 my office, or if I was going there and I remembered to  23 take, I would make a note in a book that I had, but it  24 wasn't routine with me.  25 MR MPOFU: Right, well I have to say to</p>
<p style="text-align: right;">Page 33931</p> <p>1 CHAIRPERSON: He asked whether you, like  2 Mr Botes, are a former policeman.  3 MR SINCLAIR: I'm sorry, I still –  4 CHAIRPERSON: He asks whether you, like  5 Mr Botes, are a former policeman.  6 MR SINCLAIR: Mr Chair, when I left  7 school I was a policeman in Rhodesia in the British South  8 Africa Police.  9 MR MPOFU: Okay.  10 CHAIRPERSON: The answer is yes.  11 MR SINCLAIR: Say again?  12 CHAIRPERSON: The answer is yes.  13 MR SINCLAIR: The answer is yes, I was in  14 the British South African Police.  15 MR MPOFU: Yes, thank you. Yes, well the  16 answer is yes and it also even covers my next question,  17 which was are you an ex-Rhodesian. The answer is yes to  18 that too, correct?  19 MR SINCLAIR: The answer is yes, Mr  20 Chairman.  21 MR MPOFU: Thank you. And yes, I'm  22 asking that not to be facetious but because in one of the  23 conversations which I'm going to cross-examine you about,  24 that's how you were referred to. So I just wanted to check  25 if you were the same person. Understand that?</p>	<p style="text-align: right;">Page 33933</p> <p>1 you before I ask you questions that your colleagues who  2 testified here before you, Mr Julius Motlogeloa and Mr Dirk  3 Botes, were in my view very exemplary witnesses and they  4 answered candidly. So I hope we're going to go on the same  5 trend. For example Mr Botes candidly admitted that an  6 organisation, or a person wouldn't conceal evidence or  7 alter evidence if they were innocent. Would you agree with  8 that generally speaking?  9 MR SINCLAIR: [Microphone off, inaudible]  10 MR MPOFU: Would you agree that generally  11 speaking – there might be, this case might be an exception,  12 as the Chairperson said, there might be reasonable  13 explanations and so on, but generally speaking an  14 organisation or a person wouldn't doctor or change or alter  15 evidence if they had nothing to hide?  16 MR SINCLAIR: I would accept that.  17 MR MPOFU: Yes.  18 MR SINCLAIR: Sorry, my apologies.  19 Sorry.  20 CHAIRPERSON: You said you would accept  21 that.  22 MR SINCLAIR: I would accept that, Mr  23 Chair.  24 MR MPOFU: Thank you. Yes, and the other  25 thing that Mr Botes said which you are probably in the same</p>

<p style="text-align: right;">Page 33934</p> <p>1 position to comment on was that in his estimation, having 2 watched the goings on at the JOC and so on, it was clear 3 that the person who was overall in charge was General 4 Annandale. Would you also agree with Mr Botes? 5 MR SINCLAIR: I believe, yes I believe 6 that to be correct. I believe Mr Annandale was in overall 7 charge. 8 MR MPOFU: Thanks. 9 CHAIRPERSON: Well, never mind your 10 beliefs. In accordance with what you observed that's what 11 you saw? 12 MR SINCLAIR: What I saw – again what I – 13 sorry, forgive me – 14 CHAIRPERSON: He appeared to be in 15 charge? 16 MR SINCLAIR: Let me clarify that. So 17 what I saw was Mr Annandale was in overall charge. 18 CHAIRPERSON: Ja, okay. 19 MR MPOFU: Yes, thank you. And also Mr 20 Botes also conceded I think candidly that the role played 21 by people like yourself or other members, and himself, 22 members of Lonmin Security, was so pivotal to the plan, or 23 let's call it to the Operation Platinum, as the thing was 24 called, that had you not played that role, that the 25 particular operation that took place would not have taken</p>	<p style="text-align: right;">Page 33936</p> <p>1 the thing Operation Platinum, which I will remove. Mr 2 Botes when I questioned him, Mr Sinclair, conceded that the 3 role played by Lonmin Security and people like himself and 4 yourself and others was so pivotal to the formulation of 5 the plan, and he – as Mr Bham correctly points out – it was 6 just not even him; I made the distinction between the plan 7 and the execution, but that your contribution to the – 8 CHAIRPERSON: No, no, no, you don't 9 understand. Mr Bham has got a different point. The 10 distinction he draws is between information used for the 11 purposes of compiling the plan and the actual compilation 12 of the plan. 13 MR MPOFU: Ja. No, well that's the – 14 CHAIRPERSON: That's the point Mr Bham 15 makes. 16 MR MPOFU: Ja, well that point I'm 17 ignoring because I'm talking about Mr Botes here. Mr – 18 MR BHAM SC: Sorry, Mr Commissioner, I 19 think you must then make a ruling. I'm going to raise it 20 again, because even Mr Botes' evidence made a clear 21 distinction between information provided and the 22 formulation of a plan. 23 CHAIRPERSON: I must confess that's my 24 understanding. But the way to deal with it is very easy. 25 We have a transcript. Mr Mpofu can give us a reference, we</p>
<p style="text-align: right;">Page 33935</p> <p>1 place. 2 MR SINCLAIR: Operation Platinum I don't 3 understand. I don't know what – 4 MR MPOFU: Okay, fine – 5 CHAIRPERSON: I don't remember that being 6 put in those terms. 7 MR MPOFU: Okay, remove the word – 8 MR BHAM SC: Sorry, I don't want to 9 interrupt, if I might just make the statement so I'm not 10 constantly getting into the issue with my learned friend, 11 Mr Mpofu. I'm just anxious, it happened once previously, 12 earlier today, that there's an easy conflation between the 13 provisioning of information and the formulation of the 14 plan. The evidence that has come previously has made a 15 clear distinction between that. I don't want to keep 16 raising an objection, but there was a clear distinction 17 between that and there's a danger in that being conflated 18 in the questions in a manner which might mislead the 19 witness. 20 MR MPOFU: Okay – 21 MR BHAM SC: And I'm not saying 22 deliberately, but it's important that we keep that 23 distinction. 24 MR MPOFU: Ja, okay. No, no, there's no 25 conflation. The only thing I added to was the, was naming</p>	<p style="text-align: right;">Page 33937</p> <p>1 can look it up and we can see immediately whether you are 2 right or Mr Bham is right. 3 MR MPOFU: Yes. 4 MR BHAM SC: Can I just say this in order 5 not to interrupt the cross-examination, because Mr Mpofu 6 has a limited amount of time. I'm not going to raise the 7 objection every time I think there's a conflation. I'm 8 going to put it upfront so that when we argue the matter at 9 the end of the day – 10 MR MPOFU: Sure. 11 MR BHAM SC: - it shouldn't be thought – 12 but I really don't want to interrupt the cross-examination. 13 I just want to make it clear that if I don't object time 14 and again that shouldn't be taken as an acceptance of the 15 conflation. 16 CHAIRPERSON: It doesn't follow that you 17 would have to raise the objection time and again anyway 18 because we must assume Mr Mpofu has got a number of other 19 topics he's going to deal with, but this particular one 20 there's a dispute about what Mr Botes said. Have you got 21 the reference now or can you perhaps ask your instructing 22 attorney to look at it and after the tea adjournment you 23 can come back to it and give us the reference if you 24 haven't got it at your fingertips? 25 MR MPOFU: Okay, fine. I don't</p>



<p style="text-align: right;">Page 33938</p> <p>1 immediately, Chairperson, but let me put it differently.  2 Mr Sinclair, would you agree that without the input of  3 Lonmin or people like yourself, whilst an operation might  4 have been carried out – I think this is exactly what Mr  5 Botes said – but this particular operation that happened on  6 the 16th at that particular time would not have happened in  7 the same way, so vital was your contribution?  8 MR SINCLAIR: I'm missing your question,  9 Sir.  10 MR MPOFU: Was your contribution to vital  11 that had it not been there the operation that happened on  12 the 16th would either not have happened or happened  13 differently?  14 MR SINCLAIR: I don't –  15 CHAIRPERSON: I'm sorry to interrupt. I  16 must say, Mr Mpofo, I think I understand what you're trying  17 to say but the question is a bit vague because there are a  18 couple of aspects to it. The first is the contribution by  19 Lonmin took the form of providing information, maps and  20 that kind of thing. The contribution of Lonmin also took a  21 physical form in making facilities available and so on.  22 Now I think you should make it clear to the witness if  23 you're going to hope to extract a meaningful answer from  24 him what exactly the contribution was which you are asking  25 him to confirm was pivotal, as you put it, to the actual</p>	<p style="text-align: right;">Page 33940</p> <p>1 Scott and identifying places and that kind of thing. You  2 understand?  3 MR SINCLAIR: [Microphone off, inaudible]  4 MR MPOFU: Yes, now what we're going to  5 argue is that had you not provided that assistance, and I  6 think that's what Colonel Scott himself said, except that  7 he put it milder than I'm putting it, he said something  8 like "We would have really struggled without Mr Sinclair's  9 involvement." So I'm putting much higher to say the  10 operation itself would have been, either would not have  11 happened or would have happened differently. Would you  12 quarrel with that?  13 MR SINCLAIR: Mr Chair, I cannot say with  14 the information we provided whether the operation would  15 have happened or not. I think it's way beyond my limits to  16 be able to say that. We, I and my teams needed to provide,  17 as I've explained, without going into, wasting time, that  18 we provided information that you've just revisited and I  19 believe that was then in the police's thing to take it and  20 use whatever they required in their process. I can't  21 comment on that, Sir.  22 MR MPOFU: Okay.  23 MR SINCLAIR: I don't believe so.  24 MR MPOFU: Fair enough. But when it  25 comes to the killings that happened on the 13th you would</p>
<p style="text-align: right;">Page 33939</p> <p>1 operations.  2 MR MPOFU: Ja, Chairperson, I understand  3 that. The problem is with these limited times one has to  4 take shortcuts. I had asked this question in exactly the  5 same way of Mr Botes to avoid having to say you provided  6 food, you provided the phone, you provided this, you  7 provided that.  8 CHAIRPERSON: I take it you're not really  9 suggesting that the food and that kind of thing –  10 MR MPOFU: Well, I'm just striking the  11 point.  12 CHAIRPERSON: - are pivotal. I suspect  13 that you really are concentrating on the provision of  14 information and that kind of thing.  15 MR MPOFU: That's correct.  16 CHAIRPERSON: If that's the case then –  17 MR MPOFU: Ja.  18 CHAIRPERSON: - the witness understands  19 what you are putting –  20 MR MPOFU: Fair enough.  21 CHAIRPERSON: - and he can answer.  22 MR MPOFU: Fair enough. Thank you.  23 Thanks, Chairperson. I'm referring to the more, you know,  24 important issues like what Ms Pillay spoke to you about,  25 the flying over the place, providing, sitting with Colonel</p>	<p style="text-align: right;">Page 33941</p> <p>1 agree that had you not pointed out the breakaway group  2 those five people might still be alive?  3 MR SINCLAIR: The 13th was the Monday, the  4 five people –  5 MR MPOFU: Monday, yes. Remember before  6 the helicopter arrived and all that, ja.  7 MR SINCLAIR: Mr Chairman, that breakaway  8 group and the point – I didn't personally point it out, it  9 would have obviously be picked up on the CCTV cameras and  10 pointed out to the things. Whether those people would be  11 alive with what happened subsequently with the police  12 operation, I cannot say.  13 MR MPOFU: Right.  14 MR SINCLAIR: If that was – if I  15 understood the question correctly.  16 CHAIRPERSON: I think I understand the  17 point. What Mr Mpofo is putting to you really I think is  18 this –  19 MR SINCLAIR: Yes, Sir?  20 CHAIRPERSON: - that if the police's  21 attention had not been drawn to the fact that this  22 breakaway group had gone off in the direction of, I think  23 it was K3 –  24 MR SINCLAIR: Yes.  25 CHAIRPERSON: - and they'd stayed put at</p>

