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COMMISSION OF INQUIRY

MARIKANA

BEFORE TRIBUNAL

THE HONOURABLE MR JUSTICE FARLAM (RETIRED) - CHAIRPERSON
MR TOKOTA SC
MS HEMRAJ SC

HELD ON

DAY 268

1 AUGUST 2014

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<p style="text-align: right;">Page 34022</p> <p>1 [PROCEEDINGS ON 1 AUGUST 2014] 2 [09:07] CHAIRPERSON: The Commission resumes. I 3 understand there's a problem with some of the headphones 4 but extra cables are required to fix them, so I think you 5 can only sit on one side to hear the evidence today. The 6 cables are on the way but I said we mustn't wait for them, 7 they can use them at the first comfort break. You're still 8 under oath, Mr Sinclair. 9 MR SINCLAIR: Yes, Mr Chair. 10 CHAIRPERSON: Ms Pillay, you're now going 11 to resume your interrupted cross-examination. 12 MS PILLAY: That's correct, Chair. 13 GRAEME MILLER SINCLAIR: (s.u.o.) 14 CROSS-EXAMINATION BY MS PILLAY (CONTD.): 15 Good morning, Mr Sinclair. 16 MR SINCLAIR: Good morning, ma'am. 17 MS PILLAY: Mr Sinclair, this morning I'd 18 like to start with dealing with your roles and 19 responsibilities at the time in August 2012 at Lonmin and 20 I'd ask that exhibit DDDD5 be put up on the screen. Now 21 this is an annexure to the ICAM report, isn't that correct, 22 Mr Sinclair? 23 MR SINCLAIR: It appears so, ma'am. 24 MS PILLAY: And as you can see from this 25 organogram you were the most senior manager in charge of</p>	<p style="text-align: right;">Page 34024</p> <p>1 MR SINCLAIR: I would be involved, I 2 would communicate with Henry Blou on operational issues 3 definitely. 4 MS PILLAY: And we'll cover in due 5 course, Mr Sinclair, that you had a larger operational role 6 and that's reflected in exhibit EEEE19.1. 7 MR SINCLAIR: Could you, I don't 8 understand? 9 MS PILLAY: It demonstrates a greater 10 involvement by you in operational issues. 11 MR SINCLAIR: I accept, yes. 12 MS PILLAY: Now if we can go to FFFF1 and 13 paragraph 5 thereof, that's your statement, you say here 14 that during August 2012 your management of mine security 15 included crowd control and crime prevention, that's correct 16 isn't it? 17 MR SINCLAIR: That is correct, ma'am. 18 Sorry, Mr Chairman. 19 MS PILLAY: Can I just ask, Mr Sinclair, 20 do you have any specific experience or training in crowd 21 control? 22 MR SINCLAIR: Only, only the training 23 that I had had in my police experience and the training 24 and, that I had experienced during my mining career. 25 MS PILLAY: Now from your evidence in</p>
<p style="text-align: right;">Page 34023</p> <p>1 emergency and security services, isn't that correct? 2 MR SINCLAIR: On the – sorry, Mr Chair, 3 on the mining security side and on emergency for the 4 complete group. 5 MS PILLAY: Alright and as you testified 6 in chief, immediately below you was Mr Henry Blou who was 7 in charge of day to day operational issues in relation to 8 security. 9 MR SINCLAIR: He was the appointed 10 security manager. 11 MS PILLAY: That's right and you 12 testified in chief that he was responsible for day to day 13 operational issues in relation to security. 14 MR SINCLAIR: Day to day, yes, he was 15 responsible for day to day operations and of the security 16 team. 17 MS PILLAY: Now you described your role 18 as more of a high level operational role, am I correct? 19 MR SINCLAIR: Described my role as a – I 20 want to clarify high level, I'm just looking for the right 21 word, more on the strategic and that level. 22 MS PILLAY: It wasn't purely strategic – 23 MR SINCLAIR: No, it wasn't – 24 MS PILLAY: - because you were still 25 dealing with operational issues.</p>	<p style="text-align: right;">Page 34025</p> <p>1 chief it's clear that you were in charge in what you've now 2 clearly described as on a strategic level, you were in 3 charge of assessing the adequacy of Lonmin's resources in 4 dealing with security matters, isn't that correct? 5 MR SINCLAIR: In conjunction with my 6 security personnel, Henry Blou and his seniors, yes, and my 7 management team if I required them. 8 MS PILLAY: And as the most senior 9 manager dealing with security you would be in charge of 10 ensuring that the policy framework which was in place was 11 adequate to enable Lonmin security to perform their 12 functions. 13 MR SINCLAIR: I was responsible for 14 reviewing and if I noted any – reviewing that it was 15 adequate and if I noted any, or my team supporting me noted 16 any inadequacies it was up to my role to try and address 17 those and correct that process. 18 MS PILLAY: Now on the topic of adequate 19 resources within Lonmin to attend to security issues I'd 20 like to refer you to two new exhibits and the first is 21 FFFF2 which is at page 376 of your bundle. 22 MR SINCLAIR: Chair, must I look for 23 that? 24 MS PILLAY: At page 376. 25 MR SINCLAIR: 372, Mr Chair?</p>

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1 MS PILLAY: 376.
 2 MR SINCLAIR: 376?
 3 MS PILLAY: Yes.
 4 MR SINCLAIR: Sorry.
 5 MS PILLAY: I'm just waiting for it to be
 6 put up on the screen. Chairperson, I'm informed that the
 7 computer system is hanging at the moment so I'm not sure if
 8 I should proceed or –
 9 CHAIRPERSON: Well, while that's pending,
 10 if that's the right word, I suggest you move on to a topic
 11 of cross-examination that doesn't require the assistance of
 12 a computer. I'm told that everyone's got copies of the
 13 document you're referring to so perhaps we can carry on in
 14 the meanwhile.
 15 MS PILLAY: I'll do that, Chair.
 16 MR BUDLENDER SC: Chair, the audience
 17 doesn't have copies of the documents. Some of the parties
 18 might have but the audience doesn't.
 19 CHAIRPERSON: Yes, but are the audience
 20 looking at the thing? I mean most of the time the members
 21 of the audience don't always, from my observation, look at
 22 the screen. I suppose some of them do. So are you
 23 suggesting we should wait till the computer starts working,
 24 so those who do want to look at the screen to do so. It
 25 seems sensible – alright, move on to something else please,

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1 Ms Pillay.
 2 MS PILLAY: I'm just trying to find a
 3 discreet topic, Chair, that doesn't refer to any of the
 4 exhibits. Maybe while we're waiting for the exhibit to
 5 come up on the screen, Mr Sinclair, we can deal quickly
 6 with a different topic which is the allocation and use of
 7 ammunition. Can you just share with us what policy
 8 framework was in place to control the allocation and use of
 9 ammunition by Lonmin security?
 10 MR SINCLAIR: Mr Chairman, the
 11 allocations and frameworks that, for controlling the
 12 ammunition, it was clearly made to me that it was under the
 13 response, the complete ammunition and controlling of
 14 firearms was under the responsibility of Callie Miles.
 15 There were procedures in place that he had to follow.
 16 Henry was my adviser on those issues. Callie Miles would
 17 deal with it. Within Henry Blou's own team there was
 18 allocated a, I need to just clarify, the role is a fire,
 19 there is a legal name for it and it just avoids me at the
 20 moment but a role that in his own team there was a similar
 21 role that is allocated and that person would have been the
 22 person responsible in Henry's team reporting to Callie
 23 Miles and all of that would have been, that is how the
 24 system at Lonmin complies legally and whatever and that was
 25 the advice and Henry was responsible to make sure that that

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1 was in place and inform me and if there is any issue or
 2 things, that is how we would operate.
 3 MS PILLAY: And can you describe to us
 4 what systems were place within Lonmin security department
 5 to ensure that ammunition used by Lonmin personnel, on
 6 whether the ammunition was correctly used, firstly, and
 7 secondly whether there was adequate and appropriate
 8 reporting of how ammunition was used?
 9 MR SINCLAIR: May I just have those two
 10 questions again please? The first one?
 11 MS PILLAY: When ammunition was used by
 12 Lonmin personnel what systems were place for evaluating
 13 whether or not the use was appropriate?
 14 MR SINCLAIR: Shall I deal with that
 15 question first?
 16 MS PILLAY: Yes, if you can deal with
 17 that question first.
 18 MR SINCLAIR: The systems in place that I
 19 am aware of and touched, and obviously would have been,
 20 would have had an inspection with Henry walking through and
 21 advising me was, firstly, where they were stored and where
 22 they were kept safe within the requirements that he advised
 23 me and showed me were correct. Safes, booking into the
 24 safes, there are definite books that need to be filled in,
 25 booking in, booking out. The personal safes in the –

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1 sorry, Mr Chair – the personal safes in the crime
 2 prevention units where they would have on shift booking,
 3 because it wasn't always taken out of the main safe, on
 4 shift booking personally booked in and booked out and
 5 allocated to people and those were over-inspected by those
 6 systems and those procedures on a daily basis, were under
 7 the supervision of the senior person on shift and the – if
 8 I remember the correct word it's the firearms officer but
 9 please, I might be incorrect with that terminology.
 10 CHAIRPERSON: The terminology isn't
 11 important, it's the substance of what you say.
 12 MR SINCLAIR: Sorry, sir. So it would be
 13 under the control of the firearms officer to do over-
 14 inspections and make sure that these procedures, and on a
 15 regular basis report to Henry for him to do over-
 16 inspections, the seniors and then to Henry. In compliance
 17 with that also Callie Miles was required to, he had the
 18 masters of things on the firearms control, firearms, where
 19 they were kept and stored. There was also documentation
 20 and systems that were required to record the licences, that
 21 the people being issues with firearms were correctly
 22 licensed and correctly – and had the appropriate training
 23 including refresher training, that I was made aware of that
 24 that would have been done and that would have been again
 25 under Henry, under our local, our own mining person and

<p style="text-align: right;">Page 34030</p> <p>1 Callie Miles. Have I answered the question on the use of 2 systems? So those were systems and there are a couple of 3 other systems, for instance auditing systems from external 4 auditors that would come in under, in fact Kevin van Zyl – 5 I would not be part of that but Kevin van Zyl would make 6 sure that those audits were done independently because 7 Callie Miles reported in to Kevin van Zyl.</p> <p>8 CHAIRPERSON: Adv Pillay, is that 9 essentially what you wanted the witness to deal with?</p> <p>10 MS PILLAY: It's not, Chair, but I do 11 have a follow-up question before I come back to the 12 original question.</p> <p>13 CHAIRPERSON: Well, he really wants to 14 know whether he's covered all the points you want him to 15 cover. If he hasn't then tell him what he hasn't covered 16 that you'd like him to deal with.</p> <p>17 MS PILLAY: I'll do that, Chair, but 18 before I get there, Mr Sinclair, I just have one follow-up 19 question. Having now described the control measures in 20 place in relation to how Lonmin exercises control over the 21 ammunition, are you satisfied that that would have ensured 22 that Lonmin personnel, security personnel only used 23 authorised ammunition in the exercise of their duties?</p> <p>24 MR SINCLAIR: In my over-inspections with 25 Henry and with Callie I asked, I definitely from time to</p>	<p style="text-align: right;">Page 34032</p> <p>1 of the headphones in the chamber were working. It would 2 appear, it appears now from what you tell me they're not. 3 I was also told that cables are on the way and will be 4 installed during the first comfort break. So in the 5 meanwhile I suggest that those people who wish to follow 6 the evidence go to the overflow room. I understand that 7 they prefer to be in the chamber and I sympathise with that 8 but you know time is a precious commodity. As soon as the 9 cables are installed and the system is fixed up again, they 10 can come back into the chamber but if we have consecutive 11 translation it doubles and sometimes trebles the time, so I 12 have set my face against that.</p> <p>13 MS LEWIS: Mr Chair, the only problem is 14 that the overflow room, the translation is into Sotho and 15 so I'm not sure that would resolve the issue but I am in 16 your hands.</p> <p>17 [09:26] CHAIRPERSON: Let's try, let them try 18 that and then we'll take stock of the situation at the 19 first comfort break. Surely Mr Mahlangu can do the 20 translations from their separate – anyway let's see, he's a 21 very resourceful, talented gentleman and I'm sure a 22 solution can be found, so let's carry on.</p> <p>23 MR SINCLAIR: Thank you, Mr Chair, would 24 you just remind me where –</p> <p>25 MS PILLAY: The question, Mr Sinclair,</p>
<p style="text-align: right;">Page 34031</p> <p>1 time asked is this in – and I asked for demonstrations from 2 time to time to demonstrate to me that it was correct. I 3 am of the opinion, with what I was given – sorry, what I 4 was given, Mr Chairman, and what I inspected and what I 5 asked, that we were complying with the requirements of what 6 they were issued with in respect of, if I heard the 7 question correctly, the type of ammunition, that they were 8 carrying the correct type of ammunition within the 9 procedures and the requirements.</p> <p>10 MS PILLAY: Were Lonmin security 11 personnel allowed to use their personal ammunition?</p> <p>12 MS LEWIS: Mr Chair, I'm so sorry to 13 interrupt my learned friend. I believe that there is a 14 problem with the translation and the request from the 15 families is whether the translator can come into the room 16 and do a live translation, as it were.</p> <p>17 CHAIRPERSON: That would hold up the, you 18 know, we don't have simultaneous translation. When we have 19 consecutive translation it takes up an enormous amount of 20 time.</p> <p>21 MS LEWIS: Mr Chair, I understand that 22 but the position at the moment is that the families are 23 unable to follow the proceedings.</p> <p>24 CHAIRPERSON: Well, perhaps they can go 25 to the overflow room. I did indicate, I thought that some</p>	<p style="text-align: right;">Page 34033</p> <p>1 was whether Lonmin security personnel were allowed to use 2 their private ammunition when they carried out their 3 security functions.</p> <p>4 MR SINCLAIR: Private ammunition?</p> <p>5 MS PILLAY: That's correct, yes.</p> <p>6 MR SINCLAIR: For Lonmin duties?</p> <p>7 MS PILLAY: That's correct.</p> <p>8 MR SINCLAIR: In my understanding and my 9 thing, I don't, they were not allowed to use their private 10 ammunition. That is my understanding of – that's why we 11 had a very strict issuing system for these people's –</p> <p>12 COMMISSIONER HEMRAJ: And did it come to 13 your attention that Mr Botes in fact used his private 14 ammunition in a certain incident?</p> <p>15 MR SINCLAIR: I do not record – sorry, I 16 do not recall that, that, sorry, Mr Botes?</p> <p>17 COMMISSIONER HEMRAJ: Yes.</p> <p>18 MR SINCLAIR: Dirk Botes?</p> <p>19 COMMISSIONER HEMRAJ: Yes.</p> <p>20 MR SINCLAIR: I definitely have no 21 knowledge of that.</p> <p>22 COMMISSIONER HEMRAJ: But there is in 23 effect no control over the use of any ammunition that –</p> <p>24 MR SINCLAIR: I'm sorry, ma'am, I'm –</p> <p>25 COMMISSIONER HEMRAJ: So there is in</p>

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1 effect no control over any private ammunition that might be
 2 used of any of the security officers.
 3 MR SINCLAIR: Ma'am, the control is the
 4 law. You know, if you have –
 5 COMMISSIONER HEMRAJ: Control by
 6 yourself.
 7 MR SINCLAIR: By myself? Definitely,
 8 sorry, I misunderstood you. By myself, I do not recall a
 9 control of that and I will make a note of that.
 10 MS PILLAY: Chair, if I can then go back
 11 to the exhibit I was dealing with and that's exhibit FFFF2
 12 and you will recall, Mr Sinclair, and I'm sorry we jumped
 13 around a bit, you'll recall that this was in the context of
 14 you being in charge of resource allocation to ensure that
 15 Lonmin security are able to perform their functions safely
 16 and adequately. And I'd like to take you to the e-mail
 17 that –
 18 MR SINCLAIR: May I just, that Lonmin
 19 security?
 20 MS PILLAY: Are able to perform their
 21 functions safely and adequately and the e-mail I'd like to
 22 take you to is the one that appears on the later half of
 23 the page and it's from Mr Henry Blou, who we know is your
 24 second in command.
 25 MR SINCLAIR: Yes, ma'am.

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1 MS PILLAY: To you and it's dated the 25th
 2 of August 2011 and in that e-mail Mr Blou says, "Graeme,
 3 please find the motivation and quote for a Nyala as
 4 discussed. I have requested additional quotes and shall
 5 forward these upon receipt." And if you turn the page we
 6 actually see the motivation from Mr Blou.
 7 MR SINCLAIR: Is that 377?
 8 MS PILLAY: That's correct, yes.
 9 MR SINCLAIR: Thank you.
 10 MS PILLAY: And the subject is "Urgent
 11 safety and security requirement," do you see that?
 12 MR SINCLAIR: I see that, Mr Chair.
 13 MS PILLAY: Now if you look at the first
 14 line of this request it's referring to the recent Bapong
 15 unrest situation which has once again exposed Lonmin
 16 security to extreme risks. Now we know it's not the first
 17 mention that this Commission hears of the Bapong unrest. I
 18 think you mentioned it in the meeting with the Provincial
 19 Commissioner on the 14th. We see a reference to it in
 20 JJJ192, the transcript of that meeting. Can you just tell
 21 us what had occurred at the Bapong situation and why that
 22 was relevant to a discussion on security?
 23 MR SINCLAIR: Mr Chair, there had been
 24 ongoing, and it was a long time ago so I would just be
 25 cautious of my dates but there had been an ongoing feud

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1 with, there had been an ongoing problem between the Bapo
 2 people in Bapo and Majakaneng on the Eastern Plats side, on
 3 the Eastern Plats side of our property in particular where
 4 they were unhappy with, they had issues that they were
 5 unhappy with and they had from time to time come onto our
 6 property because the Lonmin property runs through the
 7 Eastern Plats road from 1 shaft to 2 shaft to 3 shaft runs
 8 through that property and into, very close to their
 9 borders. They had come through into those areas, stone
 10 throwing along the road and things like that. Those were
 11 the situations that were taking place, disruptions to
 12 workers coming through, disruption to workers coming
 13 through from that area. If you know the area, there's
 14 informal settlements all along that area, coming through
 15 onto our road, our workers were disrupted. Vehicles,
 16 private and otherwise, were disrupted. Is that the
 17 question you asked me?
 18 MS PILLAY: That is the question, yes, Mr
 19 Sinclair.
 20 MR SINCLAIR: Thank you.
 21 MS PILLAY: We see that Mr Blou states in
 22 the second paragraph of that memorandum that the security
 23 members remain extremely vulnerable and specifically
 24 because the vehicles that they are using are soft skin
 25 vehicles, do you see that?

