

RealTime Transcriptions

TRANSCRIPTION OF THE

COMMISSION OF INQUIRY

MARIKANA

BEFORE TRIBUNAL

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

HELD ON

DAY 283

2 SEPTEMBER 2014

PAGES 36453 TO 36662



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1 [PROCEEDINGS ON 2 SEPTEMBER 2014]
 2 [09:21] CHAIRPERSON: The Commission resumes.
 3 You're still under oath, Mr Blou.
 4 MNTUNAYE HENRY BLOU: [s.u.o.]
 5 CHAIRPERSON: Who is going to cross-
 6 examine on behalf of the families?
 7 MS MOTLOENYA: I am, Chair.
 8 CHAIRPERSON: Please commence.
 9 CROSS-EXAMINATION BY MS MOTLOENYA:
 10 Morning, Mr Blou.
 11 MR BLOU: Morning, Ma'am.
 12 MS MOTLOENYA: My name is Tholoana
 13 Motloenya and I represent the families of the three
 14 strikers that were killed on the 13th and 33 of the 34 that
 15 were killed on the 16th.
 16 MR BLOU: Yes, Chairperson.
 17 MS MOTLOENYA: And I will be cross-
 18 examining on their behalf. Mr Blou, if we can start off
 19 with the events of the 11th of August, just to deal with the
 20 Lonmin Security management meeting, if we can just have
 21 exhibit EEEE19 on the screen, please. That's the logbook,
 22 and go to the 11th of August and the entry for 14h00. Ja,
 23 there we go. Now you see there it says "Briefed by HB and
 24 D Botes." I think from the evidence that you've already
 25 given and through the cross-examination we can establish

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1 that HB would be referring to you, Henry Blou?
 2 MR BLOU: Correct, Chairperson.
 3 MS MOTLOENYA: And D Botes would be
 4 referring to Dirk Botes?
 5 MR BLOU: Yes.
 6 MS MOTLOENYA: Now there seems to be a
 7 list of people who were present at the meeting. Can you
 8 just – it lists SAPS, it lists yourself and Dirk Botes and
 9 a person Lebo and Ally.
 10 MR BLOU: Yes, Chairperson.
 11 MS MOTLOENYA: Now you were together with
 12 Mr Botes during this meeting at the – during this briefing?
 13 MR BLOU: That is correct.
 14 MS MOTLOENYA: Okay, and you conducted
 15 the briefing?
 16 MR BLOU: Yes, Chairperson.
 17 MS MOTLOENYA: Now who was – I see that
 18 SAPS was present. Who was representing SAPS at that
 19 meeting?
 20 MR BLOU: Chairperson, Captain Govender
 21 of SAPS was there.
 22 MS MOTLOENYA: Was Captain Govender the
 23 only person representing SAPS?
 24 MR BLOU: Chairperson, that is what I
 25 remember at this stage.

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1 MS MOTLOENYA: Okay, and then Lebo and
 2 Ally, who are they and – first two questions, who was Lebo
 3 and who was Ally?
 4 MR BLOU: Chairperson, Lebo is Lebogang
 5 Runto. Ms Lebogang is a security superintendent working
 6 for Lonmin Platinum.
 7 MS MOTLOENYA: And Ally?
 8 MR BLOU: And then Ally referred to there
 9 would have been Ally Chamberlain. Mr Chamberlain works for
 10 the Emergency and Disaster Management which is adjoined to
 11 Mining Security for Lonmin Platinum.
 12 MS MOTLOENYA: So there was no one that
 13 was representing NUM at that meeting?
 14 MR BLOU: Chairperson, if it, as it
 15 appears there I do not remember seeing them, but I know
 16 there were meetings with NUM. I do not know whether it was
 17 maybe another meeting.
 18 MS MOTLOENYA: Because the difficulty
 19 that I'm having, I'm just trying to clarify is that Mr
 20 Botes testified about this briefing and he testified that
 21 the NUM was present at this meeting, this 14h00 meeting.
 22 MR BLOU: Right.
 23 MS MOTLOENYA: I can just for the record
 24 refer to the transcript references. It's day 265 and it's
 25 page 33344, lines 4 to 17, and day 265, the transcript page

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1 number 33401. So that's why I'm just trying to clarify -
 2 and that would be lines 8 to 17. So that's why I'm just
 3 trying to clarify if anyone from NUM was there –
 4 MR BLOU: That is correct –
 5 MS MOTLOENYA: - that you could recall.
 6 CHAIRPERSON: There's some support for
 7 the suggestion that NUM was there, is to be seen in the
 8 note itself, the entry. It says, having said "Management
 9 will discuss with AMCU to assist," I take it that should be
 10 "with a KPL situation," I take it, or "with the KPL
 11 situation." I'm not quite sure what that entry actually
 12 means. It then goes on, "NUM feels SAPS and mine security
 13 not doing enough." So it does seem as if someone from NUM
 14 may well have been there to express NUM's attitude, which
 15 was that the police and the mine security weren't doing
 16 enough. So would you agree with that?
 17 MR TIP SC: Chair, sorry, may I interrupt
 18 just to put a full picture, if one looks at the entry
 19 immediately above "Management will discuss with AMCU,"
 20 there's the entry "Management had a meeting with NUM to
 21 assist."
 22 CHAIRPERSON: [Microphone off, inaudible]
 23 MR TIP SC: Yes.
 24 CHAIRPERSON: Yes, my microphone wasn't
 25 on. The entry "NUM feels SAPS and mine security is not

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1 doing enough" is ambiguous. I put it tentatively when I
 2 asked the question. It could either mean someone from NUM
 3 was there saying what NUM's attitude was, alternatively it
 4 could be that a report was being made on what NUM had said,
 5 or the NUM representatives had said at the meeting referred
 6 to two lines above. But anyway, let's hear what the
 7 witness has to say about it.

8 MR BLOU: Chairperson, if one looks at
 9 that particular entry from 14h00 it records, 14h00, the
 10 whole of it, and issues that were discussed at that
 11 meeting. So it does appear that NUM was present,
 12 Chairperson.

13 MS MOTLOENYA: Okay, Mr Blou, so the
 14 content of the meeting was this; that "A mob was noted and
 15 information was that they wanted to torch the NUM offices
 16 and Lonmin Combi users. There was somewhat a faction
 17 between two groups, gunshot and two people were injured.
 18 Management had a meeting with NUM to assist defuse the
 19 situation," and then one line down it says, "NUM feels SAPS
 20 and mine security not doing enough." So do you confirm
 21 that that was the content of the meeting?

22 MR BLOU: Yes, Chairperson.

23 MS MOTLOENYA: Now Mr Blou, from what you
 24 said, you said NUM was present, but in any event it also
 25 seems clear that at the debriefing the NUM had already been

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1 informed about the incident of the morning of the 11th. Is
 2 that correct?

3 MR BLOU: Yes, Chairperson.

4 MS MOTLOENYA: And they were also aware
 5 that two people had been injured –

6 MR BLOU: That is correct, Chairperson.

7 MS MOTLOENYA: - in that incident. So
 8 also SAPS was also informed at that meeting, when that
 9 meeting took place, that a confrontation had happened
 10 between two faction groups and that two people were shot
 11 and injured.

12 MR BLOU: Indeed, Chairperson.

13 MS MOTLOENYA: You agree with that?

14 MR BLOU: Yes.

15 MS MOTLOENYA: So by 14h00 on the 11th of
 16 August both NUM and SAPS had been informed about the
 17 confrontation and the fact that two people were shot and
 18 injured on the 11th of August. Is that correct?

19 MR BLOU: That's correct, Chairperson.

20 MS MOTLOENYA: Now Mr Blou, I want us to
 21 move on to another issue, and Chairperson, I don't know if
 22 this would be an opportune moment to add another exhibit.

23 CHAIRPERSON: Shouldn't we do the
 24 housekeeping now, mark all your exhibits –

25 MS MOTLOENYA: We should, Chair. I think

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1 it would be better –

2 CHAIRPERSON: Then we don't have to
 3 interrupt every now and then.

4 MS MOTLOENYA: I think it will be better.

5 CHAIRPERSON: How many exhibits have you
 6 got?

7 MS MOTLOENYA: Three, Chair.

8 CHAIRPERSON: How many?

9 MS MOTLOENYA: Three.

10 CHAIRPERSON: Three.

11 MS MOTLOENYA: Well, it's only – sorry,
 12 Chair, it's actually only two which are new, so it's the
 13 security –

14 CHAIRPERSON: If we wait longer then it
 15 will be only one. So it will be RRRR4 and 5, will it? Is
 16 that right, Ms Pillay?

17 MS MOTLOENYA: So the security –

18 CHAIRPERSON: Let's check, let's get her
 19 permission.

20 MS MOTLOENYA: Okay.

21 CHAIRPERSON: Ms Pillay, is it right?

22 MS PILLAY: That's correct, Chair.

23 CHAIRPERSON: So what is RRRR4?

24 MS MOTLOENYA: It's the security case
 25 book entry number –

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1 CHAIRPERSON: Yes, that was in your list
 2 of documents.

3 MS MOTLOENYA: Yes, Chair.

4 CHAIRPERSON: Case book entry number?

5 MS MOTLOENYA: 55/08 of 2012.

6 CHAIRPERSON: Yes, alright, that's RRRR4.
 7 I've noted that. And what is RRRR5?

8 MS MOTLOENYA: And RRRR5 would be the
 9 amended Mati post mortem report.

10 CHAIRPERSON: That was also in your list
 11 of documents.

12 MS MOTLOENYA: Yes, Chair.

13 CHAIRPERSON: Yes, I've marked that, I've
 14 written those in my book, RRRR5, amended Mati post mortem
 15 report.

16 MS MOTLOENYA: Thank you, Chair. Mr
 17 Blou, if we can just deal with the security case book, if
 18 we can have that put up on the screen. So Mr Blou, it
 19 would be correct that a Lonmin Security case book is opened
 20 whenever an incident of a Lonmin employee dying of
 21 unnatural causes such as murder?

22 MR BLOU: Yes, Chairperson.

23 MS MOTLOENYA: Okay, and this would be an
 24 example of a case book, correct?

25 MR BLOU: That is correct.

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1 MS MOTLOENYA: Now this is a case book
 2 relating to the 13th of August, because I see it says "Date
 3 attending to the complaint." Would that be correct?
 4 MR BLOU: That is correct.
 5 MS MOTLOENYA: And if you look at the
 6 bottom of the first page of this case book you will see
 7 there that it's written the CAS-number, 116/08/2012. You
 8 see that?
 9 MR BLOU: Correct, Chairperson.
 10 MS MOTLOENYA: Now that was the case
 11 docket that was opened in relation to Mr Mati who was
 12 killed on the 13th of August. Do you accept that?
 13 MR BLOU: Yes, Chair.
 14 MS MOTLOENYA: Right. So this Lonmin
 15 case book clearly refers to the case of Mr Mati. Would
 16 that be correct?
 17 MR BLOU: Yes, Chair.
 18 MS MOTLOENYA: Now if we go to point 3.1,
 19 paragraph 3.1, we'll see that the full names there are
 20 recorded for Obed and the surname would be Meku, so that
 21 would be the person who made the statement.
 22 MR BLOU: And in, went out to
 23 investigate, that is correct.
 24 CHAIRPERSON: He's the complainant. His
 25 occupation is given in 3.4 as being investigating officer

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1 and 3.5 indicates that he works for Lonmin.
 2 MS MOTLOENYA: Yes, Chair, and if we go
 3 to page 2 of the report we will see there that Mr Meku
 4 states that he works under the leadership of Mr Henry Blou,
 5 so that would be you.
 6 MR BLOU: Yes, Chair.
 7 MS MOTLOENYA: Okay, and as the Chair
 8 referred, he is an investigator within the Lonmin Security
 9 division, correct?
 10 MR BLOU: That is correct.
 11 MS MOTLOENYA: Yes, now how would an
 12 investigator go about investigating such an incident?
 13 Would they inspect the scene? Would they interview
 14 witnesses? How would they go about investigating such an
 15 incident?
 16 MR BLOU: Yes, they would go and inspect
 17 the scene. They would interview people like witnesses. If
 18 there's a complainant identified they will interview them
 19 and they will always act as subordinate to the SAPS;
 20 whenever it is a SAPS case they will seek for permission in
 21 order to go into that crime scene and the like. They will
 22 collect exhibits and so on.
 23 MS MOTLOENYA: Okay, now we saw that the
 24 CAS-number was recorded on the front page and he would
 25 certainly have interviewed the police who were working on

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1 this matter?
 2 MR BLOU: Yes.
 3 MS MOTLOENYA: Right, so he would have
 4 essentially obtained the version of the police?
 5 MR BLOU: That is correct.
 6 MS MOTLOENYA: Right, now if we look at
 7 paragraph 2 – we have actually seen that, it refers to the
 8 incident of the 13th of August. Now if we look on the first
 9 page, if we look at paragraph 2.1 it says the offence is
 10 murder. You see that?
 11 MR BLOU: I see that, Chairperson.
 12 MS MOTLOENYA: Now if we look at page 2
 13 and paragraph 4 –
 14 CHAIRPERSON: Sorry, the operator is
 15 going a little bit too quickly. I'd like to see the entry
 16 at the foot of the – yes, there it is, 2.5, description of
 17 the offence, "The unknown black male ran towards the Group
 18 5 house and he died as result of gunshots," and somewhere
 19 else it says that the area was the field next to the ZCC
 20 Church, Marikana. So it appears that in that informal
 21 settlement, one of those shacks or houses must be a Zionist
 22 Christian Church building and what's said here is that the
 23 information obviously that the investigator had was he ran
 24 towards a house in that informal settlement and died then
 25 as a result of gunshots. So that's all I wanted to see,

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1 sorry. I haven't got the document in front of me, you see.
 2 We can now go on to the page that you want to refer to.
 3 MS MOTLOENYA: Yes, if we go to page 2
 4 and paragraph 4, I'm just trying to find the right
 5 paragraph. In the seventh line it reads "The unknown black
 6 male ran towards Group 5 house and fell down and he was
 7 bleeding" –
 8 CHAIRPERSON: "As he was bleeding."
 9 MS MOTLOENYA: - "as he was bleeding."
 10 CHAIRPERSON: "The deceased was one of
 11 the people who are on strike. It is believed that the
 12 deceased is one of the" – it looks like suspects – "who
 13 killed the SAPS policemen, that's why he was shot and he
 14 tried to run away with R5 rifle, which is still missing.
 15 No arrest made."
 16 MS MOTLOENYA: Thank you, Chair. Now my
 17 emphasis of what the Chair had just read was that it said
 18 the suspect who – it says, "It is believed that the
 19 deceased was one of the suspects who killed the SAPS
 20 policemen, that's why he was shot and he tried to run away
 21 with the R5 rifle." You see that on the second –
 22 MR BLOU: I see that, Chairperson, yes.
 23 MS MOTLOENYA: Now from this we can
 24 conclude that Mr Meku recorded here that he was shot by the
 25 police officers, correct?