<p style="text-align: right;">Page 33942</p> <p>1 the JOC then the events wouldn't have happened, because  2 what, we know what happened actually before the police  3 went. The breakaway group went off to K3, they met some of  4 your security people. Your security people said to them  5 look, don't waste your time going to K3, it's not working.  6 So they turned around and made their way back to where they  7 had come from. On the way they met the police, because the  8 police had been alerted to their presence –  9 MR MPOFU: By you.  10 CHAIRPERSON: - and the police had come,  11 and if that hadn't happened and they'd gone back quietly to  12 the koppie without meeting the police no one would have  13 died. That's Mr Mpofu's point.  14 MR MPOFU: Yes.  15 CHAIRPERSON: Am I right?  16 MR MPOFU: That's correct.  17 CHAIRPERSON: And then Mr Mpofu then is  18 going to put to you now clearly what the contribution was  19 he says from Lonmin which caused the police to go off on  20 that expedition with those fatal consequences. Is that  21 right?  22 MR MPOFU: That's correct, Chairperson.  23 CHAIRPERSON: [Microphone off, inaudible]  24 MR MPOFU: No, thank you, I appreciate,  25 Chairperson.</p>	<p style="text-align: right;">Page 33944</p> <p>1 MR MPOFU: Oh.  2 CHAIRPERSON: Paragraph 32 of this  3 witness's statement. Ms Pillay will tell us.  4 MR MPOFU: Yes.  5 CHAIRPERSON: Brigadier Calitz's  6 statement, what's his number?  7 MR MPOFU: JJJ107.  8 CHAIRPERSON: Let's have a look at  9 JJJ107, is that the paragraph that you – is that the  10 paragraph you want? I think actually it looks to me as if  11 you've got to go back to 30, I suspect.  12 MR MPOFU: Oh yes, that's correct,  13 Chairperson.  14 CHAIRPERSON: No, no, it's not even 30.  15 MR MPOFU: Yes.  16 CHAIRPERSON: Here we are, it's 29.  17 MR MPOFU: 29 actually, yes. He is  18 discussing a meeting that took place on the 11th, on the  19 13th. Then he says, "After the meeting with Lonmin  20 management we proceeded to the JOC where the Lonmin  21 security manager, Mr Sinclair, showed us two different  22 groups of protesters on CCTV. There was a larger group"  23 and so on, "and then the smaller group of approximately  24 200" in paragraph 30, do you see that?  25 MR SINCLAIR: I see that.</p>
<p style="text-align: right;">Page 33943</p> <p>1 MR SINCLAIR: Mr Chairperson, to my  2 understanding nothing that we did could cause the police to  3 go to that or not to go to it. I, they were in, they made  4 those decisions. Nothing that I did or my teams did caused  5 that to happen.  6 MR MPOFU: Ja.  7 MR SINCLAIR: We informed them that this  8 was taking place and that's all.  9 MR MPOFU: Yes, well it would seem, and  10 again I'll try and abbreviate this, one thing we know is  11 that you pointed out the group to the police, at least  12 according to Calitz. You and yourself.  13 [14:11] Mr Chairman, the group moving through Marikana to  14 that area had already been picked up on CCTV and  15 information from the ground people that said there's a  16 group moving, so the police were already aware of that.  17 Calitz, I went out in the helicopter to observe what might,  18 as I explained earlier, and Calitz only rode – I never  19 pointed that out, he already knew that before he met with  20 me. Sorry, am I -  21 MR MPOFU: Well, Brigadier Calitz at  22 paragraph 32 of his statement – I'm sorry, Chairperson,  23 I've just lost the exhibit number.  24 CHAIRPERSON: That's what the operator  25 thinks you're referring to.</p>	<p style="text-align: right;">Page 33945</p> <p>1 MR MPOFU: It isn't verbatim, ja. So  2 you're saying that evidence from Mr Sinclair is not  3 correct?  4 MR SINCLAIR: That I was in –  5 MR MPOFU: Calitz, I'm sorry.  6 MR SINCLAIR: I was in the CCTV room, I  7 would have seen that and I would have said to whoever the  8 police officials there – and so would my operators or  9 whoever was management in there, so I would have said, if I  10 had seen it I would have said that.  11 MR MPOFU: Yes.  12 MR SINCLAIR: I saw it, I said it.  13 MR MPOFU: Okay, now that you've seen  14 this you accept that you are the person who pointed it out  15 to Brigadier Calitz.  16 MR SINCLAIR: I was one of the people  17 that pointed out, yes.  18 MR MPOFU: Alright, so that's the one  19 contribution, as the Chair said. The next contribution is,  20 of course, the fact that you've already agreed that you  21 then went on to the helicopter with Brigadier Calitz.  22 CHAIRPERSON: That's paragraph 32.  23 MR MPOFU: Which is 32, yes. You also  24 accept that contribution?  25 MR SINCLAIR: I've stated clearly that</p>

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1 that happened, Mr Chair.  
 2 MR MPOFU: Yes, ja. Now let me tell you  
 3 then, you see because when we do things in the legal  
 4 environment we talk about acts of commission and acts of  
 5 omission. So those are things that you did that I've  
 6 pointed out in relation to the event of the 13th. Now I'm  
 7 going to talk about something that you did not do, which I  
 8 will argue you should have done in relation to that event  
 9 of the 13th. You, according to your evidence you said that  
 10 you knew that your men had intercepted the group near the  
 11 bridge, correct?  
 12 MR SINCLAIR: They had been observing the  
 13 group from the bridge –  
 14 MR MPOFU: Ja.  
 15 MR SINCLAIR: - overlooking where the  
 16 people, where they were walking through.  
 17 MR MPOFU: Correct. You said you were in  
 18 touch, you were getting information of their movements or  
 19 their successes or failures, correct?  
 20 MR SINCLAIR: I had been, through CCTV  
 21 and other means, informed of movements, yes.  
 22 MR MPOFU: Yes. So you also knew or  
 23 should have known that your men had concluded that this  
 24 group was fairly harmless and they had gone on to go and do  
 25 their other work.

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1 MR SINCLAIR: My recollection from the  
 2 information I received and, very clear, that they were  
 3 concerned of the behaviour of this group. It wasn't a  
 4 normal – that's the information that came to me and from  
 5 who it came or my observation as well, that this group was  
 6 not just casually walking down that area or from Marikana  
 7 to that area.  
 8 MR MPOFU: Yes, but the evidence of Mr  
 9 Motlogeloa is that he found that group to be very co-  
 10 operative, very respectful and very submissive.  
 11 MR SINCLAIR: I cannot say that. That  
 12 report never came through to me so I can't comment on that,  
 13 sir.  
 14 MR MPOFU: Right.  
 15 CHAIRPERSON: What did happen, according  
 16 to the evidence, because they were on their way to K3 with  
 17 all sorts of dangerous weapons and one doesn't like to  
 18 think of what they would have done if they'd got there.  
 19 MR SINCLAIR: Yes, sir.  
 20 CHAIRPERSON: But the evidence is that  
 21 your men on the bridge spoke to them and asked them what  
 22 they were doing, they said they were going to K3, just  
 23 wanted to see if people were working and they said, look,  
 24 you're wasting your time, they're not working. So on that  
 25 assurance they turned round and abandoned their intention

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1 of going to K3 and you don't have to worry about what  
 2 mischief they had in mind and they turned round and started  
 3 going back to where they had come – that's the evidence.  
 4 And then Mr Mpofo got the witness to agree to the  
 5 proposition, the adjectives that he's repeated to you. You  
 6 didn't know about that but did you know that they'd been on  
 7 the way to K3, your men had spoken to them on the bridge,  
 8 told them there was no work that was going on at K3 and in  
 9 effect persuaded them to turn around and go home. Did you  
 10 know that? Was that communicated to you?  
 11 MR SINCLAIR: I did not. This is the  
 12 first time I know of that, Mr Chairman, and that, I had the  
 13 observations from the chopper –  
 14 MR MPOFU: Yes. No, fine yes, the only  
 15 thing I left out was before they turned around they begged  
 16 Mr Motlogeloa to make sure that the employer would come and  
 17 address them at the koppie.  
 18 CHAIRPERSON: When I said they were going  
 19 home I didn't mean literally home, I meant back to the  
 20 koppie.  
 21 MR SINCLAIR: Ja. Mr Chair, I understand  
 22 that. I did not know of that, that comment either until  
 23 now, Mr Chair.  
 24 MR MPOFU: Yes, but what I'm trying to  
 25 say, as somebody who was a senior person who, according to

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1 yourself, was in touch with or was actually worried about  
 2 this group, was in touch with your people, this is  
 3 information that you should have known. Would you – if  
 4 your communication systems were properly in place.  
 5 MR SINCLAIR: Mr Chairman, from the  
 6 observations in the ops room, the CCTV, to me going out and  
 7 saying, I want to over-fly and see what's happening, I left  
 8 Dirk Botes or Henry Blou, whoever was responsible at the  
 9 time and they were in touch with the ground troops and the  
 10 communication and feeding back. In the helicopter I had no  
 11 communication except what I visually saw, that's the only  
 12 communication that I had.  
 13 MR MPOFU: Okay, no, fair enough, fair  
 14 enough Mr Sinclair. Okay, let me put it this way then,  
 15 let's assume you, for some genuine reason, were not in  
 16 touch with that information but would you agree that if  
 17 anybody from Lonmin security had communicated that  
 18 information, the five people might still be alive? The  
 19 police might have even decided not to go there.  
 20 MR SINCLAIR: I cannot comment on that.  
 21 MR MPOFU: Is it possible?  
 22 MR SINCLAIR: I don't believe it, I don't  
 23 see how I can comment on that.  
 24 MR MPOFU: No, you can comment, you are a  
 25 human being. You know that had, if – okay, let me put it

<p style="text-align: right;">Page 33950</p> <p>1 this way. Had you, because you say you didn't get 2 information, had you been appraised of what I've just told 3 you, would you have performed your civic duty to 4 communicate to somebody to say this, according to the 5 report I've just received, this group is fairly harmless 6 and they're just walking back to the koppie? 7 MR SINCLAIR: If that information had 8 come to me, I definitely would have highlighted that. 9 MR MPOFU: Thank you. I think that's – 10 so therefore those who were aware of that information 11 should have communicated it like you would have done, 12 correct? 13 MR SINCLAIR: Mr Chair, our radios were 14 in the SAPS joint operation centre. If that had come 15 through on our radios, they would have been privy to that. 16 MR MPOFU: Yes and the reason why you 17 would have communicated it is because it would have been 18 important in the decision making, correct? 19 CHAIRPERSON: No, no, I don't think 20 you're understanding his answer. By "they" I think means 21 the police. I think what he means is if that information 22 had come through by radio from the Lonmin men at the 23 bridge, it would've been on the radio in the JOC, not only 24 were members of – you know, Mr Blou and Mr Botes and 25 whoever they were, there, Lonmin people, there were police</p>	<p style="text-align: right;">Page 33952</p> <p>1 MR SINCLAIR: It's hypothetical. 2 CHAIRPERSON: If it had come through to 3 the JOC – 4 MR SINCLAIR: Yes, sir. 5 CHAIRPERSON: - not only your people 6 would have heard from the JOC but the police would have 7 heard it as well. That's your evidence. 8 MR SINCLAIR: Yes. 9 CHAIRPERSON: So I think Mr Mpofo would 10 like to move on after that. 11 MR MPOFU: Yes. 12 CHAIRPERSON: From that. 13 MR MPOFU: Yes, thank you. So those are 14 the reasons I'm saying that your contribution or, in the 15 last example, lack of it contributed to the eventual events 16 of the 13th, but let's go to the, let's start on the 10th 17 very, very briefly. Evidence has been, or rather 18 suggestions have been made that the reasons that management 19 refused to go and speak to the workers was because they 20 were scared. Were you aware of that? Or they were 21 concerned for their safety, let's put it that way. 22 MR SINCLAIR: Mr Chair, I do not recall 23 at all the evidence of management at any time mentioning to 24 me that they were scared to go and talk to the workers. It 25 never came to my ears, to my attention.</p>
<p style="text-align: right;">Page 33951</p> <p>1 people there as well. So his point is, the police would 2 have heard it and done the necessary. I think that's his 3 answer. 4 MR SINCLAIR: Yes. 5 MR MPOFU: Yes. No, no, Chairperson, 6 yes, it's my fault. I was actually reacting to his earlier 7 answer. You remember you said had the information come to 8 your attention you would have highlighted it? 9 MR SINCLAIR: Mr Chair, if I had been – 10 Chair, I don't think I should say "if I had." I was – 11 CHAIRPERSON: No, no, I think the answer 12 is if you'd gone up in the helicopter and you'd known about 13 it and you thought it was important, you would have made it 14 your business to communicate – 15 MR SINCLAIR: I would – 16 CHAIRPERSON: You would have told Calitz 17 who was with you in the helicopter. 18 MR SINCLAIR: Yes. 19 CHAIRPERSON: Told him to do the 20 necessary or expect that he do the necessary. 21 MR SINCLAIR: I would have communicated, 22 yes sir. 23 MR MPOFU: Thank you. 24 CHAIRPERSON: But that's hypothetical. 25 You didn't hear it –</p>	<p style="text-align: right;">Page 33953</p> <p>1 MR MPOFU: Because – 2 CHAIRPERSON: Mr Sinclair, it's not as 3 simple as that but the trouble is the question – I don't 4 understand that point being raised on the 10th because on 5 the 10th they hadn't gone to the koppie yet, they didn't 6 have dangerous weapons in their possession – 7 MR MPOFU: Any time – 8 CHAIRPERSON: - the complaint was they 9 could have gone, in fact been invited into the LPD and 10 there certainly would have been no basis for any fear at 11 that stage, so if they'd put that up that would be nonsense 12 but what they did say in the evidence is quite clear, one 13 of the reasons they gave for, from the 13th onwards, for 14 refusing to accede to the request from the strikers which 15 was conveyed to them by the police that the strikers wanted 16 them to go out to the koppie and speak to them about their 17 wage demands and so on, was they were afraid it was 18 dangerous and so on. So that's a fact you can accept, 19 that's – 20 MR SINCLAIR: That I accept, sir. I 21 understood Mr Mpofo to ask me on the 10th – 22 MR MPOFU: Yes – 23 MR SINCLAIR: - whether management were 24 scared and definitely I never heard anything about somebody 25 saying they're scared to go and talk to the workers. What</p>

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1 I did hear was that they are not going to talk to the  
 2 workers.  
 3 CHAIRPERSON: No, I understand. It may  
 4 be disputed as to whether they said they were scared but  
 5 what seems clearly, without being accused of prejudging the  
 6 matter is, if they'd said they were scared on the 10th they  
 7 would've been a nonsense excuse because the quest was for  
 8 these people to speak to them, their representatives –  
 9 MR SINCLAIR: Yes.  
 10 CHAIRPERSON: - to speak to them in the  
 11 LPD.  
 12 MR SINCLAIR: Yes.  
 13 CHAIRPERSON: There's no reason for the  
 14 management, if they were, if they said that, to be scared  
 15 that anything adverse would happen to them on their own  
 16 turf, as it were, in the LPD. That's right, isn't it?  
 17 MR SINCLAIR: If I hear it correctly  
 18 you're saying should they have been scared? Is that what  
 19 I'm hearing? I –  
 20 CHAIRPERSON: It may be a disputed  
 21 question later as to whether they said they were scared.  
 22 MR SINCLAIR: Okay.  
 23 CHAIRPERSON: But on the assumption that  
 24 they may have said it, if they had said it, it would have  
 25 been a nonsense excuse.