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1 MS PILLAY: And essentially the request
 2 from Mr Blou in this memorandum is for a Nyala or an
 3 armoured vehicle.
 4 MR SINCLAIR: I see that.
 5 MS PILLAY: With on and off-road
 6 mobility, versatility and economy and service. Now the
 7 request to you, Mr Sinclair, is to urgently consider the
 8 quote and to urgently consider the procurement of an
 9 armoured vehicle.
 10 MR SINCLAIR: I see that.
 11 MS PILLAY: Now can you tell us what was
 12 your response to this memorandum?
 13 MR SINCLAIR: My response was to have a
 14 detailed discussion with Henry Blou and the senior security
 15 guys to understand why this had been put in and so that I
 16 had a technical on what would a Nyala do, what – and as
 17 soon as I had that understanding, together with the
 18 documents, I then, I proceeded with these to my direct
 19 report and at the time it would have been Mr, 2011 it would
 20 have been Mr Frank Russo-Bello, to the best – I will have
 21 to just go and check – to my direct report, sir.
 22 CHAIRPERSON: Who it was isn't relevant.
 23 You went to the person above you, who you report to.
 24 MR SINCLAIR: I went to my direct report.
 25 CHAIRPERSON: And did you support the

<p style="text-align: right;">Page 34038</p> <p>1 application?</p> <p>2 MR SINCLAIR: I discussed this report</p> <p>3 with him. I said this is the people's view of – he said,</p> <p>4 the answer was very clear back then, Lonmin do not want to</p> <p>5 have, the Lonmin policy at the time did not want to have</p> <p>6 hard skin vehicles in their security fleet. He would</p> <p>7 elevate it to, he would take it up on an urgent basis and</p> <p>8 elevate it to the appropriate channels. However, if we</p> <p>9 required hard skin vehicles we could obtain them from our</p> <p>10 service providers to back up our security teams in their</p> <p>11 soft skin vehicles. That would effectively put those</p> <p>12 vehicles in the frontline and our people protected behind</p> <p>13 them.</p> <p>14 CHAIRPERSON: How would that work in</p> <p>15 practice? If you had a sudden emergency and you had a</p> <p>16 crowd of perpetrators, as they are called here, throwing</p> <p>17 stones and generally misbehaving, if you had your own Nyala</p> <p>18 you could deal with it immediately, it would be available.</p> <p>19 If you were going to get it from the service providers</p> <p>20 there would be a time delay of some sort.</p> <p>21 MR SINCLAIR: That is correct.</p> <p>22 CHAIRPERSON: And during that time your</p> <p>23 security people would be, as Mr Blou puts it, extremely</p> <p>24 vulnerable.</p> <p>25 MR SINCLAIR: That's correct and –</p>	<p style="text-align: right;">Page 34040</p> <p>1 would be that given the choice between having a hard skin</p> <p>2 vehicle in their fleet and having vulnerable staff, they</p> <p>3 preferred vulnerable staff. That does seem an unavoidable</p> <p>4 consequence doesn't it?</p> <p>5 MR SINCLAIR: That was unavoidable. One</p> <p>6 of my guidances on their safety would have been to remind</p> <p>7 them that at all times they had the right to immediately</p> <p>8 withdraw to a place of safety, even if they had to deal</p> <p>9 with an issue and their safety is exposed, they have the</p> <p>10 right by the law and by our [indistinct] to withdraw. So</p> <p>11 that was not, it wasn't – that was one of the issues that I</p> <p>12 would have definitely highlighted to Henry Blou and the</p> <p>13 C5s, sir.</p> <p>14 CHAIRPERSON: There may be some comment</p> <p>15 about, perhaps a judgment call made by Mr Mabelane at some</p> <p>16 stage on the 12th but as far as I know on the evidence they</p> <p>17 were eventually trying to withdraw and they were prevented</p> <p>18 from doing so and it's not always easy to withdraw from a</p> <p>19 scene of danger, to withdraw unscathed. So I understand</p> <p>20 you did the best you could by giving them that advice but –</p> <p>21 MR SINCLAIR: Yes, sir.</p> <p>22 CHAIRPERSON: There were problems which</p> <p>23 we don't have to explore now.</p> <p>24 MR SINCLAIR: Ja.</p> <p>25 CHAIRPERSON: Unless Ms Pillay wants to.</p>
<p style="text-align: right;">Page 34039</p> <p>1 CHAIRPERSON: As in fact we know Mr Fundi</p> <p>2 and Mr Mabelane were extremely vulnerable, they were</p> <p>3 killed.</p> <p>4 MR SINCLAIR: That is, yes, so from the</p> <p>5 Bapo issue this was put and that would have been clearly</p> <p>6 stated to my, to my superior to say this is our</p> <p>7 consideration, I need your intervention.</p> <p>8 COMMISSIONER HEMRAJ: Did you support the</p> <p>9 acquisition of the Nyala, Mr Sinclair?</p> <p>10 MR SINCLAIR: In my personal capacity?</p> <p>11 COMMISSIONER HEMRAJ: Yes.</p> <p>12 MR SINCLAIR: In my personal capacity,</p> <p>13 yes, I did and I did vocalise that with my teams. I said I</p> <p>14 would definitely take it forward and I supported it.</p> <p>15 COMMISSIONER HEMRAJ: And was any reason</p> <p>16 given to you from Lonmin management for the reluctance to</p> <p>17 acquire hard skin vehicles into their own security</p> <p>18 resources?</p> <p>19 MR SINCLAIR: Ma'am, I don't recall a</p> <p>20 detailed reason of why not. I just recall very clearly Mr</p> <p>21 Russo-Bello saying to me it's not in, Lonmin policy does</p> <p>22 not want to have hard skin vehicles in their security fleet</p> <p>23 and our option is to call in with what you have mentioned,</p> <p>24 the time delay was a problem so –</p> <p>25 CHAIRPERSON: An unfair comment perhaps</p>	<p style="text-align: right;">Page 34041</p> <p>1 MR SINCLAIR: Ja.</p> <p>2 COMMISSIONER HEMRAJ: Mr Sinclair, that</p> <p>3 there was already a policy decision about hard skin</p> <p>4 vehicles and a reluctance to acquire them, does that mean</p> <p>5 that this issue of hard skin vehicles and the acquisition</p> <p>6 of them had arisen prior to this particular request?</p> <p>7 MR SINCLAIR: Ma'am, I came into the</p> <p>8 Lonmin security in 2010. I am not familiar with why that</p> <p>9 decision was in place and that's why I said I cannot</p> <p>10 really, when I was told it was policy and Mr Russo-Bello</p> <p>11 would take it further on our urgent request, but I cannot</p> <p>12 personally comment on that.</p> <p>13 COMMISSIONER HEMRAJ: The policy was</p> <p>14 already in place at the time of this request being –</p> <p>15 MR SINCLAIR: When I say policy, let me</p> <p>16 please just be very clear, I have seen nothing in writing –</p> <p>17 COMMISSIONER HEMRAJ: As conveyed to you</p> <p>18 –</p> <p>19 MR SINCLAIR: As conveyed. Thank you for</p> <p>20 that help, ma'am.</p> <p>21 MS PILLAY: Now just to pick up on the</p> <p>22 point that the Chairperson raised with you, Mr Sinclair,</p> <p>23 your advise that security members are encouraged to</p> <p>24 withdraw if they face danger works on the assumption that</p> <p>25 they are able to withdraw.</p>

<p style="text-align: right;">Page 34042</p> <p>1 MR SINCLAIR: That is correct. Sorry, 2 that is correct, Mr Chairman, and to back that up when I 3 made that there was more than one occasion, two or three 4 occasions that when there was disruption particularly out – 5 we were talking initially about the Bapong area, I 6 personally went out there with Henry and surveyed how they 7 were operating and on my, one of my, on my first visit I 8 noticed that for instance the vehicles were parked in all 9 different ways and I immediately addressed the situation. 10 I said guys, you have the right of withdrawal, show me how 11 you are going to withdraw in this circumstance. You're not 12 close to your vehicles, you're not – I want you guys to get 13 into a discipline, when you arrive at a scene there is 14 discipline and we went through a strategy on how things – 15 so I didn't just talk about the safety, I also, whenever it 16 was possible, went and looked and then discussed it 17 following on and tried to put things in place with my 18 security people who were the experts. 19 MS PILLAY: And the right to withdraw 20 doesn't apply when your security members are under an 21 active and full-scale attack? 22 CHAIRPERSON: Well, you have the right to 23 withdraw but you can't exercise the right. 24 MS PILLAY: That's correct. 25 MR SINCLAIR: Yes, Chair. If you are now</p>	<p style="text-align: right;">Page 34044</p> <p>1 be discussed. For instance on my visits I would get Henry 2 together, we would decide can we handle it, can we give 3 them the appropriate training, would we have to go out to 4 get other training and – 5 COMMISSIONER HEMRAJ: I'm sorry to 6 interrupt you. 7 MR SINCLAIR: Sorry. 8 COMMISSIONER HEMRAJ: But was any formal 9 training provided to them? 10 MR SINCLAIR: Formal training on driving 11 into crowds, no. Other formal training on crowd control, 12 yes. 13 COMMISSIONER HEMRAJ: And was any formal 14 training provided to them on how to park their vehicles, 15 form their, the formation of their vehicles to effective 16 getaway in a situation, threat, was that training provided 17 to them? 18 MR SINCLAIR: Is that outside of our in 19 house training? 20 COMMISSIONER HEMRAJ: Yes. 21 MR SINCLAIR: No, that training I – Henry 22 and myself and, didn't see a need because we believed that 23 what we had discussed and resolved on safe behaviour 24 practice was, was in line to make it safe for these people, 25 ma'am.</p>
<p style="text-align: right;">Page 34043</p> <p>1 – Mr Chair, I hear that if you are now caught in that 2 position and that's why it was, guys, when you are 3 approaching – sorry, when I'm on my reviews – when you're 4 approaching your safety is of utmost importance, ensure 5 that you are in a position where you can take 6 countermeasures that you may need to account. For instance 7 as I briefly explained, the parking of vehicles, a driver 8 or a person left at the vehicles, I can remember 9 explicitly, left at the vehicles with the vehicle running 10 if it was – and it wasn't just applied to that. I would 11 apply it to violence. For instance if there was a stabbing 12 in an informal area or on the hostels and the ambulance was 13 required and the security needed to back them up, that this 14 is a vulnerable situation. You need to at all times make 15 sure that you are in a position to look after your own 16 safety as a prime – safety is a very big issue at Lonmin, 17 sir. 18 COMMISSIONER HEMRAJ: Mr Sinclair, if you 19 noticed that there were certain inadequacies in the manner 20 in which they parked their vehicles or the way the 21 formation of the vehicles was when they were attending to a 22 crowd scene, was any training provided to the security 23 officers to inform them and train them as to how to behave 24 in such a situation? 25 MR SINCLAIR: Ma'am, the training would</p>	<p style="text-align: right;">Page 34045</p> <p>1 MS PILLAY: Now if we look at exhibit 2 FFFF3, Mr Sinclair, and that's page 378 of your bundle, we 3 see a memorandum from Albert Kent to you dated the 20th of 4 December 2011. 5 MR SINCLAIR: Yes, ma'am. 6 MS PILLAY: And in that memorandum Mr 7 Kent is raising grave concerns with you about the safety 8 and security of security members, do you see that? 9 MR SINCLAIR: I see that, ma'am. 10 MS PILLAY: And he is specifically 11 dealing in this memorandum with increased levels of 12 violence. 13 MR SINCLAIR: I see that. 14 MS PILLAY: By the community and also 15 that while members are issued with riot helmets, 16 bulletproof vests and riot shields, that these are not 17 sufficient should the perpetrators decide to launch a full- 18 scale attack on the police – I'm sorry, on the security 19 members, do you see that? 20 MR SINCLAIR: I see that, ma'am. 21 MS PILLAY: And once again we have a 22 senior member of Lonmin's management stating that they need 23 riot control vehicles, armoured vehicles to effectively 24 contain unrest situations. 25 MR SINCLAIR: I see that, ma'am.</p>

<p style="text-align: right;">Page 34046</p> <p>1 MS PILLAY: So we see Mr Kent here 2 focusing on an aspect of the request which was missing from 3 the earlier request and that is what happens if there is a 4 full scale attack on the security members and in those 5 instances the soft skin vehicles would be inadequate to 6 protect the members and that is the reason why they needed 7 armoured vehicles. Now what was your response to this 8 request? 9 MR SINCLAIR: Ma'am, again I reviewed 10 this in a very serious light and I elevated it as I have 11 already indicated. 12 [09:46] Mr Chair, I've elevated it again to – on, I'd 13 never elevate it just once. I took this conversation, I 14 would have a regular, twice or three times a week feedback 15 meeting with my direct report and I addressed the, this 16 issue. It would have been – I would have addressed it when 17 I had received the first memorandum. I would have repeated 18 it when I received the second memorandum, and again the 19 answer remained that we are not in the business of arm – we 20 are not purchasing armoured vehicles for our personnel 21 because we will bring in contractor vehicles and devise our 22 strategy there. So I definitely elevated it and Henry 23 Blaauw can be asked, I believe he addressed it with me when 24 he – 25 CHAIRPERSON: I don't know that Ms Pillay</p>	<p style="text-align: right;">Page 34048</p> <p>1 take it, and I accept it, to those above you what the 2 position was. You supported the request made by your 3 subordinates – 4 MR SINCLAIR: I did – 5 CHAIRPERSON: And the decision was as you 6 told us. 7 MR SINCLAIR: Yes, Sir, and – 8 CHAIRPERSON: Ja, the consequences were 9 as we have heard it. 10 MR SINCLAIR: Sorry, yes, Sir. And the 11 other things that I might have suggested, there are other 12 alternatives. I wouldn't have just left it at this – 13 CHAIRPERSON: No, I understand you 14 suggested alternatives, but when things are really getting 15 rough there's no real satisfactory alternative to an 16 armoured vehicle, is there? 17 MR SINCLAIR: To an armoured vehicle or 18 in fact a water cannon is also a very, very good option to 19 assist. 20 CHAIRPERSON: No, that's true, although 21 experience at Marikana in August 2012 indicated that even 22 water cannons aren't as effective, but anyway, we don't 23 have to enter that debate. 24 MR SINCLAIR: Yes, Sir, I hear you. 25 MS PILLAY: Mr Sinclair, we will deal</p>
<p style="text-align: right;">Page 34047</p> <p>1 is suggesting that you didn't address it, you personally 2 didn't address it. 3 MR SINCLAIR: Yes, Sir. 4 CHAIRPERSON: I don't think you need 5 corroboration of that. 6 MR SINCLAIR: Yes, Sir. 7 CHAIRPERSON: She was, as I understand it 8 she's interested in getting a response from Lonmin as such, 9 the board or those to whom authority to make decisions of 10 this kind have been delegated by the board, and you already 11 told us what the decision was and it was reiterated and 12 confirmed when this letter was received from Mr Kent, which 13 you raised with Mr Russo-Bello. I think you've dealt with 14 that. 15 Of course the answer you got was patently 16 unsatisfactory because as we see from the beginning of the 17 letter a problem arises, your teams arrive on the scene 18 within minutes. [Inaudible] for the POP arrive, they 19 sometimes take three hours to come. One doesn't know how 20 long the service providers would take to come with their 21 armoured vehicle, might even take longer than the police. 22 But in any event, we don't have to explore those points any 23 further. 24 MR SINCLAIR: Yes, Sir. 25 CHAIRPERSON: You made it quite clear, I</p>	<p style="text-align: right;">Page 34049</p> <p>1 shortly with Lonmin's reliance on external service 2 providers, their supply of armoured vehicles. We will deal 3 with that topic in due course. 4 MR SINCLAIR: Yes, Ma'am. 5 MS PILLAY: If I can then just take you – 6 and I'm sorry, I seem to be jumping around a bit, I'm 7 trying to pare down my cross-examination. If I can ask you 8 around, about the security in place at the shafts, the 9 different shafts, and you know that what occurred at the K4 10 Shaft is one of the issues which this Commission is looking 11 closely at. Can you just give us a brief description of 12 how security at shafts is organised? 13 MR SINCLAIR: Security at shafts, from 14 2010 there were issues that needed to be addressed. The 15 first one was the issue of a risk assessment and access 16 control and how is that in - so that was one of the things 17 where I made sure that a risk assessment of a shaft or an 18 area under my control where people were working had to be 19 done. Based on that then we would place, we would ensure 20 that – we wanted to protect the perimeter just from access, 21 we wanted access control through controlled areas. We 22 would then place, ensure that guarding, that access control 23 was technically in a position to work. We would place 24 guarding at that with directions on what they needed to do 25 with the access control. We would then also place roving</p>

<p style="text-align: right;">Page 34050</p> <p>1 guarding inside things, for instance the crush facilities 2 where large volumes of people come in and go underground 3 and come out. We would also have roving patrols around the 4 clock around the perimeters and in the areas to have a 5 look. Is that what I understood your question about the 6 guarding and the access control? 7 MS PILLAY: In part, yes, Mr Sinclair. 8 Mr Botes testified that the security at shafts was 9 primarily outsourced to Protea Coin Security. Is that 10 correct? 11 MR SINCLAIR: That is correct. That was 12 what I intimated with my people, the people under my 13 responsibility with the 47 and then the contract guarding. 14 They were primarily the people responsible for that areas 15 and to back that up we had surveillance which was a 16 critical part of the remote surveillance to assist that 17 process. 18 COMMISSIONER HEMRAJ: And the risk 19 assessment of the access control points were yours; it was 20 the guarding that was done by an independent contractor? 21 MR SINCLAIR: The risk assessments were 22 done by a person in my team reporting to Henry Blaauw, a 23 person with a lot of past experience on that, reporting to 24 Henry Blaauw, and it was documented and put in, so – 25 MS PILLAY: Now as I understand you there</p>	<p style="text-align: right;">Page 34052</p> <p>1 do not have all your eggs in one basket, you separate that. 2 So we had independent – what's the word I'm looking for? 3 Do you understand what I'm saying, Sir? 4 MS PILLAY: I understand you. 5 MR SINCLAIR: Thank you. 6 MS PILLAY: Now on your evidence the risk 7 assessment is done in-house, the guarding is done by one 8 external company and the surveillance is done by another 9 external company. Now how do you ensure cohesion and 10 coordination between the three different groups? 11 MR SINCLAIR: That would be under the 12 control of the security manager, with me from time to time 13 overseeing where I needed to. They would have daily 14 briefings – sorry, let me go back one step. There is 15 documentation, daily documentation on the working of 16 cameras, the working of gates, the deployment of security 17 personnel, the contract security personnel. So those 18 reports would come in and it would come in to a designated 19 manager who was responsible to see that that was in place 20 and there was then a daily briefing that would take place 21 early in the morning and review what had happened, where it 22 had, what are these things, was there any assistance that 23 needed for those, and that is how we would – is that the 24 question I was asked, Ma'am? 25 MS PILLAY: It is in part, yes.</p>
<p style="text-align: right;">Page 34051</p> <p>1 are three components to security at shafts. It's the risk 2 assessment, the guarding of the perimeter and surveillance. 3 Now the surveillance was done by your members, the Lonmin 4 Security? 5 MR SINCLAIR: The surveillance was done 6 by a contracting company for us and as is still done by, 7 for Lonmin by a contracting company under the security 8 manager. So he was responsible for those people, but it 9 was an outside company that did that surveillance for us. 10 I would like to just, I think it's the one – 11 occasionally the risk assessment might have been a little 12 bit later than the, we would ensure that the access was 13 there and the guarding was there, but I just want, don't 14 want to, make sure that we went step 1, step 2, step 3. So 15 if I can just clarify, I'm concerned that there might be a 16 misunderstanding from what I'm saying. 17 MS PILLAY: Now the surveillance done by 18 the outside company, the outside company is not Protea Coin 19 Security? 20 MR SINCLAIR: No, that was – we 21 separated, we separated the guarding, Chair, we definitely 22 separate the guarding and the surveillance because we 23 wanted to make – it is a security, it is normally done like 24 that in security operations where you don't have one, it's 25 not a – what I understand in my own belief and so, that you</p>	<p style="text-align: right;">Page 34053</p> <p>1 CHAIRPERSON: Who was the designated 2 manager in August 2012? 3 MR SINCLAIR: Designated – it was Henry 4 Blaauw. Henry Blaauw was my designated manager. 5 CHAIRPERSON: Yes, no, but you said there 6 was a designated manager whose job it was to see to it 7 that – 8 MR SINCLAIR: There was a – 9 CHAIRPERSON: - all these cameras and 10 things were working. 11 MR SINCLAIR: For instance the C, the 12 Crime Prevention Unit had a designated C5 that, and I don't 13 recall who – I could go and get – 14 CHAIRPERSON: You can't remember now – 15 MR SINCLAIR: I can't remember – 16 CHAIRPERSON: Okay, we won't – 17 MR SINCLAIR: - who the actual person 18 was, but each area would have a designated C5 minimum to 19 oversee that area. 20 CHAIRPERSON: I understand. 21 MR SINCLAIR: And they would report to – 22 CHAIRPERSON: And you talked about daily 23 meetings every morning to check that everything was working 24 and so forth. 25 MR SINCLAIR: That's correct.</p>