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1 MR BLOU: Correct, that's what I note.
 2 MS MOTLOENYA: Okay, and surely this
 3 information would have come from the police officers who
 4 were involved at the scene, correct?
 5 MR BLOU: I could imagine so, yes, Chair.
 6 MS MOTLOENYA: Then on the next page,
 7 which is page 3, it says, "The victim was found bleeding
 8 from both legs next to the house at Group 5. He died as a
 9 result of gunshot." You see that?
 10 MR BLOU: I see that, Chair.
 11 MS MOTLOENYA: So the conclusion of the
 12 Lonmin investigation into Mr Mati's death is that Mr Mati
 13 died from gunshot wounds, correct?
 14 MR BLOU: I see that, yes, Chair.
 15 MS MOTLOENYA: Now this conclusion is
 16 also supported and substantiated by the post mortem report,
 17 and Chair, that would be RRRR5, if we can turn to the post
 18 mortem report.
 19 COMMISSIONER HEMRAJ: Have we been
 20 furnished with a copy of the PM report? I know Mr Wesley
 21 put it on record, or sorry, Mr Chaskalson put it on record
 22 that the cause of death was now gunshot wound, but we
 23 haven't seen that report as yet.
 24 MS MOTLOENYA: My instructions are that
 25 it was actually given to you, Commissioners, beforehand,

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1 last week.
 2 CHAIRPERSON: [Microphone off, inaudible]
 3 MS MOTLOENYA: It was actually furnished
 4 to you.
 5 CHAIRPERSON: [Microphone off, inaudible]
 6 I must confess I think I have seen it. The contents are
 7 not new to me, and we'd obviously been given a copy of –
 8 no, we found it, we have it. What led to the confusion is
 9 it's not headed PM report, it's actually headed
 10 "Commentary," and in fact it appears to be a report by Dr
 11 Naidoo –
 12 MS MOTLOENYA: Yes, Chair.
 13 CHAIRPERSON: - commenting on the autopsy
 14 photographs and the post mortem report. It's not actually
 15 a post mortem report, it's as it were a supplementary
 16 report on what's seen at the post mortem and is visible
 17 from the photographs.
 18 MS MOTLOENYA: Yes, Chair.
 19 CHAIRPERSON: Anyway, it's all been
 20 sorted out, so we can carry on.
 21 MS MOTLOENYA: Thank you. I just wanted
 22 us to go to page 2 of the commentary there and at paragraph
 23 9, which relates to the conclusions. For our purposes I
 24 just wanted us to deal with the conclusions and Mr Naidoo
 25 records here, he says, "The features are in my opinion

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1 confidently that of a gunshot wound through the thigh and
 2 not a stab wound." Under B he says, "The photographs alone
 3 do not allow for a confident distinction between entry and
 4 exit wounds." You see that?
 5 MR BLOU: I see that, Chairperson.
 6 MS MOTLOENYA: Thank you. On that point
 7 that's all that I needed your assistance with, Mr Blou.
 8 And then just on another point, if we can turn to your
 9 statement dated the 3rd of July, that is exhibit RRRR1.3.
 10 [09:41] Can we have quadruple R, thank you. RRRR1.3 and
 11 if we can turn to paragraph 40 and if we can just start
 12 with the second sentence where you say, "Suddenly a group
 13 from the crowd attacked two police officers. I witnessed
 14 both attacks from a distance and saw how one of the police
 15 officers was hacked to death. The police officers then
 16 opened fire with what I believed was teargas and stun
 17 grenades. I do not know if they used other live
 18 ammunition. As the crowd dispersed I noticed a dead police
 19 officer and a dead protester." Now Mr Blou, I'd like to
 20 refer you to exhibit TTT4.
 21 MR BLOU: Chairperson, may I just ask
 22 please?
 23 MS MOTLOENYA: Yes.
 24 MR BLOU: I heard that I do not know if
 25 they used other live ammunition but I read there, "I do not

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1 know if they used other ammunition."
 2 MS MOTLOENYA: Yes, that's correct.
 3 MR BLOU: Ja, I just heard the word
 4 "live" being put in there when I do not see it.
 5 MS MOTLOENYA: Okay.
 6 MR BLOU: Okay.
 7 MS MOTLOENYA: It might be my fault. And
 8 then if we can start at 6:13.
 9 CHAIRPERSON: Sorry, before we look at
 10 that can I just ask a question flowing from the previous
 11 exchange? Paragraph 40 of the statement you referred to
 12 concludes by saying this, which is the middle of the
 13 paragraph, "As the crowd dispersed I noticed a dead police
 14 officer and a dead protester."
 15 MR BLOU: Yes.
 16 CHAIRPERSON: "Another police officer was
 17 injured and airlifted to hospital," and then you go on
 18 about that. Now, so you saw effectively two dead people as
 19 the crowd dispersed.
 20 MR BLOU: That's –
 21 CHAIRPERSON: One was the policeman, I
 22 think it was Monene if my memory serves me correctly and he
 23 was, a spot was pointed out to us in inspection, it's in
 24 the field as it were.
 25 MR BLOU: Correct, Chairperson.

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1 CHAIRPERSON: Now, the second deceased
 2 person you saw whom you described as a dead protester –
 3 MR BLOU: Yes.
 4 CHAIRPERSON: - was that the body of Mr
 5 Mati who was found in front of a shack in that settlement
 6 which I see is described as the Group 5 settlement, is that
 7 the other body you saw or did you see a body somewhere in
 8 the field?
 9 MR BLOU: I also saw a body somewhere in
 10 the field, Chairperson, not in the informal settlement.
 11 CHAIRPERSON: I see. So in other words
 12 the dead protester you're talking about is not Mr Mati.
 13 MR BLOU: He's not –
 14 CHAIRPERSON: Mr Mati's body was
 15 apparently, you remember we – I don't know if you were at
 16 the inspection that we did twice, Mr Mati's body was found
 17 in front of one of the houses.
 18 MR BLOU: Yes.
 19 CHAIRPERSON: In that little settlement.
 20 Is that settlement known as Group 5?
 21 MR BLOU: It's known as Group 5.
 22 CHAIRPERSON: Is that where contract
 23 labourers who work for Group 5 who are in turn
 24 subcontractors for Lonmin are housed?
 25 MR BLOU: And some for Lonmin, yes, they

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1 are housed there.
 2 CHAIRPERSON: I see, thank you.
 3 MR BLOU: Yes, Chairperson.
 4 CHAIRPERSON: Sorry to have interrupted
 5 you but I wanted clarity on that before you move on to the
 6 next point.
 7 MS MOTLOENYA: Thank you, Chair. If we
 8 can start at 6:13 and play it until 6:51.
 9 [VIDEO IS SHOWN]
 10 MS MOTLOENYA: Sorry, this is not the
 11 correct one. I need Volume VTF_01_2.
 12 CHAIRPERSON: It looks like the scene
 13 near the railway. Where do you want to start?
 14 MS MOTLOENYA: If we can start at –
 15 CHAIRPERSON: 6:13, well, we've got 6 –
 16 MS MOTLOENYA: 6:13, yes, up to 6:50.
 17 [VIDEO IS SHOWN]
 18 MS MOTLOENYA: Thank you, you can stop it
 19 there. Now Mr Blou, just to deal with your statement, from
 20 this video that we've just played you saw that the strikers
 21 were walking along in the field until the stun grenades was
 22 thrown by the police and then it was then that the
 23 confrontation happened between the strikers and the police.
 24 MR BLOU: Yes, Chairperson.
 25 MS MOTLOENYA: Whereas, and in the video

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1 as well we saw Major-General Mpmembe who was the operational
 2 commander of the operation on the 13th, who conceded that
 3 that's the sequence of events.
 4 MR BLOU: Yes.
 5 MS MOTLOENYA: That was the stun grenades
 6 and the teargas and then the confrontation happened
 7 afterwards.
 8 MR BLOU: That is correct.
 9 CHAIRPERSON: That's what Colonel Vermaak
 10 said as well.
 11 MS MOTLOENYA: Yes, that's correct,
 12 Chair. So whereas in your statement your sequence of
 13 events was the other way around where you said that the
 14 strikers attacked and then the police officers opened fire
 15 with the teargas and stun grenades. So do you see that you
 16 were incorrect in your sequence of events as recorded in
 17 the statement?
 18 MR BLOU: Chairperson, can I just look at
 19 –
 20 MS MOTLOENYA: At paragraph 40.
 21 CHAIRPERSON: While you're looking at
 22 that let's get everything in perspective. I understand you
 23 weren't keen to be close to the scene of the action at the
 24 time, is that right?
 25 MR BLOU: Correct.

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1 CHAIRPERSON: You in fact didn't, it was
 2 a police operation and you were there simply because you'd
 3 shown them where to go.
 4 MR BLOU: Exactly.
 5 CHAIRPERSON: And you, when these events
 6 happened I think you told us before that you were inside a
 7 vehicle, is that right? Was it a Nyala?
 8 MR BLOU: In a Nyala, in the armoured
 9 vehicle –
 10 CHAIRPERSON: Where was that Nyala,
 11 because there were quite a number of Nyalas on the scene.
 12 MR BLOU: Yes.
 13 CHAIRPERSON: The Nyala in which you
 14 were, where was that?
 15 MR BLOU: It was quite a distance more
 16 towards the railway line as you turned off into the dirt
 17 road towards the informal settlement.
 18 CHAIRPERSON: The way it worked, there
 19 was a road, as I remember it, parallel with the railway
 20 line and then at one point there was another gravel road
 21 which was –
 22 MR BLOU: Perpendicular.
 23 CHAIRPERSON: No, vertical really.
 24 MR BLOU: So, so –
 25 CHAIRPERSON: To the road parallel with

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1 the railway line.

2 MR BLOU: Yes.

3 CHAIRPERSON: And that ran along the side

4 of part of the informal settlement.

5 MR BLOU: That is correct.

6 CHAIRPERSON: And General Mpembe was

7 afraid that there might be difficulty there so he ordered,

8 as the strikers moved off towards the koppie –

9 MR BLOU: Yes.

10 CHAIRPERSON: - he ordered the Nyalas to

11 go along that road to make sure that no-one deviated into

12 the settlement and caused trouble.

13 MR BLOU: That is correct.

14 CHAIRPERSON: That's right?

15 MR BLOU: Yes, Chair.

16 CHAIRPERSON: And so at the time of the

17 action, as you've described –

18 MR BLOU: Yes.

19 CHAIRPERSON: - you were in a Nyala which

20 hadn't moved down that road next to the settlement, you

21 were in a Nyala still near the railway line, is that

22 correct?

23 MR BLOU: It had just turned from the

24 railway line onto that road.

25 CHAIRPERSON: Ja, but it was effectively

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1 still close the railway line.

2 MR BLOU: That is correct, yes.

3 CHAIRPERSON: So you were quite far from

4 what one can call the action?

5 MR BLOU: Indeed.

6 CHAIRPERSON: So your opportunity to

7 observe what was happening was very limited.

8 MR BLOU: It was, Chairperson.

9 CHAIRPERSON: Right. Now, Captain

10 Moolman was also there.

11 MR BLOU: Inside in the Nyala.

12 CHAIRPERSON: Was she in the same vehicle

13 with you?

14 MR BLOU: Yes.

15 CHAIRPERSON: I see. So both – and she

16 had actually, according to the evidence we have, or I'm not

17 sure, the evidence or the information we have, there was an

18 objection to her presence and so she went away from the

19 scene, as it were, and went into the Nyala. Is that right?

20 MR BLOU: That's correct.

21 CHAIRPERSON: So she was trying to be

22 away from the action and you were effectively with her.

23 MR BLOU: Exactly.

24 CHAIRPERSON: So you were not really in a

25 good position to tell us what happened then, are you?

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1 MR BLOU: In correct sequence I'm not,

2 Chairperson, no.

3 CHAIRPERSON: And so do you accept what's

4 being put to you, that your chronology of what came first

5 and what came second is incorrect in the light of what

6 we've seen and what General Mpembe conceded.

7 MR BLOU: I accept.

8 CHAIRPERSON: And Colonel Vermaak said?

9 MR BLOU: I accept, Chairperson.

10 CHAIRPERSON: So it's not true to say

11 that suddenly a group from the crowd attacked two police

12 officers and thereafter the police opened fire with teargas

13 and stun grenades, the sequence is the other way around.

14 MR BLOU: I accept, Chairperson.

15 CHAIRPERSON: Alright, thanks.

16 MS MOTLOENYA: Thank you, Chair. Chair,

17 I see that Mr Wesley is indicating that our time is up.

18 Chair, if we can just have a two minute adjournment so I

19 can approach you and the other Commissioners, there is some

20 point that if we can raise with Mr Blou then we wouldn't

21 need to cross-examine –

22 CHAIRPERSON: It's a point that you –

23 MS MOTLOENYA: It's a small point.

24 CHAIRPERSON: Yes, it's a point that you

25 don't want to disclose in front of Mr Blou?

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1 MS MOTLOENYA: Yes, Chair.

2 CHAIRPERSON: I see.

3 MS MOTLOENYA: We want to cross-examine

4 Mr Blou on, sir, if we are allowed to.

5 CHAIRPERSON: Yes, you and your colleague

6 did tell me that you'd hoped to be able to possibly

7 lengthen your cross-examination of this witness beyond the

8 allotted time but the trade-off would be that –

9 MS MOTLOENYA: We can carry on, Chair.

10 CHAIRPERSON: - shorten your cross-

11 examination of Mr Sinclair.

12 MS MOTLOENYA: Yes.

13 CHAIRPERSON: But is it something that

14 you can tell us in open chamber or –

15 MS MOTLOENYA: No, we can carry on. It's

16 already an exhibit so if we can just put it –

17 CHAIRPERSON: Well, at the cost of taking

18 two minutes off your cross-examination time with Mr

19 Sinclair, I'll allow you to ask the question.

20 MS MOTLOENYA: Thank you, Chair. Can we

21 have exhibit W2 please, on the screen? It's a new

22 screenshot from exhibit W2.

23 CHAIRPERSON: It's already an exhibit, is

24 it, what we're now going to see? Yes.

25 MS MOTLOENYA: Yes, Chair.

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1 CHAIRPERSON: Okay. W2, I see.
 2 MS MOTLOENYA: So Chair, the video is an
 3 exhibit but this is a screenshot of the video so I think
 4 this we might have to make an exhibit.
 5 CHAIRPERSON: I see. Well, let's make
 6 this an exhibit. Is this the exhibit that you were
 7 thinking of using and decided to withdraw? Let's allow you
 8 to reverse that decision. RRRR6 is a screenshot of exhibit
 9 W2 at 01:17.
 10 MS MOTLOENYA: Mr Blou, that vehicle
 11 there, I just want you to – with the light on top, I just
 12 want you to confirm for me whether that's a Lonmin security
 13 vehicle?
 14 CHAIRPERSON: Which vehicle? There are
 15 two vehicles on that –
 16 MS MOTLOENYA: On the right of the screen
 17 just by where the three gentlemen are standing.
 18 CHAIRPERSON: The one which has the lower
 19 portion which is yellow.
 20 MS MOTLOENYA: Indeed, Chair, and a light
 21 on top.
 22 MR BLOU: Yes.
 23 MS MOTLOENYA: That's a Lonmin security
 24 vehicle.
 25 MR BLOU: No, it is not.