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1 MR SINCLAIR: It would have been not –  
 2 CHAIRPERSON: Clearly, it would have been  
 3 rubbish –  
 4 MR SINCLAIR: - went and spoke to them,  
 5 why couldn't they? I was, our management.  
 6 CHAIRPERSON: Yes, so you went out and  
 7 spoke to them, you wouldn't allow them into the LPD to  
 8 speak to the management people who were there, I think Mr  
 9 Da Costa and others who would presumably have had more  
 10 authority than you had to deal with their wage claim, is  
 11 that right?  
 12 MR SINCLAIR: Just to relate –  
 13 MR MPOFU: Thank you.  
 14 MR SINCLAIR: - sorry, I was just  
 15 relating that I went out and spoke with no fear.  
 16 MR MPOFU: Yes.  
 17 MR SINCLAIR: That is what I'm –  
 18 MR MPOFU: No, but fine –  
 19 MR SINCLAIR: - because I thought I'd –  
 20 MR MPOFU: No, that's not my question –  
 21 MR SINCLAIR: - heard from Mr Mpofu, so.  
 22 MR MPOFU: That's correct. No, the  
 23 conversation you had with –  
 24 CHAIRPERSON: You're talking about Da  
 25 Costa and the others who were in the LPD at the time,

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1 right?  
 2 MR SINCLAIR: Russo-Bello, Barnard, those  
 3 people. I don't –  
 4 CHAIRPERSON: That's right, whoever they  
 5 were. Now I think we'll find there's a dispute at the end  
 6 as to what exactly was said and conveyed but I put it on  
 7 the assumption that Mr Mpofu is right.  
 8 MR SINCLAIR: Yes.  
 9 CHAIRPERSON: And they said they were  
 10 scared. If they said that they were talking nonsense and  
 11 you've agreed with that.  
 12 MR SINCLAIR: I agree with that, sir.  
 13 MR MPOFU: Thanks. Thank you, okay, that  
 14 covers that point. In other words, the reason – well, the  
 15 reason why they did not speak or they refused, they took  
 16 what I called a hard line stance of not speaking to the  
 17 workers at that time when you had to convey the message  
 18 from the one group to the other, whatever the reason was  
 19 but it was not that they were scared of anything or had any  
 20 reason to be scared of anything, correct?  
 21 MR SINCLAIR: I believe that to be  
 22 correct.  
 23 MR MPOFU: Thank you. And moreover,  
 24 would you – okay, let me start by saying if through, that  
 25 HR and security work hand in glove, particularly when

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1 you're dealing with an unprotected strike, otherwise known  
 2 as a wildcat strike, correct?  
 3 MR SINCLAIR: HR and security have to  
 4 work together. HR are the advisers on those related  
 5 matters.  
 6 MR MPOFU: Yes. In other words, when you  
 7 have a wildcat strike, as that phrase suggests, there's the  
 8 wildcat and there's the strike, those two things are so  
 9 intertwined that inextricably you'll have an HR element and  
 10 a security element, correct?  
 11 MR SINCLAIR: I missed something, sir,  
 12 I'm sorry.  
 13 MR MPOFU: When you have an unprotected  
 14 strike or wildcat strike which, according to Mr Da Costa,  
 15 always has a potential to have violence, then the HR and  
 16 security issues are inextricably linked.  
 17 MR SINCLAIR: They are linked, with  
 18 management.  
 19 MR MPOFU: Yes.  
 20 MR SINCLAIR: Management, HR and  
 21 security.  
 22 MR MPOFU: Both.  
 23 MR SINCLAIR: Yes, sir.  
 24 MR MPOFU: Ja, thank you. Now in  
 25 relation to that, what I've now called the hard line stance

<p style="text-align: right;">Page 33958</p> <p>1 of management, would you also agree that it was against the 2 rules and procedures of Lonmin itself, that their own rules 3 and procedures would have prescribed that they engage with 4 these strikers.</p> <p>5 MR SINCLAIR: Mr Chairman, I – 6 MR MPOFU: In your experience. 7 MR SINCLAIR: I don't believe I can 8 honestly make that – there are processes in place that 9 Lonmin management and the workers have to communicate and 10 they have to deal with their things. If they make the 11 decision that they have to do it this way or that way, it's 12 not me as an emergency or security person to judge that 13 decision .</p> <p>14 MR MPOFU: Ja, no, it's not that simple, 15 Mr Sinclair.</p> <p>16 MR SINCLAIR: Maybe I missed you, sir. 17 MR MPOFU: Yes. Is it true that 18 according to, if we go to XXX8 –</p> <p>19 CHAIRPERSON: XXX8 is in your, is at page 20 327 of the bundle, the big bundle which we were given by 21 your attorneys. It's the Lonmin mining security 22 procedures. It's the counter-industrial action response 23 procedure. So it's exhibit XXX8, there we are.</p> <p>24 MR SINCLAIR: Yes. 25 CHAIRPERSON: At page 327. Have you got</p>	<p style="text-align: right;">Page 33960</p> <p>1 MR SINCLAIR: It is our guideline as to 2 what should be done.</p> <p>3 CHAIRPERSON: It's actually a bit 4 stronger than that, isn't it? If you look at paragraph 5 1.1.1 on page 329 it says, "The purpose of this document is 6 to set out a uniform procedure for mining security to which 7 all security members must operate in order to effectively 8 manage and normalise any form of unrest situation. And 9 then it continues, "this procedure we utilise as a 10 guideline.</p> <p>11 [14:31] When managing an unrest situation in order to 12 minimise the loss of life, production and/or assets of the 13 company and private entities." And there wasn't exactly 14 unrest situation on the 10th, was there? The unrest more or 15 less came later, but what you did have was an unprotected 16 strike on the 10th and you had an approach by the people who 17 wanted to talk to you and in fact it does appear that a 18 management committee or the equivalent could be identified 19 because there were particular spokespeople, as it were. 20 They didn't all talk. There was a group, I think it was 21 about five, wasn't it, who actually spoke to you?</p> <p>22 MR SINCLAIR: I asked for them, they came 23 forward. There, and yes, you are correct with that, Sir.</p> <p>24 MR MPOFU: Yes – 25 CHAIRPERSON: And you effectively, to use</p>
<p style="text-align: right;">Page 33959</p> <p>1 it there?</p> <p>2 MR SINCLAIR: I see it there, sir.</p> <p>3 CHAIRPERSON: Well, perhaps you'd like to 4 have your own copy in front of you.</p> <p>5 MR SINCLAIR: Sorry, I –</p> <p>6 CHAIRPERSON: What's the page you're 7 referring the witness to, Mr Mpofo?</p> <p>8 MR MPOFU: It's 25. It's 3, 25 of the 9 document and 340. Now let's go to 24, page 24, 339. Is it 10 correct that that is the prescribed procedure to be 11 followed in respect of unprotected industrial action?</p> <p>12 MR SINCLAIR: This is the procedure for 13 Lonmin security –</p> <p>14 MR MPOFU: Yes. 15 MR SINCLAIR: As a guideline for them to 16 try and –</p> <p>17 MR MPOFU: That's correct. 18 MR SINCLAIR: - best handle these 19 situations.</p> <p>20 MR MPOFU: That's correct, yes. Okay, 21 and according to that procedure, would you agree that it 22 says exactly what you, should be done?</p> <p>23 MR SINCLAIR: - in the guideline of what 24 should be done, Mr Chair. 25 MR MPOFU: Yes.</p>	<p style="text-align: right;">Page 33961</p> <p>1 the language of 8.3.6 on page 339, you effectively 2 identified, or caused to be identified a committee that 3 could talk to management?</p> <p>4 MR SINCLAIR: I, those individual – 5 because it was a massive group, in my conversation, because 6 I had spoken in Fanagalo to them, I am fluent in that, with 7 the police officers, we couldn't speak to the crowd and we 8 needed to speak to things, and they came forward with those 9 people to Henry Blaauw and myself.</p> <p>10 MR MPOFU: Good. Yes, that's exactly the 11 point. You were acting according to how you are supposed 12 to act. You couldn't speak to a crowd of 2 000 or 3 000 13 people.</p> <p>14 MR SINCLAIR: I accept. 15 MR MPOFU: In line with these guidelines 16 you identified a few spokespersons –</p> <p>17 MR SINCLAIR: Yes. 18 MR MPOFU: And then you went to 19 management and say, ja, now everything is in place, we've 20 got the spokespersons, we've got the crowd there, will you 21 talk to them, and they, in contrast to what is expected in 22 these guidelines, refused to talk. That is exactly what 23 happened, correct?</p> <p>24 MR SINCLAIR: That is correct in my 25 opinion, yes.</p>

<p style="text-align: right;">Page 33962</p> <p>1 MR MPOFU: Thank you. And that's what I 2 mean when I say they were breaching their own Lonmin rules 3 in taking that hard-line stance – 4 MR SINCLAIR: I just want to – 5 MR MPOFU: - for whatever reason. 6 MR SINCLAIR: - clarify; this is our 7 security. There could be other, this is for us in 8 security – 9 MR MPOFU: Ja, are you Lonmin Security? 10 MR SINCLAIR: Yes, Sir. 11 MR MPOFU: Yes, thank you. So these 12 rules are prescribed by Lonmin for how an unprotected 13 industrial action should be handled, correct? 14 MR SINCLAIR: Accept. 15 MR MPOFU: Thank you. Now there's a 16 company called PPS. Is this one of the companies you 17 subcontracted? 18 MR SINCLAIR: It's the one I explained 19 this morning, it's from the Brits area, PPS Security. 20 MR MPOFU: Yes. 21 CHAIRPERSON: It's a security firm that 22 you used. 23 MR SINCLAIR: It's a security firm based 24 in Brits. 25 MR MPOFU: Yes, and were you aware that</p>	<p style="text-align: right;">Page 33964</p> <p>1 CHAIRPERSON: Well, if it's relevant 2 then. 3 MR MPOFU: Yes. 4 CHAIRPERSON: If they didn't know about 5 it, they didn't appoint this firm – 6 MR MPOFU: He didn't know, yes. 7 CHAIRPERSON: They didn't appoint this 8 firm on the strength of this action and breaking the strike 9 then it wouldn't be relevant for our purposes. 10 MR MPOFU: Yes, thank you, Chairperson. 11 Now you would agree again that the operation that was 12 meted, or carried out on the 16th at least can be described 13 as a joint operation as between Lonmin and the police? 14 MR SINCLAIR: Mr Chair, the operation 15 that was carried out at the koppie area was an SAP 16 operation. Lonmin were up to and involved on the rest of 17 the property, the four-way stop. It was not a joint 18 operation at the koppie from Lonmin Security side at all. 19 MR MPOFU: Okay, so you differ with Mr 20 Botes that it was a joint operation? 21 MR SINCLAIR: No, I'm not – Mr Chair, I'm 22 not saying that at all. Lonmin participated, and I've 23 explained about the, most of our stuff with the police. 24 The operation at the koppie was a police operation. 25 MR MPOFU: Ja.</p>
<p style="text-align: right;">Page 33963</p> <p>1 they were carrying live ammunition? 2 MR SINCLAIR: My recollection is that PPS 3 at this point in time over this were only engaged by the 4 BMR Smelter, the process security areas. They were not 5 engaged by me and I was not aware of that. 6 MR MPOFU: And were you also aware that 7 some of their vehicles were kind of part of the police 8 convoys involved in this operation at the relevant time? 9 MR SINCLAIR: I don't – they could have 10 been there. I don't recall seeing them. 11 MR MPOFU: Okay, and are you aware that 12 their managing director was allegedly, was charged with 13 alleged attempted murder related to stopping a strike? 14 MR SINCLAIR: I'm not aware of that at 15 all, Sir. 16 MR MPOFU: Okay, it's fine. We'll 17 provide that information and the footage, relevant footage, 18 but if you're not aware there's no point in canvassing that 19 with you. Alright – 20 CHAIRPERSON: You say he was charged. 21 MR MPOFU: Yes. 22 CHAIRPERSON: What happened with the 23 case? Was he convicted or acquitted? 24 MR MPOFU: I'm not sure, Chairperson. 25 I'll follow it up. I just know –</p>	<p style="text-align: right;">Page 33965</p> <p>1 MR SINCLAIR: We were at the four – we 2 were out on the site at the four-way stop at Rowland Shaft 3 where the dirt road is, and we were at the hospital and we 4 participated in that, definitely. The police were also at 5 the four-way stop. I don't know if they were at the 6 hospital – 7 MR MPOFU: Okay – 8 MR SINCLAIR: And we were on the rest of 9 our property. 10 MR MPOFU: Alright, for the purposes of 11 progress then let's exclude the koppie. Was it at any 12 stage in your estimation a joint operation? 13 MR SINCLAIR: Specifically at the koppie? 14 MR MPOFU: No, excluding the koppie. 15 MR SINCLAIR: Excluding the koppie. 16 CHAIRPERSON: Just leave out the koppie. 17 MR SINCLAIR: We had to be involved with 18 the police because it was our property, so we had to be 19 involved in certain aspects of that operation. 20 MR MPOFU: And to that extent it was a 21 joint operation? 22 MR SINCLAIR: If that's the term you want 23 to use, I'm not going to dispute that, Sir. 24 MR MPOFU: Thank you. Then what I'm 25 going to do, Mr Botes, is to show you – Mr Sinclair, sorry.</p>