<p style="text-align: right;">Page 34054</p> <p>1 CHAIRPERSON: And if it wasn't to make 2 sure something was done to make sure it did work. 3 MR SINCLAIR: Yes, Sir. 4 CHAIRPERSON: Were those meetings held 5 seven days a week? 6 MR SINCLAIR: They were held on a 7 Saturday and Sunday. The duty manager, one of those 8 designated managers would be a duty manager for the 9 weekend. That duty manager at an appropriate time would 10 hold either a full meeting, or if he didn't deem it 11 necessary for that day he would certainly review what he 12 had to review, or she had to review, and that was on a – it 13 was 24/7, holiday, public holidays, Sundays, etcetera, Mr 14 Chair. 15 MS PILLAY: Now Mr Sinclair, if I could 16 just put a hypothetical scenario to you and just to get an 17 understanding of how the different components of security 18 at shafts would work. If for example a risk assessment was 19 done and the risk assessment was that there were employees 20 of Lonmin on strike and that the strikers would regularly 21 march and that there was a high level of risk that they 22 would either attack Lonmin employees who are reporting for 23 duty or damage Lonmin property, that's the risk assessment 24 done in-house. The surveillance picks up that a crowd of 25 strikers are marching in the direction of a particular</p>	<p style="text-align: right;">Page 34056</p> <p>1 the evening of the 12th that the colour coding, I think it 2 was either double or triple red colour coding. So there 3 was a broader risk assessment done. Now how does that risk 4 assessment relate to the risk assessment done at a 5 particular shaft? 6 MR SINCLAIR: Okay, so the risk 7 assessment at the shaft is an infrastructure and that risk 8 assessment, that was the risk assessment to put the 9 infrastructure and that in. The risk assessments when we 10 would sit, if we went into an orange mode or a red mode we 11 would have a risk assessment with the relevant managers 12 with the experience, sitting down and saying what are we 13 confronting, what do we need to consider, and that would be 14 documented, not in a risk assessment document like it was 15 for infrastructure; that would be done where we would 16 clearly on, we had documents that we'd put onto the walls, 17 etcetera, that we would go through step for step to see 18 what would we need to do. So that's how we would do that 19 risk assessment as opposed to the infrastructure risk 20 assessment. Is that what you are asking me? 21 MS PILLAY: I understand you, but my 22 question is how does the broader risk assessment, let's 23 call it that, the colour coding this risk assessment – 24 MR SINCLAIR: Yes, the one in – 25 MS PILLAY: How does that translate into</p>
<p style="text-align: right;">Page 34055</p> <p>1 shaft. Now how would that relate to the actual security 2 measures in place at the shaft? 3 MR SINCLAIR: I just want to understand 4 the question correctly. Just please deal with the risk 5 part that you're asking, sorry. 6 MS PILLAY: If you assume a risk 7 assessment that there are striking workers who have a 8 tendency to be violent, to attack Lonmin employees and to 9 damage Lonmin property, that's the risk assessment – 10 MR SINCLAIR: Can I deal with that? 11 MS PILLAY: Yes. 12 MR SINCLAIR: The risk assessment was for 13 the risk on what are the risks in this infrastructure, so 14 we need to control access, we need to have lighting, we 15 need to, this type of fencing. So it wasn't a risk 16 assessment, if I heard you correctly, on, we didn't do that 17 – that risk assessment on, for that shaft was not a risk 18 assessment on people coming to the shaft. It was a risk 19 assessment that said this is the access control, this is 20 whatever, is it adequate, is that for our day-to-day 21 operations. Is that – 22 MS PILLAY: I understand you, Mr 23 Sinclair. Now what I'm trying to probe is we know that 24 there was a broader risk assessment done in relation to the 25 security situation at Karee. We know that for example on</p>	<p style="text-align: right;">Page 34057</p> <p>1 security at a particular shaft? 2 MR SINCLAIR: That risk assessment for 3 instance in the operational room when we were in an orange 4 mode, we would then say that shaft could be vulnerable. We 5 would go back to the – we could go, we would go back to 6 what is in place through our risk assessments at the shafts 7 and say we think we could have a problem in that area based 8 on the infrastructure; what are we going to put in place to 9 counter that measure. As an example, fencing; the, we have 10 a threat that the shaft is going to be – hypothetically, if 11 I could go back to I think, that the shaft in our orange 12 mode risk assessment, that there's a possibility that the 13 shaft could be attacked from the back, the, what is the 14 risk assessment at the back of the shaft, is it safe, is it 15 in an adequate position, yes it is, or no it's not, would 16 we have to bring in and reinforce the back area of the 17 shaft because it was vulnerable, would we have to put in 18 extra lighting, would we have to put in extra personnel, 19 roving personnel in a safe environment to understand that 20 area. That, is that what I was asked, Ma'am? 21 MS PILLAY: Let me get just a bit of 22 clarity on the question, Mr Sinclair. We know that by the 23 12th the broader risk assessment was double red. 24 MR SINCLAIR: Yes. 25 MS PILLAY: Did that translate into an</p>

<p style="text-align: right;">Page 34058</p> <p>1 instruction to Protea Coin to increase the security 2 measures in place at the K4 Shaft? 3 MR SINCLAIR: That double red, say that – 4 I want to just, that we required across the company in, at 5 all installations that had been assessed as one, assessed 6 could be a problem, that we would require additional 7 guarding, or the removal of for instance you are saying K4, 8 or the non-arrival at work of the majority of workers, we 9 would reduce – if there was a risk to workers we wouldn't, 10 we would stop them arriving at a shaft and have them go 11 somewhere else. So we would bring in, we would, and we 12 would assess, do we need to bring in additional Protea Coin 13 guarding, or if they weren't able to provide it, as I 14 mentioned G4S, we could get them in fairly quickly to go 15 and do that. If that was the assessment on that, you're 16 referring to the double red, on that risk assessment, yes 17 we would have considered that and taken appropriate 18 measures in the timeframes that we had. 19 MS PILLAY: Mr Sinclair, with the 20 greatest of respect, I'm not probing what would have or 21 could have happened. 22 MR SINCLAIR: We did – 23 MS PILLAY: I'm probing what happened. 24 MR SINCLAIR: We definitely had, we 25 definitely - Mr Chair, we definitely had those review</p>	<p style="text-align: right;">Page 34060</p> <p>1 would do and they would then – whoever we would need, 100 2 extra people to bolster the security or whatever the number 3 was we would make there and bring those in and deploy them 4 where we understood the vulnerability was. 5 MS PILLAY: The burning and the death at 6 K4 shaft on the evening of the 12th that was serious 7 incident for Lonmin wasn't it? 8 MR SINCLAIR: That was an extremely and 9 tragic, absolutely tragic incident for all of us. 10 MS PILLAY: And yet you are unable to 11 tell us today, Mr Sinclair, whether there was a specific 12 instruction to Protea Coin security on the 12th of August to 13 increase the security measures in place because at a 14 broader level the company had increased its risk assessment 15 to a double red. 16 MR SINCLAIR: Ma'am, Mr Chairman, sorry. 17 I believe that to answer that specifically I could locate 18 the records of what was the decision. 19 CHAIRPERSON: What you're telling us you 20 can't tell us now, but we understand you're not going to 21 finish your evidence today, unfortunately and you're coming 22 back sometime. I think at the end of next week. So if you 23 can look into that in the meanwhile and report back to us. 24 If you can't give us the answer now – 25 MR SINCLAIR: I don't want to give you an</p>
<p style="text-align: right;">Page 34059</p> <p>1 briefs, those risk review briefings in the JOC with the 2 appropriate management team there, Henry, it might have not 3 always been Henry, myself, I might not always have been 4 there, but we definitely had – for instance Dirk Botes 5 might sit, if he was the head for that afternoon or that 6 morning or whatever, he would sit with the things and 7 definitely they would have had that risk assessments done. 8 MS PILLAY: Can I ask, Mr Sinclair, was 9 there an instruction to Protea Coin to increase the 10 security at K4 Shaft as a result of the double red risk 11 assessment? 12 MR SINCLAIR: There was - 13 [10:06] Mr Chair, I would have to go back to – we 14 increased security across the operation, whether it was 15 specifically increased at K4 I right now cannot say 16 categorically yes it was. 17 COMMISSIONER HEMRAJ: Was security 18 increased at all the access controls, at all the shafts? 19 MR SINCLAIR: One of my prime moves, as 20 soon as an unstable situation arose into orange or into red 21 or wherever I would immediately call in additional security 22 and then they would be deployed as the manager or myself or 23 Henry saw that we should deploy additional here, we should 24 deploy additional there. So there was a definite plan, it 25 wasn't just haphazard. It was document in a format that we</p>	<p style="text-align: right;">Page 34061</p> <p>1 incorrect answer, Sir. 2 CHAIRPERSON: No, no, no very 3 commendable, you want to give us accurate information. So 4 if you have to check then please do so. 5 MR SINCLAIR: I would jus then request, 6 Mr Chairman, am I allowed to go back and find that? For 7 instance can I go back – 8 CHAIRPERSON: Not only are you allowed to 9 do that, you're expected – can you talk to it, refresh your 10 memory. Ja I would think so, yes. 11 MR SINCLAIR: I won't be breaching any – 12 CHAIRPERSON: No, no, no – 13 MR SINCLAIR: - all legal, so I can go 14 and find that information. 15 CHAIRPERSON: I'm giving you permission 16 to do it, so it will be in order. Don't discuss the merits 17 of it. When if you want information from them then you can 18 – 19 MR SINCLAIR: No I'm looking for 20 specifically the information, Mr Chairman. 21 CHAIRPERSON: Relating to this point. 22 MR SINCLAIR: And I trust that it will 23 still be documented. 24 CHAIRPERSON: Yes, well one hopes so. 25 MR SINCLAIR: I will definitely find</p>

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1 that, Sir. May I just make a note that I don't forget?

2 CHAIRPERSON: Yes, okay then you can

3 bring it for us. And if you find some documents perhaps

4 you can give them to the legal team and they can give them

5 to us before you come back.

6 MR SINCLAIR: So I can give them to my

7 legal team.

8 CHAIRPERSON: Yes, yes, yes of course and

9 they can then give them to us so we can read them and be

10 ready so your evidence will go more quickly when you come

11 back.

12 MR SINCLAIR: Sir, I will endeavour to

13 actually chase that up as soon as possible, Sir.

14 COMMISSIONER HEMRAJ: Perhaps whilst

15 you're about that, Mr Sinclair, there are in this exhibit

16 EEEE19 instances on the 10th and the 11th about certain

17 instances in and around K4 shaft and I'd like to know if

18 those were taken into account when assessing the risk that

19 K4 shaft might be at or the access control point might be

20 it.

21 MR SINCLAIR: Ma'am, there are incidents

22 recorded there is what you're telling me.

23 COMMISSIONER HEMRAJ: There are indeed.

24 CHAIRPERSON: There are some, ja. But

25 you can see them yourself.

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1 MR SINCLAIR: I can see that they are

2 there. They would be there because in our information area

3 where we had set up to manage this elevated threat we would

4 have considered the travel distance from K3 to K4. We

5 would have considered what people are there. On the Sunday

6 we knew that there was a works - the security teams knew

7 that there was a work stoppage and that there was a minimal

8 amount of people that would be going to that shaft. So we

9 would have considered all of those options in our risk and

10 then our patrolling as an example, we would have ensured

11 that there was patrols. If you recall when I was saying

12 about the CPU and the Protea Coin there was patrols that we

13 would have said we want you definitely to patrol this area.

14 And those are the type of things. Is that the question you

15 were asking?

16 CHAIRPERSON: I think that's among the

17 things we'd like you to look at, yes and come back to us on

18 that. You see the question is whether attention was

19 specifically directed to beefing up, if that's the correct

20 word, the security at K4. Whether it was foreseen that

21 these people who were determined to enforce an unprotected

22 strike, didn't want production to proceed at all, didn't

23 want any work to be done at the shafts. Whether it was

24 foreseen that they would confine their activities to other

25 shafts or whether there was a danger that they might act,

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1 take steps to enforce the strike at all the shafts that

2 were operative. That's really the question.

3 MR SINCLAIR: Yes, Sir, sorry.

4 CHAIRPERSON: What does give me some

5 concern I must tell you, if Ms Pillay is going to deal with

6 brief number 4 then I won't take the point further.

7 MS PILLAY: I'm happy for you to take the

8 point up.

9 CHAIRPERSON: All right. Well your brief

10 4 confidential document. It is a report you made on the

11 Sunday morning the 12th of August at 7:30. We've already

12 had it on the screen yesterday.

13 MR SINCLAIR: Yes, Sir.

14 CHAIRPERSON: You gave the report as

15 pages 431 and 432 of the bundle, the internal number is 272

16 and 273. Now what you said in paragraph 2, remember we had

17 this yesterday, so I'll just go through it very quickly.

18 "Mining security continued to maintain maximum visibility

19 across the Marikana operation throughout the day and into

20 the early hours of Sunday morning. Now across the Marikana

21 operation presumably includes K4.

22 MR SINCLAIR: K4 right through to eastern

23 plat 3 shaft, yes.

24 CHAIRPERSON: That's what I thought the

25 answer was. Now let me get to this which worries me a bit.

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1 There are a number of sub paragraphs each introduced by a

2 letter and G reads as follows. "An eye in the sky Protea

3 Coin helicopter with powerful floodlight searching

4 capabilities was deployed after dark around Wonderkop.

5 This added value to security ground teams especially in

6 the difficult dark areas surrounding mine facilities to

7 identify undesirable activities and root them out. This

8 intervention added to the effort to deter perpetrators of

9 disruption and will be used in the upcoming days to assist

10 in securing the dark and venerable," I don't know whether

11 venerable is the right word. But vulnerable I should

12 imagine, "securing the dark and vulnerable access routes to

13 shaft and working areas and we enhanced security efforts to

14 protect our employees." And then also we see in I,

15 "visible and frequent security is maintained at all

16 hostels, shaft areas and access areas to shafts while

17 ongoing security operations with the focus being on

18 employee safety and preventing intimidation."

19 MR SINCLAIR: Yes, Sir.

20 CHAIRPERSON: Now it does appear from

21 what we heard that whatever was done, if anything was done

22 in respect of beefing up the security at K4 was manifestly

23 ineffectual because it appears that your people at K4 were

24 taken totally by surprise. The evidence indicates, some of

25 the Murray and Roberts employees and said there's stories

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1 can we come and they were told no it's order you can come
 2 and they came. And they were assaulted and vehicles were
 3 damaged, set alight and so on and as we know one of the
 4 employees was killed. So it looks to me from the Para G
 5 that I read as if this "eye in the sky" Protea Coin
 6 helicopter with powerful floodlight search capabilities was
 7 deployed only around Wonderkop and not at Karee. Now the
 8 people going to Karee 4, the people who went, the strikers
 9 they would presumably have done so by traversing difficult,
 10 dark areas and dark and vulnerable access routes that's
 11 presumably how they got through without it being picked up.
 12 The "eye in the sky" Protea Coin helicopter with the
 13 powerful floodlight search capabilities appears only to
 14 have been deployed around Wonderkop. Am I interpreting
 15 this correctly?
 16 MR SINCLAIR: You interpreting correctly,
 17 Sir.
 18 CHAIRPERSON: And not being deployed also
 19 around Karee, if there had been they would have picked
 20 these people up surely. They would have spotted them.
 21 MR SINCLAIR: Mr Chair –
 22 CHAIRPERSON: Anyway that's my problem.
 23 MR SINCLAIR: I hear you.
 24 CHAIRPERSON: I put the problem to you,
 25 so I get the benefit of your comment.

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1 MR SINCLAIR: Thank you, Mr Chair. Mr
 2 Chair, I will make the first comment that the rush when the
 3 five or eight vehicles who went out in convoy from K3 to K4
 4 and that was also a precaution that we put in place that
 5 they travel to there because the area is vast. If you
 6 overfly the area there are literally hundreds of vulnerable
 7 areas and particularly in the dark. So even the – I think
 8 I'll go one step back, sorry. So we've not at any stage
 9 had ever – I had not at any stage seen and I stand
 10 corrected, but I had not seen intimidators rushing the
 11 gates, forcing them open or whatever the circumstances –
 12 okay I had never encountered that. We encountered people
 13 coming to shafts, coming to offices, so that incident took
 14 everybody by surprise, absolutely surprise. The focus in
 15 our assessments at that time on the ground, remember it had
 16 become extremely vulnerable, sorry extremely complicated in
 17 a very short space of time. We heard Mr Mpofu taking me
 18 through the steps about the rapid build up. With this
 19 rapid build up we were trying to understand where we were
 20 vulnerable and the K4 we believed with the very few people
 21 at work, with the – it was remote, very few people at work
 22 with the positions of people travelling in convoy into that
 23 with the surveillance that that was okay. So there was no
 24 prior risk to fly those areas and even if we had, Mr
 25 Chairman, that one helicopter with one light I question

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1 whether it firstly would have detected and secondly but it
 2 would have taken it away from where our focus area was.
 3 And that was at Wonderkop, that our, at that stage, main
 4 focus area although we were looking at the shafts, at the
 5 complete complex, Mr Chair.
 6 CHAIRPERSON: Para I said "Visible and
 7 frequent security presence is maintained at all hostel,
 8 shaft areas and access areas to shafts by ongoing security
 9 operations. The focus being on employee safety and
 10 preventing intimidation."
 11 MR SINCLAIR: Yes, Sir.
 12 CHAIRPERSON: What I would like to know
 13 is what focus was there on employee safety at K4 because
 14 the evidence says one gatekeeper was there, Mrs Bothma.
 15 There were three guards, but Mrs Bothma I think was by
 16 herself at the gate.
 17 MR SINCLAIR: Yes.
 18 CHAIRPERSON: The evidence is that some
 19 of the strikers actually were able to force the fence.
 20 When we had an inspection in loco in October 2012 we were
 21 actually shown where they had succeeded in getting in
 22 through the fence.
 23 MR SINCLAIR: Yes, Sir.
 24 CHAIRPERSON: So you'll forgive my saying
 25 it, but it does look prima facie at least that's why I'm

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1 putting these points to you as if there wasn't a very
 2 effective focus on employee safety at K4. And regard being
 3 had to the fact that the strikers seemed to have wanted to
 4 enforce the strike across the whole Marikana operation, in
 5 retrospect at least, it looks as if a serious judgemental
 6 error was made in respect of K4. What would your comment
 7 be on that? That's just a prima facie view. I'm putting
 8 it to you to get your response.
 9 MR SINCLAIR: Mr Chair, in retrospect and
 10 looking back where we're sitting here today, yes did we
 11 assess that correctly, did we make a judgment call error,
 12 yes.
 13 CHAIRPERSON: Thank you, that's what -
 14 MR SINCLAIR: However, I am going to go
 15 and see what we did do and that's what I have committed to
 16 bring back to you, Sir.
 17 CHAIRPERSON: You did say that. Thank
 18 you.
 19 COMMISSIONER HEMRAJ: The information
 20 before us, Mr Sinclair, is that the three guards at the
 21 access control of K4 shaft were not armed with anything at
 22 all.
 23 MR SINCLAIR: Those are not armed guards,
 24 they are grade – if I stand corrected, grade C guards who
 25 are on guard duty and roaming duty. They are not armed

<p style="text-align: right;">Page 34070</p> <p>1 guards.</p> <p>2 COMMISSIONER HEMRAJ: So perhaps when</p> <p>3 you're checking your records you would perhaps inquire</p> <p>4 whether any of the dangers were communicated to Protea Coin</p> <p>5 because they were their people weren't they?</p> <p>6 MR SINCLAIR: Yes, Sir.</p> <p>7 COMMISSIONER HEMRAJ: Thank you.</p> <p>8 MR SINCLAIR: I will follow that up. I</p> <p>9 will also just try – sorry yes and there's other</p> <p>10 information I will try and follow up that I believe could</p> <p>11 help the Commission, Sir.</p> <p>12 CHAIRPERSON: Things of concern - I just</p> <p>13 put these to you so you can deal with them is if you've got</p> <p>14 double red and it's a problem over the whole of the</p> <p>15 operation, not just Wonderkop to have three guards who are</p> <p>16 not armed looking after K4 it does seem to be rather</p> <p>17 inadequate to put it gently.</p> <p>18 MR SINCLAIR: Sir, I absolutely agree</p> <p>19 with you. I will just bring the attention back that this</p> <p>20 rapid change in everything that was taking place also</p> <p>21 caught us by surprise, definitely.</p> <p>22 CHAIRPERSON: I must put to you I'm not</p> <p>23 sure that's a cock that'll fight because this rapid change</p> <p>24 had already started at least on the Sunday morning. In</p> <p>25 fact there is evidence there had been trouble before then,</p>	<p style="text-align: right;">Page 34072</p> <p>1 need debate the matter further. You understand our</p> <p>2 concerns.</p> <p>3 MR SINCLAIR: I understand your concerns.</p> <p>4 CHAIRPERSON: And you're going to go and</p> <p>5 do some research, archives or otherwise and come back and</p> <p>6 give us the benefits of your considered answers to that</p> <p>7 point.</p> <p>8 MR SINCLAIR: I'll certainly do that,</p> <p>9 Sir.</p> <p>10 CHAIRPERSON: All right, okay. Sorry, Ms</p> <p>11 Pillay, we took over a little bit. I hope you'll forgive</p> <p>12 us.</p> <p>13 MS PILLAY: I'm indebted to you and</p> <p>14 Commissioner Hemraj, Chair.</p> <p>15 CHAIRPERSON: It might be convenient if</p> <p>16 we took the first comfort break now. The reason I say that</p> <p>17 is that I hope the cables have come by now. I see some</p> <p>18 people have returned to the chamber and in fact have got</p> <p>19 their headphones one because I was told the problem was on</p> <p>20 the left, as I face the chamber it was on my left that</p> <p>21 there was a problem. I thought it was working on the</p> <p>22 right, but people did leave.</p> <p>23 [10:26] And it's obviously important insofar as we can</p> <p>24 arrange it that they should be able to hear the evidence</p> <p>25 and have it translated into a language they understand. So</p>
<p style="text-align: right;">Page 34071</p> <p>1 but let's just concentrate our energies at the moment on</p> <p>2 Sunday morning.</p> <p>3 MR SINCLAIR: Yes, Sir.</p> <p>4 CHAIRPERSON: A terrible thing happened</p> <p>5 on Sunday morning. Now I can understand that may have</p> <p>6 taken people by surprise, but we're now talking Sunday</p> <p>7 evening.</p> <p>8 MR SINCLAIR: Yes, Sir.</p> <p>9 CHAIRPERSON: Anyway that's something</p> <p>10 else for you to look at when you come back and give us</p> <p>11 answers on the matter, you'll deal with that point too.</p> <p>12 MR SINCLAIR: Including the up scaling by</p> <p>13 Sunday evening of the SAPS response because at that stage</p> <p>14 we already now had SAPS coming onto the property because we</p> <p>15 were in a position, we were stretched to our limits, Sir.</p> <p>16 CHAIRPERSON: No I understand that and</p> <p>17 I'm not sure that there's any evidence that there were</p> <p>18 police at K4. But you see it's against the background of</p> <p>19 what my colleague, Advocate Hemraj has put to you.</p> <p>20 MR SINCLAIR: Yes, Sir.</p> <p>21 CHAIRPERSON: That it appears from the</p> <p>22 occurrence book there had been incidents at K4. So it</p> <p>23 wasn't as if K4 wasn't within the sights of the strikers.</p> <p>24 MR SINCLAIR: Yes, Sir.</p> <p>25 CHAIRPERSON: Anyway I don't think we</p>	<p style="text-align: right;">Page 34073</p> <p>1 let's take the short adjournment now, the comfort break, a</p> <p>2 quarter of an hour and then we'll come back and you can</p> <p>3 move onto your next topic. Is that appropriate?</p> <p>4 MS PILLAY: We can do so, Chair.</p> <p>5 CHAIRPERSON: We'll take the 15 minute</p> <p>6 break. Let's make it 15 minutes.</p> <p>7 [COMMISSION ADJOURNS COMMISSIONS RESUMES]</p> <p>8 [10:51] CHAIRPERSON: The Commission resumes. I</p> <p>9 understand that the cables have now been put in and that</p> <p>10 all the headphones should be working. If they're not I</p> <p>11 would be grateful if someone would tell me. You're still</p> <p>12 under oath, Mr Sinclair.</p> <p>13 GRAEME MILLER SINCLAIR: [s.u.o.]</p> <p>14 CHAIRPERSON: Ms Pillay, you're still</p> <p>15 cross-examining, I believe.</p> <p>16 MS PILLAY: Thank you, chair.</p> <p>17 MR BHAM SC: Sorry, Mr Chair, just before</p> <p>18 Ms Pillay continues –</p> <p>19 CHAIRPERSON: Sorry, I beg your pardon,</p> <p>20 you were going to say something.</p> <p>21 MR BHAM SC: During the course of Mr</p> <p>22 Sinclair's cross-examination a number of documents were</p> <p>23 requested which he said he's going to look for. He</p> <p>24 obviously will give those documents to us and we'll look at</p> <p>25 it and then pass it on. There may well be issues arising</p>