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1 MS MOTLOENYA: It is not a Lonmin –
 2 MR BLOU: It's a Lonmin rescue vehicle,
 3 Chairperson.
 4 CHAIRPERSON: Lonmin what vehicle?
 5 MR BLOU: Rescue.
 6 CHAIRPERSON: Rescue?
 7 MR BLOU: Yes.
 8 MS MOTLOENYA: So it belongs to Lonmin,
 9 it's one of the Lonmin ones?
 10 CHAIRPERSON: He's conceded that.
 11 MR BLOU: Yes, yes.
 12 MS MOTLOENYA: And then do the security
 13 officials ever use that vehicle?
 14 MR BLOU: No, Chairperson, no. It's used
 15 by rescue people.
 16 MS MOTLOENYA: Okay.
 17 MR BLOU: Yes.
 18 MS MOTLOENYA: Thank you, Chair. That
 19 concludes -
 20 CHAIRPERSON: That's your two minute
 21 point.
 22 MS MOTLOENYA: That is my two minute
 23 point, Chair.
 24 CHAIRPERSON: Mr Wesley, you'll take the
 25 two minutes off their Sinclair time. That's the end of

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1 your cross-examination?
 2 MS MOTLOENYA: That concludes our cross-
 3 examination questions, thank you, Chair.
 4 CHAIRPERSON: Right. I think there's no
 5 other cross-examiner, is there, so re-examination, Mr Van
 6 As?
 7 MR VAN AS: Mr Wesley reserved his right
 8 to ask questions.
 9 CHAIRPERSON: Oh, you're quite right.
 10 Your memory is better than mind. Mr Wesley, do you want to
 11 exercise your right?
 12 RE-EXAMINATION BY MR WESLEY: Chair, yes,
 13 it's just one very, very small aspect. Could we have
 14 EEEE19 up please, Craig? Could we go to the 12th of August
 15 at 7H40. Mr Blou, if you could just confirm something for
 16 me. You see there that there is an inscription that's
 17 under 7:32, there's five lines below, at the meeting 7:40
 18 what's recorded is, "Tony – Murray and Roberts," do you see
 19 that?
 20 MR BLOU: Yes, Chairperson.
 21 MR WESLEY: And then if you go down you
 22 see the sixth line from the bottom next to 7H40 the
 23 following is recorded, "Tony reports all in order and
 24 communiqué sent out through HC to sensitise workers on the
 25 strike situation." Do you see that?

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1 MR BLOU: I see that, Chairperson.
 2 MR WESLEY: Tony, do you know what his
 3 surname is?
 4 MR BLOU: I don't know now, no, sir.
 5 MR WESLEY: Okay but you confirm that
 6 report there that Tony would have made that he was going,
 7 the communiqué was going to be sent out through HC to
 8 sensitise workers.
 9 MR BLOU: Indeed, Chairperson.
 10 MR WESLEY: Do you recall that happening?
 11 MR BLOU: I don't recall it happening. I
 12 know he was from Murray and Roberts, Chair.
 13 CHAIRPERSON: Who is HC?
 14 MR BLOU: Human capital.
 15 CHAIRPERSON: Oh, I see.
 16 MR BLOU: It's human resources.
 17 CHAIRPERSON: It's a department.
 18 MR BLOU: Yes.
 19 CHAIRPERSON: Now Murray and Roberts were
 20 the contractors at K4, were they?
 21 MR BLOU: That is correct.
 22 CHAIRPERSON: So what, Tony, the semi-
 23 anonymous Tony was doing was, he was going to, a communiqué
 24 was going to be sent out to human capital to sensitise
 25 workers, is that the workers at K4.

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1 MR BLOU: That is correct.
 2 CHAIRPERSON: Including Mr Mabebe.
 3 MR BLOU: That is workers at K4 for
 4 Murray and Roberts, yes.
 5 CHAIRPERSON: On the strike situation.
 6 MR BLOU: Yes.
 7 CHAIRPERSON: Now what exactly was this
 8 communiqué going to say? Did you ever see the communiqué,
 9 do you know what it was?
 10 MR BLOU: No, I never saw it,
 11 Chairperson, but we were discussing the situation and we
 12 wanted to get as many people involved as possible so they
 13 can sensitise their people in return.
 14 CHAIRPERSON: What does sensitise mean?
 15 Do you mean bring them up to speed to know what's going on?
 16 MR BLOU: Inform yes, yes, Chair.
 17 CHAIRPERSON: To inform, it's a
 18 malapropism for reform, I take it.
 19 MR BLOU: Yes, yes, Chair.
 20 COMMISSIONER HEMRAJ: So at that stage it
 21 was foreseen that K4 shaft might be a trouble spot.
 22 MR BLOU: Probably, Commissioner, or even
 23 just to ensure that we leave nobody out, that they are not
 24 knowing about the situation.
 25 CHAIRPERSON: No, you wouldn't sensitise

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1 people and alarm them unnecessarily, would you, so - you
 2 use the word "sensitise," which I don't think is right, but
 3 anyway.
 4 MR BLOU: Yes.
 5 CHAIRPERSON: You wouldn't do that
 6 unnecessarily to alarm them, so there must have been, as
 7 Adv Hemraj puts to you, there must have been foresight that
 8 there might be trouble at K4. It follows, doesn't it?
 9 MR BLOU: Maybe, Chairperson.
 10 CHAIRPERSON: Sorry?
 11 MR BLOU: I think –
 12 CHAIRPERSON: Maybe.
 13 MR BLOU: Ja.
 14 CHAIRPERSON: We're talking about a
 15 foresight of something as a possibility, right?
 16 MR BLOU: Yes.
 17 CHAIRPERSON: And it looks as if there
 18 was, it was foreseen that there might be trouble at K4,
 19 hence the need to inform the workers as to what was going
 20 on, or might happen, is that right?
 21 MR BLOU: I don't –
 22 CHAIRPERSON: Or am I misreading it?
 23 MR BLOU: - think so, Chairperson. I
 24 don't think so.
 25 CHAIRPERSON: What does it mean then?

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1 MR BLOU: We wanted to inform everybody
 2 at every shaft that the situation is, there's a strike
 3 situation and then we wanted to inform all contractors
 4 working for Lonmin platinum.
 5 CHAIRPERSON: Why?
 6 MR BLOU: We wanted them to know from us
 7 as security and emergency disaster management.
 8 COMMISSIONER HEMRAJ: Well, there are
 9 other references to incidents pertaining to K4.
 10 MR BLOU: Yes, Chair.
 11 COMMISSIONER HEMRAJ: On this.
 12 MR BLOU: Yes.
 13 COMMISSIONER HEMRAJ: So you can hardly
 14 say that it was not foreseen that it might be a trouble
 15 spot because there's mention in this exhibit of a march
 16 towards K4.
 17 MR BLOU: Yes.
 18 COMMISSIONER HEMRAJ: Do you want to
 19 reconsider your answer in the light of that?
 20 MR BLOU: Commissioner, what I remember
 21 at that stage, at those meetings, our strategy has always
 22 been, before this strike, post this strike, that everybody
 23 should be informed. That is why we had a representative
 24 from that shaft.
 25 COMMISSIONER HEMRAJ: Informed to be

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1 careful that there might be trouble?
 2 MR BLOU: Alert and careful that there
 3 might be trouble, yes.
 4 COMMISSIONER HEMRAJ: And therefore steps
 5 needed to be taken to protect those points.
 6 MR BLOU: Yes.
 7 CHAIRPERSON: It's actually simpler than
 8 that, isn't it? The fact is that the RDOs wanted to stop
 9 production.
 10 MR BLOU: Yes.
 11 CHAIRPERSON: They didn't want any work
 12 done.
 13 MR BLOU: Yes.
 14 CHAIRPERSON: They wanted a total strike,
 15 isn't that right?
 16 MR BLOU: Correct.
 17 CHAIRPERSON: There was no reason to
 18 believe that they had a selective approach, that they only
 19 wanted to strike at some shafts and not others, is that
 20 right?
 21 MR BLOU: That's right, Chairperson.
 22 CHAIRPERSON: So therefore the logic of
 23 the situation is that one would expect that they would also
 24 want a strike at K4?
 25 MR BLOU: Yes, Chairperson.

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1 CHAIRPERSON: And if they wanted a strike
 2 at K4, the probability was – not just the possibility - the
 3 probability was that they would do something about it to
 4 make sure that there was a strike at K4.
 5 MR BLOU: Yes.
 6 CHAIRPERSON: Is that right?
 7 MR BLOU: Yes, Chair.
 8 CHAIRPERSON: I mean it's as simple as
 9 that, isn't it? And if those were the facts that were not
 10 known afterwards but known at the time, then it must have
 11 been apparent that there might well be trouble at K4 and
 12 something has got to be done about it to prevent it and to
 13 protect the people who were there, isn't that correct?
 14 MR BLOU: That's correct, Chairperson.
 15 CHAIRPERSON: Thank you. Sorry, Mr
 16 Wesley –
 17 MR WESLEY: Thank you, Chair.
 18 CHAIRPERSON: I interrupted you.
 19 MR WESLEY: No, that's covered everything
 20 which I wanted –
 21 CHAIRPERSON: I am sorry if I stole your
 22 thunder.
 23 MR WESLEY: No problem, Chair.
 24 CHAIRPERSON: Alright re-examination, Mr
 25 Van As.

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1 [10:01] RE-EXAMINATION BY MR VAN AS: Mr Blou
 2 before the attack on Lonmin security on Sunday the 12th of
 3 August 2012 had you received any reports of the strikers
 4 attacking or threatening to attack Lonmin Security?
 5 MR BLOU: Chairperson, no.
 6 MR VAN AS: Had you received reports
 7 about the strikers intimidating and threatening non-
 8 striking workers?
 9 MR BLOU: Chairperson, yes on the Friday
 10 evening the 10th, intimidation yes.
 11 MR VAN AS: You also –
 12 CHAIRPERSON: Are you moving onto another
 13 point?
 14 MR VAN AS: I am, thank you, Mr –
 15 CHAIRPERSON: I was going to ask this
 16 later, but I suppose in fairness to you I should ask it now
 17 so that you can deal with it. There's something that
 18 puzzles me about your statement and I must put it to you.
 19 In your statement of the 17th October 2012 which is the once
 20 closes to the events you said this in paragraph 23. Under
 21 the heading Saturday the 11th of August "On Saturday 11
 22 August 2012 I reported for duty at 7:30" and you go on to
 23 say how you went to the EDM to brief your colleagues and
 24 you say "I received reports of concern that were raised by
 25 Midbank bus service which provide internal bus services at

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1 the Lonmin mine about the security of their buses and bus
 2 drivers." We now come to a sentence which interests me.
 3 "We had advised Midbank bus services that the situation
 4 would be monitored and also that there were no reported
 5 incidents from the previous night." That's the end of the
 6 quotation. Now one of the points that interests us and
 7 it's obviously important for our investigations, is whether
 8 there was intimidation on the Friday night, Saturday
 9 morning and I think you've said there was and there's some
 10 evidence about it. But that being so I don't understand
 11 what the statement "There were no reported incidents from
 12 the previous night" means in a context where it's Lonmin's
 13 case that there was intimidation. Now was there or wasn't
 14 there? Were there reported incidents the previous night or
 15 weren't there, what's going on?
 16 MR BLOU: Chairperson, this has reference
 17 to the buses. Prior to this event we had had buses being
 18 burnt and we had had drivers being intimidated. So we
 19 advised them here that there were no incidents towards them
 20 at Midbank.
 21 CHAIRPERSON: So it's incomplete, the
 22 statement. It should say there were no reported incidents
 23 involving the buses and bus drivers for the previous night.
 24 Is that your explanation?
 25 MR BLOU: Yes.

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1 CHAIRPERSON: I see thank you.
 2 Commissioner Hemraj, wants to ask a question, we think in
 3 fairness to you, Mr Van As, we should ask it now so you can
 4 deal with it if you want to in the rest of your re-
 5 examination.
 6 MR VAN AS: Thank you, Mr Chairperson.
 7 COMMISSIONER HEMRAJ: Mr Blou, this is
 8 the ICAM file, it's exhibit RRRR2.4 The Wonderkop Hostel
 9 Incident. Page 2 of that, do you have it in front of you?
 10 The second column from the left, dated 11 August 2012, the
 11 Saturday which reads "A call was made to the shaft mine
 12 overseer of KR shaft by a Lonmin employee", below that, "To
 13 inform him on an attack that will be carried out on K4
 14 shaft on Sunday night. The employees were informed about
 15 the attack by people planning the attack." What does that
 16 refer to and what information do you have about that?
 17 MR BLOU: Commissioner, for me it refers
 18 to an employee telephoning into K4 shaft and forewarning
 19 them that there's a planned attack. However, personally I
 20 was not aware of a planned attack at K4 shaft before it
 21 occurred.
 22 CHAIRPERSON: But somebody was then
 23 because the person to whom this report was made knew about
 24 it.
 25 MR BLOU: Yes.