<p style="text-align: right;">Page 33966</p> <p>1 Sorry, Mr Botes is my favourite, ja. So I'm just going to  2 show you the connectedness as it were between these events,  3 because our – and the reason I'm doing that is because our  4 argument, or starting from day 1 is that these events were  5 feeding into each other from the 10th, which is the refusal  6 to talk, to the 11th, which is the incident outside the NUM  7 offices, to the 12th, which is the security killings which  8 were linked to the events of the 11th, the 13th, which,  9 where the five people were killed and how that had a  10 bearing on the mood and how it led up to the massacre on  11 the 16th. You understand what I'm saying? You don't have  12 to agree, but it's something –</p> <p>13 MR SINCLAIR: Mr Chairman, I understand  14 that.</p> <p>15 MR MPOFU: Yes.</p> <p>16 MR SINCLAIR: I just want clarification,  17 I think I heard you say from the 1st.</p> <p>18 MR MPOFU: 10th, sorry.</p> <p>19 MR SINCLAIR: 10th.</p> <p>20 MR MPOFU: I started on the 10th.</p> <p>21 MR SINCLAIR: Okay, thank you. I just  22 wanted to clarify that, thank you, Mr Chairman.</p> <p>23 MR MPOFU: Alright, and I'm not going to  24 go back to the 10th. The important thing in this chain that  25 I'm drawing about the 10th is what we've called the hard-</p>	<p style="text-align: right;">Page 33968</p> <p>1 remember.</p> <p>2 MR MPOFU: Correct, it's common cause.</p> <p>3 CHAIRPERSON: I think that's virtually  4 common cause evidence.</p> <p>5 MR BHAM SC: I'm not going to argue it.  6 I'm talking about the way it was framed. At a later stage  7 we'll argue it by reference to what's in the transcript –</p> <p>8 MR MPOFU: No, fair enough.</p> <p>9 MR BHAM SC: And I don't want to jump up  10 and down all the time. I just want to make it clear that  11 where something is paraphrased on what the evidence has  12 been –</p> <p>13 MR MPOFU: Yes.</p> <p>14 MR BHAM SC: - and we think there are  15 subtleties between what was said and what is now being  16 said, we'll deal with it by reference to the record. I  17 don't want to argue every time about it now.</p> <p>18 MR MPOFU: Yes. No, no, I think that's  19 fair. Let me put it this way. We'll do the connections  20 later. Subsequent to them being turned away, as it were,  21 subsequent to them being turned away due to the stance that  22 you and I have discussed, they went to re-congregate near  23 the koppie. That much you know.</p> <p>24 MR SINCLAIR: Yes, Sir.</p> <p>25 MR MPOFU: Yes, and the evidence, which</p>
<p style="text-align: right;">Page 33967</p> <p>1 line stance of refusing to talk, which you and I have  2 already covered.</p> <p>3 MR SINCLAIR: Yes, Sir.</p> <p>4 MR MPOFU: Okay, ja. Now because of that  5 hard-line – at least the version of the people that I  6 represent is that because of that hard-line stance they  7 then went to re-congregate near the stadium. You're aware  8 of that?</p> <p>9 MR SINCLAIR: What day was that?</p> <p>10 MR BHAM SC: Sorry, Mr Chairman –</p> <p>11 MR MPOFU: On the 10th, I'm sorry.</p> <p>12 MR BHAM SC: If I could just have a short  13 moment. I don't want to take away from Mr Mpofo's time.</p> <p>14 MR MPOFU: Yes.</p> <p>15 MR BHAM SC: If it's being presented as a  16 version, presumably we'll get the evidence, direct evidence  17 on that issue?</p> <p>18 CHAIRPERSON: I think the evidence is –</p> <p>19 MR MPOFU: It's very clear.</p> <p>20 CHAIRPERSON: - that they, after having  21 been told they couldn't talk to management –</p> <p>22 MR MPOFU: It's common cause.</p> <p>23 CHAIRPERSON: - on the 10th they turned  24 around and went in the direction of the stadium and stopped  25 there. I mean they had a meeting there as far as I</p>	<p style="text-align: right;">Page 33969</p> <p>1 you won't know, is that at that subsequent meeting they  2 then took a decision to meet the following day outside of  3 the stadium.</p> <p>4 MR SINCLAIR: Sorry, Sir, outside the  5 where?</p> <p>6 MR MPOFU: Outside of the stadium –</p> <p>7 MR SINCLAIR: Yes.</p> <p>8 MR MPOFU: The Wonderkop Stadium.</p> <p>9 MR SINCLAIR: I believe that to be  10 correct.</p> <p>11 MR MPOFU: Yes, and indeed when they met  12 there one of the issues that they discussed was the fact  13 that management had said look, we can only speak to you  14 through the appropriate structures, which is just a  15 euphemism for NUM. You understand?</p> <p>16 MR SINCLAIR: I understood the  17 appropriate – yes, NUM at –</p> <p>18 MR MPOFU: At that time it was your  19 recognised –</p> <p>20 MR SINCLAIR: - at the shafts or at,  21 wherever they had the structures in place, yes.</p> <p>22 MR MPOFU: Yes, yes, because then it was  23 the recognised union –</p> <p>24 CHAIRPERSON: The only union – sorry,  25 sorry, the only union that was recognised for the purposes</p>



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1 of wage negotiations was NUM.  
 2 MR SINCLAIR: For wage negotiations –  
 3 CHAIRPERSON: AMCU had certain other  
 4 rights, particularly at Karee, but the only union that had  
 5 the authority as it were, recognition to engage in wage  
 6 negotiations on behalf of the workers was NUM.  
 7 MR SINCLAIR: I believe also Solidarity  
 8 and –  
 9 CHAIRPERSON: UASA.  
 10 MR SINCLAIR: - in another –  
 11 CHAIRPERSON: Well Solidarity and UASA  
 12 yes, but they weren't relevant for the rock drill  
 13 operators.  
 14 MR SINCLAIR: Yes.  
 15 MR MPOFU: For this category.  
 16 MR SINCLAIR: Yes, I accept –  
 17 CHAIRPERSON: There weren't any rock  
 18 drill operators who joined –  
 19 MR SINCLAIR: I accept, Mr Chairman.  
 20 CHAIRPERSON: - joined UASA or  
 21 Solidarity, were there? Okay.  
 22 MR MPOFU: Thank you. Yes, then the  
 23 evidence of the relevant people that I have called is that  
 24 at that meeting, the meeting that then took place, because  
 25 of what management had said that the decision was taken to

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1 march to the NUM either to say why are you stopping people  
 2 from talking to us or whatever, but the point I'm simply  
 3 making is that that march to the NUM was directly linked to  
 4 the refusal to talk the previous day, or the decision that  
 5 says we'll only talk to the NUM. You understand that?  
 6 MR SINCLAIR: I understand your view,  
 7 Sir.  
 8 MR MPOFU: Yes.  
 9 CHAIRPERSON: Are you able to comment on  
 10 that, whether what's being put to you is correct or not, or  
 11 is it something that you have no knowledge of?  
 12 MR SINCLAIR: I don't believe I had  
 13 knowledge of the meeting and that was their decision.  
 14 MR MPOFU: Yes.  
 15 MR SINCLAIR: So I accept that the bigger  
 16 picture –  
 17 MR MPOFU: For what it's worth.  
 18 MR SINCLAIR: - that that is a good  
 19 probability.  
 20 MR MPOFU: Yes, thank you. That's  
 21 enough, ja. Now the – and then of course we know what  
 22 happened. Then they marched there and then two of them  
 23 were shot and so on and so on. Again the evidence that has  
 24 been presented is had that incident, particularly the two  
 25 people who were shot, whom they believed wrongly were

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1 killed at that time, that that incident then precipitated  
 2 two important things in this Commission; 1, their decision  
 3 to shift their meeting place to the koppie; and 2, their  
 4 decision to arm themselves, which is even more important,  
 5 their decision to arm themselves and their decision to  
 6 retreat to the koppie. Were you aware of that?  
 7 MR SINCLAIR: I personally am not aware  
 8 of that decisions and, yes –  
 9 MR MPOFU: Is that what you believe –  
 10 MR SINCLAIR: But I accept, if that's  
 11 what you're putting to me I would accept –  
 12 MR MPOFU: Yes.  
 13 MR SINCLAIR: - what you're putting.  
 14 MR MPOFU: Fine.  
 15 MR SINCLAIR: So when I say I'm  
 16 accepting, I'm not agreeing –  
 17 MR MPOFU: Agreeing, no, no, fair enough.  
 18 MR SINCLAIR: - something, I hear your  
 19 version.  
 20 MR MPOFU: And you think it's a  
 21 probability?  
 22 MR SINCLAIR: I don't think – it could  
 23 be. I don't think I'm –  
 24 MR MPOFU: Well, you don't think it's a  
 25 probability that when people are attacked then they decide

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1 to arm themselves –  
 2 CHAIRPERSON: Well Mr Mpofo, frankly what  
 3 this witness thinks is far more improbable, it doesn't  
 4 interest the Commission. The facts are before us, you can  
 5 argue it. If he says it's a probability, well that's his  
 6 opinion. If he says it isn't that's also his opinion –  
 7 MR MPOFU: That's fine, Chairperson.  
 8 CHAIRPERSON: But I won't be impressed  
 9 either way.  
 10 MR MPOFU: Ja well –  
 11 CHAIRPERSON: I say that without  
 12 intending any –  
 13 MR MPOFU: No, the idea was not to  
 14 impress, Chairperson. It was simply to draw the chain that  
 15 I'm drawing. But it's fine. Accepted in the qualified  
 16 manner that you've said.  
 17 MR SINCLAIR: I hear –  
 18 MR MPOFU: Ja, not that you have personal  
 19 knowledge of it and so on, ja.  
 20 MR SINCLAIR: I hear you, Sir.  
 21 MR MPOFU: Yes, now once they were there  
 22 you know that the attack that occurred on the 11th had a  
 23 relationship to their decision the following day to march  
 24 to NUM on the 12th, either to avenge themselves or to  
 25 confront them, whatever, we don't know, but there was a

<p style="text-align: right;">Page 33974</p> <p>1 connection between the events of the 11th and their march of 2 the 12th. Correct? 3 MR SINCLAIR: I don't know – 4 MR MPOFU: To your knowledge. 5 CHAIRPERSON: Do you have knowledge of 6 the – Mr Mpofu is putting certain propositions to you. 7 MR SINCLAIR: Yes, Sir. 8 CHAIRPERSON: He's going to argue then at 9 the end that we must accept that they're correct, and 10 obviously if you know about them and you can confirm them 11 that's important you should tell us. Alternatively if you 12 don't know you must tell us. Alternatively you may know 13 that it isn't correct, but I suspect the answer is you 14 don't know. 15 MR SINCLAIR: Yes, Mr Chair, and I just 16 wasn't quite clear – I don't know of that, those decisions 17 and it's never, and it hasn't come to me. I have 18 conclusions but I don't know of those decisions. 19 MR MPOFU: Well okay, on this one I'm not 20 going to accept that answer. I accepted it with the 21 previous two. Can you go to the document that was given to 22 you this morning? It's going to be called FFFF6. It 23 should be there, Chairperson. It's also marked 423 24 onwards, it's just a continuous pagination. You've got 25 that, Mr Sinclair? It might be a loose one which you got</p>	<p style="text-align: right;">Page 33976</p> <p>1 CHAIRPERSON: Yes, we've got it on the 2 screen. So – 3 MR MPOFU: So let's move. Okay, fine. 4 On the screen, this is an email from you, correct? 5 MR SINCLAIR: This document, Sir, on the 6 screen? 7 MR MPOFU: Yes. 8 MR SINCLAIR: Is from Frank – 9 MR MPOFU: I'm sorry. I'm sorry. I'm 10 sorry, 272. Let's go to the – ja, that one, it's an email 11 from you, correct? 12 MR SINCLAIR: That is an email from me, 13 yes. 14 MR MPOFU: Yes, and it's an update which 15 you were sending to whoever you were sending it to. 16 MR SINCLAIR: Yes, Sir. 17 MR MPOFU: And paragraph 1 of that you 18 say there, "Saturday afternoon and evening saw no 19 escalation in violence. However, reliable information 20 indicated that the group reported in the last communication 21 were responsible for the confrontation flare-up on Saturday 22 morning at Wonderkop, had gathered some 1.5 kilometres away 23 from the hostel in the veld area, were undergoing 24 traditional rituals in preparation to attack the NUM 25 representatives who confronted them in the Wonderkop Hostel</p>
<p style="text-align: right;">Page 33975</p> <p>1 this morning. 2 MR SINCLAIR: What is it's number, 3 please? 4 MR MPOFU: It's marked 423 as a page 5 number. The big printed number is 266. 6 MR SINCLAIR: I don't seem to have it 7 before me, Sir. Is that the document there, Sir? 8 MR MPOFU: Yes. We gave it to you team 9 this morning. 10 MR SINCLAIR: Thank you. 11 MR MPOFU: Thank you. 12 CHAIRPERSON: I don't know that we'd been 13 given this document. But anyway, it's on the screen now. 14 We'll get copies in due course. But let's carry on with 15 your cross-examination. 16 MR SINCLAIR: I have a copy, Sir. 17 CHAIRPERSON: No, never mind. We're not 18 unable to follow at the moment because it's on the screen. 19 So put your – 20 MR MPOFU: Yes, Chairperson, your version 21 might be under JJJ192. 22 CHAIRPERSON: Yes, well I haven't got 23 that up on the bench – 24 MR MPOFU: Oh, you don't have that 25 either. Okay, alright, yes thank you –</p>	<p style="text-align: right;">Page 33977</p> <p>1 on Saturday morning." 2 CHAIRPERSON: I'm sorry, Mr Mpofu, for 3 the sake of good order, we haven't seen this. It hasn't 4 got an exhibit number at the top, so I think it's only 5 right that we should – 6 MR MPOFU: Chairperson, what – 7 CHAIRPERSON: - we should make it an 8 exhibit now. 9 MR MPOFU: Yes, our proposal is that it 10 should be FFFF6 and then it should then join into the 11 continuous pagination. 12 CHAIRPERSON: No, I accept that. So the 13 next number is FFFF6. 14 MR MPOFU: FFFF6, yes. 15 CHAIRPERSON: What do I call it? I know 16 what I call it. Lonmin – 17 MR MPOFU: Call it various – 18 CHAIRPERSON: Lonmin Mining Security RDO 19 disruption – 20 MR MPOFU: Email, because it's not one, 21 it's a fairly – 22 CHAIRPERSON: No, I'm taking the heading 23 from it. Lonmin Mining Security RDP disruption update 24 12/8/2012, and then it will be in the bundle, what is it 25 suggested to be in the bundle? It should be added to the</p>