<p style="text-align: right;">Page 34074</p> <p>1 from those documents which we would need to talk to him 2 about and of course in the course of cross-examination 3 you're not permitted to, but as I understand the practice 4 if we new documents emerge insofar as you need to talk to a 5 witness in respect of those documents you're permitted to 6 do so. If the need were to arise we would want to speak to 7 the witness, limited to those documents, but if we do so we 8 will make sure that we inform the evidence leaders and if 9 the topic is of such a nature that they have to be part of 10 that discussion then absolutely no difficulty, but I'm 11 seeking the consent of the Commission to that approach. 12 CHAIRPERSON: The practice up to now of 13 course has only arisen in the case of documents produced by 14 cross-examiners, so this would be an extension of that, but 15 in the circumstances in the interest of expedition and so 16 on I think it appropriate, you are very – all counsel are 17 people of integrity, that's why they're counsel, but we 18 have reason to believe that you would misbehave in any way 19 and the safeguard you suggested seems to be an eminently 20 practical one, so you have our permission. 21 MR BHAM SC: Thank you, Mr Chair. 22 CHAIRPERSON: While we're making 23 statements of logistical and other matters, I want to make 24 one thing clear from now on, that yesterday I allowed Mr 25 Gotz to give some of his time to Mr Mpofu and I've decided</p>	<p style="text-align: right;">Page 34076</p> <p>1 until the 16th, and so it's communication between Lonmin 2 personnel, whether that be telephonic communication over 3 the radio systems, because we notice that EEEE19 doesn't 4 set out such communications, so radio communication and 5 telephonic communication, and between Lonmin personnel and 6 contractors, contracted security personnel. 7 MR SINCLAIR: May I clarify; it's radio 8 communication between Lonmin and Lonmin personnel, radio 9 communication between Lonmin and contract security? 10 MS PILLAY: And between security 11 personnel amongst themselves. 12 MR SINCLAIR: Ja, that's what I'm talking 13 about. 14 MS PILLAY: Yes. 15 MR SINCLAIR: Lonmin Security to Lonmin 16 Security and Lonmin Security to Lonmin contractor. Am I 17 understanding correctly? Sorry, Mr Chairman, am I 18 understanding correctly the request? 19 MS PILLAY: That is the request, if that, 20 whatever form that communication takes, whether it's 21 telephonic or whether it's radio communication. 22 CHAIRPERSON: Telephonic or? 23 MS PILLAY: Radio communication. 24 CHAIRPERSON: Also emails, if there are 25 any.</p>
<p style="text-align: right;">Page 34075</p> <p>1 that in future, I give notice now that as far as I'm 2 concerned time is not transferable. So if someone wants to 3 give up time then they can't give it to somebody else, save 4 with my permission, which I did give yesterday so I'm not 5 criticising Mr Gotz. I want to make it clear I will be 6 loath to give that permission because we're in fact running 7 behind the schedule, we're a few hours behind the schedule 8 and I'm rather keen to make up the slack. So any donations 9 of time will be gratefully received by me to be used for 10 that purpose. 11 It also is important to ensure that people don't 12 claim more time than they need on the basis that they will 13 be able to give it to some of their colleagues, so in 14 future people are put under – counsel are put under notice 15 that time is not transferable save with my permission, 16 which will be rarely granted. Right, you're still under 17 oath, Mr Sinclair. 18 MR SINCLAIR: Thank you, Mr Chair. 19 CHAIRPERSON: Ms Pillay. 20 CROSS-EXAMINATION BY MS PILLAY (CONTD.): 21 Thank you, Chair. Mr Sinclair, on the topic of additional 22 documentation, we have been requested by some of the 23 parties to ask you if you would kindly ascertain whether 24 Lonmin had records of communication between Lonmin Security 25 personnel on the relevant dates, that's the 10th, 11th, 12th,</p>	<p style="text-align: right;">Page 34077</p> <p>1 MS PILLAY: Or emails, yes. 2 CHAIRPERSON: In other words it's not 3 limited to particular forms of communication. All 4 communication. 5 MR SINCLAIR: And as per the other 6 request I have the permission to go to the authorities, 7 draw that and deposit it with the Lonmin legal team. Is 8 that correct? 9 CHAIRPERSON: Yes, I thought I said that 10 before, but if I didn't I do so now – 11 MR SINCLAIR: I just want to make sure 12 that I'm – thank you, Sir. 13 MS PILLAY: Now we know, Mr Sinclair, 14 that you've testified both in chief and under cross- 15 examination of the risk assessment being used by Lonmin 16 Security Management in that a situation is characterised as 17 either green, orange, or red, and on the 12th it was 18 characterised as a double red. What we needed to find out 19 was is there a policy document that encapsulates this risk 20 management tool being used? 21 MR SINCLAIR: Mr Chair, I don't believe 22 there is a – no, Mr Chairman, there is no policy document. 23 That, as I explained yesterday I think it was that that was 24 a tool that Henry and I had put in. I don't believe there 25 is a policy document around that. I could be, there could</p>

<p style="text-align: right;">Page 34078</p> <p>1 be something in writing but I don't believe there's a 2 policy document around that.</p> <p>3 MS PILLAY: And apart from a policy 4 document, what other documents would relate to that risk 5 assessment tool?</p> <p>6 MR SINCLAIR: I don't, I further don't 7 believe that there are documents relating to that process. 8 It was our process to manage the – our process to manage 9 the job. So I, and I don't think we have. I will – if I 10 do recall that there is something in writing I will 11 certainly come back and tell you so.</p> <p>12 COMMISSIONER HEMRAJ: So are you saying 13 that there's no specific protocol laid down for example of 14 an assessment of red; it is what is determined to be 15 appropriate at the time?</p> <p>16 MR SINCLAIR: Ma'am, from 2010 when 17 security came into our things I reviewed various ways on 18 how we operated and some of them were very carefully – 19 depending on them, were very carefully documented on what 20 the requirements were. Some of them, like this one – I'm 21 not saying there is not, I'm not saying there is not a 22 document, but like this one to, as I sit here now I don't 23 believe there was a document, but certainly we would have 24 developed we want this and we want that.</p> <p>25 COMMISSIONER HEMRAJ: And that must</p>	<p style="text-align: right;">Page 34080</p> <p>1 got in writing and bring that forward as well if we do 2 have. I will definitely, I will do that.</p> <p>3 MS PILLAY: Now when the management team 4 meet to discuss risk assessment, organisational risk 5 assessment, are those meetings minuted?</p> <p>6 MR SINCLAIR: When the security 7 management team?</p> <p>8 MS PILLAY: When you meet to discuss risk 9 assessment and to categorise your risk assessment in terms 10 of the colour model, are those meetings minuted?</p> <p>11 MR SINCLAIR: We, I would meet with Henry 12 Blaauw and whoever we required on a specific subject, or 13 subjects. They would if they needed diaries or whatever in 14 those discussions bring their diaries and they would record 15 what was required and go out and follow that up. On my 16 follow-up meetings I would review has that been done, is 17 this being done. Minutes, I never had a minute for every 18 meeting that I had in those lines, Mr Chairman.</p> <p>19 CHAIRPERSON: Never mind the minutes; if 20 a decision was made –</p> <p>21 MR SINCLAIR: Yes, Sir.</p> <p>22 CHAIRPERSON: - would a note be kept for 23 good order and efficiency and so on, would a note be kept 24 of decisions made so that they could be followed up if 25 necessary? And presumably if a note was kept of decisions</p>
<p style="text-align: right;">Page 34079</p> <p>1 surely be recorded somewhere, otherwise it's just a 2 haphazard guess on whoever were on duty will decide what to 3 do?</p> <p>4 MR SINCLAIR: The way we operated and the 5 coding that we're going to orange, red and that, was 6 definitely verbalised and discussed amongst us on how we 7 would do it and what was required, that documented – there 8 will be some reference to we need to do this or we need to 9 do that. There will be some – I'm sure there will be some 10 reference, but as I sit here now to say that there is a 11 policy number so-and-so, I would be incorrect in saying 12 that, Ma'am.</p> <p>13 MS PILLAY: You see, Mr Sinclair, I find 14 that evidence difficult to understand in view of your 15 testimony that there were defined requirements for a colour 16 characterisation, and further that certain operational 17 consequences flowed from a characterisation. Now if there 18 is no certainty, nothing to which other employees can have 19 reference in both understanding the characterisation and 20 the consequences that flow from that characterisation, how 21 is the system implemented?</p> <p>22 MR SINCLAIR: I hear your, I hear the 23 concern of is it and I again am going to say that I right 24 now cannot say there's a specific document. However, I 25 will also undertake in the same light to ask what have we</p>	<p style="text-align: right;">Page 34081</p> <p>1 then the appropriate person, or one of the, you know, the 2 main person who was the appropriate custodian of the notes 3 relating to decisions would have been you.</p> <p>4 MR SINCLAIR: That's, that is correct. I 5 would have had a scribbling pad on my desk, that was my 6 normal modus operandi, where I would have written that date 7 and I require that and that by that date, and when that 8 task had been completed I would tick it off and when the 9 paper was finished I would probably throw it away. I would 10 normally throw it away.</p> <p>11 CHAIRPERSON: There would be two types, 12 at least two types of decisions in meetings of that kind.</p> <p>13 MR SINCLAIR: Yes, Sir.</p> <p>14 CHAIRPERSON: The one would be something 15 has got to be done by next week.</p> <p>16 MR SINCLAIR: Yes.</p> <p>17 CHAIRPERSON: That's a sort of temporary 18 decision, temporary operation as it were. Then there would 19 be, there might be permanent decisions, from now on 20 vehicles have got to be parked in a particular way when 21 people go on site to be able to escape and exercise your 22 right to withdraw and that kind of thing. That would be a 23 permanent decision.</p> <p>24 MR SINCLAIR: Yes.</p> <p>25 CHAIRPERSON: So what was done in the</p>

<p style="text-align: right;">Page 34082</p> <p>1 case of permanent decisions? Was a note kept somewhere in 2 your custody of all the permanent decisions that had been 3 taken? 4 MR SINCLAIR: I would have, on the same 5 basis as the informal ones, the formal ones I would have 6 documented there and when that task was completed, if a 7 procedure was required, when that was completed I would 8 have ticked it off and that would have been – I would not 9 have kept that. 10 COMMISSIONER HEMRAJ: But more 11 pertinently, the escalation to double red status and the 12 protocols to be put into place thereafter, surely that must 13 be recorded somewhere? 14 MR SINCLAIR: When we were in the 15 operation room and we decided to do that, that's why I 16 would have made the memorandum with we are doing this and 17 doing that and doing that, so that that was recorded and 18 escalated to – those are the types of records that I 19 definitely would have kept in decisions like that, and 20 that's why we have that type of record before us today, 21 Ma'am. 22 MS PILLAY: Would you have kept a record 23 of the consequences for contractors arising from a decision 24 on risk assessment? 25 MR SINCLAIR: Sorry, would I have kept a</p>	<p style="text-align: right;">Page 34084</p> <p>1 contractors were reporting to needed something implemented 2 by the contractors, a safety instruction or whatever it 3 might be, they would be called in. They would be called in 4 and they would be explained what the requirement was. If 5 there was something they needed to do there would be a 6 follow-up date by it and that would come back and we would 7 check that it had been done. We would also, Henry would go 8 out and the C5s and do over inspections on any instructions 9 that had been given and from time to time on my walkabouts 10 I would also go in and say we talked about that last week, 11 or we discussed that or issued that instruction last week 12 or this week, whenever it was, show me that it is either 13 been activated or in the process of being, so there was 14 those – is that what your question was, Ma'am? Does that 15 answer your question? 16 MS PILLAY: Yes, it does. If we can go 17 then to – 18 CHAIRPERSON: Can I take this point a 19 little bit further? In the brief 3 we got – 20 MR SINCLAIR: Yes, Sir. 21 CHAIRPERSON: - the RDO instruction brief 22 3, it says at the end in paragraph 11, this is a, what you 23 call a Lonmin Mining Security RDO disruption update on the 24 11th. 25 MR SINCLAIR: Yes.</p>
<p style="text-align: right;">Page 34083</p> <p>1 record? 2 MS PILLAY: Of the consequences for 3 contractors arising from a decision on risk assessment. 4 MR SINCLAIR: If we had needed to give a 5 contractor instructions, Henry, the contractors, we need 6 this done, will you please do it; I believe - I've 7 explained how I do my things - I believe he would keep a, 8 he had a book that he wrote down. Whether he's kept it or 9 not I cannot speak for him, but certainly he would have a 10 record of that, it was that is what I require, go and do 11 it. He would then pass it on, come back to me and say it's 12 done, ticked off, and move on. 13 MS PILLAY: And how would Lonmin 14 exercise, or would Lonmin exercise control and supervision 15 over whether or not contractors abided by particular 16 decisions in respect of security requirements? 17 MR SINCLAIR: I'm sorry, I don't want to 18 – please just ask me that again. I just want it clearly 19 that I've got it. 20 MS PILLAY: Would Lonmin exercise 21 supervision and/or control over whether or not contractors 22 implemented decisions made in respect of security 23 requirements? 24 MR SINCLAIR: Very definitely. We would 25 – Henry, myself and whoever the contractor, the C5 that the</p>	<p style="text-align: right;">Page 34085</p> <p>1 CHAIRPERSON: That's the Saturday at 2PM. 2 MR SINCLAIR: Yes, Sir. 3 CHAIRPERSON: Paragraph 11 says, "The 4 security briefing will be convened at 15h00 to strategise 5 for the next 12 hours. Follow-up security briefing is 6 scheduled for 7:30 on Sunday morning." 7 MR SINCLAIR: Yes, Sir. 8 CHAIRPERSON: Now I take it that the 9 stepping up, to use your language, from brief 4, the 10 stepping up in security operation to a double red status – 11 MR SINCLAIR: Yes, Sir. 12 CHAIRPERSON: - must have happened at 13 this security briefing that you had at 3 o'clock. 14 MR SINCLAIR: Yes, Sir. 15 CHAIRPERSON: Now a number of decisions 16 were taken, I take it, as to what was going to happen – 17 MR SINCLAIR: Yes, Sir. 18 CHAIRPERSON: - in relation to the 19 strategy for the next 12 hours, as you put it, and then 20 there was another meeting at 7:30 the next morning where 21 the same thing happened; decisions were taken, either 22 existing decisions were extended or new ones were made. 23 Now will there be any written record of those? Now you 24 said some of the people who were at the meeting would have 25 had their diaries with them and if they'd made notes in</p>

<p style="text-align: right;">Page 34086</p> <p>1 their diaries of the decision and if the diaries are still 2 available, that will be a written record taken by various 3 participants of the decisions taken. 4 MR SINCLAIR: Yes, Sir. 5 CHAIRPERSON: That's the kind of document 6 I think that will be helpful for us because I think Ms 7 Pillay is concerned about the decisions that you people 8 took or didn't take at those meetings. 9 MR SINCLAIR: And whether they were 10 documented for follow-up. 11 CHAIRPERSON: Yes, yes, I would have – I 12 mean I would have expected it to happen. This an important 13 meeting, double red. You have a meeting, you decide it's 14 double red, you work out the strategy for the next 12 hours 15 and you're going to review it again at 7:30 the next 16 morning at another strategy meeting. I would have thought 17 that notes would be taken, and you said people at the 18 meeting normally bring their diaries along – 19 MR SINCLAIR: Diaries or – 20 CHAIRPERSON: - and make notes. 21 MR SINCLAIR: There - Mr Chairman, I – 22 CHAIRPERSON: Anyway, you understand what 23 we're interested in? 24 MR SINCLAIR: I understand. I will ask. 25 We, the documents I'm, you, I've asked, you've asked me for</p>	<p style="text-align: right;">Page 34088</p> <p>1 certainly will have a look at that, Sir. 2 CHAIRPERSON: Thank you. 3 MS PILLAY: Mr Sinclair, just to round 4 off this line of questioning around the policy framework, 5 we know that the policy which is formally adopted is XXX8, 6 which is the Counter Industrial Action Response Procedures 7 dealt with – 8 MR SINCLAIR: Sorry? 9 MS PILLAY: The Counter Industrial Action 10 Response Procedures. 11 MR SINCLAIR: Yes. 12 MS PILLAY: And you'll agree that from 13 our reading of this document, that there are essentially 14 four pillars to Lonmin's response to unrest situations. 15 The first is intelligence. The second is briefing. The 16 third is planning, and the fourth is debriefing. Isn't 17 that correct? 18 MR SINCLAIR: That I believe is in the 19 document, and that's how our operational procedure is 20 worked through. 21 MS PILLAY: And those four pillars would 22 guide Lonmin's response to any unrest situation? 23 MR SINCLAIR: Not Lonmin, security 24 response. 25 MS PILLAY: Sorry, I apologise, Lonmin's</p>
<p style="text-align: right;">Page 34087</p> <p>1 already with the regard to the Karee 4, etcetera, would on 2 the same document have information. Now whether it is what 3 you are looking for or not, but I know that it would have 4 information, we would have written a note on there or 5 something. That is what I'm specifically going to go and 6 have a look at and I, if I locate that I will pass it on to 7 our legal team. And I hope that might answer the question 8 that you are asking me now. 9 [11:11] As related to the individuals whether they have 10 still got their notes and that I will ask if anybody has, 11 and are they available, and that's all I can do. Okay, 12 unless there's something else that I should do, Sir? 13 CHAIRPERSON: I take it to be fair the 14 what one called brief 4, which you issued at seven - has 15 got the time 7:30 on the Sunday morning, that sets out 16 these sets out these subparagraphs that I read from. 17 MR SINCLAIR: Yes, Sir. 18 CHAIRPERSON: That would probably also be 19 a record of decisions of that had been taken at strategy 20 meetings. Is that right? Isn't that the kind of thing 21 we're looking for? 22 MR SINCLAIR: So that is definitely a 23 record. I am going to check if there's any others that 24 could assist you with your questions. From the 25 individuals, I don't know, I cannot answer for them, but I</p>	<p style="text-align: right;">Page 34089</p> <p>1 security response to any unrest situation? 2 MR SINCLAIR: That was the purpose of 3 that document to give us that, Mr Chair. 4 MS PILLAY: And you can assure this 5 Commission that those four central pillars are observed by 6 Lonmin security personnel when dealing with unrest 7 situations? 8 MS PILLAY: Mr Chair, in these situations 9 I'm very adamant about that type of structure, although I 10 hear about the after-recordings, but I am a person that 11 would say, "Right, let's start at the beginning and walk 12 through. It's the only logical way to deal with these." 13 So that is why they would have been there. They would have 14 been the guideline to the teams that they know what my 15 requirements were, or our requirements, and we could then 16 in a structured way deal with those. So, yes, I believe – 17 and whenever I was partaking, that definitely would have 18 been a procedure that would have – a sequence that would 19 have been followed. 20 MS PILLAY: Now, the last foundational 21 issues that I wanted to cover with you, Mr Sinclair, before 22 we turn to the events themselves is just to look at the 23 ICAM report very briefly. Now, if you can just explain to 24 us what an ICAM report is, and what purpose does it serve 25 within the organisation.</p>