<p style="text-align: right;">Page 36489</p> <p>1 CHAIRPERSON: And obviously the purpose 2 of informing that person was so that something could be 3 done about. 4 MR BLOU: Correct. 5 CHAIRPERSON: And nothing was done about 6 it. 7 MR BLOU: Correct. Chairperson, the 8 question we must – not the question, we should find out 9 whether that person then alerted the security people, the 10 executives and the like. 11 CHAIRPERSON: The section above the 12 paragraph that was read reads “A call was made to the shaft 13 mine overseer of K4 shaft.” 14 MR BLOU: Correct. 15 CHAIRPERSON: All right and the ICAM 16 people picked it up obviously, that was investigated. 17 MR BLOU: Yes. 18 CHAIRPERSON: And then lower down it says 19 “The employee had a good relationship with the mine 20 overseer as they worked together previously.” 21 MR BLOU: Yes. 22 CHAIRPERSON: Then in the next column – 23 could we perhaps have that lowered a little bit so we can 24 see that? Thank you. It goes on to say “The mine overseer 25 confirmed with the employee that he informed security about</p>	<p style="text-align: right;">Page 36491</p> <p>1 under cover I know exactly about that. As to the security 2 persons that were informed beforehand, I do not know about 3 that, Chairperson. It is a serious breach of security for 4 whoever in security was informed and later there was that 5 attack. 6 CHAIRPERSON: Was that investigated? I 7 mean this is not something that you heard about for the 8 first time. The ICAM people were onto it, so this, what 9 you concede to be a serious breach of security do you know 10 whether that was investigated? 11 MR BLOU: I don't know, Chairperson. 12 CHAIRPERSON: If it had been investigated 13 would it not have been communicated to you as the head of 14 security that there was this serious breach that had been 15 investigated? They wouldn't have done it behind your back 16 and not told you would they? 17 MR BLOU: I'm afraid it wasn't done, 18 Chairperson. It should have been done. 19 CHAIRPERSON: Those you've got two 20 serious matters now. The first is a breach of security, a 21 serious breach which actually can almost be related to the 22 death of Mr Mabebe and then another serious omission, the 23 failure to follow up when the ICAM people discovered these 24 facts which are set out here. 25 MR BLOU: Yes.</p>
<p style="text-align: right;">Page 36490</p> <p>1 the planned attack, to alert security in time about the 2 planned attack, for security to be prepared for the 3 possible attack.” And then the next column says, 4 presumably this is where the information comes from “A 5 security employee” that's one of your people I take it, 6 “went under cover and attended the gathering of people in 7 the open field next to Wonderkop stadium.” 8 MR BLOU: Yes. 9 CHAIRPERSON: To get intelligence of what 10 was happening. The security did not know what was 11 happening. The security had a lack of intelligence in the 12 field. 13 MR BLOU: Yes. 14 CHAIRPERSON: Now what does all that 15 mean? This relates to the security department to 16 information being conveyed to them in order, as it is put, 17 for security to be prepared for the possibility of attack. 18 You can see that nothing was done to ward off the attack. 19 So it looks like a serious breach of security. A failure 20 to react to information which prima facie appears to have 21 been reliable or certainly reliable enough to be taken 22 seriously. Would you agree with that? 23 MR BLOU: 100%, Chairperson. 24 CHAIRPERSON: So what's your explanation? 25 MR BLOU: The security employee that went</p>	<p style="text-align: right;">Page 36492</p> <p>1 CHAIRPERSON: And you don't know why that 2 wasn't followed up either. 3 MR BLOU: I do not know, Chairperson. 4 CHAIRPERSON: Wasn't it your 5 responsibility as head of security when it was brought to 6 your attention to ensure that the matter was fully 7 investigated, or was that the responsibility of somebody 8 else? 9 MR BLOU: I only saw the ICAM report in 10 2014, Chairperson. 11 CHAIRPERSON: Had the trail gone cold by 12 then, was it too late to investigate? 13 MR BLOU: Chairperson, when the ICAM was 14 conducted I wasn't aware about the contents of what was 15 happening. I was aware that there was an ICAM, but that 16 never was brought under my attention. 17 CHAIRPERSON: To whose attention would 18 the results of the ICAM investigation have been brought? 19 MR BLOU: It would have been brought to 20 the attention of Mr Graham Sinclair and Mr Frank Russo- 21 Bello. 22 CHAIRPERSON: I see. Well Mr Sinclair is 23 coming next perhaps someone may make a note and ask him 24 about it. This ICAM report is full of things that I want 25 to put to you. The next column goes on about – well let's</p>

<p style="text-align: right;">Page 36493</p> <p>1 start with the column beginning where security employee 2 went under cover. That reads "A security employee went 3 undercover, attended the gathering of people in the open 4 field next to the Wonderkop stadium to get intelligence on 5 what was happening. The security didn't know what was 6 happening. The security had a lack of intelligence in the 7 field. The leaders of the mass of people requested that 8 the sangoma that helped Impala employees assist the mass 9 gathering. To let the people attending do a ritual to be 10 fearless. They believed that the bullets fired at them 11 will turn into water and firearms would not be able to 12 shoot bullets. The mass wanted to retaliate. The mass 13 believed that two of their members were killed during an 14 attempt earlier in the day to torch the NUM offices. They 15 were preparing for war. The mass of people moved to the 16 koppie. It was more private for what they had planned. 17 There were no women and children around to witness what was 18 happening. The undercover security officer decided to 19 leave the mass of people gathered at the koppie, it was 20 dark and his life was in danger. The undercover security 21 officer reported to the JOC team and informed them of the 22 ritual and the retaliation planned. He needed to inform 23 them that the mass will not sleep that night. The mass 24 wanted to plan what they will be doing in retaliation. 25 They were planning for war." Now according to this all</p>	<p style="text-align: right;">Page 36495</p> <p>1 CHAIRPERSON: No, no, no I know it was a 2 Sunday night. Sorry it's my fault. I asked the question 3 ambiguously, forgive me. This information that we've heard 4 about now from the ICAM report was that available to people 5 in the JOC on the Saturday night? 6 MR BLOU: Chairperson, he reported to the 7 JOC when he returned, I'm not sure what day this was. 8 CHAIRPERSON: I see. It looks like the 9 Saturday night doesn't it? Because obviously the K9 think 10 hasn't happened yet. Sorry the K4 thing, the K9 was 11 something else, we won't go there now. The K4 attack 12 hadn't happened yet, right? 13 MR BLOU: Yes. 14 CHAIRPERSON: So he talks about the 15 people aren't going to sleep that night, he's clearly 16 talking about something that's going to happen the night 17 before. It looks that it's the Saturday isn't it? 18 MR BLOU: The way I read it, it's the 19 Sunday, but I'm not sure. I read it that they won't sleep 20 this evening which is Sunday. But surely we should know 21 what day this was based on the ICAM. 22 COMMISSIONER HEMRAJ: Yes it says the 23 11th. 24 CHAIRPERSON: It's headed the 11th. 25 MR BLOU: Okay.</p>
<p style="text-align: right;">Page 36494</p> <p>1 this information was conveyed, reported to the JOC team. 2 Now what's that about? Was it reported to you by the way? 3 MR BLOU: Chairperson, it was reported. 4 I remember speaking to the person that was at the koppie. 5 I can put on record that he has never informed me 6 specifically about K4 shaft. 7 CHAIRPERSON: Never mind whether he 8 reported about K4 shaft, we've already gone over that. 9 MR BLOU: Yes. 10 CHAIRPERSON: Then let's not revisit 11 that. You accept that the RDOs wanted a general strike 12 over the whole of Lonmin didn't they? 13 MR BLOU: Yes. 14 CHAIRPERSON: It wouldn't have suited 15 their purpose if they had a partial strike or a selective 16 strike, one shaft on and one shaft off. So obviously K4 17 was in their visier isn't that right? 18 MR BLOU: Yes. 19 CHAIRPERSON: But this was the 20 information that you people had. 21 MR BLOU: Yes. 22 CHAIRPERSON: When was that, on the 23 Saturday night? 24 MR BLOU: The K4 incident happened on 25 Sunday.</p>	<p style="text-align: right;">Page 36496</p> <p>1 CHAIRPERSON: So let's not go there, it's 2 obviously the Saturday night. Now the point of the matter 3 is that the people in the JOC knew on the Saturday, perhaps 4 knew is an unfortunate word because some people may deny 5 the information is correct. But what the people on the 6 Saturday night knew was the information that had been 7 received. 8 MR BLOU: Yes. 9 CHAIRPERSON: Which they had to take 10 seriously. 11 MR BLOU: Yes. 12 CHAIRPERSON: And they don't seem to take 13 that seriously. What did they do? 14 MR BLOU: They concentrated for what we 15 believed that the retaliation would be directed towards the 16 Lonmin property from historical events that we would list 17 and those were the areas that we covered. 18 CHAIRPERSON: Ja but they wanted to 19 retaliate against what they believed was the death of their 20 colleagues. 21 MR BLOU: Yes. 22 CHAIRPERSON: And they believed I take it 23 that they'd been killed by NUM people because shots had 24 been fired by NUM people - 25 MR BLOU: That is correct.</p>

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1 CHAIRPERSON: - in the vicinity of the
 2 NUM office. So you didn't have to be a rocket scientist to
 3 know that it was possible, if not probable, that the target
 4 for retaliation might well be the NUM office. Isn't that
 5 right?
 6 MR BLOU: No it's not right, Chairperson.
 7 CHAIRPERSON: Why not?
 8 MR BLOU: There were many NUM offices at
 9 the time at Lonmin Plats, there's not just one NUM office.
 10 CHAIRPERSON: The place at which they
 11 thought the killings had taken place was the office in
 12 question was it not?
 13 MR BLOU: Yes, Chair.
 14 CHAIRPERSON: Anyway but I want to know
 15 is what exactly did the people at the JOC do which I take
 16 it included you.
 17 MR BLOU: Yes.
 18 CHAIRPERSON: What did you do? You got
 19 this information, quite alarming information, talking about
 20 planning for war, right?
 21 MR BLOU: Yes.
 22 CHAIRPERSON: So this is a serious
 23 matter, a very, very serious matter.
 24 MR BLOU: That is correct, Chair.
 25 CHAIRPERSON: So what did you do about

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1 it?
 2 MR BLOU: We deployed our resources as
 3 best we could. We also ensured that we inform the SAPS
 4 about information we had at our disposal.
 5 CHAIRPERSON: Did you convey this
 6 information to the police, say this all information we've
 7 got, these people are planning for war? They're planning
 8 to act in retaliation for what they considered to be the
 9 deaths of their colleagues, did you tell that to the
 10 police? That they'd sent for a sangoma to make them
 11 fearless and turn the bullets that are going to be fired at
 12 them into water and render the firearms incapable of
 13 shooting bullets to use the words that it is reported in,
 14 was that conveyed to the police?
 15 MR BLOU: Chairperson, yes. Some of the
 16 police members had informed us that they had witnessed this
 17 ritual themselves in the afternoon at the koppie.
 18 COMMISSIONER HEMRAJ: But if you had
 19 believed that the retaliation or the attack would be
 20 against Lonmin structures or key points then that is what
 21 you would have communicated to the police. Not that there
 22 would be a possible attack on the NUM offices.
 23 MR BLOU: Correct.
 24 CHAIRPERSON: Sorry, Mr Van As, I think
 25 it's only fair that we should put those points that were

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1 worrying us to the witness now to enable you to deal with
 2 them if you consider it appropriate in re-examination.
 3 MR VAN AS: Mr Chairperson, I wonder if I
 4 could ask if we could take the first comfort break now just
 5 to give me five minutes to consider the points you've put
 6 because there quite a number of points –
 7 CHAIRPERSON: We'll take the first
 8 comfort break now, a bit earlier than usual, but we'll give
 9 15 minutes to consider the points.
 10 MR VAN AS: Thank you, Mr Chairperson.
 11 COMMISSION ADJOURNS COMMISSION RESUMES
 12 [10:45] CHAIRPERSON: - Mr Van As, thanks to the
 13 housekeeping matters we've been attending to you've had a
 14 bit longer to consider your position than you thought you
 15 had. Are you ready to commence your re-examination?
 16 RE-EXAMINATION BY MR VAN AS: I am, thank
 17 you, Mr Chairperson. Mr Blou, you were cross-examined
 18 rather extensively about the radio communication, the
 19 warning that Mr Louw gave on the Sunday, on the 12th of
 20 August 2012, and you testified that it's a real-time
 21 communication.
 22 MR BLOU: Yes, Chair.
 23 MR VAN AS: And I understood your
 24 evidence to be that meant that anybody else who had access
 25 to a Lonmin Security radio would have heard it at the same

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1 time as what the security centre heard the communication.
 2 Can you just confirm that?
 3 MR BLOU: Correct, I confirm that, Chair.
 4 MR VAN AS: So similarly when Mr Louw
 5 then radios in a bit later and he warns Lonmin Security not
 6 to confront the strikers, would anybody who had access to a
 7 Lonmin Security radio also have heard that warning?
 8 MR BLOU: Real-time, yes, Chair.
 9 MR VAN AS: Without the security centre
 10 having to relay that warning back to them?
 11 MR BLOU: Chairperson, that is not
 12 standard practice because they will be jamming the
 13 communication, so yes, without them relaying it.
 14 CHAIRPERSON: Does everybody have their
 15 security radio on all the time?
 16 MR BLOU: Yes, Chairperson.
 17 CHAIRPERSON: You talk about those who
 18 have access to the radio, but does everybody listen to the
 19 security radio all the time?
 20 MR BLOU: Yes, Chairperson.
 21 CHAIRPERSON: 24/7?
 22 MR BLOU: Yes, Chairperson.
 23 MR VAN AS: And where are these security
 24 radios normally kept? Are they kept on one's person or are
 25 they kept in the vehicle?

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1 MR BLOU: Both, Chairperson. We've got
 2 base stations in radios and hand-held radios on the person.
 3 MR VAN AS: We're specifically dealing
 4 with Mr Fundi and Mr Mabelane and do you know whether they
 5 would have had a hand-held radio on their person or whether
 6 they would have had a radio in their motor vehicle?
 7 MR BLOU: Chairperson, I would know of a
 8 radio in the motor vehicle. I would not be 100% sure if
 9 they had a radio on the person.
 10 MR VAN AS: So in other words if they had
 11 been out of their motor vehicle already at the time that Mr
 12 Louw issued the warning not to confront the strikers, would
 13 they have heard that warning?
 14 MR BLOU: If they were a distance from
 15 the vehicle, Chairperson, they would have not heard it.
 16 MR VAN AS: And would it similarly flow
 17 from that that even if radio control centre had sent
 18 another warning to them over the radio they wouldn't have
 19 heard that warning either if they'd been out of their
 20 vehicle?
 21 MR BLOU: Correct, Chairperson.
 22 MR VAN AS: Now you were present on the
 23 Monday near the railway line.
 24 MR BLOU: Yes.
 25 MR VAN AS: I'd please ask you if we

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1 could just please look at exhibit Z1 and if you could go to
 2 about 23 minutes, please? No, if we can go to 23. I want
 3 the part where they're marching around the corner, when
 4 they're moving around the corner, please. Stop there,
 5 please.
 6 CHAIRPERSON: That's 23:14.
 7 MR VAN AS: Thank you, Mr Chairperson.
 8 Did you see this, Mr Blou, the strikers marching around the
 9 corner like this?
 10 MR BLOU: Chairperson, is this now –
 11 MR VAN AS: On the Monday.
 12 MR BLOU: Yes, I saw the strikers
 13 marching, yes.
 14 CHAIRPERSON: Did you see them marching
 15 around the corner? I thought you were in a Nyala near the
 16 railway line.
 17 MR BLOU: I just need to confirm, is this
 18 now before they were addressed by General Mpembe or
 19 afterwards?
 20 CHAIRPERSON: No, no, no, this is after,
 21 after they were addressed by General Mpembe and he starts
 22 to count to 10, when he got to 3 they got up and walked
 23 away –
 24 MR BLOU: I saw that, yes.
 25 CHAIRPERSON: - in the direction of the

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1 koppie, and in proceeding as they were –
 2 MR BLOU: Yes.
 3 CHAIRPERSON: - they came past this rock
 4 here, this corner as Mr Van As describes it.
 5 MR BLOU: Yes, Chairperson.
 6 CHAIRPERSON: Now when that happened you
 7 were in a Nyala near the railway line. Is that right?
 8 MR BLOU: No, when they started walking
 9 away we were all still at the place where they had
 10 congregated. We drove away as they were walking away.
 11 MR VAN AS: Be that as it may, you
 12 testified in cross-examination that you were scared and
 13 uncomfortable about the situation.
 14 MR BLOU: Correct, Chairperson.
 15 MR VAN AS: Now you saw these strikers
 16 moving forward in a crouching formation on that day, did
 17 you not?
 18 MR BLOU: Correct, I did, Chairperson.
 19 MR VAN AS: Now the evidence before the
 20 Commission from Lonmin Security is that that is a similar
 21 position that they adopted on the Sunday when they
 22 approached Lonmin Security.
 23 MR BLOU: Yes.
 24 MR VAN AS: Now did you view, when you
 25 saw them on the Monday did you view them as adopting a

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1 threatening and aggressive approach?
 2 MR BLOU: Correct, Chairperson.
 3 MR VAN AS: Right, now you know the late
 4 Mr Fundi and the late Mr Mabelane, don't you? You worked
 5 with them for a number of years.
 6 MR BLOU: Yes, Chair.
 7 MR VAN AS: Can it conceivably be
 8 concluded that Mr Fundi and Mr Mabelane would have formed
 9 any other view as to the danger posed by these individuals
 10 moving forward in a crouching position, heavily armed with
 11 pangas and machetes and spears?
 12 MR BLOU: Chairperson, can you just
 13 reformulate your question?
 14 MR VAN AS: Do you believe that Mr Fundi
 15 and Mr Mabelane would similarly have viewed the strikers as
 16 posing a danger when they approached them in that sort of
 17 formation?
 18 MR BLOU: Chairperson, I believe they
 19 would because the other security members with them had the
 20 same view as well.
 21 MR VAN AS: And then do you know why
 22 Lonmin Security went to the Wonderkop Hostel on that day?
 23 Let me perhaps frame the question in more detail. Was it
 24 in order to protect NUM's offices or was it in order to
 25 assist Mr Louw and Mr Vorster?