<p style="text-align: right;">Page 33978</p> <p>1 bundle, what page number?  2 MR MPOFU: Thank you, Chairperson.  3 CHAIRPERSON: Alright, I don't know what  4 the next page number is –  5 MS PILLAY: Chair, just to indicate –  6 CHAIRPERSON: You can give me that later.  7 MS PILLAY: Chair, the page that's on the  8 screen now is part of a bundle and this particular page is  9 page 425 of the bundle.  10 CHAIRPERSON: 425, it is not in my copy  11 of the bundle, but never mind, I have written it down as  12 bundle 425.  13 MR MPOFU: Yes.  14 [14:50] CHAIRPERSON: And I've called it "Lonmin  15 Mining security RDO disruption update, 12/8/2012" and it's  16 bundle 425. So that should identify it.  17 MR MPOFU: Thank you, thank you,  18 Chairperson. And the simple point I really want to make  19 there, Chairperson, I mean Mr Sinclair, is that in this  20 document you yourself make the clear link about the march  21 on the 12th being linked to the attack on the 11th. That's  22 really, I'm just making that simple point, nothing further  23 than that. Do you accept that?  24 MR SINCLAIR: Thank you, I accept -  25 MR MPOFU: Thanks.</p>	<p style="text-align: right;">Page 33980</p> <p>1 COMMISSIONER HEMRAJ: Are these –  2 MR MPOFU: I'm sorry, sorry.  3 COMMISSIONER HEMRAJ: Are these daily  4 updates, Mr –  5 MR SINCLAIR: They were periodical, from  6 me they were periodical updates when I had time and when I  7 could, to try and just make sure that management – because  8 remember I had already kept telephonic updates all the  9 time. So these were periodical in support of the  10 telephonic updates.  11 MR MPOFU: Yes.  12 CHAIRPERSON: I see here the heading at  13 the top says, "Subject: RDO disruption update, brief 4,  14 confidential." So it sounds as if there were three  15 previous briefs, as it were -  16 MR SINCLAIR: If I look –  17 CHAIRPERSON: - which deal with the "RDO  18 disruption."  19 MR SINCLAIR: If I look at that, that is  20 very possible, Mr Chairman. I don't think I would have  21 made a mistake on, put brief 4 if it wasn't brief 4.  22 MR MPOFU: If it was the first time.  23 CHAIRPERSON: The last one, in our copies  24 of the bundle we're up to 404 but I understand this is 425,  25 so there are 20 pages that we're going to get that we</p>
<p style="text-align: right;">Page 33979</p> <p>1 MR SINCLAIR: - that this document does  2 that, yes.  3 MR MPOFU: Ja.  4 CHAIRPERSON: The link, for what it's  5 worth, is set out in paragraph 1 of your update.  6 MR MPOFU: Yes.  7 MR SINCLAIR: Yes, sir.  8 MR MPOFU: Yes. And so that's the point  9 I'm making. It's a kind of a – you get what I'm saying – a  10 rolling accumulation of events.  11 MR SINCLAIR: I had the same opinion that  12 something was taking place.  13 MR MPOFU: Building up.  14 MR SINCLAIR: Yes.  15 MR MPOFU: Yes, thank you.  16 CHAIRPERSON: To whom did you send this  17 update?  18 MR SINCLAIR: It would have been to  19 Frank, to Frank Russo-Bello. It could have also, and I  20 stand corrected but it could have also been to Barnard  21 Mokwena and our communications people.  22 CHAIRPERSON: It was essentially top  23 management in, top management and others in Lonmin.  24 MR SINCLAIR: Yes, sir.  25 MR MPOFU: Yes and –</p>	<p style="text-align: right;">Page 33981</p> <p>1 haven't got yet, we should've got, and they will presumably  2 contain, I take it, briefs 1, 2 and 3 but that's something  3 we will see in due course. You can't tell us –  4 MR BHAM SC: Sorry, Mr Chairman, brief 1  5 appears at page 268, brief 2 appears at page – 1 appears at  6 page 268 of that bundle, brief 2 appears at page 270 and  7 brief 3 appears at page 271.  8 CHAIRPERSON: Well, we've now been given  9 one copy with – and if we're patient we'll get the rest,  10 we'll get two other copies for the other Commissioners in  11 due course. Anyway, thank you very much, I've written down  12 those page numbers so that we know where we are. Thank  13 you.  14 MR MPOFU: Thank you –  15 CHAIRPERSON: Let's not take, let's not  16 eat into Mr Mpofu's, let's not eat into Mr Mpofu's precious  17 cross-examination time.  18 MR MPOFU: No, thank you, Chairperson. I  19 have to take responsibility for this and there's even more  20 confusion because the page numbers that Mr Azhar Bham is  21 referring to are the printed page numbers. The paginated  22 numbers which are on the continuous bundle are different.  23 And I'll clear it up during the break.  24 CHAIRPERSON: Brief 1 is, while we're  25 busy with it, brief 1 is page 425 in the bundle, I see from</p>

<p style="text-align: right;">Page 33982</p> <p>1 what I've been handed.</p> <p>2 MR MPOFU: Yes.</p> <p>3 CHAIRPERSON: And brief 2 is page 427 and</p> <p>4 brief 3 is page 271.</p> <p>5 MR MPOFU: That's correct.</p> <p>6 CHAIRPERSON: So that's all put in order.</p> <p>7 MR MPOFU: Thank you very much,</p> <p>8 Chairperson. Now what I'm saying, Mr Sinclair, and this is</p> <p>9 very important because as you can see I'm building up to</p> <p>10 the 16th, is that on top of what you said there, which you</p> <p>11 and I have now covered, for a – let me put it this way, the</p> <p>12 connectedness between the events of the 11th and the events</p> <p>13 of the 12th would have been patent and predictable to an</p> <p>14 experienced security person like you, correct?</p> <p>15 MR SINCLAIR: They would –</p> <p>16 MR MPOFU: That there might be revenge.</p> <p>17 MR SINCLAIR: - been predictable, yes.</p> <p>18 MR MPOFU: Yes. And therefore even</p> <p>19 before you got the, you did get information obviously from</p> <p>20 sources that there will be another march but even before</p> <p>21 that you would have predicted that something like that</p> <p>22 might occur.</p> <p>23 MR SINCLAIR: We would have certainly</p> <p>24 focused on it.</p> <p>25 MR MPOFU: Yes.</p>	<p style="text-align: right;">Page 33984</p> <p>1 was a wise thing to do?</p> <p>2 MR SINCLAIR: They were competent –</p> <p>3 MR MPOFU: 3 000 –</p> <p>4 MR SINCLAIR: They were competent people</p> <p>5 and I respect their decision.</p> <p>6 MR MPOFU: You respect their decision,</p> <p>7 yes. And yet on the 12th when a similar – well, not</p> <p>8 similar, an armed version of that crowd was coming, the</p> <p>9 decision was taken to confront them. You would agree if</p> <p>10 the first one was wise, then the second one must be unwise,</p> <p>11 correct?</p> <p>12 MR SINCLAIR: I can go no further than,</p> <p>13 of that opinion, yes.</p> <p>14 MR MPOFU: Yes, thank you. Right, and</p> <p>15 that is why Mr Botes made the concession yesterday to say</p> <p>16 if you look at it like that, then Lonmin was partially to</p> <p>17 blame for the deaths of those people. Would you agree with</p> <p>18 Mr Botes?</p> <p>19 MR SINCLAIR: Lonmin was partially to</p> <p>20 blame for the deaths, of those individuals' decisions?</p> <p>21 MR MPOFU: No.</p> <p>22 MR SINCLAIR: The security team's</p> <p>23 decision?</p> <p>24 MR MPOFU: Yes, ja, the Lonmin security</p> <p>25 should have –</p>
<p style="text-align: right;">Page 33983</p> <p>1 MR SINCLAIR: Thought about it.</p> <p>2 MR MPOFU: Ja. And in fact if you look</p> <p>3 at 2A of that same fax, or rather e-mail, you say that "The</p> <p>4 security operation was stepped up on Saturday afternoon to</p> <p>5 a double red status because of the potential mass revenge</p> <p>6 conflict indicated in point 1."</p> <p>7 MR SINCLAIR: Absolutely.</p> <p>8 MR MPOFU: Yes. And "because of" means</p> <p>9 exactly that, the events of the 12th were directly connected</p> <p>10 to those of the 11th.</p> <p>11 MR SINCLAIR: Yes, sir.</p> <p>12 MR MPOFU: Thanks. So one can then</p> <p>13 safely say that had the – okay, no, I'll do that at the</p> <p>14 end. And as you know, on the 12th two of your colleagues</p> <p>15 lost their lives and as I put it, on the 11th your security</p> <p>16 personnel had decided, wisely in my view, that the crowd</p> <p>17 that was marching to the NUM should not be confronted. Do</p> <p>18 you remember that?</p> <p>19 MR SINCLAIR: I –</p> <p>20 MR MPOFU: That they should –</p> <p>21 MR SINCLAIR: - I was not there at the</p> <p>22 time but I heard it on –</p> <p>23 MR MPOFU: You heard about it.</p> <p>24 MR SINCLAIR: Yes.</p> <p>25 MR MPOFU: Yes, and you would agree that</p>	<p style="text-align: right;">Page 33985</p> <p>1 MR SINCLAIR: It's a Lonmin issue, yes.</p> <p>2 MR MPOFU: Yes, you agree.</p> <p>3 MR SINCLAIR: Yes.</p> <p>4 MR MPOFU: Thank you. Now, because</p> <p>5 remember that's what this Commission is about, is to find</p> <p>6 who should be blamed for what. I mean that's not the only</p> <p>7 reason, ja. And now having, with those events of the 12th</p> <p>8 having happened, obviously the tensions were getting more</p> <p>9 and more intense, correct?</p> <p>10 MR SINCLAIR: The tensions with?</p> <p>11 MR MPOFU: Ja, I'm saying –</p> <p>12 MR SINCLAIR: Overall?</p> <p>13 MR MPOFU: Yes, overall.</p> <p>14 MR SINCLAIR: I believe that to be a</p> <p>15 correct statement.</p> <p>16 MR MPOFU: Yes and –</p> <p>17 CHAIRPERSON: It was double red.</p> <p>18 MR SINCLAIR: It was double red, that's</p> <p>19 why I believe it to be a –</p> <p>20 CHAIRPERSON: Is double red as hot as</p> <p>21 you, as high as you can go?</p> <p>22 MR SINCLAIR: That is what this brief</p> <p>23 was, to alert people that this was escalating into tensions</p> <p>24 that were of a nature that we had never ever anticipated</p> <p>25 or seen before.</p>

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1 MR MPOFU: Correct. Thank you.  
 2 CHAIRPERSON: Mr Mpofu, it's three  
 3 o'clock. When it's convenient we'll take the tea  
 4 adjournment and you're going to carry on for 10 minutes  
 5 after that. So when it's convenient, just let me know when  
 6 it's convenient for me to take the tea adjournment and I'll  
 7 take it.  
 8 MR MPOFU: Yes.  
 9 CHAIRPERSON: You may want to ask some  
 10 rounding off questions at this point.  
 11 MR MPOFU: Yes, I do, Chairperson.  
 12 CHAIRPERSON: I'm in your hands.  
 13 MR MPOFU: Yes. Well, the first one I  
 14 think is obvious, so from this reading of these documents  
 15 it's clear that, let's say the events of the 11th were  
 16 responsible for your decision to – they were a turning  
 17 point of some sort which prompted you to escalate the  
 18 coding to double red, correct?  
 19 MR SINCLAIR: That is correct, sir.  
 20 MR MPOFU: Yes. Ja, well, we call it a  
 21 game changer but it's the same thing. It was a significant  
 22 point. Now I'll just ask you one question before we take a  
 23 break. Surely then this double red situation which is even  
 24 made triple red, if there's such a thing, by the killings  
 25 on the 12th – remember it was double red even before the

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1 security people died, correct?  
 2 MR SINCLAIR: Yes, sir.  
 3 MR MPOFU: Yes. It's now even  
 4 exacerbated by the killings on the 12th. Surely that must  
 5 have played a role in your decision when you saw that  
 6 breakaway group, in alerting the police and saying look,  
 7 there's another group moving. Had that just happened in  
 8 the air, it might not have been so significant.  
 9 MR SINCLAIR: I've lost you. Which  
 10 breakaway group, sir?  
 11 MR MPOFU: Oh, I'm sorry, yes. The  
 12 breakaway group on the 13th. You remember we started by  
 13 saying you alerted the police to the breakaway group, yes.  
 14 MR SINCLAIR: Yes.  
 15 MR MPOFU: I'm saying surely the face  
 16 that the situation was now at triple red, must have played  
 17 a role in your alerting the police as soon as you saw that  
 18 breakaway group, surely?  
 19 MR SINCLAIR: Mr Chair, you'll see I was  
 20 not present at that, on the 13th at the start of that event  
 21 and I will obviously be asked to give evidence on that but  
 22 the potential mass revenges and that and the double red  
 23 definitely alerted us to the more, to be more vigilant and  
 24 prepared and we would have definitely been, communicated  
 25 this to the SAPS on a continuous basis.