<p style="text-align: right;">Page 34090</p> <p>1 MR SINCLAIR: Okay, can I have an ICAM 2 report?</p> <p>3 MS PILLAY: It's exhibit GGG2 and it 4 appears from page 387 of your bundle.</p> <p>5 MR SINCLAIR: Do I need to look at it?</p> <p>6 MS PILLAY: If we just start with 7 background questions around the ICAM report itself?</p> <p>8 MR SINCLAIR: Thank you.</p> <p>9 MS PILLAY: What is an ICAM report and 10 what purpose does it serve?</p> <p>11 MR SINCLAIR: My understanding of the 12 system is an ICAM is a review policy when there has – a 13 review instrument when there has been an incident that 14 requires review in a certain format. The ICAM is an 15 extensive review tool with comprehensive questions from 16 start to finish, and a procedure as well to take that 17 process, and the reason for that is to have a look through 18 that process at there was an incident, there was an 19 activity. What was done well? What was done that is of 20 concern? What do we need to put in place to address those 21 concerns, and a timeframe. That is the large document. 22 There is also in the Lonmin system, and I can't remember 23 when it came in, because that particular ICAM, and I have 24 seen the documents, so I know what you are referring to, 25 that can take a long time. There is a smaller version of</p>	<p style="text-align: right;">Page 34092</p> <p>1 institute a mini-ICAM. We had a safety person from the 2 safety department working closely with our teams. We had 3 our own safety reps. They would then undertake to do that 4 and do it. And then a major document would be done, if it 5 was necessary, of this, for instance, this.</p> <p>6 CHAIRPERSON: I think the question really 7 is, if there was a big ICAM, would there also have been 8 beforehand a small ICAM, or an incident investigation?</p> <p>9 MR SINCLAIR: I believe there would have 10 –</p> <p>11 CHAIRPERSON: Well, would there be or was 12 there?</p> <p>13 MR SINCLAIR: I believe there would – are 14 they documented? As I sit here, are they documented? 15 There definitely would have been an incident and a mini- 16 ICAM process.</p> <p>17 CHAIRPERSON: There would have been, but 18 whether it was documented you can't say? That sort of 19 thing can you look into for us.</p> <p>20 MR SINCLAIR: I will definitely look into 21 that for you, Sir.</p> <p>22 CHAIRPERSON: Your time is up, Ms Pillay.</p> <p>23 MS PILLAY: Chairperson, if I may ask for 24 just a few minutes more, there are some crucial issues. 25 CHAIRPERSON: Few as in, how many?</p>
<p style="text-align: right;">Page 34091</p> <p>1 the ICAM, what I call a mini-ICAM, that we could run 2 through in a shorter period to do.</p> <p>3 There is also attached to the ICAM and the mini- 4 ICAM an incident report, where you go through an incident 5 investigation that could address immediate short-term 6 occurrence. So that's what I understand of the ICAM 7 procedure, and it is controlled by the – it is run and 8 managed by the safety department of Lonmin.</p> <p>9 MS PILLAY: Now, do you know whether a 10 mini-ICAM or an incident investigation was done in relation 11 to the incidents which form the basis of this Commission?</p> <p>12 MR SINCLAIR: Ma'am, I know of in those 13 information room meetings, the mornings and the lunch times 14 that you've already referred to, that if there had been an 15 incident, we would immediately, because the other processes 16 take a long time, the security teams, the emergency teams, 17 their people appropriate, would review in a slightly 18 broader base, but would review an incident. May I refer to 19 K4, for instance? We would refer the K4 incident, then say 20 what has happened from a security and an emergency point of 21 view? We wouldn't just do it from a security point of 22 view. What is there that we need to do? So that would 23 really be done, if there were immediate steps that we would 24 then in that format. If it was serious, like K4, it would 25 be elevated through the safety department. They would</p>	<p style="text-align: right;">Page 34093</p> <p>1 MS PILLAY: Probably about half an hour.</p> <p>2 CHAIRPERSON: I have a suggestion which 3 may find favour with you, and that is in view of the fact 4 that this witness is going to go, as a result of questions 5 you asked, is going to go and investigate and come back 6 with some documents at a date to be arranged in the future, 7 it might be sensible, if I may say so, for you to continue 8 your cross-examination then, because you will do so anyway, 9 I take it, on the basis – or you may well do so, on the 10 basis of such documents that he produces. So that would –</p> <p>11 MS PILLAY: Yes, Chairperson, there are a 12 few –</p> <p>13 CHAIRPERSON: Unless you want to ask for 14 other documents as well.</p> <p>15 MS PILLAY: There are a few issues which 16 I needed to canvass with Mr Sinclair, which are just purely 17 located within quadruple E19. Which, if I could just 18 complete those as well?</p> <p>19 CHAIRPERSON: How long is that going to 20 take?</p> <p>21 MS PILLAY: That will take about 20 22 minutes.</p> <p>23 CHAIRPERSON: Yes, alright. Well, please 24 try and finish as soon as you can, because Mr Tip is not 25 going to cross-examine today, but some of the other parties</p>

<p style="text-align: right;">Page 34094</p> <p>1 who are here, the police particularly. You're going to be 2 about an hour, aren't you, Mr Semenya? That's what you 3 asked for. How long are you going to be? Sorry, Ms 4 Baloyi. 5 MS BALOYI: Yes, Chair, we've been 6 allocated an hour. 7 CHAIRPERSON: About an hour. Will you 8 need the full hour? 9 MS BALOYI: I doubt it. 10 CHAIRPERSON: So we may have some time. 11 Then the families want to, the families were going to 12 cross-examine, or AMCU, Mr Gotz? 13 MS LEWIS: Yes, Chair, the families will 14 cross-examine after SAPS. 15 CHAIRPERSON: And how long are you going 16 to be? 17 MS LEWIS: Well, ideally we would need an 18 hour. 19 CHAIRPERSON: Well, I don't know, you 20 were given three quarters of an hour, weren't you? Anyway, 21 I give you the twenty minutes you asked for, Ms Pillay, but 22 I'm going to ask Mr Wesley to be very strict and so if in 23 the middle of a word at the end of the twenty minutes, 24 you're going to have to stop. 25 MS PILLAY: I'm indebted, Chair.</p>	<p style="text-align: right;">Page 34096</p> <p>1 and the difficulties attended? 2 MR SINCLAIR: Ma'am, it had been already 3 prior to this event taking place, we had already identified 4 shortcomings that we were addressing, contractors 5 relocating our relay systems, purchasing in additional 6 radios. I had on occasion found a security area without a 7 radio, and so we had definitely already started following 8 up on those difficulties. 9 COMMISSIONER HEMRAJ: The question was 10 who was tasked with attending to the – 11 MR SINCLAIR: It would be Henry Blaauw's 12 responsibility. He might have sub-tasked it to a technical 13 person to follow up. 14 COMMISSIONER HEMRAJ: Thank you, Mr 15 Sinclair. 16 MS PILLAY: Mr Sinclair, if we then go to 17 quadruple EEEE19, which is the occurrence book? And if we 18 can look at the entry on the 10th of August against the 19 time, 13:55? Now, what we see there is that this entry is 20 made after the strikers have left the area, the Lonmin 21 premises, and it's a debriefing by you, I assume to your 22 management team. And specifically, Mr Sinclair, what I'd 23 ask you to explain is the line just after HR, where it 24 indicates that you – what was shared was there was no good 25 communication between management and workers. Can you tell</p>
<p style="text-align: right;">Page 34095</p> <p>1 COMMISSIONER HEMRAJ: Before that, can I 2 just ask you something, Mr Sinclair? What control do you 3 have over any equipment of Protea Coin, or any of the 4 contractors that might not be in a good operating order to 5 do the job they're expected to do? 6 MR SINCLAIR: If I understand your 7 question correctly, Ma'am, the vehicle, any vehicles used, 8 we have strict vehicle rules. Firearms has to comply fully 9 with our firearms procedures. Their personal equipment is 10 prescribed on what they can do, and I believe it correct 11 that in the contract there is definitely very strict rules 12 in the contract about safety compliances and all of those 13 issues that they have to comply with, Ma'am. 14 COMMISSIONER HEMRAJ: And who would be 15 aware at any given time if there was any difficulty with 16 radio communication, for example, between Protea Coin 17 Security and your own personnel? 18 MR SINCLAIR: Ma'am, those working 19 difficulties would be – I would have expected them to be 20 discussed at the morning meetings and in particular 21 relating to radios, I know that was discussed, and I was 22 aware of them and the steps being taken in particular with 23 the radio communication, Ma'am. 24 COMMISSIONER HEMRAJ: And who was tasked, 25 at this particular time, to attend that radio communication</p>	<p style="text-align: right;">Page 34097</p> <p>1 us what is meant by that? 2 MR SINCLAIR: The 10th is a Friday? 3 MS PILLAY: That's correct, yes. 4 MR SINCLAIR: In that debriefing I would 5 have also have said, this would have been a partial record 6 of our meetings, that I explained it would be a brief 7 record of our meetings in that it was communicated that the 8 communication between management and the workers was what, 9 I've already explained, or have I? Where the management 10 would not go out and communicate with the workers, Henry 11 Blaauw and I. So we would have explained to the teams, 12 they would have wanted to know what happened. We would 13 have explained to the teams what happened on the Friday 14 from the four-way stop to LPV and back. So that they were 15 familiar with the – not all of them might have been 16 present. So that's what that would refer to. 17 MS PILLAY: And does this encapsulate 18 your view that there was no good communication between 19 management and workers? 20 MR SINCLAIR: It encapsulates, rightly or 21 wrongly, it encapsulates my personal view. 22 MS PILLAY: And if we look at the second- 23 last line, I think on this copy. I'm looking for the line 24 that starts, "Management can't make decisions sitting in 25 the office."</p>

<p style="text-align: right;">Page 34098</p> <p>1 CHAIRPERSON: On the next page on the 2 screen.</p> <p>3 MS PILLAY: That's correct, Chair. Mr 4 Sinclair, management can't make decisions sitting in their 5 office, they must allow people on the ground to make 6 decisions. Can I ask you to explain that entry?</p> <p>7 MR SINCLAIR: Mr Chairman, if I recall, 8 "Management can't make decisions sitting in the office," it 9 related to the start of the Friday morning incident, where 10 at Wonderkop at the four-way stop, when there was 11 indications that the crowd would be moving towards there 12 and moving towards LPV, the instructions that Henry and I 13 received was we must take all possible avenues to prevent 14 them from moving from there to LPV, and the security teams 15 on the ground had an issue with that, because they were the 16 ones that would be assessing whether they were capable of 17 doing this. And the instruction was, "We do not want them 18 to come past the four, from the office, to come past the 19 four-way stop to LPV, and the teams on the ground, that is 20 the reason for that, and remember I explained carefully 21 that we would have had a junior person capturing it. So 22 they wouldn't have captured it word for word, but that was 23 what the content, that was that was referring to, and they 24 were just emphasising to Henry and myself that they still 25 need to be empowered to be able to make those decisions,</p>	<p style="text-align: right;">Page 34100</p> <p>1 I don't believe I was aware, but I was made aware of it in 2 a very short space of time after that, because I think 3 there is – that is the evening where I then had Dirk Botes 4 arrive, or he went and him and I would have communicated. 5 So I would have been aware of that.</p> <p>6 MS PILLAY: So did closely examine the 7 circumstances under which the three incidents of shooting 8 took place?</p> <p>9 MR SINCLAIR: At the four-way stop on 10 Friday night?</p> <p>11 MS PILLAY: That's right.</p> <p>12 MR SINCLAIR: If I recall correctly, was 13 it together with Dirk or did I do it independently, climbed 14 into my vehicle.</p> <p>15 [11:30] I had a very clearly marked yellow Polo and I 16 drove to the area. I parked and I climbed out and I 17 interacted with what, and I was briefed with what had taken 18 place.</p> <p>19 MS PILLAY: Let's look more closely at 20 the incident, the shooting incident report, Mr Sinclair, 21 and the first is EEEE32C and that's the shooting incident 22 report of PW Botha and we see on that shooting incident 23 report that the time of the incident is between 18:35 to 24 20:10. It's EEEE32C. If we can just scroll down you'll 25 see that the time of the incident, and if you look at the</p>
<p style="text-align: right;">Page 34099</p> <p>1 when the situation is in that situation.</p> <p>2 COMMISSIONER HEMRAJ: Is that the kind of 3 instruction that might have gone out to Mr Fundi and Mr 4 Mabelane on the day in question, "Do not let the crowds 5 past a certain point?"</p> <p>6 MR SINCLAIR: I cannot speak for – I was 7 not in the control room. If somebody did give that 8 instruction, I am not aware of it, as I sit here, that that 9 instruction would have been given.</p> <p>10 MS PILLAY: Now, we know that quadruple 11 EEEE19 reflects three incidents of shooting by Lonmin 12 personnel, and we've covered those three entries already. 13 Were, at the time, were you aware of the three separate 14 incidents of shooting?</p> <p>15 MR SINCLAIR: Could you just remind me 16 which three they are?</p> <p>17 MS PILLAY: It's at 18:35, PW reported 18 shooting 10 rounds at commuters. At 18:59, PW shot 15 19 rounds at commuters, and then at 20:10, GK reports that 20 they shot 10 to 15 rounds.</p> <p>21 MR SINCLAIR: And that was on the Friday 22 night, is that correct?</p> <p>23 MS PILLAY: That's correct, that's on the 24 10th.</p> <p>25 MR SINCLAIR: Straight after the events,</p>	<p style="text-align: right;">Page 34101</p> <p>1 next page we see that Mr Botha alleges that he shot 17 2 rubber bullets and he states further that all 17 were 3 warning shots. If you could just scroll up a bit?</p> <p>4 MR SINCLAIR: And that was at what time 5 on this document, sorry?</p> <p>6 MS PILLAY: It's between 18:35 and 20:10.</p> <p>7 MR SINCLAIR: And on the other document 8 you have? I don't have the other document in front of me?</p> <p>9 MS PILLAY: No, this is the one we're 10 dealing with now.</p> <p>11 MR SINCLAIR: Okay sorry, I thought you 12 were relating to another document.</p> <p>13 MS PILLAY: No, no, it's this document.</p> <p>14 MR SINCLAIR: Thank you.</p> <p>15 MS PILLAY: So we see in this document 16 that Mr Botha claims that he shot 17 rubber bullets.</p> <p>17 MR SINCLAIR: Yes, ma'am.</p> <p>18 MS PILLAY: And that all 17 were shot as 19 warning shots.</p> <p>20 MR SINCLAIR: Yes, ma'am.</p> <p>21 MS PILLAY: And he acknowledges further 22 that victims were hit on the body during the shooting.</p> <p>23 MR SINCLAIR: Yes, ma'am.</p> <p>24 MS PILLAY: Now did you investigate this 25 shooting and these claims that all 17 rubber bullets were</p>

<p style="text-align: right;">Page 34102</p> <p>1 shots as warning shots?</p> <p>2 MR SINCLAIR: No, I didn't personally</p> <p>3 investigate it because Dirk Botes was responsible for that,</p> <p>4 that incident. He would have been required to follow up</p> <p>5 and ensure that the reports were put in and that that – so</p> <p>6 Dirk would have been responsible for the detail. I would</p> <p>7 have been briefed that it had happened, Mr Chair, I would</p> <p>8 have been briefed that it had happened and Dirk would have</p> <p>9 been responsible to see that the follow up and whatever was</p> <p>10 required was done.</p> <p>11 MS PILLAY: Let's look at the second</p> <p>12 shooting incident report, it's EEEE32B and the shooter is</p> <p>13 Mr Kellerman.</p> <p>14 MR SINCLAIR: Yes, ma'am.</p> <p>15 MS PILLAY: The time of the incident is</p> <p>16 the same as this shooting incident report, it's 18:35 to</p> <p>17 20:10 and Mr Kellerman alleges that he shot 16 rubber</p> <p>18 bullets and of them, two were warning shots. Now the</p> <p>19 significant part of Mr Kellerman's shooting incident report</p> <p>20 is that he states that the witnesses to the shooting were</p> <p>21 PW Botha and, importantly, Captain Govender. Now the fact</p> <p>22 that Captain Govender witnessed the shooting is very</p> <p>23 significant for us and I'll tell you why in due course. I</p> <p>24 just want to highlight for you that this is the third</p> <p>25 shooting incident report, which is EEEE32A, is also one</p>	<p style="text-align: right;">Page 34104</p> <p>1 guys, I would have asked what's going on and I recall</p> <p>2 Captain Govender being present when I was there. What</p> <p>3 would have happened, he might have been standing with me,</p> <p>4 he might have been standing away because it's quite a large</p> <p>5 area and we were placed in different areas. So I asked</p> <p>6 what was going – no, there were people being stopped from</p> <p>7 coming to work. I recall the explanations to me and there</p> <p>8 were people that they went, who were stopping them. My</p> <p>9 security teams had taken the decision to move out from the</p> <p>10 four-way stop across the road, we've got a long walking</p> <p>11 thing that comes there, to go and provide protection, my</p> <p>12 understanding from that briefing, to try to protect the</p> <p>13 people wanting to come to work and dis – and visible</p> <p>14 policing let these people then see that they were moving</p> <p>15 towards them, they would move away. However, they were</p> <p>16 attacked by stones, if I recall correctly.</p> <p>17 CHAIRPERSON: Did you actually see that?</p> <p>18 MR SINCLAIR: No, no, I'm telling you</p> <p>19 what, the report that was given to me.</p> <p>20 CHAIRPERSON: The report.</p> <p>21 MR SINCLAIR: The report that was given</p> <p>22 to me, Mr Chair. They were attacked by stones and they had</p> <p>23 retaliated with rubber to repel that attack by stones.</p> <p>24 That was the report given to me. I was with Dirk, I said</p> <p>25 so where do we stand now, they said it's calmed down now,</p>
<p style="text-align: right;">Page 34103</p> <p>1 filed by Mr Kellerman and in that report he acknowledges</p> <p>2 that he shot five 37 millimetre rubber bullets and again we</p> <p>3 see that that shooting was witnessed by Mr Botha and</p> <p>4 Captain Govender. Now we know, Mr Sinclair, that Mr Botes</p> <p>5 testified that at 20:30 on the evening of the 10th he had a</p> <p>6 telephonic discussion with Captain Govender around SAPS's</p> <p>7 continue interventions and Captain Govender indicated to</p> <p>8 him that there was no further role for SAPS to play because</p> <p>9 the crowd was peaceful. So what we want to understand is,</p> <p>10 in this context was it questioned whether or not the use of</p> <p>11 ammunition by both Mr Botha and Mr Kellerman was justified</p> <p>12 in circumstances where SAPS was present and SAPS thought</p> <p>13 that the crowd was peaceful.</p> <p>14 MR SINCLAIR: You are asking me, the</p> <p>15 question you are asking me is?</p> <p>16 MS PILLAY: Is, was there an assessment</p> <p>17 done of whether the use of ammunition by Mr Botha and by Mr</p> <p>18 Kellerman was justified in circumstances, particularly on</p> <p>19 Mr Kellerman's shooting report, that SAPS was present at</p> <p>20 the time when the shooting occurred and secondly, where</p> <p>21 SAPS thought that the crowd was peaceful.</p> <p>22 MR SINCLAIR: Mr Chairman, I can answer,</p> <p>23 is I drove to the scene. At the scene, and I can't</p> <p>24 remember – I'll explain, I can't remember whether I drove</p> <p>25 with Dirk or whether I met him there – at the scene I said</p>	<p style="text-align: right;">Page 34105</p> <p>1 there's nobody around, please make sure of your safety. I</p> <p>2 would have immediately, I did immediately go into their</p> <p>3 safety to make sure that they – I was concerned that they</p> <p>4 had moved across the road so I just reinforced their safety</p> <p>5 and in the conversation with Dirk he came to me and he</p> <p>6 said, Graeme, I'm dealing with the police, I've got</p> <p>7 whatever going on with the police, carry on with that and</p> <p>8 please follow up that we have got all the correct</p> <p>9 information, that if any shooting has taken place that</p> <p>10 those documents and the procedure that we know should be</p> <p>11 done is carried out. That was my conversations and my</p> <p>12 involvement at that area.</p> <p>13 CHAIRPERSON: How long were you there</p> <p>14 for?</p> <p>15 MR SINCLAIR: If I recall correctly, I</p> <p>16 probably was there for 15, about 15 minutes, maybe a bit</p> <p>17 longer, Mr Chair.</p> <p>18 CHAIRPERSON: And what was happening</p> <p>19 while you were there?</p> <p>20 MR SINCLAIR: When I was there it was</p> <p>21 quiet, it was quiet. My teams were there. I could not see</p> <p>22 because there is lighting shadows from the – the lights</p> <p>23 were bright from the shafts, I could not see people there</p> <p>24 but, they indicated to me where they're going but there was</p> <p>25 nothing adverse going on when I was there.</p>