<p style="text-align: right;">Page 36505</p> <p>1 MR BLOU: Mr Chairperson, as far as I can 2 remember it was to protect the NUM office. 3 MR VAN AS: That's why they went there? 4 MR BLOU: Yes. 5 MR VAN AS: And that's why they formed 6 the formation there? 7 MR BLOU: That is correct. 8 MR VAN AS: Right, now would they have 9 known whether the NUM office was occupied or not at that 10 stage? 11 MR BLOU: I am not hundred percent sure, 12 Chairperson. 13 MR VAN AS: Is it normally occupied on a 14 Sunday morning? 15 MR BLOU: Normally on Sundays it is 16 closed, Chair. 17 CHAIRPERSON: Did you know whether the 18 NUM – by you I mean you and your colleagues – 19 MR BLOU: Yes. 20 CHAIRPERSON: - know that the, if this is 21 so, I'm not sure it is so but I'm putting it on the basis 22 of maybe. Did you know whether the NUM officials had gone 23 into hiding already on the Sunday morning? 24 MR BLOU: Yes – 25 CHAIRPERSON: There is evidence they went</p>	<p style="text-align: right;">Page 36507</p> <p>1 misrepresentation. 2 CHAIRPERSON: Well, I don't know about 3 misrepresentation, maybe a wrong question. What is your 4 response to the question? 5 MR VAN AS: Well, it will make my case 6 significantly easier if Mr Louw hadn't issued such a 7 warning. My understanding of the evidence is he testified 8 that he had in fact radioed in and told radio, and issued a 9 warning that Lonmin Security shouldn't approach the 10 strikers because they were armed and dangerous. 11 CHAIRPERSON: Yes, we remember that. It 12 may not be in his statement, but that's our recollection. 13 It may be incorrect, but it is our recollection of what he 14 said in his oral evidence. So I overrule the objection in 15 this regard. 16 MR RAMPHELE: We will have to check that, 17 Chair, because – 18 CHAIRPERSON: Yes, on the basis – 19 MR RAMPHELE: - I've been going through 20 the transcript and I don't see that. The only thing is 21 that he asked for replenishment. 22 CHAIRPERSON: Yes. Anyway, I'll allow 23 the question to be asked on the basis that if it turns out 24 that our recollection is incorrect then the answers he 25 gives now will be affected by that.</p>
<p style="text-align: right;">Page 36506</p> <p>1 into hiding. 2 MR BLOU: Yes, we knew that, yes Chair. 3 CHAIRPERSON: And they'd already gone 4 into hiding by the Sunday morning? 5 MR BLOU: Yes, Chair, we knew that. 6 MR VAN AS: So the purpose of forming the 7 line would be for no other reason other than to protect 8 property, not lives? 9 MR BLOU: Correct, Chairperson. 10 MR VAN AS: And what did you advise Mr 11 Fundi and Mr Mabelane in relation to Lonmin, the value of 12 Lonmin property as – I see there's the – 13 CHAIRPERSON: Mr Ramphele, you turned 14 your light on. 15 MR RAMPHELE: Yes, Chair. I'm just 16 objecting to a question to the effect that Mr Louw warned 17 the security not to approach the crowd because I've just 18 looked at this statement and we went through the transcript 19 and I don't see any – 20 CHAIRPERSON: Alright. 21 MR RAMPHELE: - such warning being made 22 that Louw said security should not approach the crowd. 23 CHAIRPERSON: Mr Van As, what is your 24 response to the objection? 25 MR RAMPHELE: So it would be</p>	<p style="text-align: right;">Page 36508</p> <p>1 MR VAN AS: Then you were also cross- 2 examined rather extensively in relation to scenario 3 planning. 4 MR BLOU: Correct, Chair. 5 MR VAN AS: And my learned friend Ms 6 Baloyi used the word that Lonmin Security were blindsided. 7 Do you recall that being put to you? By what happened on 8 the Sunday. 9 MR BLOU: I'm not recalling it. 10 MR VAN AS: Be that as it may – 11 MR BLOU: Ja. 12 MR VAN AS: - is it fair to say that 13 Lonmin Security were in fact blindsided in that on the 14 Sunday there was a decoy attack at EPL and that diverted 15 most of Lonmin Security? You're aware of that? 16 MR BLOU: I'm aware of that, Chair. 17 MR VAN AS: And thereafter the real 18 attack on the NUM office at Wonderkop Hostel. 19 MR BLOU: Yes. 20 MR VAN AS: Rather sophisticated 21 strategy, is it not, on the part of the strikers? 22 MR BLOU: A well coordinated strategy, 23 yes. 24 MR VAN AS: In my limited time, if one 25 has a look at the history they seem very similar to the</p>

<p style="text-align: right;">Page 36509</p> <p>1 strategy that the Zulus adopted at the Isandlwana –</p> <p>2 CHAIRPERSON: Yes, we won't go into 19th</p> <p>3 century military history. I'll give you a little bit more</p> <p>4 time, because Adv Hemraj and I took up a bit of your time –</p> <p>5 MR VAN AS: Thank you.</p> <p>6 CHAIRPERSON: - which it would not be</p> <p>7 fair to debit you with.</p> <p>8 MR VAN AS: The point I'm making is it's</p> <p>9 a sophisticated paramilitary strategy that was used by the</p> <p>10 strikers on the Sunday.</p> <p>11 MR BLOU: Yes, Chair.</p> <p>12 MR VAN AS: Have you ever experienced</p> <p>13 something similar to that at Lonmin?</p> <p>14 MR BLOU: Chairperson, no. We have never</p> <p>15 – that was the first time that we had seen such</p> <p>16 determination and armed people assuming paramilitary</p> <p>17 tactics, yes.</p> <p>18 MR VAN AS: Was there any reason for you</p> <p>19 to factor that into your scenario planning before the</p> <p>20 Sunday morning?</p> <p>21 MR BLOU: Chairperson, no. What we</p> <p>22 worked on is historical events that had informed us of how</p> <p>23 best to counter industrial action.</p> <p>24 MR VAN AS: Then let's move on to your</p> <p>25 telephone conversations –</p>	<p style="text-align: right;">Page 36511</p> <p>1 MR BLOU: Yes.</p> <p>2 MR VAN AS: That also doesn't appear in</p> <p>3 your telephone records.</p> <p>4 MR BLOU: That's my observation,</p> <p>5 Chairperson.</p> <p>6 MR VAN AS: Is it possible that you would</p> <p>7 have used another telephone or cell phone to make these</p> <p>8 calls to General Mbombo?</p> <p>9 MR BLOU: It's very possible,</p> <p>10 Chairperson.</p> <p>11 MR VAN AS: Was there an increase in</p> <p>12 police presence after the murders of Mr Fundi and Mr</p> <p>13 Mabelane?</p> <p>14 MR BLOU: No, Chairperson.</p> <p>15 MR VAN AS: Did Lonmin expect a</p> <p>16 significant increase in police presence after that?</p> <p>17 MR BLOU: We did, Chairperson.</p> <p>18 MR VAN AS: Did you believe it was</p> <p>19 necessary for you to actually spell out to the police that</p> <p>20 more police need to arrive here after two people had been</p> <p>21 brutally hacked to death on your premises?</p> <p>22 MR BLOU: Chairperson, correct, because</p> <p>23 we were, we had limitations on where to operate and we</p> <p>24 needed the police presence to assist us with public</p> <p>25 violence as well as, there were breaches of a lot of</p>
<p style="text-align: right;">Page 36510</p> <p>1 CHAIRPERSON: Before you go to the</p> <p>2 telephone conversations, I'd like to ask something about</p> <p>3 what you've just asked. The information that you had</p> <p>4 according to passages I read from the ICAM report was that</p> <p>5 they were planning for war. Had you ever encountered a</p> <p>6 situation where workers or strikers were according to the</p> <p>7 information apparently regarded as potentially reliable –</p> <p>8 MR BLOU: Yes.</p> <p>9 CHAIRPERSON: Have you ever had a</p> <p>10 situation before where according to your information</p> <p>11 strikers were planning for war?</p> <p>12 MR BLOU: Never, Chairperson.</p> <p>13 MR VAN AS: You spoke to, you say in your</p> <p>14 statement that you spoke to General Mbombo on the Friday.</p> <p>15 MR BLOU: Yes.</p> <p>16 MR VAN AS: That doesn't appear in your</p> <p>17 telephone records.</p> <p>18 MR BLOU: That is correct.</p> <p>19 MR VAN AS: It's also common cause that</p> <p>20 you spoke to General Mpembe on the Sunday.</p> <p>21 MR BLOU: Yes.</p> <p>22 CHAIRPERSON: Is it General Mpembe or</p> <p>23 General Mbombo?</p> <p>24 MR VAN AS: General Mbombo, sorry. You</p> <p>25 spoke to General Mbombo on the Sunday?</p>	<p style="text-align: right;">Page 36512</p> <p>1 statutes and that to my recollection is a function of the</p> <p>2 South African Police Services.</p> <p>3 MR VAN AS: You also were cross-examined</p> <p>4 about the fact that you held a meeting with NUM on the</p> <p>5 Saturday.</p> <p>6 MR BLOU: Yes.</p> <p>7 MR VAN AS: If one has regard to the</p> <p>8 documentation you also undertook to hold a meeting with</p> <p>9 AMCU about the security situation.</p> <p>10 MR BLOU: Correct.</p> <p>11 MR VAN AS: Was that meeting held?</p> <p>12 MR BLOU: I know a meeting with AMCU was</p> <p>13 held at the LPD offices, but I do not remember a meeting</p> <p>14 with AMCU at the Middelkraal offices.</p> <p>15 MR VAN AS: And then if we could please</p> <p>16 have exhibit LLLL2 on the screen? This is the statement of</p> <p>17 Captain Govender where he makes reference to going to the</p> <p>18 koppie and seeing strikers performing rituals and making</p> <p>19 ready for war, I think he used the words, either commit</p> <p>20 crimes or engaged in faction fighting. Was that</p> <p>21 information communicated to Lonmin by the police?</p> <p>22 MR BLOU: Chairperson, we had a meeting</p> <p>23 with Captain Govender in one of the – in fact on the</p> <p>24 afternoon at 2 o'clock. We did hear about the rituals that</p> <p>25 were performed from members of the SAPS. I'm sure it would</p>

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1 have been Captain Govender.
 2 MR VAN AS: Now did the police advice
 3 Lonmin to place additional security at the NUM office
 4 because they were anticipating some sort of second attack
 5 on the NUM office?
 6 MR BLOU: Chairperson, not as far as I
 7 can remember.
 8 MR VAN AS: Thank you, Mr Chairperson,
 9 those are my questions.
 10 CHAIRPERSON: Thank you, Mr Van As.
 11 Thank you, Mr Blou, you'll be excused on the usual basis
 12 that if it's necessary for us to get you back we won't have
 13 to subpoena you; you'll come back when we ask you to do so.
 14 MR BLOU: Thank you, Chairperson.
 15 CHAIRPERSON: Are you prepared to give
 16 that undertaking?
 17 MR BLOU: That is correct.
 18 CHAIRPERSON: Yes, you're excused.
 19 MR BLOU: Thanks.
 20 [NO FURTHER QUESTIONS – WITNESS EXCUSED]
 21 CHAIRPERSON: Is Mr Sinclair available to
 22 continue with his evidence?
 23 MR VAN AS: He's outside, if we could
 24 just call him in, please, Mr Chairperson.
 25 CHAIRPERSON: Ms Baloyi, you will

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1 continue the cross-examination –
 2 MS BALOYI: Yes, Chair.
 3 MR WESLEY: Chair, if I could perhaps at
 4 this stage just highlight where we stand with the cross-
 5 examination that's remaining of Mr Sinclair, because there
 6 has been a change. The SAPS have got 60 minutes left. NUM
 7 and Mrs Fundi have 30 minutes left. Then AMCU have got an
 8 hour and a half. The families were then going to also have
 9 an hour and a half but they've indicated they have no
 10 cross-examination for Mr Sinclair.
 11 CHAIRPERSON: Mr Gotz?
 12 MR GOTZ: Chair, having regard to the
 13 concessions that Mr Sinclair has already given and the
 14 evidence of other witnesses since him it is not necessary
 15 for AMCU to cross-examine Mr Sinclair. So –
 16 CHAIRPERSON: Thank you, Mr Gotz. I'm
 17 grateful to you for communicating that to me now. Mr
 18 Sinclair, I think I'd better swear you in again because
 19 you've been out of the country since you last testified.
 20 Do you swear that the continued evidence you'll give in
 21 this matter before the Commission will be the truth, the
 22 whole truth, nothing but the truth? Please raise your
 23 right hand and say, "I swear, so help me God."
 24 GRAEME MILLER SINCLAIR: I swear, so help
 25 me God.