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1 CHAIRPERSON: What we see from this is,  
 2 we know it's double red.  
 3 MR SINCLAIR: Yes, sir.  
 4 CHAIRPERSON: You wanted maximum  
 5 visibility from the part of mining security.  
 6 MR SINCLAIR: Yes, sir.  
 7 CHAIRPERSON: You then got the PMR  
 8 security team deployed.  
 9 MR SINCLAIR: Yes, sir.  
 10 CHAIRPERSON: You'll tell us about that  
 11 in a second, I take it, after the adjournment. You got  
 12 concentrated security people as well.  
 13 MR SINCLAIR: Yes, sir.  
 14 CHAIRPERSON: And D band security  
 15 managers from all areas.  
 16 MR SINCLAIR: Yes, sir.  
 17 CHAIRPERSON: And you also got additional  
 18 emergency fire prevention and medical teams deployed and  
 19 you advised the people at the Saffy Hospital to be ready to  
 20 deal with mass casualties.  
 21 MR SINCLAIR: Yes, sir.  
 22 CHAIRPERSON: That's what you did. Now  
 23 perhaps just before, if Mr Mpofu will let me, just before  
 24 we adjourn can you tell us quickly about PMR security team?  
 25 Is that one of the private security firms that you –

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1 MR SINCLAIR: Those are our own in house  
 2 security, for instance Kallie Miles who would come in with  
 3 his, the Dewald Louws that you've already – it would be  
 4 those people that would come in.  
 5 CHAIRPERSON: Okay, that –  
 6 MR SINCLAIR: And the concentrated as  
 7 well, our own security people there, they would say right,  
 8 we can cope in our normal security with that, we can deploy  
 9 these people to assist you, our own internal teams.  
 10 CHAIRPERSON: So you've got your internal  
 11 people, your PMR security people and your concentrated  
 12 security people, you got them involved as well.  
 13 MR SINCLAIR: Yes, sir.  
 14 CHAIRPERSON: They would not normally  
 15 have been involved.  
 16 MR SINCLAIR: They wouldn't. They were  
 17 deployed and what's the word I'm looking for when they're  
 18 given to me to utilise –  
 19 CHAIRPERSON: Seconded to you.  
 20 MR SINCLAIR: Seconded to me.  
 21 CHAIRPERSON: Ja.  
 22 MR SINCLAIR: They were seconded to our  
 23 area to assist us –  
 24 CHAIRPERSON: To deal with the double  
 25 red.

<p style="text-align: right;">Page 33990</p> <p>1 MR SINCLAIR: - because we had this 2 potential of this massive escalation that we were seeing 3 unfold. 4 CHAIRPERSON: Alright. 5 MR MPOFU: Chairperson, if I may, just so 6 that when I come back I come to something else, just one 7 question. I'm sorry, Mr Sinclair, I think it's my fault I 8 didn't ask the question properly. I don't think you 9 understood what I was saying. What I was saying is simply 10 this, your decision to alert the police on the 13th to the 11 breakaway group must have been influenced by what, I've 12 just made up this, by the triple red situation which had 13 accumulated from the 11th to the 12th to the killing and 14 then when you saw those people, surely that must have – if 15 it had just happened on a normal sunny day you wouldn't 16 have alerted the police, would you agree – 17 MR SINCLAIR: We would definitely, even 18 on the Saturday, have elevated and alerted the police to 19 these problems right through until the Sunday. 20 MR MPOFU: Yes, but specifically the one 21 of the 13th when you saw that group – 22 MR SINCLAIR: Yes. 23 MR MPOFU: - in that environment, it was 24 influenced by the tragic things that had just happened. 25 MR SINCLAIR: My teams on the ground – my</p>	<p style="text-align: right;">Page 33992</p> <p>1 15 minutes to the injured and arrested. 2 MR MPOFU: Thank you. 3 CHAIRPERSON: I didn't know these times 4 are transferrable, but in this case I'll accept it. 5 MR MPOFU: Thank you, Chairperson. That 6 makes it about ten to five, thank you. Thank you, Mr Gotz. 7 MR MPOFU: Okay, Mr Sinclair, let's go 8 through this very quickly. What I want to do because of 9 the time problem is - you see where I was going I was 10 building up the connectedness between all the events 11 towards the 16th, but I will do that with other witness as 12 from the 13th. You have helped me to connect the events 13 from the 10th to the 13th and as I understand it you agree 14 that because of what I call the triple red status you 15 became more sensitive to that breakaway group, correct? 16 MR SINCLAIR: That is correct, Sir. 17 MR MPOFU: Yes so from the further 18 connectedness from the 13th onwards and the political 19 pressure and all that I will deal with that with other 20 witnesses because we don't have time to do what I was 21 intending to do, to build up the events after the 15th. But 22 thank you for helping me with the first connectedness up to 23 the 13th. The only thing in that respect that I'd like to 24 canvas with you is that it's just a concern that it was 25 your view that had SAPS responded to your numerous</p>
<p style="text-align: right;">Page 33991</p> <p>1 teams, Mr Chairman, on the ground would definitely have 2 alerted the SAPS to the situation. 3 MR MPOFU: Yes, and influenced by the 4 deaths of their colleagues and other people, correct? 5 MR SINCLAIR: I think even before that. 6 MR MPOFU: Yes. 7 MR SINCLAIR: Even before that, Mr Chair. 8 MR MPOFU: Chairperson, I think I'd like 9 to try again – 10 CHAIRPERSON: We'll take a 15 minute 11 adjournment now? 12 MR MPOFU: Yes, Chair. 13 CHAIRPERSON: You got the answer you 14 wanted, I think. 15 MR MPOFU: Yes, I did, thanks. 16 CHAIRPERSON: 15 minutes. It's got to be 17 15 minutes because Mr Mpofo has got a problem, he's got 18 another engagement tomorrow. 19 [COMMISSION ADJOURNS COMMISSION RESUMES] 20 [15:22] CHAIRPERSON: The Commission resumes. 21 You're still under oath, Mr Sinclair. Mr Mpofo, by Mr 22 Wesley's calculations you've got seven minutes but I give 23 you 10. 24 MR MPOFU: You're very kind, Chairperson. 25 MR GOTZ: Chair, AMCU is happy to donate</p>	<p style="text-align: right;">Page 33993</p> <p>1 approaches which I discussed with Mr Botes, between the 2 time you got the information that there was a threat to 3 burn the NUM offices on the 11th and the actual happening of 4 that event had SAPS responded timeously that event could 5 have been prevented. Correct that you have that view? 6 MR SINCLAIR: That was on the Sunday the 7 13th. 8 MR MPOFU: The Saturday. 9 MR SINCLAIR: On the Saturday I think 10 that my opinion is if there had been a bigger SAPS or a 11 different SAPS response there might have been a different 12 outcome. 13 MR MPOFU: Yes thank you, thank you very 14 much. In fact just for completion, on page FFFF6, big 271, 15 you can put it back on the screen please. 4 to 8 I think, 16 Chairperson it would be, 271, the big 271 ja. That's your 17 brief 3, Chairperson, yes. 18 CHAIRPERSON: Three. 19 MR MPOFU: Yes I'm just to read – 20 CHAIRPERSON: I've just heard that FFFF6 21 before the bundle 425, it starts earlier than that and so 22 this would really be part of FFFF6. 23 MR MPOFU: That's correct, Chairperson. 24 CHAIRPERSON: So we don't have to mark it 25 separately.</p>

<p style="text-align: right;">Page 33994</p> <p>1 MR MPOFU: Yes thank you. Mr Sinclair,  2 just to confirm what you've already said. You say there at  3 paragraph 4 of your brief 3 and you're talking about the  4 incident of the 11th because this brief was issued at 2  5 o'clock of the 11th, you say no SAPS presence was available  6 in this area, ongoing –  7 CHAIRPERSON: Sorry, Mr Mpofo, before we  8 get there. I understand you're getting there in a moment,  9 but remember you were asked earlier by Mr Mpofo whether it  10 was correct, was it your information, but after the problem  11 near NUM office that the strikers then went off and re-  12 gathered, re-congregated outside the Wonderkop stadium and  13 you said you didn't know about that. But here we see that  14 in paragraph 1 of this document "Following this morning's  15 brief" which obviously had dealt with had happened at the  16 NUM office "a large number of persons assembled, plus,  17 minus 300 in the veld area outside of the Wonderkop  18 stadium. They started dancing and chanting and so on and  19 moved into the hostel area." And there's talk of a further  20 confrontation, but it does appear, am I right, Mr Mpofo or  21 have I got it wrong? It does appear as if there was an  22 assembly in the veld area outside the Wonderkop stadium.  23 It's not clear actually from this whether it's before or  24 after the actual confrontation, but that's something that  25 may well be clearer later when we have the other dockets.</p>	<p style="text-align: right;">Page 33996</p> <p>1 CHAIRPERSON: Okay but the Mr Mpofo wants  2 to make, he's made it's really based on your paragraph 4.  3 MR SINCLAIR: Yes, Sir.  4 MR MPOFU: Thank you, Chairperson. Okay  5 now let's move onto something else. That's the end of  6 connectedness discussion. Now when Ms Pillay, when she was  7 listing the events, the important events in which you were  8 involved which were not mentioned in your statement, one of  9 the things she mentioned was the discussion which happened  10 between the Provincial Commissioner and Mr Mokwena which  11 was recorded and appears at JJJ19.2 which should also have  12 been given to you this morning. JJJ19.2 you are aware of  13 those discussions? Well the recorded conversation of Mr  14 Mokwena and the Provincial Commissioner which suggests all  15 sorts of reasons why they have to kill this thing. Meaning  16 that the sooner the operation was carried out the better.  17 I'm just paraphrasing. Do you remember that?  18 MR SINCLAIR: The conversation between Mr  19 Mokwena - are you saying I was present –  20 MR MPOFU: Yes I'm saying  21 MR SINCLAIR: I was present.  22 MR MPOFU: Yes it was on the 14th. Do you  23 remember that?  24 MR SINCLAIR: Yes, Sir.  25 MR MPOFU: Yes now that question I was</p>
<p style="text-align: right;">Page 33995</p> <p>1 Mr Mpofo is not putting to you at 4 there was no SAPS  2 presence available in the area. You say "Ongoing  3 communication at all levels of the SAPS calling for backup  4 and assistance had been taking place since early morning,  5 but to no avail." And after the confrontation a single  6 SAPS vehicle arrived. So that's the point.  7 MR MPOFU: That's the point, Chair.  8 MR SINCLAIR: That is what I had – before  9 I arrived there it would have been information that I had  10 received from my people to draw this brief up and what I  11 observed from when I arrived there, Sir.  12 MR MPOFU: Yes and that reinforces your  13 view that SAPS responded properly that event might have  14 been prevented, correct?  15 MR SINCLAIR: There could have been a  16 different outcome.  17 MR MPOFU: Yes a different outcome,  18 that's fine. That's good enough.  19 CHAIRPERSON: I may have been wrong, the  20 assembly outside the stadium may well have taken place  21 prior to the confrontation, but anyway –  22 MR SINCLAIR: That is what I believe I  23 was trying to put that there was assembly and then they  24 came in from different areas and the confrontation took  25 place, Sir.</p>	<p style="text-align: right;">Page 33997</p> <p>1 asking you about the actual relation was exactly that, it  2 came from there – on page 15 of that document you will see  3 Mr Mokwena says, probably joking with you, there's Graham,  4 the SAPS Commissioner at the bottom, Mr Mokwena and Graham.  5 oh there your name is misspelt, you are the person who was  6 being referred to, correct? You are the only Graham.  7 MR SINCLAIR: They were the ones – I was  8 being referred to, yes.  9 MR MPOFU: Yes, okay and he says  10 something about water canons and then Mr Mokwena says "How  11 do I trust an ex Rhodesian?" and so on.  12 MR SINCLAIR: Yes, yes, Sir.  13 MR MPOFU: Joking with you obviously.  14 Ja, okay. But more importantly at page 13 of that  15 document, I'm sorry let's start at page 12 and this relates  16 again to the connectedness of all these things. There was  17 a discussion about political reasons why the operation had  18 to be fast tracked or escalated. Do you remember that?  19 MR SINCLAIR: Yes, Sir.  20 MR MPOFU: Pardon?  21 MR SINCLAIR: Yes, Sir.  22 MR MPOFU: You do, okay and then – so  23 we'll jump all that. Connected to that political  24 discussion then it says, Mr Mokwena says at line 18 "So I  25 agree with you, Commissioner, if we can arrest these people</p>