<p style="text-align: right;">Page 34106</p> <p>1 CHAIRPERSON: Did you speak to Captain 2 Govender? 3 MR SINCLAIR: I – 4 CHAIRPERSON: Or did anybody from your 5 side speak to Captain Govender in your presence? 6 MR SINCLAIR: I am trying to recall 7 whether I personally spoke to him. There was a definite, 8 and what it was about I wasn't going to get involved with 9 it, there was a confrontation with Dirk and something to do 10 – he was unhappy about something that was going on with the 11 police and I saw that, I allowed him to deal with it and I 12 was, I was there to show support to the teams and see that 13 things were proper, but I don't know what that was about. 14 I think it was about deployment but I am not at this point 15 in time, I cannot recall exactly what that was about. 16 MS PILLAY: Are you – 17 CHAIRPERSON: Sorry, yes Ms Pillay? 18 MS PILLAY: Are you aware, Mr Sinclair, 19 that there are two Lonmin employees who were injured as a 20 result of shooting by Lonmin security or who claimed to be 21 injured as a result of shooting by Lonmin security on the 22 evening of the 10th and who were not part of the striking 23 group? 24 MR SINCLAIR: As I sit, and it was 25 reported – did you say it was reported?</p>	<p style="text-align: right;">Page 34108</p> <p>1 allegations which appear from the docket, I think. If you 2 put it that way he'll be happy and now it's been said, so 3 he is happy – 4 MR BHAM SC: And I just want to make it 5 clear that it's one thing saying we have their statements, 6 they haven't been called, we haven't been able to test it, 7 we don't know whether they were part of the strike, what 8 happened, so the fact that you've got the statements is not 9 sufficient. I'm just – 10 CHAIRPERSON: What you've now been told 11 is there is a police docket dealing with – the police 12 opened a docket on a charge of attempted murder. 13 MR BHAM SC: It must be put on that 14 basis. 15 CHAIRPERSON: And there are a number of 16 statements in that docket. I think that – is that what 17 you're referring to? 18 MR BHAM SC: But it must be put on that 19 basis. At the moment it's being put as a statement of 20 fact. 21 MS PILLAY: Chair, the questions have 22 merely been testing Mr Sinclair's knowledge of the 23 allegations and not the veracity of the allegations. 24 CHAIRPERSON: Mr Bham was concerned you 25 should make it clear they were allegations, you've now made</p>
<p style="text-align: right;">Page 34107</p> <p>1 MS PILLAY: I'm asking if you were aware 2 of that? And I can name them, it's Mr Mtengwane and Mr 3 Dlomo. 4 MR SINCLAIR: Okay. Mr Chairman, I 5 don't, I don't recall if that is but if it was reported it 6 would have been to our medical people or hospital and it 7 would have been recorded and I would have obviously seen it 8 as some time. I do not recall that there were two people. 9 As I sit here now I do not recall that there were two 10 people injured. 11 MS PILLAY: Now Mr Sinclair, particularly 12 Mr Mtengwane suffered fairly serious, quite serious 13 injuries as a result of the alleged shooting. 14 MR BHAM SC: Sorry, Mr Commissioner, what 15 is being put to the witness now are matters which have been 16 reported to have occurred. I don't know to the best of my 17 knowledge that direct evidence has been placed before the 18 Commission on those instances or those incidents. Of 19 course the question can be put but it must be clearly put 20 on the basis that this is what is alleged. We don't have 21 the direct evidence before the Commission. 22 MS PILLAY: Chair, we have the statements 23 of Mr Mtengwane and Mr Dlomo which are exhibits – 24 CHAIRPERSON: Yes, yes, all that Mr Bham 25 says is you must put it to the witness that those are</p>	<p style="text-align: right;">Page 34109</p> <p>1 that clear and as I understand Mr Sinclair's evidence, he 2 has no knowledge of these allegations, is that correct? 3 MR SINCLAIR: Mr Chair, I cannot recall 4 whether there were injuries that night. I think that's 5 what I've clearly said, I cannot recall right now if there 6 were any injuries resulting from these rubber shots being 7 fired. And I'll say it is possible but I cannot recall it 8 right now, sir. 9 MS PILLAY: Now Mr Sinclair, Mr 10 Mutengwane's medical records are an exhibit before this 11 Commission and they demonstrate fairly serious injuries and 12 specifically the medical records show that the doctor 13 records the injuries as the result of a bullet wound. Now 14 if those injuries had been drawn to your attention you 15 would have remembered those because they are quite serious. 16 CHAIRPERSON: It can't be that bad, Mr 17 Sinclair, serious allegations of that kind, if they were 18 made – Ms Pillay is not suggesting to you that they were 19 made to you but it's a hypothetical question or a 20 conditional one, if they had been drawn to your attention I 21 would imagine you would have remembered. 22 MR SINCLAIR: I'm certain I would have, 23 I'm certain I would have remembered so – but at this point 24 in time I cannot recall, sir. 25 CHAIRPERSON: No, no, you've said that.</p>

<p style="text-align: right;">Page 34110</p> <p>1 Yes, alright Ms Pillay, do you want to carry on, on this 2 incident or are you moving on to something else? 3 MS PILLAY: Chair, I'm just waiting for 4 Mr Wesley to pull up a document which is relevant. Maybe I 5 can carry on and come back to this as soon as he has the 6 document. 7 CHAIRPERSON: Dealing with this incident 8 though, further? 9 MS PILLAY: Yes. Not beyond what I need 10 to put, the document that I need to put. 11 CHAIRPERSON: What is the document you 12 want to put up? 13 MS PILLAY: I just need the green light 14 from Mr Wesley that I can put the document to – he's 15 frantically looking for the document. 16 CHAIRPERSON: While you're frantically 17 looking, let me ask him something else. In the docket 18 there's – which is CAS68/8/2012 Marikana. 19 MR SINCLAIR: Yes, sir. 20 CHAIRPERSON: It's an attempted murder 21 docket, there's a statement in that docket, it is A12 in 22 the docket. I don't know if it's capable of being put up 23 but I'll read you the relevant passage. 24 MR SINCLAIR: Yes, sir. 25 CHAIRPERSON: Captain Govender says this,</p>	<p style="text-align: right;">Page 34112</p> <p>1 possession of any weapons? 2 MR SINCLAIR: I do not recall seeing 3 anybody with was, Mr Chair. 4 CHAIRPERSON: Let me carry on reading 5 what he said. "Upon arrival at Wonderkop I noticed a group 6 of African males standing on the side road opposite Rowland 7 Shaft. The group consisted of approximately 15 African 8 males. Some of the males were in possession of 9 knobkerries. As we drove closer, the group immediately 10 started to move towards the Wonderkop hostel." Did you see 11 people moving towards the Wonderkop hostel? 12 MR SINCLAIR: I don't recall that, Mr 13 Chair. 14 CHAIRPERSON: Right. "We then proceeded 15 to the group of Lonmin security officials parked at the 16 four-way crossing. We sat in the vehicle and I was 17 approached by the chief of Lonmin, Mr Graeme Sinclair, and 18 Mr Derek Botes who said I must disperse the group of males 19 standing on the opposite side. I said to Mr Botes that 20 these people are presently just standing there, not 21 presenting a problem to anyone." So he then goes on but 22 before he goes on let's find out whether you can remember 23 that. Do you agree that you and Botes approached Govender 24 and said that he must, he must disperse the group of males 25 standing on the opposite side?</p>
<p style="text-align: right;">Page 34111</p> <p>1 he's a captain in the SA Police, stationed at Marikana as 2 VISPOL commander. I'm sure you must have had many dealings 3 with him - 4 MR SINCLAIR: - very well, yes sir. 5 CHAIRPERSON: "On Friday the 10th August 6 2012 at about 18:20 whilst on duty I received a report from 7 Mr Henry Blou, the security at Lonmin Platinum, that the 8 employees of Lonmin were being threatened and intimidated 9 by other employees as a result of industrial action – it 10 was concentrated at Rowland Shaft and at Karee 3 Shaft. I 11 immediately proceeded to Rowland Shaft, Wonderkop, 12 accompanied by Warrant Officer Van Rooyen, Warrant Officer 13 Bouwer and Constable Njomo. Upon arrival at Wonderkop I 14 noticed a group of African males standing on the side of 15 the road opposite Rowland Shaft." Did you see a group, 16 when you were there at that, this is opposite Rowland 17 Shaft, you were there too you've told us. 18 MR SINCLAIR: I specifically saw a few 19 people around, quiet, standing around. 20 CHAIRPERSON: Just standing around. 21 MR SINCLAIR: There is a, just to put it 22 into context, there is a taxi rank there as well and those 23 people could have well been either commuters climbing on or 24 climbing off that I saw. 25 CHAIRPERSON: Did you see anyone in</p>	<p style="text-align: right;">Page 34113</p> <p>1 MR SINCLAIR: Mr Botes said that, sir, 2 not me. 3 CHAIRPERSON: In your presence? 4 MR SINCLAIR: In my presence, sir. 5 CHAIRPERSON: And he – 6 MR SINCLAIR: He was in, if it was those 7 exact words, but he definitely said he wants them 8 dispersed. 9 CHAIRPERSON: Okay and did he then reply 10 by saying they're presently just standing there, not 11 presenting a problem to anyone? 12 MR SINCLAIR: That is correct, ja. 13 CHAIRPERSON: He said, he then goes on, 14 "I then heard the sound of gunshots being discharged 15 somewhere in the vicinity of Wonderkop Stadium." Did you 16 hear gun, while you were there just at the time of this 17 conversation with Captain Govender did you hear gunshots 18 being discharged somewhere in the vicinity of Wonderkop 19 Stadium? 20 MR SINCLAIR: Pistol shots – 21 CHAIRPERSON: This says gunshots. 22 MR SINCLAIR: Actually, that you read 23 that statement, I do recall that there were gunshots but it 24 was away. 25 CHAIRPERSON: Alright. He says, "I</p>

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1 called the members of crime prevention to patrol around the
 2 informal settlement to ascertain as to whether anybody was
 3 injured. We received no information of any person – I'm
 4 reading it as he has written it – "We received no
 5 information of any person who was injured or killed. I
 6 then drove towards the Wonderkop satellite police station."
 7 That's the one next to the NUM office, I think, isn't it?
 8 MR SINCLAIR: Next to the NUM office,
 9 that's correct, Mr Chairman.
 10 CHAIRPERSON: "And patrolled the
 11 Wonderkop shopping area. There were still no signs of any
 12 reports being made to the shooting report. The other
 13 members also deployed in the area didn't receive any
 14 reports. After an hour later I proceeded back to the
 15 station as all appeared to be quiet. At no stage did any
 16 member of Lonmin security inform me that they dispersed any
 17 persons by firing baton rounds." I take it baton rounds
 18 are rubber bullets.
 19 MR SINCLAIR: Are rubber bullets, ja.
 20 CHAIRPERSON: "I did not even attend to a
 21 so-called shooting incident. I do recall seeing a few
 22 security personnel and one of them I know is PW Botha."
 23 That's his statement. Now we've seen here a discharge
 24 report where it is alleged that rubber bullets were fired,
 25 what Govender would call baton rounds were fired in his

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1 presence. His statement is as I've read it to you. Have
 2 you any comments?
 3 MR SINCLAIR: Mr Chairman, when I was
 4 present I recall that Botes, we approached, I wasn't right
 5 next to him but we approached Govender, that he spoke to
 6 Govender. I recall very definitely that there were shots,
 7 was one or two in the distance, there was no crowd – no,
 8 there were people standing around but there was no crowd
 9 that I saw in the vicinity opposite the road that was
 10 threatening or whatever.
 11 [11:50] And during my visit there no rubber bullets or
 12 things by the security had been fired at all, although they
 13 informed me that they had already done that.
 14 CHAIRPERSON: Now tell me, you've said
 15 that Mr Botes asked Captain Govender to disperse these
 16 people who were standing there and he apparently declined –
 17 MR SINCLAIR: Yes.
 18 CHAIRPERSON: - because he said – you
 19 were present when it happened?
 20 MR SINCLAIR: I was –
 21 CHAIRPERSON: Did you agree with his
 22 request that the police should take it upon themselves to
 23 disperse these people?
 24 MR SINCLAIR: Mr Chairman, I – Dirk was
 25 in a state, he was not in a quiet state, he was vocal and

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1 he said that and when he came back to me I recall very
 2 clearly saying to him, "Dirk, calm down and address these
 3 situations correctly." So I cautioned him as the way,
 4 because he was dealing with the police and the scene.
 5 CHAIRPERSON: But you were present –
 6 MR SINCLAIR: So I definitely remember –
 7 CHAIRPERSON: You were present and you
 8 were his superior.
 9 MR SINCLAIR: Yes, and I cautioned him
 10 about his behaviour. He needed to carry on with what he
 11 needed to do.
 12 CHAIRPERSON: He made a request to
 13 Captain Govender, which Captain Govender declined to accede
 14 to –
 15 MR SINCLAIR: Yes, Sir.
 16 CHAIRPERSON: - because he didn't
 17 consider it appropriate that the police should disperse
 18 these people, they were just standing there.
 19 MR SINCLAIR: Yes, Sir.
 20 CHAIRPERSON: When he made the request
 21 did you countermand the request? Did you say no, no, we're
 22 not asking you to do that?
 23 MR SINCLAIR: No, I didn't counter. I
 24 got Dirk to the side and I said, "Dirk, calm down. There
 25 is no – Govender is here, he needs to take responsibility."

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1 I definitely had that – whether those were my exact words,
 2 two years later, Mr Chair, but I definitely, that was the
 3 thrust of my conversation.
 4 CHAIRPERSON: Well, we'll have to arrange
 5 for a copy of the statement I read out to be made an
 6 exhibit.
 7 MR SINCLAIR: Yes, Sir.
 8 CHAIRPERSON: And the next exhibit number
 9 will be –
 10 MS PILLAY: FFFF7, Chair.
 11 CHAIRPERSON: - will be FFFF7.
 12 MR SINCLAIR: My –
 13 CHAIRPERSON: No, no, Kellerman – the
 14 Govender statement I read out.
 15 MR SINCLAIR: Oh, yes, yes, yes.
 16 CHAIRPERSON: Now you said, did you come
 17 with Mr Botes or how did it happen that you and he were
 18 together there?
 19 MR SINCLAIR: Mr Chairman, Dirk Botes was
 20 to the, to my recall Dirk Botes was the duty official for,
 21 from Henry, myself, and whatever that evening. I went out
 22 to the mine, I was at Middelkraal doing, trying to catch up
 23 on things that I needed to catch up on, when there was this
 24 incident. Now whether I was still with Dirk or whether he
 25 had gone ahead, I think he – he must have gone ahead of me

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1 because he never came back with me, to my recollection, and
 2 I then proceeded to go out to the four-way stop and have an
 3 understanding of what was going on so that when I withdrew
 4 and went back I could inform my direct report. I could
 5 give him a more accurate evaluation, Sir.
 6 CHAIRPERSON: How did it happen that –
 7 can you recall, how did it happen that he happened, that he
 8 was there on the Friday evening?
 9 MR SINCLAIR: He, I, if I recall
 10 correctly I would have called Dirk back – I, if I recall
 11 correctly I called Dirk back for whatever reason. I don't
 12 believe it was for this incident. It might have been for
 13 this incident. I was at Middelkraal and I called Dirk back
 14 and he proceeded – my recollection and, that he proceeded,
 15 because he didn't come back with me, so he had to proceed
 16 in his own vehicle and then I met him up at the four-way
 17 stop, Mr Chair.
 18 CHAIRPERSON: You met him at the four-way
 19 stop?
 20 MR SINCLAIR: Yes, Sir. I met him and
 21 the rest of our team and –
 22 CHAIRPERSON: At the four-way stop?
 23 MR SINCLAIR: At the four – as you come,
 24 just on the, where the Lonmin tar finishes, before you
 25 cross the road.

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1 CHAIRPERSON: Yes, close to the Rowland
 2 Crossing?
 3 MR SINCLAIR: That's, that is the
 4 Rowland –
 5 CHAIRPERSON: That is the Rowland
 6 Crossing.
 7 MR SINCLAIR: That is the Rowland
 8 Crossing, Mr Chair.
 9 CHAIRPERSON: Well, that's not his
 10 evidence. His evidence is that you telephoned him, you
 11 requested him to take – this is his statement, para 10.
 12 You telephoned him, you asked him if he was willing to
 13 assist Mine Security because they needed extra hands,
 14 having regard to the situation developing at the mine,
 15 asked him to take charge of security personnel at an
 16 operations level, and he agreed.
 17 MR SINCLAIR: Ja.
 18 CHAIRPERSON: And he then, he says he
 19 went there, he travelled back to the mine, went to
 20 Middelkraal where he met you.
 21 MR SINCLAIR: Yes, Sir.
 22 CHAIRPERSON: And he says you and he then
 23 travelled together –
 24 MR SINCLAIR: Oh, okay.
 25 CHAIRPERSON: - from Middelkraal.

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1 Alright, so it that correct or are you correct?
 2 MR SINCLAIR: That - Mr Chairman, I
 3 believe that statement is more correct than what I have
 4 tabled.
 5 CHAIRPERSON: Yes, well there's a problem
 6 about that statement and there's a problem about yours too.
 7 MR SINCLAIR: Yes, Sir.
 8 CHAIRPERSON: But let me put them both to
 9 you now.
 10 MR SINCLAIR: Yes, Sir.
 11 CHAIRPERSON: You don't mention in your
 12 statement anywhere that you were at the scene on the
 13 Friday. In fact you don't say anything in your statement
 14 about anything that happened on the Friday night. Am I
 15 right?
 16 MR SINCLAIR: That's, that is correct,
 17 Sir.
 18 CHAIRPERSON: Why is that?
 19 MR SINCLAIR: Mr Chair, I think as I
 20 explained yesterday I believe that my statement was there
 21 and those were there, I –
 22 CHAIRPERSON: Your statement was where?
 23 MR SINCLAIR: Sorry, that my –
 24 CHAIRPERSON: Your statement about the
 25 Friday night was where?

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1 MR SINCLAIR: So that my statement, that
 2 what I have recorded has got - now I see I with this
 3 Commission should have put that in.
 4 CHAIRPERSON: Why didn't you?
 5 MR SINCLAIR: Mr Chairman –
 6 CHAIRPERSON: I can understand matters
 7 involving other people, reports you received, that you'd
 8 only be giving hearsay.
 9 MR SINCLAIR: Ja.
 10 CHAIRPERSON: But here was something,
 11 here was an incident on the Friday night where your people
 12 were involved, where you personally were present on the
 13 scene.
 14 MR SINCLAIR: Yes, Sir.
 15 CHAIRPERSON: You actually asked Botes to
 16 go there.
 17 MR SINCLAIR: Yes, Sir.
 18 CHAIRPERSON: There's not a word about it
 19 in your statement.
 20 MR SINCLAIR: Yes, Sir.
 21 CHAIRPERSON: Why is that?
 22 MR SINCLAIR: Mr Chairman, I –
 23 CHAIRPERSON: What's your answer?
 24 MR SINCLAIR: Mr Chairman, I don't know
 25 why I - Mr Chairman, I did not include it in my statement.