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1 CHAIRPERSON: Thank you. You may be
 2 seated. You can keep your jacket on or take it off,
 3 whichever makes you feel the most comfortable. You may be
 4 seated. Now when you were here last time we asked you
 5 about some documents. You remember? Have you been able to
 6 trace, find the documents?
 7 MR SINCLAIR: Mr Chair, if I can just
 8 please recall which documents? Because there's, I was a
 9 little bit confused. I didn't get a list of what I had to
 10 find. I looked through the things. I think the documents
 11 that I was required to find, if I can recall correctly,
 12 were the sheets that were required – sorry, the deployment
 13 sheets that were in the control room and then if I recall
 14 it was the deployment of Protea Coin. I think that was the
 15 other one that I was required to – and I don't recall which
 16 of the other ones that I was required to –
 17 CHAIRPERSON: The ones you've mentioned
 18 now, are those the only ones you've brought?
 19 MR SINCLAIR: Those are the ones, the –
 20 when I was, and I needed to be careful, but I didn't go to
 21 Middelkraal to go and look for them myself. I went through
 22 Mike da Costa and asked him to trace them, obviously to
 23 stay within the rules, and I recall, Mr Chairman, that the
 24 deployment sheet, the initial deployment sheets that we
 25 used in the control room where we would put them on the

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1 walls with the plans and everything, we would use
 2 handwritten ones. We were, they were not in a substantial
 3 typed up form for that. Those I believe the team did try
 4 and find.
 5 [11:05] Whether they have been put away somewhere and
 6 they weren't able to find those. What they did find is the
 7 ones that came a little bit later because that operation
 8 obviously went on for quite a while so I have an example of
 9 that type of deployment sheet that we, handwritten, that we
 10 haven't been able to find exactly who was on it and who was
 11 deployed. I have an example of the later ones that were
 12 typed up, I've not been able to find that. And then as
 13 regard to the Protea Coin deployment, if I recall correctly
 14 in – may I just look at something quickly, please?
 15 CHAIRPERSON: Yes, of course.
 16 MR SINCLAIR: Thank you. If I recall
 17 correctly, it has been submitted to me by the Lonmin legal
 18 team, it's in the bundle that I was given. I don't know if
 19 that is here or how the process works but it's in there
 20 that the Protea Coin, their deployment sheets, I've also
 21 been given examples. For instance, that specifies – sorry,
 22 not of the deployment sheets for the Protea Coin on duty
 23 but for instance what we were asking for with the
 24 additional hard skin vehicles and those type of things,
 25 I've been able to find those, Mr Chair.

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1 CHAIRPERSON: When we take the next
 2 adjournment you can hand them to Mr Wesley and we can then
 3 take the matter further, if necessary. Were you not given
 4 a list by the evidence leaders when you left of the
 5 documents that you were asked to bring?
 6 MR SINCLAIR: Mr Chair, I did ask for
 7 that before we left and I have not been, unless it's come
 8 to – but I have not been, got that it was this, this and
 9 this unless I have missed it but I don't believe I have and
 10 I tried to go through, I have read through the scripts to
 11 see what was required and I've tried to stay as close to
 12 that as possible –
 13 CHAIRPERSON: Alright, well, we won't
 14 take that any further at this stage. Ms Baloyi, you're
 15 cross-examining the witness.
 16 CROSS-EXAMINATION BY MS BALOYI: Thank
 17 you, Chair. Good morning, Mr Sinclair.
 18 MR SINCLAIR: Good morning, sir.
 19 MS BALOYI: Mr Sinclair, if we could look
 20 at exhibit FFFF6, yes, this document here and specifically
 21 I'm looking at your report of the 10th of August which is
 22 page 268 at the top.
 23 COMMISSIONER HEMRAJ: 268 you say, Ms
 24 Baloyi?
 25 MS BALOYI: Yes, this one, thank you

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1 Commissioner. Mr Sinclair, this is a report from you, do
 2 you confirm that?
 3 MR SINCLAIR: Yes.
 4 MS BALOYI: And to whom is it directed?
 5 MR SINCLAIR: It is a report through to
 6 Mr Frank – is this one of the four, the briefs, yes. It is
 7 a report that I produced to send through to Mr Frank Russo-
 8 Bello who was my direct report, Mr Chair.
 9 MS BALOYI: Yes. Now, and this is a
 10 report, you're giving a report at the end of the 10th of
 11 August, after the events of the 10th. I'm correct in that?
 12 MR SINCLAIR: The 10th of August, yes, I
 13 tied that up, if I remember, I think I finished it that
 14 evening.
 15 MS BALOYI: Now if you look at paragraph
 16 2 of that document, it records what information you have at
 17 that point when you write this report. You say to, you
 18 say, "Conflicting information subsequently emerged. 1a)
 19 being no employees will be permitted to work across Lonmin
 20 and access to bus transport would be denied." Then b),
 21 "Employees would be permitted to work Friday night shift
 22 and Saturday day shift but work would be disrupted on
 23 Monday." You see that?
 24 MR SINCLAIR: I see that, Mr Chair.
 25 MS BALOYI: So this is about the

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1 information of what to expect in the following days, am I
 2 correct?
 3 MR SINCLAIR: That was information that
 4 had been filtering through from various sources, Mr Chair.
 5 MS BALOYI: Yes. Now if you go to the
 6 next page of this document and you look at item 20, you say
 7 there, "Indications are that employees will not be
 8 reporting for work on Saturday, 11th August 2012." Do you
 9 see that?
 10 MR SINCLAIR: I see that.
 11 MS BALOYI: Am I correct, this sums up
 12 what your expectation is, Lonmin's expectation is about
 13 what will happen on the 11th, which is the Saturday?
 14 MR SINCLAIR: Mr Chair, I don't know if
 15 it was our expectations. That was information coming to us
 16 that we were saying this is the information we are
 17 receiving. Whether it was our expectations I cannot say
 18 that but this was the information that we, that was
 19 filtering through and we were trying to make sense of what
 20 information was coming through.
 21 MS BALOYI: Now if you had received any
 22 other information specifically that the strikers would be
 23 marching to the offices of the NUM to attack, to confront
 24 the NUM, if you received such information it would have
 25 been contained in this report, I would expect.

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1 MR SINCLAIR: Mr Chairman, I think this
 2 report was concluded at about 11 o'clock that evening and I
 3 think if I had had that information I certainly would have
 4 included it in this brief to Mr Frank Russo-Bello.
 5 MS BALOYI: Yes. Now moving on to
 6 something else, I would like to discuss with you about your
 7 CCTV footage and unless you need me to call up videos, I
 8 don't propose to do that. I'll just talk you through what
 9 the evidence has been and indicate if you would like to see
 10 any footage at all. We know from the evidence of Mr Botes,
 11 amongst others, but also statements of Mr Blou and Mr
 12 Botes, that the incident of the 11th of August, the
 13 confrontation between the strikers and members of the NUM,
 14 that was not covered on CCTV, on Lonmin CCTV. You are
 15 aware of that?
 16 MR SINCLAIR: I'm sorry, I missed that.
 17 Could you just – the evidence of Mr Botes, what?
 18 MS BALOYI: And the statement, a
 19 statement deposed to by Mr Blou, okay? From that, we have
 20 been told that the incident of 11th August was a
 21 confrontation between the strikers and the NUM, was not
 22 covered or recorded on CCTV. You are aware of that?
 23 MR SINCLAIR: I am aware that there was,
 24 that we were not able to find footage of that confrontation
 25 in the road past Wonderkop stadium towards the bus station.

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1 We weren't able to find CCTV footage of that to – and I
 2 don't think they have been able to find CCTV footage.
 3 MS BALOYI: Yes.
 4 CHAIRPERSON: Also am I correct in
 5 thinking after you get to the bus stop you actually have to
 6 turn the corner to come to the police satellite station and
 7 the NUM office?
 8 MR SINCLAIR: If you're going from
 9 Wonderkop stadium down towards the bus stop, when you get
 10 to the T junction you turn left to the NUM offices and
 11 right to the hospital, sir.
 12 CHAIRPERSON: Is there no footage
 13 available as to what happened near the NUM office? You
 14 said there wasn't footage from the Wonderkop stadium to the
 15 bus stop but from the bus stop to the NUM office, is there
 16 no footage available for that either?
 17 MR SINCLAIR: Sir, Mr Chair, we have two
 18 or three cameras, I can't remember exactly but I know
 19 there's two or three cameras. One critical camera is close
 20 to the bus stop that can, it's one of those cameras, I
 21 forget whether it can go all the way around and that can
 22 see the NUM offices, it can see the houses, it can see down
 23 towards the hospital and then back up towards the road.
 24 However, there were trees on that one. I know that when I
 25 looked at other footage there, there were trees on that

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1 one. There's another one up towards the workshop area
 2 halfway up to where the kitchen is in Wonderkop. That,
 3 that one was there and there's one at the offices in – at
 4 the technical offices. I think those are the three in that
 5 area. They are all on the same system. Does that answer
 6 your question?
 7 CHAIRPERSON: No, it doesn't answer my
 8 question. You told us there's no footage available from
 9 the Wonderkop stadium to the bus stop. I want to know, is
 10 there any footage available from the bus stop through to
 11 the NUM office?
 12 MR SINCLAIR: I haven't been able to find
 13 any footage and I believe that the technical team have
 14 looked and I believe they haven't been able to find on that
 15 particular day, but I stand corrected whether they have
 16 been able to subsequently find it.
 17 CHAIRPERSON: Thank you.
 18 MS BALOYI: Mr Blou, I'm trying to find –
 19 I beg your pardon, Mr Sinclair, I'm trying to find the
 20 statement from Mr Blou. Mr Blou, in one of his statements,
 21 in fact said the camera that would have captured that scene
 22 or that incident, that area, was not working on the day.
 23 Does that accord with what you know?
 24 MR SINCLAIR: Mr Chair, I would believe
 25 that that was correct, that there was obviously a technical

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1 issue with that camera on that day because I would have
 2 gone back that afternoon and said, guys, review for me. I
 3 definitely would have asked for a review that afternoon,
 4 not that I can recall doing it at 2 o'clock or 3 o'clock
 5 but I would have gone back because that's one thing that I
 6 was fairly systematic about and there was – and to the
 7 best, I could find no footage. So I don't believe that any
 8 of those cameras were working on that particular day, sir.
 9 MS BALOYI: And the incident of the 12th
 10 where the two Lonmin security were attacked, that too,
 11 there is no footage of that attack on the security.
 12 MR SINCLAIR: I don't, I believe there is
 13 footage of that from the camera that I explained that was
 14 at the bus stop that could go from the NUM offices all the
 15 way around. There is definitely footage because I have
 16 personally seen that footage and I've looked at that
 17 footage two or three times, so there is definitely footage
 18 on the Sunday the 12th.
 19 MS BALOYI: Yes. Well, Mr Sinclair, I
 20 think you may be referring to different footage from what
 21 I'm asking you. I'm asking you about the attack itself as
 22 it is happening, when Mr Fundi is attacked and when Mr
 23 Mabelane is attacked, I'm asking you about that particular
 24 footage.
 25 MR SINCLAIR: There is footage, there is

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1 footage. You cannot see the actual attack because there
 2 are, if I recall correctly and I haven't looked at it for
 3 at least two years but, Mr Chair, there is definitely
 4 footage of the movement of those people that I recall,
 5 there is footage and I think it's behind the tree, if I
 6 recall correctly, of smoke coming out. There is footage of
 7 the people that were there, moving into the roadway that
 8 turns to NUM. So there is – and I can't remember all the
 9 details, as I say I haven't looked at that footage for a
 10 long time but there is definitely footage of that. The
 11 attack, I can't recall how clear that footage is, Mr
 12 Chairman.
 13 MS BALOYI: Yes.
 14 MR SINCLAIR: And I'm sure it must be, I
 15 think it has been given to you, I'm not sure.
 16 MS BALOYI: Yes. Mr Sinclair, just to
 17 make sure that we are talking about the same thing, could
 18 we have exhibit L33 shown on the screen? This is a shot
 19 from Lonmin CCTV and I want to see if this is what you may
 20 be referring to, or something different.
 21 MR SINCLAIR: Mr Chair –
 22 MS BALOYI: Does this mean anything to
 23 you, Mr Sinclair?
 24 MR SINCLAIR: No, that's – that one is a
 25 bit difficult. If I could see a short clip of the video I

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1 would tell you.
 2 [VIDEO IS SHOWN]
 3 MR SINCLAIR: I cannot, I think that is
 4 the same video, Mr Chairman, because the shot at the bottom
 5 I remember saying, "What is that, that is going on there"
 6 when I was doing a review on that. So I believe that this
 7 is from the same footage that I am talking about.
 8 MS BALOYI: Yes.
 9 MR SINCLAIR: It's about 15 minutes long,
 10 if I remember, if I recall correctly, Mr Chair.
 11 MS BALOYI: Chairperson, I'm told it
 12 might be helpful for Y1, video Y1 to be shown.
 13 CHAIRPERSON: Alright, do that.
 14 [VIDEO IS SHOWN]
 15 MS BALOYI: Is this the relevant –
 16 MR SINCLAIR: I believe this is the same
 17 one. That's where that still photograph was taken of that
 18 group there, if I recall correctly.
 19 MS BALOYI: And do you know, is this
 20 before or after the attack on security?
 21 MR SINCLAIR: If you follow this video
 22 through, I think it's the same video that you will see, go
 23 back and you will see smoke starting to rise from where the
 24 tree is.
 25 MS BALOYI: And you say –

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1 MR SINCLAIR: I think it's a continuous
 2 video and it's all the same video, if I recall correctly,
 3 Mr Chair.
 4 MS BALOYI: Yes. And you say from this
 5 video you actually are not able to see the attack as it
 6 happens at the time that they're being attacked, the two
 7 securities.
 8 MR SINCLAIR: If I – as I say, it was a
 9 long time – if you go, if the video goes back to where the
 10 tree is, you can see the smoke starting.
 11 MS BALOYI: Okay, could we please go back
 12 on the video to the beginning?
 13 MR SINCLAIR: And I think if I recall it
 14 might be after, it comes down –
 15 [VIDEO IS SHOWN]
 16 MR SINCLAIR: Mr Chair, I think if I
 17 could just help? I think it's a bit beyond that, that it
 18 takes – it takes quite a lot of, those people go onto the
 19 road and then it comes back to that tree and you can see
 20 the smoke through the tree and that, there, that you can
 21 see now. You can see the smoke starting there but it's a
 22 little while after this, sir, if I recall correctly.
 23 [VIDEO IS SHOWN]
 24 MS BALOYI: Chair, I'm happy to stop here
 25 to try and make the point that I'm trying to make with

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1 this.
 2 CHAIRPERSON: 1:35 at the moment but we
 3 haven't seen much the last few seconds.
 4 MS BALOYI: Yes.
 5 CHAIRPERSON: So make your point.
 6 MS BALOYI: I'll try and do that, Chair.
 7 Mr Sinclair, what I'm trying to establish with you is that
 8 from this footage you are unable to identify the persons
 9 that were involved in the attack on Mr Fundi and Mr
 10 Mabelane, is that correct?
 11 MR SINCLAIR: Mr Chair, that is correct.
 12 Through that, we were not able to see where, we could only
 13 see the tree and the smoke. We could not see people or
 14 identify people from that.
 15 MS BALOYI: And the same for the damage
 16 to property, vehicles of Lonmin.
 17 MR SINCLAIR: We could not see that
 18 either through this camera with that footage, Mr Chair.
 19 MS BALOYI: Now the earlier clip which is
 20 exhibit L33 that we started out with, if we could go back
 21 to that or in fact pick it up on this video, that's fine.
 22 Now on this as well, which is part of the clip that we've
 23 been looking at, was Lonmin able to identify any of the
 24 people that are found in this clip?
 25 MR SINCLAIR: Mr Chair, to the best of my

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1 knowledge through our investigations, but remember this has
 2 become a police investigation so we were very careful to
 3 not infringe on that, from just our looking we were not
 4 able, to the best of my knowledge, able to identify anybody
 5 in either of those groups but I do stand corrected on that.
 6 MS BALOYI: Yes. And you have another
 7 attack on the evening of the 12th, this is the attack where
 8 Mr Mabebe was attacked and killed. Now we have, I think,
 9 the evidence of Mr Botes who explained – no, I'm sorry,
 10 yes, I think it's Mr Botes who explains also that the
 11 cameras could not pick up that incident in the - I think
 12 it's described as in the car park. Are you aware of that?
 13 MR SINCLAIR: I don't recall. I would
 14 have had a brief look at those but I don't recall the
 15 details of that CCTV footage as I sit here right now, sir.
 16 [11:25] MS BALOYI: Okay. Now maybe let me ask
 17 you this way, as you sit there right now, do you know
 18 whether Lonmin has been able to identify any of the people
 19 that were – from CCTV footage whether Lonmin has been able
 20 to identify any of the people that were involved in the
 21 incident with Mr Mabebe.
 22 MR SINCLAIR: I cannot recall whether
 23 they have identified them or not, through the
 24 investigations or through the police investigation.
 25 MS BALOYI: Yes.