<p style="text-align: right;">Page 33998</p> <p>1 because the longer it goes it is giving all the other 2 opportunities to comment and seize the opportunity and it 3 gets out of control." Then she says "That's it." Then 4 Mokwena says "I think let tomorrow be D Day where we issue 5 ultimatum and say if you do not show up for work sorry that 6 is it" and so on and so on. And then you say "Please just 7 get them to me early, I will do it during the night because 8 there is issues with the chopper, I hear you." Do you 9 remember that?</p> <p>10 MR SINCLAIR: Yes.</p> <p>11 MR MPOFU: In other words what you are 12 saying is – they were saying because of these political 13 reasons and opportunism and what have you the thing must 14 fast tracked and there must be pamphlets. And you were 15 saying please get them to me as quick as possible and so on 16 and so on.</p> <p>17 MR SINCLAIR: That is correct, Sir.</p> <p>18 MR MPOFU: You remember that.</p> <p>19 MR SINCLAIR: Yes.</p> <p>20 MR MPOFU: Okay sure and then on the 21 following page then there's a discussion about that, about 22 these people must see action otherwise they become 23 demoralised and then you say "They are also going to see 24 that wow. These people are working together and not 25 bugging around. And that is important, Barnard okay."</p>	<p style="text-align: right;">Page 34000</p> <p>1 MR MPOFU: So when you say we have now 2 got the horse unit you were meaning you and SAPS as a 3 partnership or as a joint force.</p> <p>4 MR SINCLAIR: I wasn't meaning that.</p> <p>5 MR MPOFU: Well what did you mean by we?</p> <p>6 MR SINCLAIR: Mr Chairman, in that 7 context I use the word we, the horse unit had arrived. We 8 had had, Lonmin security had had a problem in the remote 9 areas between shafts and I had seen the horse unit as 10 advantageous to be able to get through those remote areas 11 as visible policing. So where I went there I said the SAP 12 have the horse units here and there was a discussion to 13 deploy them into those areas where you couldn't get the 14 vehicles to do and that's what that conversation was about.</p> <p>15 MR MPOFU: No I know what it was about, 16 Mr Sinclair, please answer the question. When you said 17 there we have got now the horse unit, we want to deploy as 18 well for visible policing. You were referring to the we 19 was meaning Lonmin and SAPS as a joint force.</p> <p>20 MR SINCLAIR: I said we, ourselves wanted 21 to make sure that deployment was for visible policing.</p> <p>22 CHAIRPERSON: But that's Mr Mpofu's 23 point. You were putting Lonmin and the police together as 24 the joint agents as it were in doing the deploying and -</p> <p>25 MR SINCLAIR: Yes, Sir.</p>
<p style="text-align: right;">Page 33999</p> <p>1 Do you remember saying that?</p> <p>2 MR SINCLAIR: I definitely would have 3 said it, yes.</p> <p>4 MR MPOFU: Thank you. And then further 5 down you say "I've got my attorney, we are working very 6 closely with our attorneys" very close and so on, 7 inaudible, inaudible then you say "Okay so why I'm saying 8 to this, they need to get their strategies right. We have 9 deployed 140 across the, inaudible SAP to go and interact 10 with our security as the operation, inaudible. We have got 11 now the horse unit, we want to deploy as well for visible 12 policing." Do you remember that?</p> <p>13 MR SINCLAIR: I recall that conversation, 14 Sir.</p> <p>15 MR MPOFU: And the we you were talking 16 about here was obviously consistent with the joint 17 operation mentality. You were saying we meaning SAPS and 18 Lonmin, correct?</p> <p>19 MR SINCLAIR: I was saying that.</p> <p>20 MR MPOFU: When you are using the word 21 we, you don't have a horse unit yourself at Lonmin, 22 correct?</p> <p>23 MR SINCLAIR: We don't have.</p> <p>24 MR MPOFU: A horse unit.</p> <p>25 MR SINCLAIR: We don't have.</p>	<p style="text-align: right;">Page 34001</p> <p>1 CHAIRPERSON: Do you agree with that?</p> <p>2 MR SINCLAIR: Yes, Sir.</p> <p>3 MR MPOFU: Thank you, thank you very 4 much. And then the next important thing which might seem 5 unimportant is that the SAPS commissioner then says to you 6 "I think it's very right what Graham is saying" and so on 7 and so on. That does suggest that you were on first name 8 terms with the Commissioner.</p> <p>9 MR SINCLAIR: No she knew my first name, 10 I always the Commissioners, the PC as Ma'am or -</p> <p>11 MR MPOFU: Okay, but she called you by 12 your first name.</p> <p>13 MR SINCLAIR: She called me by my first 14 name. I'd always been introduced as Graham across any -</p> <p>15 MR MPOFU: Yes, no in fact I think 16 somewhere you call her Ma'am ja. But she called you by 17 your first name.</p> <p>18 MR SINCLAIR: Yes.</p> <p>19 MR MPOFU: And she had your telephone 20 numbers as indicated by Ms Pillay earlier.</p> <p>21 MR SINCLAIR: I believe the Commissioner, 22 I stand corrected, but I believe the Commissioner – the 23 Provincial Commissioner definitely had my telephone number.</p> <p>24 MR MPOFU: Yes she must have because she 25 called you on the 15th during the National Management</p>



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1 meeting.

2 MR SINCLAIR: That is correct, Sir.

3 MR MPOFU: Ja, okay. Okay as far as that

4 is concerned, the rest we'll argue from that document. Now

5 let's go back to the issue of the deletions which Ms Pillay

6 dealt with you and which you earlier indicated or at least

7 you'd agree with me that at face value would look

8 suspicious. Did you do those deletions, you did them

9 intentionally, I mean it was not an involuntary movement of

10 the hand.

11 MR SINCLAIR: The eradications off the

12 document?

13 MR MPOFU: Yes.

14 MR SINCLAIR: I gave instructions for

15 that to be done.

16 MR MPOFU: Yes and insofar as those

17 deletions are systemic and the logic in them someone must

18 have been looking out for specific things, correct?

19 MR SINCLAIR: My assistant was looking

20 out for those items, yes.

21 MR MPOFU: Yes specifically.

22 MR MPOFU: Specifically items, there were

23 items to add in and those to delete.

24 MR MPOFU: Yes okay well enough for my

25 purposes that it was deliberate and it was looking out for

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1 specific items and then they were deleted. For the

2 purposes of this questioning whether it was you or someone

3 else who did the deletions, it's not important for now. It

4 might be important in other proceedings. The point is

5 simply that for the five hours between 10 o'clock and about

6 3 o'clock on the day that this document was deleted,

7 somebody was doing the alterations. Someone who worked for

8 Lonmin, correct?

9 MR SINCLAIR: For days before somebody

10 had been doing alterations.

11 MR MPOFU: Yes, no I accept that. I said

12 to you, say for example Ms Van der Merwe was working on it,

13 obviously she working on it for days leading up to the 8th

14 of October 2012.

15 MR SINCLAIR: That is correct, Mr Chair.

16 MR MPOFU: All I'm saying is that on the

17 8th of October 2012 from about 10:15 till about 3 o'clock

18 somebody working for Lonmin was making those systemic

19 deletions from the document.

20 MR SINCLAIR: Well they were already

21 made.

22 MR MPOFU: Yes well but someone was

23 editing or effecting them to cause the two documents to

24 differ in that five hours.

25 MR SINCLAIR: - they could have been

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1 already made, I don't know where, I can't remember what

2 time and frame they were done.

3 MR MPOFU: Yes, but they were effected,

4 Mr Sinclair.

5 MR SINCLAIR: They were effected.

6 MR MPOFU: They were effected in that

7 five hour period obviously just from objective reading of

8 the document, would you agree?

9 MR SINCLAIR: I agree.

10 MR MPOFU: Thank you. Now the next issue

11 is that – well let me put it this way and you'll correct me

12 if I'm wrong. Insofar as you gave instructions for those

13 deletions I wanted to just check, there are two entries

14 which I think you might have forgotten which you might have

15 wanted to delete. Firstly, and I think on a lighter note,

16 I must say that my client said that this is quite

17 remarkable because they've been accused of making

18 themselves invisible. So when we were discussing this

19 matter they say well it looks like you are also making some

20 of this evidence to be invisible. And they say –

21 CHAIRPERSON: They did it without using

22 any muti either.

23 MR MPOFU: Yes that's exactly what they

24 said. They said it looks like the delete button is the

25 white man's muti. That's what they said.

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1 MR SINCLAIR: Definitely I was not

2 intending making anything invisible, Sir.

3 MR MPOFU: Okay but they were invisible

4 by 3 o'clock. They were visible at 10:00 and invisible at

5 3.

6 MR SINCLAIR: I hear you, Sir.

7 [15:42] MR MPOFU: Thank you, okay, the two

8 entries, one is on the 14th – I'm sorry, EEEE19 Chairperson,

9 one on the 14th of August 2012, 14:22. 14:22, are we there?

10 I'll read it out for you, it's quite feint, Mr Sinclair,

11 and I'll just read out for you, according to your

12 instructions, whether this would have been a candidate for

13 deletion which just escaped.

14 CHAIRPERSON: I wonder what 15:50 means

15 as well.

16 MR MPOFU: Yes. Let's start with 14:22,

17 "SAPS reports that 2 000 people around the koppie need to

18 be given instruction on whether or not they should shoot at

19 the mob." Wouldn't you have deleted that if you had

20 spotted it?

21 MR SINCLAIR: I don't – that wasn't a

22 Lonmin shooting incident.

23 MR MPOFU: Oh, you were only deleting

24 Lonmin shooting incidents.

25 MR SINCLAIR: The Lonmin – that wasn't a

<p style="text-align: right;">Page 34006</p> <p>1 thing that we had given, we had given procedure, it was 2 under investigation from the SAPS, sir. Sorry, Mr Chair, 3 that's – 4 MR MPOFU: And then 15:50 which says, 5 "SAPS are planning to go into the mob," would that also 6 have been deleted even though it was not a Lonmin shooting 7 incident? 8 MR SINCLAIR: It was a record from the 9 clerk at that thing and that does not deal with shooting, 10 Lonmin shooting. 11 CHAIRPERSON: I'm rather interested in 12 the – 13 MR MPOFU: Sorry, Chairperson. 14 CHAIRPERSON: Sorry, I'm interested in 15 this entry, this is what the clerk writes down, right? 16 MR SINCLAIR: Yes, sir. 17 CHAIRPERSON: What would it be based on? 18 I suppose if it's important we can follow up and ask the 19 clerk – 20 MR SINCLAIR: Yes, sir. 21 CHAIRPERSON: - if we can trace the 22 clerk, but I mean "SAPS reports" - to whom - "that plus- 23 minus 2 000 people on the koppie need to be given 24 instructions" - again by whom – "on whether or not they 25 shoot the mob." How does it work in practice?</p>	<p style="text-align: right;">Page 34008</p> <p>1 that, would have heard and they would have thought this, I 2 need to capture this. 3 MR CHASKALSON SC: Sorry, Chairperson. 4 There is in fact a statement by the clerk who recorded this 5 entry, it's GGG23 and it's a verbatim entry or according to 6 her statement – 7 MR MPOFU: Yes. 8 MR CHASKALSON SC: - it was a verbatim 9 entry from SAPS radio. 10 MR MPOFU: Van der Merwe. 11 MR CHASKALSON SC: The SAPS radio. 12 CHAIRPERSON: Yes, it sounds like the 13 SAPS radio because if you look at the entry at 13:40 it 14 also, that sounds not like what somebody said in the room 15 but SAPS's, they were being followed from the area where 16 the mob were all around. That certainly sounds like 17 something recorded from the radio. 18 MR SINCLAIR: Mr Chairman, thank you for 19 that reminder. In that room, if I recall correctly, there 20 was a SAPS radio in our information room and remember there 21 was a logbook at the SAPS operational centre where our 22 screens were, our people had a logbook. That's what I'd 23 asked Amanda to take that – so they would have also in that 24 operational room, and I don't know whether which, where 25 they would have got that entry but definitely they had</p>
<p style="text-align: right;">Page 34007</p> <p>1 MR SINCLAIR: The clerk would have been 2 sitting there and heard it on the radio or heard somebody 3 saying it and he would have thought, I need to capture this 4 and that was his interpretation of what he heard. So 5 that's why it would have been captured and that was part of 6 the things that I'd asked Amanda to go through and see, is 7 it making sense, does it tie up with this because just your 8 concern now. So those were my real concerns. This 9 document may have been required by somebody and at that 10 stage I wasn't thinking that it may have been required by a 11 commission, quite honestly, I wasn't thinking along those 12 lines and somebody might need it to make sense. Would it 13 have been our legal department, would it have been our 14 communications department? So that's why I was asking for 15 things like that to be verified and clarified against the 16 other documents, sir. 17 CHAIRPERSON: Now but what radio? You 18 say the clerk would have heard this on the radio, what 19 radio would the clerk have heard it from, on? 20 MR SINCLAIR: He might have heard – I'm 21 assuming he would have heard it on the radio or somebody 22 talking inside the room because remember what I explained, 23 we had the radio and the telephone and the computer, we had 24 the monitors and that on the side, so he would have – he or 25 she, whoever it was, I don't know who it was that recorded</p>	<p style="text-align: right;">Page 34009</p> <p>1 access to the SAPS radio there that they could have, they 2 would have had access because if I remember correctly there 3 was a SAPS radio in our information room for whatever 4 reason. 5 MR MPOFU: Okay, I understand. 6 MR SINCLAIR: Thank you, sir. 7 CHAIRPERSON: It's clear that on the 14th 8 no instruction was given to shoot at the mob. I mean 9 whoever asked the question and to whom we asked it we don't 10 know – 11 MR SINCLAIR: Ja. 12 CHAIRPERSON: - but certainly no such 13 instruction was given. 14 MR SINCLAIR: Is that the one that you 15 read, sir, yes. 16 MR MPOFU: Okay. Finally – 17 CHAIRPERSON: The one at 14:22. 18 MR SINCLAIR: 14:22, yes sir. 19 MR MPOFU: Chairperson, are you finished? 20 Oh, thank you. And – 21 CHAIRPERSON: I'll give you 10 minutes 22 till four o'clock. 23 MR MPOFU: Thank you, Chairperson. Now 24 Mr Chaskalson is quite correct, this information came from 25 the SAPS radios. You don't know from whom the instructions</p>

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1 to shoot the mob were being sought?

2 MR SINCLAIR: I, and I don't believe my

3 people would know who that instruction came from. I'm very

4 confident of that.

5 MR MPOFU: Yes. No, yes – no, my point

6 was simply that this –

7 CHAIRPERSON: We also have the police

8 occurrence book and I don't remember any entry of that kind

9 being recorded in the police occurrence book, unless there

10 were deletions from that as well.

11 MR MPOFU: Yes. No, well, it happened

12 before, Chairperson. So the other candidate for deletion

13 which I think you forgot is on, if you go to 31st August

14 2012 against the time 10:09, against the time 10:09, I also

15 think that given your instructions, this one is also

16 another one that got away. It says there, it says, "As per

17 Mr Sinclair" –

18 MR BHAM SC: [Microphone off, inaudible]

19 MR MPOFU: Sorry, it's 31/08, Mr Bham.

20 31/08/2012 against 10:09. This also escaped the chop

21 somehow. It says, "As per Mr Sinclair, when flight suits

22 are ordered then we must order two big flight suits for

23 Colonel McIntosh and his wife, no branding on suits." Were

24 you buying big flight suits for Colonel McIntosh? We know,

25 we saw him, he's a big guy.