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1 Either I forgot, when I was doing my statement either I
 2 forgot to do it or – I think that is probably the reason
 3 that I forgot to put that in. It's an important issue, I
 4 acknowledge that, but certainly I didn't include it in my
 5 statement.
 6 CHAIRPERSON: When did you make your
 7 statement?
 8 MR SINCLAIR: Sir, I made my draft
 9 statement, and I don't know if it's in my draft statement,
 10 I made my draft statement on the 9th of the 10th 2012 –
 11 CHAIRPERSON: Yes, the 9th of October,
 12 that's at the top –
 13 MR SINCLAIR: And then this statement I
 14 made on the 10th of 2000 and – June 2014.
 15 CHAIRPERSON: No, I know that, but the
 16 original draft statement we've asked for, we haven't got it
 17 yet.
 18 MR SINCLAIR: Yes, Sir.
 19 CHAIRPERSON: And you can't remember
 20 whether you included this in that statement. But anyway,
 21 we'll see when we get –
 22 MR SINCLAIR: Yes. Ja, ja –
 23 MR BHAM SC: Sorry, Mr Chairman –
 24 MR SINCLAIR: Mr Chairman, it was an
 25 omission on my part, that I acknowledge that for this

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1 Commission it was an omission on my part and I can only –
 2 CHAIRPERSON: Which you can't explain at
 3 the moment, you say it may have slipped your mind.
 4 MR SINCLAIR: I can only apologise for
 5 not including it, Mr Chairman.
 6 CHAIRPERSON: Yes, I see.
 7 MR SINCLAIR: And that is where I am.
 8 That's –
 9 CHAIRPERSON: Yes, I can understand. Mr
 10 Bham, you turned your light on.
 11 MR BHAM SC: Just to say that as I
 12 understand it the draft statement has been forwarded to the
 13 evidence leaders.
 14 CHAIRPERSON: Thank you. Now you see, I
 15 have the problem, there's something worrying me very much
 16 about this part of the case.
 17 MR SINCLAIR: Yes, Sir.
 18 CHAIRPERSON: It's my duty to put it to
 19 you.
 20 MR SINCLAIR: Yes, Sir.
 21 CHAIRPERSON: In Mr Botes' statement,
 22 initial statement, he mentions what happened on the Friday
 23 night, but he moves it to the Saturday night, and in fact
 24 it's a very circumstantial account about how you phoned
 25 him, you told him what had happened earlier on the Saturday

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1 at the NUM office and people were shot and all that kind of
 2 thing. So it fixes it firmly as something that happened on
 3 the Friday night following this conversation he had with
 4 you, which clearly could only have taken place on the
 5 Saturday – sorry, fixed it firmly on the Saturday night –
 6 MR SINCLAIR: Yes.
 7 CHAIRPERSON: - in the light of this
 8 telephone conversation with you where you allegedly told
 9 him what happened in the morning. At a very, very late
 10 stage, in fact last month, July, we get a new statement
 11 from him, which is in the middle of July, 23rd of July in
 12 fact, and he says this, it's page 96 of his – well, it's
 13 the statement dated the 23rd of July 2014 and it's page 95
 14 of his bundle and he says this in para 8, "During the week
 15 of 14 July I had preparatory sessions with all my
 16 colleagues who were with me at Wonderkop when the problems
 17 started and then realised how much I forgot. Discussing
 18 the events as it unfolds with my interactions or
 19 contributions many memories returned which I have omitted
 20 in the statement submitted and hereby wish to add the
 21 following facts.
 22 8.1, I was called out by Graeme Sinclair the
 23 Friday evening, 10 August, and not Saturday 11 August.
 24 8.2, The shooting incident described at Rowland
 25 Crossing also happened on Friday 10 August, not Saturday 11

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1 August.
 2 8.3, After the security personnel shot at the
 3 groups they dispersed to in the direction of the koppie."
 4 Now what concerns me is this; you don't mention
 5 the Friday evening at all. He doesn't mention Friday
 6 evening either, he puts it on Saturday, and belatedly in
 7 July 2014 he suddenly says it was the Friday night. Of
 8 course other things had come to light by then. The events
 9 on the Friday night which were originally recorded in the
 10 OB were deleted in the copy that we got.
 11 MR SINCLAIR: Yes, Sir.
 12 CHAIRPERSON: These factors taken
 13 together, your failure to mention it –
 14 MR SINCLAIR: Yes, Sir.
 15 CHAIRPERSON: - his transposition of it
 16 to Saturday, following on a telephone conversation which
 17 could never have happened on the Friday –
 18 MR SINCLAIR: Yes, Sir.
 19 CHAIRPERSON: - please the deletion from
 20 the OB, they raise serious questions which require an
 21 answer. Are you able to give me an answer?
 22 MR SINCLAIR: Mr Chair, I have given my
 23 answer and I stick to it, about the occurrence books. That
 24 is my answer. In regard to my omission in this statement,
 25 when I was asked make your statement and I made my

<p style="text-align: right;">Page 34126</p> <p>1 statement and I was going through, recall, Friday night 2 occurred, there were, there – Friday night occurred. It 3 did not come to me when I was writing my statement to put 4 it in. It was an omission on my part and that is where I 5 am, Mr Chair. 6 CHAIRPERSON: What I must put to you – 7 look, it's just an appearance and there may be a valid 8 plausible and acceptable explanation – 9 MR SINCLAIR: Yes, Sir. 10 CHAIRPERSON: - but it is an appearance 11 which worries me. 12 MR SINCLAIR: I hear you, Sir. 13 CHAIRPERSON: And the appearance is that 14 there appears to have been an attempt to conceal from the 15 Commission what happened on the Friday night, not mention 16 in statements, take it out of the occurrence book, 17 particularly as what happened was quite a lot of rounds of 18 rubber ammunition were fired. A docket was opened of 19 attempted murder. A man had a 9 millimetre bullet removed 20 from him under – I don't know if it was the Saffy Hospital, 21 but somewhere – that's all in that docket 68, CAS68, and it 22 does create an unfortunate impression, shall we say. 23 MR SINCLAIR: I hear that. 24 CHAIRPERSON: And I'd be grateful if at 25 some stage something could be done to explain to me why</p>	<p style="text-align: right;">Page 34128</p> <p>1 I'm just stressing my opinion with the – 2 CHAIRPERSON: I asked you for your 3 opinion. 4 MR SINCLAIR: Yes, and I would say would 5 I do that again tomorrow? My answer would probably be yes. 6 CHAIRPERSON: I see. Alright, thank you. 7 Those are the question I – 8 MR SINCLAIR: The answer would be yes. 9 CHAIRPERSON: - yes, I was proposing to 10 ask you on this topic. Ms Pillay I'm sure wants to ask 11 further questions, but perhaps she'd prefer to ask them 12 after we've taken the tea adjournment. 13 MS PILLAY: If I can – I've just got one 14 question to round off my line of questioning, if I can just 15 proceed with that. Mr Sinclair, I asked specifically 16 whether you were aware of the injuries to Mr Mutengwane and 17 Mr Dlomo and you indicated that you weren't aware of their 18 injuries. 19 MR SINCLAIR: As I'm sitting here, yes. 20 MS PILLAY: That's right. Can I refer 21 you to an email – Chair, which I would like to have marked 22 as FFFF7 – sorry, 8, I apologise, 8 – 23 CHAIRPERSON: I intervened and inserted 24 7. We haven't got it yet, but we've allocated a number 25 already, so it will be 8.</p>
<p style="text-align: right;">Page 34127</p> <p>1 that impression should not persist. Each of the – I'm 2 reminded in fact that both Botha and Kellerman's shooting 3 reports indicate that they were issued with 200 rubber 4 bullets. That does look as if a highly dangerous situation 5 was envisaged is likely to happen, or possibly to happen, 6 so that they were given – I mean I take it they don't 7 normally go out with 200 rounds each, do they, of rubber 8 bullets? It's quite a lot of bullets, isn't it? 9 MR SINCLAIR: Mr Chairman, I know they 10 have bandoliers and they, I do not know what quantity is 11 the requirement for them to carry. That would be Henry's 12 decision with those. 13 CHAIRPERSON: [Microphone off, inaudible] 14 prima facie 200 sounds a lot of – 15 MR SINCLAIR: It's a – 16 CHAIRPERSON: I mean it's not 4 000, but 17 200 is quite a lot. 18 MR SINCLAIR: I would put it – 19 CHAIRPERSON: Each. 20 MR SINCLAIR: I would put it to you that 21 when they are travelling around, if there is an incident, 22 it sounds like quite a lot but if you're in a remote area 23 and you start to – you can't come back if you need to come 24 and replenish, could be a problem. So I don't believe it's 25 an unacceptable number, Mr Chairman – my own opinion – and</p>	<p style="text-align: right;">Page 34129</p> <p>1 MS PILLAY: This will be 8, and if I – 2 CHAIRPERSON: FFFF8. 3 MS PILLAY: If I could ask that the email 4 be put on the screen. It's an email dated the 12th of 5 August, the first one being from Mel Mentz and the subject 6 is "Forward call-up date assaults 10 to 11 August," and do 7 you see that you are one of the recipients of the email? 8 And if you scroll down you will see the content of the 9 email is "Good morning, FYI, Strike related injuries," and 10 a list of all the employees, if you go further down, "All 11 the employees and the injuries that they suffered." If we 12 go further down we see Mr Dlomo is a rubber bullet injury. 13 If you go further down, Mutengwane. Just hold on, scroll 14 back up. Mr Mutengwane, there we go, "Rubber bullet 15 injury, entry wound on left thigh proximal to groin, no 16 exit wound, no vascular injury, no fracture on X-ray," and 17 important, "bullet is visualised, not lodged on the femur." 18 Mr Dlomo, "Gunshot wound, rubber bullet? Two centimetre 19 laceration, etcetera, no fracture, bullet not visualised." 20 If we go further down you will see a list of all the other 21 people who suffered injuries as a result of strike related 22 violence on the 10th to 11th. Do you see that? And you 23 accept that you were a recipient of this email? 24 MR SINCLAIR: I was a recipient – 25 CHAIRPERSON: I'm sorry to interrupt you.</p>

<p style="text-align: right;">Page 34130</p> <p>1 Can I just say something before you answer? Remember the 2 question, even though I'm going to interrupt. Mr 3 Mabuyakhulu is I think the person who is the subject of 4 that docket, CAS68/8/2012, and he's the one according to 5 the docket who had a bullet inside him which they removed. 6 It says bullet is not visualised but we'll also hand that 7 medical report in perhaps when we resume. I suppose we can 8 do it in anticipation, it will be FFFF9, I think. 9 MS PILLAY: 9, Chair. 10 CHAIRPERSON: 9. So anyway, this was 11 drawn to your attention and Ms Pillay asked you a question 12 to which you now get a chance to answer. 13 MR SINCLAIR: Your question, Ma'am? 14 MS PILLAY: Do you accept that you 15 received this email? 16 MR SINCLAIR: I accept the email was 17 addressed to me. I don't recall if I opened it and read it 18 in detail. 19 MS PILLAY: Now the second, if we just 20 scroll to the top of this email we see that not only was 21 this email sent to you by Mel Mentz at 7:54 on the 12th, Mr 22 Sinclair – 23 MR SINCLAIR: Yes. 24 MS PILLAY: - more importantly, if we 25 scroll right to the top of this email, we see that Mr</p>	<p style="text-align: right;">Page 34132</p> <p>1 sort of person, he would have compelled me to respond. 2 CHAIRPERSON: Right, and what was your 3 response that you were compelled to give? 4 MR SINCLAIR: Say again, Sir? 5 CHAIRPERSON: What was the response that 6 you were compelled to give? 7 MR SINCLAIR: Are we aware of these 8 injuries, what are the circumstances, the details, and I 9 would have furnished him – 10 [12:10] CHAIRPERSON: That was the question. 11 What was the answer you gave? 12 MR SINCLAIR: The answer I gave to who, 13 Sir? 14 CHAIRPERSON: To Mr Russo-Bello. 15 MR SINCLAIR: Where, when he would have 16 asked me personally about it I would have said I – 17 CHAIRPERSON: [Microphone off, inaudible] 18 MR SINCLAIR: Yes, Sir. 19 CHAIRPERSON: I take it these injuries 20 were picked up at the Saffy Hospital when these people – 21 MR SINCLAIR: It was picked up at the 22 hospital, yes Sir. 23 CHAIRPERSON: Right, someone at the 24 hospital reported them – 25 MR SINCLAIR: Yes, Sir.</p>
<p style="text-align: right;">Page 34131</p> <p>1 Russo-Bello, who we've heard is your immediate – I'm 2 reluctant to use the term "superior" – the person to who 3 you report, and we see an email from him at 8:32 on Sunday 4 the 12th of August where he asks, "Graeme, did you see two 5 to three guys admitted on Friday with gunshot wounds caused 6 by rubber bullets?" So a very specific enquiry sent to you 7 by your immediate superior arising from the injuries 8 suffered by employees of Lonmin. Do you see that? 9 MR SINCLAIR: I see that. 10 MS PILLAY: And did you receive the email 11 from Mr Russo-Bello? 12 MR SINCLAIR: The email would definitely 13 have been received in my mailbox. 14 MS PILLAY: And do you maintain that you 15 were not made aware of the injuries suffered by employees 16 from the period 10 to 11 August? 17 MR SINCLAIR: So the email would have 18 been received. Over this period, the 12th and the 13th and 19 those days, I spent very little time on my computer. So I 20 don't know when I opened, whether I would have opened this 21 email, but this query - I would have also received a verbal 22 query from Mr Russo-Bello and then I would have followed up 23 on those and responded to him as to what our medical 24 response was, what documents we had on it and so I would 25 have responded. He would have compelled me – he was that</p>	<p style="text-align: right;">Page 34133</p> <p>1 CHAIRPERSON: - and it was a cause for 2 great concern, I would imagine. 3 MR SINCLAIR: Yes. 4 CHAIRPERSON: So an email is sent – who's 5 Mel Mentz? 6 MR SINCLAIR: He's the doctor. He's the 7 head of the medical – 8 CHAIRPERSON: He's the head of Saffy, 9 right. 10 MR SINCLAIR: Yes. 11 CHAIRPERSON: So he's very worried about 12 it. So he sent early in the morning on the Sunday morning, 13 7:54, these injuries have been picked up from the Friday 14 night really. 15 MR SINCLAIR: Yes, Sir. 16 CHAIRPERSON: He sends it to you. Who's 17 Poena Prinsloo? 18 MR SINCLAIR: He is the Human Resources 19 Senior Manager. 20 CHAIRPERSON: Senior manager. We know 21 Abey Kgotle is a senior official as well. I don't know who 22 Tumela Nkisi is. Who is Tumela Nkisi? 23 MR SINCLAIR: Tumela is a HR person. 24 CHAIRPERSON: Right, we know who Mr 25 Russo-Bello is. Natasha Viljoen we've met, but just put it</p>

<p style="text-align: right;">Page 34134</p> <p>1 on record, who is she?</p> <p>2 MR SINCLAIR: She is the Executive Vice</p> <p>3 President.</p> <p>4 CHAIRPERSON: Ja, and Lenie Stassen?</p> <p>5 MR SINCLAIR: She is the medical manager</p> <p>6 at the hospital.</p> <p>7 CHAIRPERSON: Ja, so it's a high-level</p> <p>8 request.</p> <p>9 MR SINCLAIR: Yes, Sir.</p> <p>10 CHAIRPERSON: And then it's specifically</p> <p>11 referred to you. You got a copy from Mr Mentz – Dr Mentz,</p> <p>12 I take it. You then, it's sent – then you get an extra one</p> <p>13 just to remind you from Mr Russo-Bello, who asks you a</p> <p>14 question. He would have been, you said you would have been</p> <p>15 compelled to give an answer. I take it, translated into</p> <p>16 the indicative that means you were compelled to give the</p> <p>17 answer. What was the answer?</p> <p>18 MR SINCLAIR: The answer is we've – these</p> <p>19 incidents are recorded and I will bring you the details of</p> <p>20 the incidents that are recorded.</p> <p>21 CHAIRPERSON: Did you bring him the</p> <p>22 details?</p> <p>23 MR SINCLAIR: I definitely would have</p> <p>24 taken details of those to him.</p> <p>25 CHAIRPERSON: In writing or orally?</p>	<p style="text-align: right;">Page 34136</p> <p>1 MS BALOYI: Indeed, Chair, thank you.</p> <p>2 CHAIRPERSON: You asked for an hour.</p> <p>3 You've got half an hour till we adjourn today. If you can</p> <p>4 finish in half an hour I'd be grateful. If you can't I'll</p> <p>5 understand, but please don't spend half an hour discussing</p> <p>6 flight seats and things of that sort.</p> <p>7 CROSS-EXAMINATION BY MS BALOYI: Chair,</p> <p>8 I'll try not to do that. Thank you. Mr Sinclair, I'm</p> <p>9 going to be asking you questions on behalf of the SAPS.</p> <p>10 Now if we could look at the document exhibit XXX8. Now</p> <p>11 this document, as I understood you yesterday you testified</p> <p>12 that this is a document for, which sets out the procedure</p> <p>13 for Lonmin Security how to conduct themselves when they are</p> <p>14 confronted with industrial action and community unrest. Am</p> <p>15 I correct?</p> <p>16 MR SINCLAIR: That's, that is correct.</p> <p>17 MS BALOYI: Yes, and if we could look at</p> <p>18 the paginated page 16, the printed page 16 and in</p> <p>19 particular paragraph 4.1, and you look at paragraph 4.1.2</p> <p>20 which reads, "Security personnel must be able to identify</p> <p>21 the signs that may lead to unrest situations and act to try</p> <p>22 and establish the reasons for the pending action." You see</p> <p>23 that?</p> <p>24 MR SINCLAIR: I see that.</p> <p>25 MS BALOYI: Yes, did that happen in this</p>
<p style="text-align: right;">Page 34135</p> <p>1 MR SINCLAIR: I would have taken our</p> <p>2 emergency, any emergency incident reports that we had in</p> <p>3 connection with them and said this is the information we</p> <p>4 have. I wouldn't have taken the shooting reports because</p> <p>5 those were still in the process of being compiled.</p> <p>6 CHAIRPERSON: So I take it these three</p> <p>7 people, the injuries they received, they would have been</p> <p>8 among those who were the recipients of the rubber bullets</p> <p>9 that formed the subject of the entries that were deleted.</p> <p>10 Is that correct?</p> <p>11 MR SINCLAIR: I'm sure that is correct.</p> <p>12 CHAIRPERSON: Ms Pillay, can we now take</p> <p>13 the tea adjournment?</p> <p>14 MS PILLAY: We can, thank you, Chair.</p> <p>15 CHAIRPERSON: Quarter of an hour.</p> <p>16 [COMMISSION ADJOURNS COMMISSION RESUMES]</p> <p>17 [12:28] CHAIRPERSON: The Commission resumes.</p> <p>18 You're still under oath, Mr Sinclair.</p> <p>19 GRAEME MILLER SINCLAIR: [s.u.o.]</p> <p>20 CHAIRPERSON: I gather you're finished,</p> <p>21 Ms Pillay. Is that right?</p> <p>22 MS PILLAY: Yes, thank you, Chair, those</p> <p>23 are our questions.</p> <p>24 CHAIRPERSON: Ms Baloyi, I believe you're</p> <p>25 cross-examining for SAPS.</p>	<p style="text-align: right;">Page 34137</p> <p>1 case?</p> <p>2 MR SINCLAIR: The security personnel</p> <p>3 prior to the event and during the event certainly looked</p> <p>4 out for signs that may lead to unrest.</p> <p>5 MS BALOYI: Yes, you did look out for</p> <p>6 signs?</p> <p>7 MR SINCLAIR: Yes, signs that may lead to</p> <p>8 unrest.</p> <p>9 MS BALOYI: Yes, and what actions were</p> <p>10 taken? That is prior to the event, what actions were taken</p> <p>11 to try and deal with the signs that you have already seen?</p> <p>12 You say you saw signs. What actions were taken to deal</p> <p>13 with what you thought would happen?</p> <p>14 MR SINCLAIR: On the security personnel</p> <p>15 as part, the security teams with myself, if we had any</p> <p>16 information or any indication from whatever source, our</p> <p>17 roving patrols, the guards at our various locations, that</p> <p>18 there was a possibility of an unrest situation or</p> <p>19 industrial type situation, we would through our channels,</p> <p>20 and we had various ways of communication, Henry Blaauw</p> <p>21 would – or if it was, had come to my attention, would</p> <p>22 communicate that to the relevant Human Resources management</p> <p>23 and the industrial relations people.</p> <p>24 MS BALOYI: And that was done in this</p> <p>25 case?</p>

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1 MR SINCLAIR: There was definitely verbal
 2 communication through to say prior to the events of –
 3 you're talking about the 10th?
 4 MS BALOYI: We can talk about the 10th,
 5 yes. Prior to –
 6 MR SINCLAIR: Prior to the events –
 7 MS BALOYI: Prior to the 10th, yes.
 8 MR SINCLAIR: - any indications, be it
 9 hearsay, be it substantive, be it whatever, would have been
 10 communicated through – definitely would have been
 11 communicated through to the industrial relations and Human
 12 Resources.
 13 MS BALOYI: Now if you then go on to
 14 paragraph 8 of the same document, and you look at – let's
 15 start at paragraph 8, the heading is "Managing the
 16 situation," and if you start at 8.1.1 it says, "Liaisons
 17 must immediately commence to establish a workable solution
 18 in order to address the reason for the industrial
 19 actions/community unrest situation." And then 8.1.2 reads,
 20 "A collective resolution must be reached as soon as
 21 possible that will benefit both parties." Now what does
 22 8.1.2 contemplate? In practice, what would happen?
 23 MR SINCLAIR: Well, 8.1.2?
 24 MS BALOYI: Yes.
 25 MR SINCLAIR: Sorry. It means that the

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1 information - or formal/informal, correct/incorrect - that
 2 security had needs to be passed on to the Human Resources
 3 and IR and they need to try and sort out a – what we are
 4 saying in this document, they need to try and sort out a
 5 resolution to minimise any of those things if it is found
 6 to be that it is a possibility of taking place.
 7 MS BALOYI: So in the case where the IR
 8 of Lonmin did not take any steps to engage with these
 9 strikers to find a resolution to the problem, they would
 10 have failed to comply with paragraph 8.1.2. Am I correct?
 11 MR SINCLAIR: Chair, I want to be very
 12 clear; this is a security department procedure and this
 13 general is a security procedure to our personnel to say
 14 these are, for your guidance these are the steps that
 15 should be taken. We maybe should reword that to be very
 16 specific. This is security, this is what should be taken,
 17 but in that contents there, this is a security document for
 18 security personnel, not for the IR personnel. I should
 19 imagine they've got their own procedure.
 20 MS BALOYI: Okay, help me make sure that
 21 I understand you. Paragraph 8.1.2, it says, "A collective
 22 resolution must be reached." Who must reach, who must
 23 participate in the reaching of the collective resolution?
 24 MR SINCLAIR: Collective resolution must
 25 be reached between the parties with whatever concerns they