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1 MR SINCLAIR: Because again that was a
 2 SAPS investigation now, so Lonmin would have been, the
 3 Lonmin security would have been very careful to not
 4 infringe on that.
 5 MS BALOYI: Yes. No, I'm interested more
 6 in the footage, Mr Sinclair, whether there was any useful
 7 footage from that –
 8 MR SINCLAIR: I don't recall that. I
 9 stand corrected but I don't believe that we, that Lonmin
 10 security have identified any people in this or that
 11 footage, Mr Chair.
 12 MS BALOYI: And the next attack that we
 13 have that I'm interested in is the attack on Mr Langa on
 14 the 13th early in the morning. This is the employee that
 15 was one the way to work, we have been told –
 16 MR SINCLAIR: Is that the one at Eastern
 17 Platinum?
 18 MS BALOYI: I think it is.
 19 MR SINCLAIR: That's the one near the
 20 railway line at Eastern Platinum, yes, okay.
 21 MS BALOYI: Yes, that's the one. Now Mr
 22 Botes was asked questions about it by Mr Chaskalson, about
 23 whether that incident was captured on CCTV and whether it
 24 could have been captured and his answer, in short, was that
 25 it was dark, it couldn't be – there wasn't any CCTV footage

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1 of that incident, it couldn't pick it up. Are you aware of
 2 that?
 3 MR SINCLAIR: I don't know the time of
 4 the incident but certainly I would concur with Mr Botha
 5 where, my knowledge of where the cameras are placed and
 6 their capabilities, that if it was dark and obviously I –
 7 CHAIRPERSON: It was about 3 o'clock in
 8 the morning.
 9 MR SINCLAIR: Then definitely our
 10 cameras, these cameras are not night vision cameras. They
 11 would not have been able to get that and from my
 12 understanding, that I never visited that scene personally
 13 but from my understanding that was too far away from our
 14 cameras based at the Eastern Platinum hostel area, sir.
 15 MS BALOYI: Thank you, Chair, those are
 16 my questions.
 17 CHAIRPERSON: Thank you. Mr Wesley, who
 18 is going to cross-examine next?
 19 MR WESLEY: Chair, what remains is NUM
 20 and Mrs Fundi for half an hour, Chair.
 21 CHAIRPERSON: Mr Tip?
 22 CROSS-EXAMINATION BY MR TIP SC: Thank
 23 you, Chair. Well, as you've heard, Mr Sinclair, I'll be
 24 putting some questions to you on behalf of NUM and also on
 25 behalf of Mrs Fundi and there will not be many topics.

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1 Time is against us a little, but I want to deal with a
 2 general subject first of all and that is what we have
 3 debated at some length with your colleague Mr Blou and is
 4 accepted, I think, as being an inherently important part of
 5 security planning, namely what has been described as
 6 comprehensive scenario planning. Would you concur that
 7 that is an important factor?
 8 MR SINCLAIR: I'm sorry, could I – I just
 9 didn't understand. Could you just ask me the question
 10 again, please?
 11 MR TIP SC: Yes, with pleasure. What,
 12 let me take it step by step. When one has the duty to plan
 13 security arrangements then it is essential to examine the
 14 situation, to examine the mood of the various role players
 15 and to give very careful consideration to the various
 16 possibilities that may arise. Would you agree with that?
 17 MR SINCLAIR: That is a good way of
 18 sorting out security issues, with a couple of things
 19 attached to that depending on the circumstances, depending
 20 on the time available and the resources available, as to
 21 what depth that is done but certainly that is – you would
 22 try and follow those steps, Mr Chairman.
 23 MR TIP SC: Yes. Thank you, Mr Sinclair,
 24 that's fairly put and why I use the phrase "comprehensive
 25 scenario planning" is because that phrase was used in the

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1 ICAM report and I take it that you are familiar with the
 2 ICAM report, not in every detail but overall what I dealt
 3 with.
 4 MR SINCLAIR: Mr Chairman, I believe
 5 that's the ICAM, I think that was one of the other
 6 documents that I needed to look at or somebody told me I
 7 needed to look at. So I am, I have paged through it.
 8 Could I have your question please, sir, again?
 9 MR TIP SC: Yes. I think to assist you
 10 let me call up a page of that ICAM report.
 11 CHAIRPERSON: Is the one for the 11th of
 12 August –
 13 MR TIP SC: RRRR2.2.
 14 CHAIRPERSON: Yes.
 15 MR TIP SC: Now just familiarise
 16 yourself. I'm going to ask the operator in a moment just
 17 to scroll down but this is the document that you would have
 18 seen, the ICAM report that was compiled as a result of the
 19 investigations that were done into the incidents in August
 20 2012 and some of the incidents thereafter, as you see,
 21 August to November 2012. Are you familiar with what you're
 22 looking at, Mr Sinclair?
 23 MR SINCLAIR: Yes, I am, sir.
 24 MR TIP SC: Yes, thank you. Then let us
 25 just scroll to page 12, please. That is a page that was

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1 compiled obviously by the authors of the report and
 2 evidently with the intention that a person picking up the
 3 report would give, would see that as attracting particular
 4 prominence in the thinking of those who did the report. Do
 5 you follow me?
 6 MR SINCLAIR: I'm listening, sir.
 7 MR TIP SC: Yes, good. And the subject
 8 matter that is identified there is, "Absent and failed
 9 defences" which we understand and Mr Blou confirmed is a
 10 reference to what was lacking in the response of Lonmin to
 11 the situation, a difficult situation that unfolded in the
 12 course of the period that is being examined. Would that,
 13 would you concur with that?
 14 MR SINCLAIR: There were, there were
 15 definitely absent and failed defences that were, after the
 16 incidents when the inquiry was going on, that were
 17 highlighted.
 18 MR TIP SC: Yes, thank you. And the one
 19 that I particularly want to draw to your attention and
 20 you've probably read it as we're speaking, paragraph 2,
 21 what is identified as an absent or failed defence is the
 22 following, I quote, "Comprehensive scenario planning not
 23 conducted and embedded across the operations, which is risk
 24 based and details tactical actions." I suppose that that
 25 language would be familiar to you?

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1 MR SINCLAIR: It is familiar to me, sir.
 2 MR TIP SC: Yes. In short, what the
 3 compilers are highlighting here is that there was not
 4 comprehensive scenario planning which was risk based and
 5 which detailed the tactical actions that ought to have been
 6 implemented by the security. Would that be a fair
 7 description of it?
 8 MR SINCLAIR: Mr Chair, that is the view
 9 of the team that was sitting together and had compiled the
 10 comprehensive document. There were aspects of that that,
 11 although they compiled that and to their belief collected
 12 the information and put it down and put this in, there were
 13 a couple of stages in the completion of this ICAM that
 14 would have dealt with those three points. One would have
 15 been a review of the ICAM team with the security management
 16 team. Now that, I know this document was put out and I
 17 don't remember when it came to there – I got a partial view
 18 of, I got this sent to me, all those details of the views
 19 and there were reasons how we came to dealing with mainly
 20 the four issues there to give us an overall picture of what
 21 the absent and failed things were and the other things that
 22 we would need to look at. We never went back and reviewed
 23 this with that team, to the best of my knowledge, although
 24 Henry Blou was responsible, together with Jacques Erasmus,
 25 to deal with this ICAM. I don't believe that the

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1 investigators, I don't believe the investigators sat with
 2 them to verify whether they had detected that as a correct
 3 and comprehensive failed, absent and failed defence. So
 4 don't believe we went to that review. I stand corrected
 5 but I certainly don't believe we went to that. So when I
 6 understand your question is, should that be taking place?
 7 Yes, it should be taking place in any security scenarios,
 8 time and the things that I've already mentioned. Did it
 9 take place? To my knowledge there was a lot of scenario, a
 10 great deal of scenario planning based on risks and tactical
 11 options that did take place. Now where the missing is
 12 between this number, this point number 2 and what I'm
 13 telling you, I haven't analysed and I've actually parked
 14 the conversation deliberately while I'm under oath and
 15 giving here, to go back and address this once I'm released
 16 from this because I believe sincerely that there is
 17 something, a part of the detail that should have been done.
 18 I don't know if it was done, I haven't been able to ask and
 19 it probably would have a slightly different outcome on
 20 these three points if it had been done.
 21 MR TIP SC: Right. Thank you, Mr
 22 Sinclair. You'll doubtless find it interesting when you do
 23 take, undertake that exercise of going back but let me just
 24 put very crisply, if I can, the proposition to you that
 25 there were indeed very serious shortcomings in the

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1 planning, the scenario planning in the course of the days,
 2 at least 10, 11 and 12 August 2012. Would you accept that
 3 there were such shortcomings?
 4 MR SINCLAIR: Mr Chairman, I would accept
 5 that under the rapid and changing conditions that we were
 6 placed under with things that we had never anticipated – we
 7 had never anticipated the violence, the levels of violence,
 8 we had never anticipated that security had never, to my
 9 knowledge, been attacked with the exception of, I remember
 10 briefing you on the Bapong things where we used, with the
 11 vehicles, with scenario planning and how we did. That was
 12 the only time security had actually ever been attacked.
 13 So we were, there were definitely things that
 14 just transpired in such a rapid way that yes, we would have
 15 missed some of the steps by scripting and documenting, by
 16 pulling teams in, because we were a small team deployed
 17 across a vast area and we were totally taken by things that
 18 were transpiring. So certainly we would have missed some
 19 scenario planning. Scenario planning would have been done.
 20 We would have missed some risks, risks would have been
 21 analysed. We definitely would have done those, if I can
 22 answer, and I don't know, Mr Chair, if that has answered
 23 the question, sir.
 24 COMMISSIONER HEMRAJ: Do you say –
 25 MR SINCLAIR: Sorry?

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1 COMMISSIONER HEMRAJ: Would you say that
 2 because of the circumstances that the scenario planning
 3 that was done, was not as comprehensive as it ought to have
 4 been?
 5 MR SINCLAIR: Mr Chair, on all the
 6 previous unrests and things we had, we would have had
 7 scenario planning and risk things and we had a system.
 8 That was the system that we explained, on the boards,
 9 writing on the white boards, writing on the things. We
 10 would have had a system where we got together – and we had
 11 managed well up until that stage but because of these
 12 circumstances we were placed, we were stretched to our
 13 limits, we were placed with things that we had not
 14 anticipated and we couldn't really just go by what we had
 15 traditionally been doing effectively in this circumstance.
 16 So yes, I'm sure that we made quite a few or omitted things
 17 in that, not deliberately because we were a very
 18 conscientious team but definitely we would have omitted,
 19 and looking back, we need to go and review that. And I
 20 think it has and in fact I would – that it has been
 21 reviewed and if could just go one step further, I don't
 22 want to delay but this recent five month disruption that we
 23 had, everything was done completely differently to what we
 24 had before the 12th to the 16th and then over the 12th to the
 25 16th and to now. So yes, I think if that was the question

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1 and I hope I haven't over-extended but I think that there
 2 were things missing and we needed to move forward and that
 3 and get it right.
 4 MR TIP SC: Thank you, Mr Sinclair. I'm
 5 going to leave the broad overview type question at that
 6 point.
 7 MR SINCLAIR: Yes, sir.
 8 MR TIP SC: And ask you to look at one or
 9 two specific instances which I will do by examining with
 10 you RRRR2.4. I suppose that you recognise that, Mr
 11 Sinclair, as being a timeline of a series of timelines that
 12 were prepared and formed part of the ICAM investigation and
 13 report.
 14 MR SINCLAIR: It's the first part of an
 15 ICAM report, to my understanding.
 16 MR TIP SC: And if we could look at page
 17 2 and you will see there in the second column and, Mr
 18 Sinclair, I will just read down if you follow me as I do
 19 so, "A call was" – this is, I must point out first of all,
 20 that this is time-dated 11 August, in other words the
 21 Saturday and you'll recall that there was an attack on the
 22 K4 shaft at about 9 o'clock on the Sunday, 12 August, that
 23 sequence is before you?
 24 MR SINCLAIR: Yes.
 25 MR TIP SC: Thank you. So we're looking

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1 at Saturday and reading down from the top in that column,
 2 "A call was made to the shaft mine overseer of K4 shaft by
 3 a Lonmin employee to inform him of an attack that will be
 4 carried out on K4 shaft on Sunday night. The employee were
 5 informed about the attack by people planning the attack.
 6 The employee had a good relationship with the mine overseer
 7 as they worked together previously." And then in column 3
 8 again from the top, "The mine overseer confirmed with the
 9 employee that he inform security about the planned attack
 10 to alert security and time about the planned attack for
 11 security to be prepared for the possible attack." And I'll
 12 stop reading at that point. Now this is a very specific
 13 recordal by the ICAM investigators of this report which, as
 14 I have identified, was conveyed to the mine overseer and,
 15 as noted there, was evidently also conveyed to security as
 16 at the afternoon of Saturday. Now, there appears not to
 17 have been any reaction from the security establishment to
 18 this early warning of an intended attack on K4 shaft on the
 19 Sunday evening. Do you follow what I'm putting to you?
 20 MR SINCLAIR: Just your last, there
 21 appears to be?
 22 MR TIP SC: There appears not to have
 23 been any reaction from within the Lonmin security
 24 establishment to this early warning of what was evidently
 25 intended by some of the strikers to take place on the