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1 MR SINCLAIR: My emergency teams had

2 flight suits and he was walking around in civvies and he

3 had made a request to me in a passing conversation, can –

4 and I had repeatedly said no, no, no, and I had then

5 obviously changed and said something we already –

6 MR MPOFU: Yes, yes, yes.

7 MR SINCLAIR: - knowing that it would not

8 happen.

9 MR MPOFU: Oh, but –

10 MR SINCLAIR: I definitely –

11 MR MPOFU: Is your evidence that after

12 you said no, no, no and then later you said yes, yes, yes.

13 MR SINCLAIR: No, I didn't say yes, yes,

14 yes. I would've said he's nagging me, I would have said

15 yes knowing that it wasn't going to happen.

16 MR MPOFU: But if it was not going to

17 happen, can I take it that the events that get noted in

18 these OBs are important events?

19 MR SINCLAIR: I take that they should be

20 important.

21 MR MPOFU: Yes.

22 MR SINCLAIR: Should that have been

23 recorded in the OB? It was irrelevant to the thing because

24 it was a passing –

25 MR MPOFU: That's why I say it would have

Page 34012

1 been a candidate –

2 MR SINCLAIR: It should not be and Amanda

3 should have realised and taken it out, sir.

4 MR MPOFU: Should she have deleted it?

5 Should she have deleted it?

6 MR SINCLAIR: She should have deleted it,

7 it's irrelevant.

8 MR MPOFU: Ja, okay.

9 MR SINCLAIR: She should have – to me at

10 that time, sir.

11 MR MPOFU: Yes, thank you. No, then we

12 agree that it fortuitously escaped the chop. Well, if you

13 had said yes to – let's even, in the unlikely event that

14 anyone would find that explanation acceptable, why would

15 you buy another big suit for Colonel McIntosh's wife?

16 MR SINCLAIR: Sir, that would have been

17 just a passing comment to brush him off and I would've

18 said, ja, I'll get you two and move on. I wouldn't have

19 paid attention to it, sir.

20 MR MPOFU: How did you know Colonel

21 McIntosh's wife's size for the flight suit?

22 MR SINCLAIR: I didn't know, I didn't

23 know her flight size and definitely he was harassing me and

24 I would have just accepted and said, I've got more

25 important things to do, yes, let me move on.

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1 MR MPOFU: Why was he harassing you?

2 MR SINCLAIR: Because he –

3 MR MPOFU: How was he harassing –

4 MR SINCLAIR: I want, I need a flight

5 suit, those are good flights suits, I need a flight suit –

6 and I had a huge amount on my plate and I would have said,

7 ja, okay, we'll see what we can do, let's make a plan but

8 you're not going to get them because Lonmin badges, Lonmin

9 emergency badges are important, not – I'll get you a flight

10 suit.

11 MR MPOFU: Ja, but when you say no

12 branding on the suits that means exactly you were resolving

13 that problem so it was a deliberate instruction for this to

14 be done. You were right that if they had Lonmin badges

15 then it would be inappropriate.

16 MR SINCLAIR: Ja.

17 MR MPOFU: That's why you gave the

18 instruction.

19 MR SINCLAIR: I hear you.

20 MR MPOFU: Isn't that correct? Please

21 answer. That's the reason, isn't it, that you wanted the

22 branding to be removed?

23 MR SINCLAIR: That's the reason for what,

24 sir?

25 MR MPOFU: Yes, that's the reason. Okay,

<p style="text-align: right;">Page 34014</p> <p>1 and is Colonel McIntosh's wife Sergeant Venter?</p> <p>2 MR SINCLAIR: I haven't got a clue, sir.</p> <p>3 MR MPOFU: You don't know her size?</p> <p>4 MR SINCLAIR: Did I record her size?</p> <p>5 MR MPOFU: Yes.</p> <p>6 MR SINCLAIR: If I did, certainly – but I</p> <p>7 don't know who she was, sir.</p> <p>8 MR MPOFU: Thank you, Chairperson.</p> <p>9 CHAIRPERSON: It sounds like the end of</p> <p>10 your cross-examination really.</p> <p>11 MR MPOFU: It is, Chairperson.</p> <p>12 CHAIRPERSON: On that elevated note.</p> <p>13 MR MPOFU: On that note, yes, Chair.</p> <p>14 CHAIRPERSON: Very well. It occurs to me</p> <p>15 that something I said earlier might have been susceptible</p> <p>16 to misinterpretation. As far as the police occurrence book</p> <p>17 is concerned there is, as far as I understand it, no</p> <p>18 question of any deletion because it's a hard copy book of</p> <p>19 which we have a copy. So there's no possibility, as far as</p> <p>20 I see it, of any deletion and it seems quite clear, (a)</p> <p>21 that no order was given to shoot the mob on the 14th and</p> <p>22 there was no entry in the police –</p> <p>23 MR MPOFU: As far as that one is –</p> <p>24 CHAIRPERSON: - occurrence book.</p> <p>25 MR MPOFU: Chairperson, please, I just</p>	<p style="text-align: right;">Page 34016</p> <p>1 MR MPOFU: Yes, Mr Sinclair, this</p> <p>2 document, this loose document marked 433 which is in front</p> <p>3 of you, there is evidence which I canvassed with Mr Botes</p> <p>4 about the fact that some of the people I represent were</p> <p>5 incarcerated at Lonmin premises on the 16th. I'm not going</p> <p>6 to canvass with you, it is common cause. Do you</p> <p>7 understand?</p> <p>8 MR SINCLAIR: Yes, sir.</p> <p>9 MR MPOFU: Yes. Now here there's an e-</p> <p>10 mail sent to you by Myniya Lezo on the 19th, two days after</p> <p>11 or three days after the massacre.</p> <p>12 MR SINCLAIR: Yes, sir.</p> <p>13 MR MPOFU: Where she says to you, "Good</p> <p>14 morning, it is now two calls received to Lonmin helpdesk</p> <p>15 since yesterday reporting that there are people held at</p> <p>16 Middelkraal which are beaten and have gone days without</p> <p>17 food."</p> <p>18 MR SINCLAIR: Yes.</p> <p>19 MR MPOFU: "Not sure how true this is but</p> <p>20 if it can get to the media it won't look good. I thought</p> <p>21 you should be informed." Were you aware of any rumours,</p> <p>22 discussions, information about any people, further people</p> <p>23 who were incarcerated at Lonmin premises anywhere, apart</p> <p>24 from Middelkraal, after the 16th.</p> <p>25 MR SINCLAIR: Apart from Middelkraal, no.</p>
<p style="text-align: right;">Page 34015</p> <p>1 forgot one document and one question. There's a loose</p> <p>2 document which I just handed up, Chairperson, it's marked</p> <p>3 433.</p> <p>4 CHAIRPERSON: You wanted me to give it an</p> <p>5 exhibit number, I suppose?</p> <p>6 MR MPOFU: Yes, Chairperson.</p> <p>7 MR SEMENYA SC: In the meantime -</p> <p>8 CHAIRPERSON: This will be FFFF –</p> <p>9 MR MPOFU: 6.</p> <p>10 CHAIRPERSON: 7.</p> <p>11 MR MPOFU: It can be a continuation – it</p> <p>12 doesn't really.</p> <p>13 CHAIRPERSON: Sorry, Mr Semenya, did you</p> <p>14 turn your light on?</p> <p>15 MR SEMENYA SC: No, I just wanted to</p> <p>16 place on record that we welcome that correction, Chair,</p> <p>17 because we could go nowhere to put an objection.</p> <p>18 CHAIRPERSON: No, I realised when I said</p> <p>19 it that in fact there was no basis for saying it and that's</p> <p>20 why I hastened to correct it. I'm glad you've accepted the</p> <p>21 correction. Yes, so you say it's part of FFFF6 really?</p> <p>22 MR MPOFU: We might as well make it as</p> <p>23 part of –</p> <p>24 CHAIRPERSON: Alright, then I'll take it</p> <p>25 out of my book.</p>	<p style="text-align: right;">Page 34017</p> <p>1 MR MPOFU: Ja, anywhere else.</p> <p>2 MR SINCLAIR: Mr Chairman, there was</p> <p>3 nobody incarcerated at the security offices or that at</p> <p>4 Middelkraal at all and I think I replied to that, these was</p> <p>5 information that came through, we have a communication</p> <p>6 system and she [inaudible]. I think the only</p> <p>7 incarcerations were on the 16th and I'm not absolutely</p> <p>8 familiar with it, were at the –</p> <p>9 MR MPOFU: Number 1 shaft, I think.</p> <p>10 MR SINCLAIR: - at BT, at the contractor</p> <p>11 hub.</p> <p>12 MR MPOFU: Yes.</p> <p>13 MR SINCLAIR: That was the only place</p> <p>14 where any incarceration – at Middelkraal under my</p> <p>15 jurisdiction I can categorically say that I know of no</p> <p>16 incarcerations, nobody was held there for any reason at any</p> <p>17 time.</p> <p>18 MR MPOFU: Yes. No, I accept that Mr –</p> <p>19 the reason why I'm saying that is because your answer was</p> <p>20 quite curious. You said no-one is held at Middelkraal</p> <p>21 Lonmin, by Lonmin security, which would suggest that maybe</p> <p>22 other people were held at places other than Middelkraal.</p> <p>23 That's the real reason I'm asking you that question.</p> <p>24 MR SINCLAIR: I hear you, sir.</p> <p>25 MR MPOFU: And then on page 272 of FFF6 –</p>

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1 CHAIRPERSON: I think you only had one  
 2 question left, Mr Mpofo.  
 3 MR MPOFU: Yes, but I also have five  
 4 minutes.  
 5 CHAIRPERSON: No, you haven't, your time  
 6 is up.  
 7 MR MPOFU: Thank you, Chairperson.  
 8 CHAIRPERSON: What's the question? Let  
 9 me hear the question and see whether it's of the same  
 10 calibre as the McIntosh flying suit one, which was a  
 11 frivolous one.  
 12 MR MPOFU: No, it's – no, it's a more  
 13 important thing, Chairperson. You said, or let me put it  
 14 this way, you were aware that there was pressure which had  
 15 to be put at high levels, I think as you put it, at very  
 16 high levels to SAPS. You were aware of this –  
 17 CHAIRPERSON: There's a statement to that  
 18 effect in the document, it's not on the screen at the  
 19 moment. I think we must go down the screen a bit to look  
 20 at that.  
 21 MR MPOFU: Yes. No, not that one,  
 22 there's another one. Yes –  
 23 CHAIRPERSON: H. H says, "SAPS support  
 24 is again very low key during much of Saturday. Security  
 25 management and EA continue to apply pressure to all levels

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1 of SAPS and provincial administration in an effort to  
 2 improve the SAPS visibility and intervention." That's the  
 3 passage you're referring to.  
 4 MR MPOFU: And if you – yes, that's the  
 5 one, Chairperson – you read it with the previous page 271,  
 6 number 6, 271, just 271 not – ja, number 6.  
 7 CHAIRPERSON: High level, sorry, "Very  
 8 high level interaction continues to muster up support from  
 9 SAPS."  
 10 MR MPOFU: Yes. I'm saying you – I'm not  
 11 accusing you of having exerted the pressure but from what  
 12 you were hearing you were aware that there were efforts at  
 13 very high level to apply pressure to SAPS, correct?  
 14 MR SINCLAIR: Mr Chairman, what I was  
 15 indicating to my management in this brief was that Henry  
 16 Blou, myself, my team were applying high levels of pressure  
 17 on the Marikana, the local SAPS, the clusters and the  
 18 provincial SAPS. That is what I was meaning in this brief,  
 19 that we were applying high levels of pressure to try and  
 20 engender a response that we were not satisfied –  
 21 MR MPOFU: Yes. No, sir, I'm not again –  
 22 MR SINCLAIR: I wasn't saying that  
 23 somebody else must apply high pressure. I was saying we  
 24 were. I think that's what I was saying in this brief to my  
 25 managers.

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1 MR MPOFU: That's fine, Mr Sinclair. All  
 2 I'm saying is that it's not about individuals.  
 3 MR SINCLAIR: No, I'm –  
 4 MR MPOFU: You were aware that Lonmin was  
 5 intent on applying high level pressure on SAPS.  
 6 MR SINCLAIR: I agree with that.  
 7 MR MPOFU: Thank you very much. Thanks,  
 8 Chairperson.  
 9 CHAIRPERSON: We will adjourn till 9  
 10 o'clock tomorrow morning. Thank you, that's your cross-  
 11 examination, Mr Mpofo?  
 12 MR MPOFU: It is, thank you very much,  
 13 Chairperson and thank you to the evidence leaders for  
 14 accommodating me.  
 15 [16:02] CHAIRPERSON: Ms Pillay will resume her  
 16 cross-examination tomorrow. Also we'll have abbreviated  
 17 cross-examination by AMCU, and who else, Mr Wesley?  
 18 MR WESLEY: Sorry, Chair. Sorry, could  
 19 we have silence, please? Chair, tomorrow Ms Pillay must  
 20 finish her cross-examination, then the allocations as they  
 21 stand as of now, NUM and Mrs Fundi have two hours, SAPS  
 22 have got 60 minutes, AMCU have 30 minutes now, and the  
 23 families 45 minutes.  
 24 CHAIRPERSON: Are we going to compress  
 25 all that into tomorrow?

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1 MR WESLEY: We can try, Chair. I know  
 2 that –  
 3 CHAIRPERSON: We must try.  
 4 MR WESLEY: Ja.  
 5 MR BHAM SC: That leaves out any possible  
 6 re-examination.  
 7 MR WESLEY: And 15 minutes of re-  
 8 examination.  
 9 CHAIRPERSON: Alright, well you've heard  
 10 that, Mr Bham. We now adjourn till 9 o'clock tomorrow.  
 11 [COMMISSION ADJOURNED]  
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