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1 have and the Human Resources. We are telling, our
 2 procedure is telling our security people that collective
 3 resolution should be resolved between the Human Resources
 4 and those parties. That is what we are – that is what this
 5 procedure is saying in our security environment.
 6 COMMISSIONER HEMRAJ: So in the context
 7 of this particular period it would be the strikers and
 8 Human Resources?
 9 MR SINCLAIR: Should collectively resolve
 10 to reach a possible way forward, yes, Ma'am. Sorry, Mr
 11 Chairman.
 12 MS BALOYI: Well, let's look at paragraph
 13 8.3, and keep the answer that you just gave now in mind.
 14 Paragraph 8.3, which specifically deals with unprotected
 15 industrial actions, which is what we are dealing with in
 16 this operation, and you look at paragraph 8.3.6, it reads,
 17 "A management committee will be identified that will engage
 18 in talks with the grievance committee that would include
 19 the Manager Mining Security, or such an appointed person,
 20 and the ER Liaison Officer." You see that?
 21 MR SINCLAIR: That is correct.
 22 MS BALOYI: So you, holding the position
 23 of Manager –
 24 CHAIRPERSON: The person who's got that
 25 call sign on his or her telephone must please leave the

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1 chamber. Someone's now left the chamber. Was that the
 2 person whose cell phone went off like that, or is it
 3 someone else? Was it a media person? Who was it? The
 4 lady with the Apple, I understand the lady with the Apple
 5 computer on her lap, is that right? Is she listening to
 6 me?
 7 MR SINCLAIR: No.
 8 CHAIRPERSON: Would someone – Madam, was
 9 it your computer or cell phone that made the noise? Would
 10 you please leave the chamber? We'll now carry on without
 11 disturbance.
 12 MR SINCLAIR: Thank you, Mr Chair.
 13 MS BALOYI: Thank you, Chair. Mr
 14 Sinclair, I referred you to paragraph 8.3.6 which talks
 15 about the management committee, and then in paragraph 8.3.7
 16 it talks about "A committee that will talk to management
 17 will be identified and only those people would be allowed
 18 to engage in talks with management." Now this committee at
 19 8.3.7, who constitutes that committee?
 20 MR SINCLAIR: That would be a committee,
 21 an IR or HR committee – sorry, an IR or HR committee – let
 22 me just make sure I'm reading it correctly.
 23 MS BALOYI: 8.3.7.
 24 MR SINCLAIR: Ja, "The committee that
 25 will talk to management will be identified and only those

<p style="text-align: right;">Page 34142</p> <p>1 people," that would be under the jurisdiction of the IR and 2 HR management team and it is in this procedure, so that the 3 guidance, because this is a security procedure, that it is 4 a guidance on what would take place. So it's just as an 5 information, it's procedure informing him that a management 6 team will be conducted. We don't specify in there that it 7 would be HR or IR that would do that.</p> <p>8 COMMISSIONER HEMRAJ: IR would be? 9 MR SINCLAIR: Industrial Relations, 10 Ma'am.</p> <p>11 COMMISSIONER HEMRAJ: Thank you. 12 MS BALOYI: Mr Sinclair, is that correct 13 though? 8.3.6 speaks of the management committee that will 14 have in it the manager responsible for mining security and 15 a representative of the employee relations, which is IR, 16 Employee Relations Liaison Officer. Is it correct that 17 8.3.7 refers to the same thing? 18 MR SINCLAIR: No, Mr Chairman, the 19 management committee would be an IR and HR committee of 20 which a security person would be enrolled from them as an 21 advice to them on any of those issues, and that's, that is 22 what 8.3.6 is, it would be an IR/ER liaison officer and 23 whoever else management, the HR and IR would want on that 24 structure. 25 MS BALOYI: Mr Sinclair, it cannot be</p>	<p style="text-align: right;">Page 34144</p> <p>1 sure that I'm understand you. 2 MR SINCLAIR: Yes, Sir. 3 CHAIRPERSON: Perhaps you can help me. 4 You talk about the grieving committee. I take it you're 5 referring to the grievance committee. 6 MR SINCLAIR: Grievance – 7 CHAIRPERSON: That is 8.3 – 8 MR SINCLAIR: The people who would have a 9 problem, yes. 10 CHAIRPERSON: Well, that's why I'm not 11 sure about that. The committee referred to in 8.3.7 – 12 MR SINCLAIR: Yes, Sir? 13 CHAIRPERSON: - would include, would be 14 the so-called strikers, protesters, complainants, whatever 15 one calls them. 16 MR SINCLAIR: Yes. 17 CHAIRPERSON: The employees who've got a 18 complaint which has given rise to the unprotected strike, 19 right? 20 MR SINCLAIR: Yes, Sir. 21 CHAIRPERSON: That's the – 22 MR SINCLAIR: The committee – 23 CHAIRPERSON: The heading is "Unprotected 24 industrial action," so assuming it's an unprotected 25 strike –</p>
<p style="text-align: right;">Page 34143</p> <p>1 right what you're saying because then this paragraph 2 contemplates that Lonmin will be speaking to Lonmin to seek 3 a resolution of a problem. 4 MR SINCLAIR: The management security 5 will be, will identify, that will engage in talks with the 6 grieving committee. The grieving committee would be the, 7 what we are saying in this proceeding, the grieving 8 committee would be whoever had the issue and the, and will 9 be, will include – I see what you are saying that there is 10 a wording wrong. It is the management committee would be 11 engaging with the grieving committee, and I will note that 12 that sentence needs to be corrected in our procedure. 13 MS BALOYI: But you accept my 14 proposition, my suggestion to you that in the way that you 15 read this paragraph it doesn't seem to provide for a 16 discussion or conversation between Lonmin management and 17 the employees who are involved in unprotected action? 18 MR SINCLAIR: The management committee 19 and the grieving committee, it provides management 20 committee and grieving committee. 21 MS BALOYI: Yes. 22 MR SINCLAIR: They are, will be 23 identified, including the security manager or such 24 appointed person from IR. 25 CHAIRPERSON: Sorry, Mr Sinclair, I'm not</p>	<p style="text-align: right;">Page 34145</p> <p>1 MR SINCLAIR: Ja. 2 CHAIRPERSON: - the strikers would be on 3 8.3.7. 4 MR SINCLAIR: Yes, Sir. 5 CHAIRPERSON: And 8.3.8 says their 6 committee should preferably not have more than four people 7 on it. Then you talk at 8.3.6 about the grievance 8 committee that will include the Manager Mining Security and 9 such other appointed person and the ER Liaison Officer. 10 Now I must confess the impression I got when I read this 11 document was two Lonmin committees were being talked about. 12 One is the management committee, and one, a special 13 committee at Lonmin which is designed to deal with 14 grievances on which the ER Liaison Officer and so on would 15 serve. Now if I misread it I'd be grateful if you'd 16 correct me. 17 MR SINCLAIR: Mr Chairman, I think it is 18 put the way you have seen it. It is, it needs to be 19 corrected. The meaning ends up to our security teams so 20 that this says procedure to guide them. The meaning is 21 that there will, the meanings that we intended in this 22 document is that the management, there would be a 23 management committee, there would be a grievance committee, 24 whatever it was. They would come together and there would 25 be a security manager seconded to that committee to assist</p>

<p style="text-align: right;">Page 34146</p> <p>1 in any security issues. That is what it is. I will note 2 there the concerns of the Commission the way it is worded 3 and go and ask somebody to address it. 4 CHAIRPERSON: So you say the grievance 5 committee referred to in 8.3.6 consists in the case of an 6 unprotected strike of strikers. Is that right? 7 MR SINCLAIR: Yes – 8 CHAIRPERSON: And obviously then it can't 9 include the Manager Mining Security or such appointed 10 person and ER Liaison Officer. So 8.3.6 is obviously badly 11 drafted – 12 MR SINCLAIR: Yes. 13 CHAIRPERSON: - and must be redrafted to 14 give effect to the true intention as you've explained it to 15 us. 16 MR SINCLAIR: That is what I'm putting to 17 the Commission, Sir. 18 CHAIRPERSON: It sounds as if Adv Hemraj 19 has already solved the problem for you. 20 MR SINCLAIR: Yes, Sir. 21 CHAIRPERSON: She thinks that those words 22 that will include the manager up to liaison officer – 23 MR SINCLAIR: Yes, Sir. 24 CHAIRPERSON: - should appear after 25 management committee. If you just change the word order it</p>	<p style="text-align: right;">Page 34148</p> <p>1 MR SINCLAIR: That is what this procedure 2 guidance to the security teams is indicating, is that 3 should be the procedure that should be followed. 4 CHAIRPERSON: Yes, in other words that 5 committee, the one of the strikers, that's the one referred 6 to in 8.3.7 – 7 MR SINCLAIR: Yes. 8 CHAIRPERSON: - and 8.3.8. 9 MR SINCLAIR: Yes, Sir. 10 CHAIRPERSON: And also in the correct 11 version of 8.3.6 once it's been corrected. 12 MR SINCLAIR: Yes, Sir. 13 CHAIRPERSON: Ja, okay. 14 MS BALOYI: Now the committee that is 15 contemplated in 8.3.7, was it constituted? Did management 16 request of the strikers to constitute a committee that 17 would speak to management? 18 MR SINCLAIR: I cannot speak for HR and 19 say whether there was a committee constituted. I cannot 20 speak for them. I definitely was not informed of a 21 committee, although this, in this guidance procedure to 22 security it is in there. Whether it was done I cannot 23 speak. I think HR would be able to confirm that. 24 MS BALOYI: Yes, but from the security 25 officials, or from your position there was no such</p>
<p style="text-align: right;">Page 34147</p> <p>1 will probably solve the problem. 2 MR SINCLAIR: I will definitely address 3 this document – it's not the first time there's been a – 4 because we use this for our security people, so I will 5 definitely address it so that there is no confusion. 6 CHAIRPERSON: I think Ms Hemraj has 7 solved the problem for you and presumably you'll get her 8 fee list in the post. 9 MR SINCLAIR: Yes, Sir. 10 MS BALOYI: Thank you, Chair. Now Mr 11 Sinclair, proceeding on the basis that this document 12 contemplates that Lonmin management, a Lonmin management 13 committee or representative would engage in discussion with 14 a committee of the strikers, am I correct that the document 15 contemplates that? 16 MR SINCLAIR: Ma'am, I apologise, I was 17 just making a note of what I had to do. Please could you 18 repeat? 19 MS BALOYI: Yes. I just want to make 20 sure that I understand that this document, this paragraph 21 in particular contemplates that there would be a committee 22 of Lonmin management which will engage in discussion with a 23 committee that represents the strikers? Am I correct that 24 is what is contemplated in paragraph 8.3, or under 25 paragraph 8.3?</p>	<p style="text-align: right;">Page 34149</p> <p>1 committee of people involved with – 2 MR SINCLAIR: From the security position 3 there was definitely none that I am aware of. 4 MS BALOYI: If there was you would have 5 been aware of it? 6 [12:48] MR SINCLAIR: If there was I am very 7 confident that we would have, that security would have been 8 asked to be involved. 9 COMMISSIONER HEMRAJ: The manager of 10 mining security referred to in 8.3.6 would come from your 11 department, I suspect? 12 MR SINCLAIR: Myself or an appointee from 13 me, Mr Chair. 14 COMMISSIONER HEMRAJ: I understand. 15 MS BALOYI: Thank you, Commissioner. Now 16 if we could now look at your statement, exhibit FFFF1 and 17 in para, if you look at paragraph 15 which is the big page 18 93 – yes, that paragraph, that page rather. Paragraph 15 19 and from paragraph 15 to paragraph 17 you set out what you 20 were aware of and you say at paragraph 15, "Since the 21 dismissal of the 9 000 employees at Lonmin's Karee Mine 22 during 2011, unprotected strikes and marches manifested 23 from time to time. Following upon the Impala strike during 24 January 2012 I also noticed incidents of intimidation at 25 Lonmin's Marikana operation, more particularly from about</p>

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1 April 2012 up to the incidents of August 2012." And you go
 2 on to give further descriptions. In paragraph 17 you say,
 3 "I recall that unprotected marches that occurred during the
 4 period leading up to 9 August 2012, this led to discussion
 5 between my seniors and I on the one hand and *1-44 on the
 6 other, information gathering indicated that there was
 7 unhappiness amongst mine employees and there were
 8 indications of intimidation." Now as head of security, as
 9 the head of security in this case, in the light of this
 10 kind of information that you refer to as having, you've
 11 been aware of it over a period of time, what measures did
 12 you take to deal, to address the problem that was
 13 developing?
 14 MR SINCLAIR: The measures that we took,
 15 if we had information of intimidation, we had information
 16 of possible and we had many lots of information coming
 17 through that there was going to be a work disruption and it
 18 would never material – whether it materialised or not, we
 19 had several areas that we would disseminate that
 20 information to assist with dealing with it. One of the
 21 areas would be back to the human resources teams and the IR
 22 teams to say we are sensitised to this or whatever. The
 23 other area would be mine and Henry Blou's communication to
 24 our direct reports and upwards so that they were
 25 sensitised. A third area of this would be via our

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1 communications teams and for instance we had a C5
 2 designated and delegated to attending discussions,
 3 scheduled discussions at the Marikana, Mooinooi and
 4 Bethanie police stations and we would disseminate this
 5 information and say we have this in – whether it was
 6 factual or unfactual, we would disseminate it there. And
 7 those were primarily where we would initially address these
 8 things and pass that information on and have feedback and
 9 interaction between us.
 10 MS BALOYI: Mr Sinclair, I'm more
 11 interested in the actions that you took to prepare for this
 12 situation that you were sensitising others about. You had
 13 information, you sensitised, your job as security, as I
 14 understand this document, this security document is to take
 15 steps to prepare for an eventuality such as you ended up
 16 having with the unprotected strike action. What actions
 17 were taken by Lonmin security?
 18 MR SINCLAIR: On information received and
 19 the actions taken were making sure that the HR were aware
 20 of this information, making sure that our structures were
 21 ready and prepared to elevate if it were, if we were at
 22 that stage that you're talking about, the 8th or the 9th or
 23 prior to – that our structures were prepared for any
 24 indications thought that this could escalate, that we were
 25 prepared to move our security structures from a normal

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1 operational mode into a required orange surveillance mode
 2 or higher, if need be. We would have definitely had those
 3 discussions to say how sensitive is this information,
 4 should we be contemplating moving to an orange mode or a
 5 more serious mode. We have informed HIR, we're waiting for
 6 their feedback. We would have sensitised the actions we
 7 were taking, we would have sensitised the relevant SAPS
 8 police stations. Is that the question you asked me, ma'am?
 9 MS BALOYI: Well, Mr Sinclair, you see
 10 the impression from the incident of the 12th –
 11 MR SINCLAIR: Yes, sir?
 12 MS BALOYI: - the impression is that your
 13 security people were not quite prepared to deal with this
 14 crowd and I think in cross-examination by Ms Pillay one of
 15 the Commissioners raised with you, it may be you or Mr
 16 Botes, that there's a record which indicates that two
 17 security offices had between them one firearm when they
 18 went to confront the attackers, which seems to suggest lack
 19 of preparations. I'm asking the question from that
 20 perspective and in your answer, in your long answer you say
 21 you made sure that your structures were ready and prepared
 22 to deal with this. It's that which I'm enquiring about.
 23 What are the measures of readiness and preparedness that
 24 you took, other than disseminating the information that you
 25 had?

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1 MR SINCLAIR: To deal with specifically
 2 ready and prepared for the 12th –
 3 MS BALOYI: No, not for the 12th, for the
 4 action that culminates from the 10th onwards.
 5 MR SINCLAIR: The actions we took was
 6 when the indications of the first march, excuse me, was
 7 starting and those things would be to activate the – to
 8 activate the information centre, to have out of the day to
 9 day controls specific additional, specific additional
 10 controls of who was placed where, did they have vehicles,
 11 did they have additional manpower that was, they had
 12 manpower that was brought in on overtime or seconded from
 13 other areas and a higher level of command to manage those
 14 people in their various areas. They would have had their
 15 normal equipment that they would have carried on a day to
 16 day basis and that they would carry in these circumstances.
 17 So with the exception of, for instance, the additional
 18 crowd control equipment that we kept, we kept special sets,
 19 spare sets of crowd control equipment that would have been
 20 drawn by the shift supervisor dealing with a particular
 21 area if that was what was required because there was a
 22 possibility of a crowd or those things. And the additional
 23 actions would have been to see, do we have, with the
 24 resources that we are drawing from the other security units
 25 on Lonmin, do we require to bring in additional resources.

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1 Those would have been the actions that we would have
 2 reviewed and, where required, implemented.
 3 COMMISSIONER HEMRAJ: Mr Sinclair, are
 4 you familiar with the events analysis report that's
 5 attached to the ICAM report?
 6 MR SINCLAIR: I –
 7 COMMISSIONER HEMRAJ: The events analysis
 8 and the criticisms that have been raised about so many of
 9 the security officers not being in possession of firearms
 10 and being at critical points in the installation.
 11 MR SINCLAIR: I am aware of that, that
 12 was very – the reason for the ICAM to identify those
 13 shortcomings, Mr Chair.
 14 COMMISSIONER HEMRAJ: So in relation to
 15 Adv Baloyi's question then, what was done in the planning
 16 during this period to ensure that the security officers
 17 were adequately equipped to deal with the situation that
 18 was developing?
 19 MR SINCLAIR: What was done was –
 20 remember this developed into an extraordinary event that we
 21 had never dealt with on that scale previously to the 11th,
 22 12th and 13th. So this was absolutely extraordinary to what
 23 we had confronted, for instance you saw the issue on, the
 24 issue with the previous strikes at Karee and those. So
 25 there we had our equipment and our things to deal with that

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1 level of industrial action that took place. The things
 2 that unfolded after the Saturday morning issue, through the
 3 Saturday night through to the Sunday, were definitely not
 4 what we had been at any time used to or experienced ever
 5 before that. So did we have everything to deal with that
 6 level of, that level of escalation that happened on the
 7 Sunday morning? I don't believe we did have and that was
 8 the shortcomings that are in the ICAM report that needed to
 9 be addressed.
 10 MS BALOYI: Thank you, Chair.
 11 CHAIRPERSON: Ms Baloyi, it's now one
 12 o'clock. I take it you haven't finished?
 13 MS BALOYI: Not gone anywhere, Chair.
 14 CHAIRPERSON: The witness is going to be
 15 excused now on the basis that he'll come back on a date
 16 without having to issue a subpoena against him.
 17 MR SINCLAIR: Yes, sir, I have agreed,
 18 sir.
 19 CHAIRPERSON: On a date to be arranged
 20 between his legal representatives and the evidence leaders.
 21 And so your cross-examination – you'll come back with all
 22 that information you're going to find for us.
 23 MR SINCLAIR: Yes, sir.
 24 CHAIRPERSON: And then you'll have a
 25 chance to continue your cross-examination.

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1 MS BALOYI: Thank you, Chair.
 2 CHAIRPERSON: How much longer do you
 3 think you'll be? I know it's difficult to predict because
 4 it depends on, not on the length of the question but the
 5 length of the answer but can you give us just a rough
 6 estimate?
 7 MS BALOYI: Chair, given my questions I
 8 would have estimated 30 minutes to 45 minutes from the
 9 beginning, starting and finishing but then it also depends
 10 on the answers, the way the answer is –
 11 CHAIRPERSON: Alright, okay. Well, thank
 12 you for that. We will now -
 13 MR SINCLAIR: Mr Chair –
 14 CHAIRPERSON: Yes, Mr Sinclair?
 15 MR SINCLAIR: Mr Chair, sorry, I thought
 16 you were going – just before, may I please be able to
 17 communicate with the evidence leaders just to ensure that I
 18 have the correct list of what is required? I just need,
 19 I've been writing notes, I just want to make sure I haven't
 20 missed. I would like anybody who requires something from
 21 me, please to just make sure that I am correctly
 22 familiarised with that.
 23 CHAIRPERSON: Well, yes, I'm sure – I'll
 24 ask the evidence leaders to depute one of their members to
 25 go through the transcript of today's evidence.

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1 MR SINCLAIR: Yes, sir.
 2 CHAIRPERSON: And make a list of the
 3 things that you were asked.
 4 MR SINCLAIR: Thank you, sir.
 5 CHAIRPERSON: They can give it to your
 6 counsel and they can pass it on to you.
 7 MR SINCLAIR: Thank you, sir.
 8 CHAIRPERSON: On that note, an SMS went
 9 out saying we're starting at nine on Thursday. That's not
 10 correct, it's going to be 9:30. We have asked for a new
 11 SMS correcting that to be sent out but just in case you
 12 people haven't got it, 9:30 Thursday morning we will
 13 resume. The chamber is not available on Monday and
 14 Wednesday and there's another problem in relation to
 15 Tuesday, so I'm sorry we have to lose these three days but
 16 these things happen from time to time but I'm sure a lot of
 17 work will be able to be done of a preparatory nature during
 18 those three days and the days will not in fact be wasted.
 19 We'll now adjourn until Thursday morning 9:30. Mr X is
 20 anticipated to be with us.
 21 [COMMISSION ADJOURNED]
 22 .
 23 .
 24 .
 25 .

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