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1 Sunday evening.
 2 [11:45] Namely that K4 Shaft would be attacked. Do you
 3 follow? Now the question that has arisen in these
 4 proceedings, Mr Sinclair, and I'd be glad if you can assist
 5 us, is, (a), whether you have any knowledge from your
 6 position as the ultimate head of security and emergency
 7 management of this report having been fed into the security
 8 information network; and (b), if you have no knowledge of
 9 that and if it appears that it was not acted upon, whether
 10 there has been an investigation subsequently into why there
 11 was no reaction. I've put a few things together in that
 12 one question. If it would assist you for me to break them
 13 up I'll do so, but if you followed me then please let us
 14 have your response.
 15 MR SINCLAIR: Just give me your questions
 16 on (b) again, please.
 17 MR TIP SC: Yes, (b) –
 18 MR SINCLAIR: So it's no knowledge?
 19 MR TIP SC: Whether if indeed it is so
 20 that there was no recorded knowledge within security or
 21 response from security to this information, whether that in
 22 itself as an apparent shortcoming of very serious extent
 23 was investigated to find out why there had not been a
 24 response to this very important information. Again let me
 25 ask you whether that's all clear, because I know that

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1 there's quite a lot of content there.
 2 MR SINCLAIR: Okay, Sir. I will, if I
 3 could just go through step by step. Mr Chairman, firstly
 4 is the comments that are in the ICAM report, they are not
 5 the information to inform him that the attack will be
 6 carried out on K4 Shaft. K4 Shaft and the surrounding area
 7 is a huge area, so I just want to highlight that point. K4
 8 Shaft is also, with it being specified that they are
 9 planning attack on K4 Shaft, it is extensively security
 10 fenced. It has extensive lighting. It has extensive
 11 lighting, it has extensive things, and those - so where the
 12 employee is saying on K4 Shaft, whereabouts? Is it on the
 13 road coming to the shaft? Is it at the -
 14 MR TIP SC: Mr Sinclair, you'll forgive
 15 me for interrupting you but you are with respect just
 16 directing your answer towards the circumstances at K4
 17 shaft, and although those are important my questions are
 18 directly very specifically to the aspect of what happened
 19 to this information?
 20 MR SINCLAIR: So the -
 21 MR TIP SC: That is where the question
 22 goes.
 23 MR SINCLAIR: So that's - thank you.
 24 Chair -
 25 MR TIP SC: Was the information acted

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1 upon, and if not, has that fact, namely the failure to
 2 react, been investigated?
 3 MR SINCLAIR: And - so Mr Chairman,
 4 sorry, but I needed to just say that; I thought it was
 5 important. So has the information been acted on? Who
 6 received that report? Was it just a security guard at the
 7 shaft? I can't say. And was it there? I don't have
 8 knowledge here as I sit of this report coming through.
 9 However, it could have come through to the structures we
 10 have in place; the security managers out at the units. It
 11 could have come through to the roving managers. It could
 12 have come through to the call centre. Whether it is
 13 recorded in that I don't know. So I personally do not
 14 recall whether this personally came through and was
 15 highlighted to me in that process that I was explaining
 16 with the scenario planning and that, with the overwhelming
 17 things that came through. I do not recall having knowledge
 18 of this coming through until well after the time. Does
 19 that answer part (a) of your question?
 20 MR TIP SC: It does, yes. If you could
 21 deal briefly with part (b), Mr Sinclair, I'd be grateful,
 22 thank you.
 23 MR SINCLAIR: Sure.
 24 MR TIP SC: Let me just repeat (b), is
 25 whether the fact that there was no apparent response to

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1 this information has itself been investigated as a
 2 shortcoming.
 3 MR SINCLAIR: If that -
 4 MR TIP SC: In other words to whom did
 5 this information come? Why was it not acted upon?
 6 MR SINCLAIR: Okay, sure.
 7 MR TIP SC: That in itself is a point of
 8 enquiry to see what went wrong.
 9 MR SINCLAIR: So I cannot say whether
 10 Henry has taken it up. I definitely did not see it for
 11 quite a while afterwards. So I didn't take it up. Was it
 12 taken up by Henry? But what I am very aware of as that the
 13 scenario planning in the lead up of the, after the Sunday,
 14 the Sunday morning attack, scenario planning around all the
 15 shafts, including K4, we very specifically placed our
 16 people where we believed we were vulnerable; at K3, along
 17 the road to K4 and around the area. So there was
 18 definitely a reaction in that area, and I know that because
 19 I have reviewed deployments. I recall reviewing
 20 deployments that we were out in that area. So there was a
 21 reaction. Whether it was because of this comment from the
 22 mine overseer on the 11th, there was a reaction to security
 23 in that area and scenario. Exactly what it took from Dirk
 24 Botes, from Henry, from the people who were undertaking
 25 this I cannot say, Sir. Does that answer your question,

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1 Sir?
 2 MR TIP SC: Partly, Mr Sinclair. I think
 3 just for the record I must put to you that there is
 4 evidence that the situation at K4 Shaft on the Sunday
 5 evening was in no respect any different from what it had
 6 been previously and that there was indeed no protection for
 7 employees there. I put that to you. If you have a brief
 8 comment, please make it, otherwise we -
 9 MR SINCLAIR: I don't understand the
 10 question, I'm sorry.
 11 MR TIP SC: Yes.
 12 MR SINCLAIR: There was?
 13 MR TIP SC: The evidence that has been
 14 placed before the Commission thus far is that the situation
 15 at K4 Shaft at the time of the attack at approximately 9
 16 o'clock on Sunday evening the 12th of August was no
 17 different from what it normally was, meaning that there was
 18 no additional security there, and meaning more importantly
 19 that there was no effective protection whatsoever for
 20 employees who came to work at that shaft that evening.
 21 MR SINCLAIR: Mr Chair, I cannot agree
 22 with that. Firstly the shaft itself, we had spent a huge
 23 amount of time, effort and in securing the shaft, the
 24 inside, the working for employees, with lighting, with
 25 cameras, with gate access, with all of those. There was

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1 also an effort on our stretched resources of getting
 2 patrols through the vulnerable area between K4 and K3 on
 3 the roads to protect employees because that's traditionally
 4 where the attacks had taken place, the one in the ICAM of
 5 April 2012 where one of our colleagues was brutally
 6 assaulted on his way to work through remote areas, so we
 7 were very aware that those attacks are along those dark
 8 remote areas because the shaft itself was well fenced, well
 9 lit, cameras, additional CCTV was activated and we were
 10 monitoring as much as we could with additional monitoring.
 11 So a whole lot was done to secure not just K4 but all the
 12 shafts across the property from Eastern Plats right the way
 13 through to K4, which is an extensive area, Mr Chair.
 14 COMMISSIONER HEMRAJ: Mr Sinclair, there
 15 was one lady security officer who was deployed to the
 16 access control where the boom entrance is. We've seen a
 17 statement from her.
 18 MR SINCLAIR: Mr Chair, to my
 19 understanding – and I do stand to be correct – that there
 20 was the deployment of the six officers at K4. There was
 21 also, because of the, and they had duties – and I don't
 22 know what their duties are, they would have been dealt with
 23 by the people responsible to ensure that they were
 24 effected. There were also roving patrols, and I know that
 25 I had during the course of the Friday, Saturday and Sunday

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1 ensured that the roving patrols that visited regularly,
 2 were on a regular basis, they were in place, and that to
 3 the best of my knowledge when I was talking with the vice
 4 president during the Saturday and Sunday, that the
 5 positions of who's going to be at work, are there limited
 6 people, do we have an assembly process in place for those
 7 people who were going to work. So those had all been
 8 considered. Whether it was recorded correctly I cannot
 9 say, but I'm certain that there were those patrols, or
 10 those people in. I don't understand how there was out of
 11 that that I've just explained, that there was one lady by
 12 herself. I don't know where I've missed that in the past,
 13 but there was definitely more than that and there was a
 14 limited team at the shaft with all the other infrastructure
 15 that I've, in place to assist with security, including the
 16 access from K3 to K4, which is a substantial road. I think
 17 it's about two and a half kilometres to a very dark and a
 18 bushy area. Those were in place, Ma'am, sorry.
 19 COMMISSIONER HEMRAJ: Well, the docket
 20 that relates to the investigation of this incident, if you
 21 read the statements there it was one lady stationed there.
 22 She asked the two other gentlemen security officers to
 23 remain with her because she was afraid at that stage. That
 24 is what is contained in the docket.
 25 MR SINCLAIR: Well, I –

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1 COMMISSIONER HEMRAJ: But all three of
 2 them were not stationed at the access control point to –
 3 MR SINCLAIR: I don't know where they
 4 were stationed, Ma'am. They would have been stationed by
 5 their, by the managers responsible for that. The contract
 6 managers and the mine managers would have worked out where
 7 they should best be stationed.
 8 MR TIP SC: Thank you, Commissioner. Mr
 9 Sinclair, I just want to go on to a different topic partly
 10 because of time limitations.
 11 MR SINCLAIR: Yes, Sir.
 12 MR TIP SC: And I want to take you to one
 13 of your briefing –
 14 CHAIRPERSON: Sorry, Mr Tip, I see it's
 15 now almost 12 o'clock. I was proposing to take the tea
 16 adjournment now. Let's take it now then you can move on to
 17 a new topic afterwards.
 18 MR TIP SC: That would be convenient,
 19 Chair, thank you.
 20 CHAIRPERSON: Quarter of an hour.
 21 [COMMISSION ADJOURNS COMMISSION RESUMES]
 22 [12:17] CHAIRPERSON: The Commission resumes. Mr
 23 Sinclair, you're still under oath.
 24 GRAEME MILLER SINCLAIR: Yes, Sir.
 25 CROSS-EXAMINATION BY MR TIP SC (CONTD.):

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1 Thank you, Chair. Mr Sinclair, I want to take up only one
 2 further aspect with you today, and that is one of your own
 3 briefing communications, exhibit FFFF6, please, at page
 4 272, numbered page 272. Now Mr Sinclair, you may recall
 5 that you had touched on your, what you called the mining
 6 security RDO disruption update, and you issued certain of
 7 those that went to Mr Russo-Bello.
 8 MR SINCLAIR: That's –
 9 MR TIP SC: Correct?
 10 MR SINCLAIR: That's correct, Mr Chair.
 11 MR TIP SC: Yes, and this one is brief
 12 number 4 which you evidently compiled on the 12th of August
 13 2012, the Sunday, at approximately 7:30 in the morning.
 14 You see that?
 15 MR SINCLAIR: That's correct, Mr Chair.
 16 MR TIP SC: That's correct. I'm going to
 17 just read a few portions, if I may, and then ask you just
 18 one or two questions pursuant to that. If you'll just
 19 follow what I read on screen, "Saturday afternoon and
 20 evening saw no escalation in violence. However, reliable
 21 information indicated that the group reported in the last
 22 communication who were responsible for the confrontation
 23 flare-up on Saturday morning at Wonderkop Hostel had
 24 gathered some 1.5 kilometres away from the hostel in the
 25 south area and were undergoing traditional rituals in

<p style="text-align: right;">Page 36549</p> <p>1 preparation to attack the NUM representatives who 2 confronted them in the Wonderkop Hostel on Saturday 3 morning." You followed that; you're familiar, it's your 4 own writing of course. 5 MR SINCLAIR: Yes, Sir. 6 MR TIP SC: And then if you have a look 7 at paragraph 2(a) you say the following there, "The 8 security operation was stepped up on Saturday afternoon to 9 a double red status because of the potential mass revenge 10 conflict indicated in point 1." You see that? 11 MR SINCLAIR: I see that, Sir. 12 MR TIP SC: And you understandably 13 thought it appropriate to underline the words "mass 14 revenge." You see that also? 15 MR SINCLAIR: I can see that, Sir. 16 MR TIP SC: Now what of course that boils 17 down to, Mr Sinclair, is a very clear recordal by you in 18 this brief of the situation, namely that the group had 19 moved to the koppie, as we know, that it had undergone 20 rituals, that those rituals were in preparation for another 21 attack on the NUM representatives who they had dealt, who 22 had confronted them on the Saturday morning, and you saw 23 this as being a potential mass revenge conflict. Correct? 24 MR SINCLAIR: That's correct, Sir. 25 MR TIP SC: And really what, if I may put</p>	<p style="text-align: right;">Page 36551</p> <p>1 group. My question, is the question clear to you, Sir? 2 MR SINCLAIR: Please Sir, your question? 3 Will you give me the very – I just want the question, 4 please. 5 MR TIP SC: The question is this, yes, 6 let me repeat that. The question is this; Mr Blou has told 7 this Commission that until after the incident had taken 8 place in which Mr Fundi and Mr Mabelane were killed, he had 9 not anticipated that there might be a retaliatory attack of 10 that kind. You're with me? And so the question that I'm 11 putting to you is given that you had very clearly 12 identified that prospect, did your identification of what 13 might happen get fed into the security information network 14 so that people such as Mr Blou and others dealing with 15 security matters that Sunday could address this very 16 serious possibility? 17 MR SINCLAIR: Mr Chair, I would just like 18 to comment, I do not under – I cannot comment on why Mr 19 Blou, Henry Blou did not see this in the same light that I 20 saw it. So that's the first point I would make. The 21 second point is for me to put this into a report like this 22 to Mr Frank Russo-Bello, obviously we had already looked, 23 strategised and talked, whoever was the duty managers, and 24 put processes in place to try and cover eventualities that 25 would be in our scenario planning. So definitely I would</p>
<p style="text-align: right;">Page 36550</p> <p>1 it in the language that I'd used earlier this morning, this 2 was in effect a very important item of scenario planning, 3 or at least identification by you of something that 4 appeared to be likely to happen. You agree with that? 5 MR SINCLAIR: I agree with that, Mr 6 Chair. 7 MR TIP SC: And as we know there was 8 indeed then the further, the second movement by the 9 strikers intending to get to the NUM office and that is the 10 one that led to the confrontation in which your officers 11 Fundi and Mabelane lost their lives. 12 MR SINCLAIR: Yes, Mr Chair. 13 MR TIP SC: Yes. Now this is my 14 question, Mr Sinclair; this information which you had thus 15 recorded at half past 7 in the morning of Sunday before the 16 incident began, this is before the group even started to 17 gather at the koppie, there was this very important 18 recordal by you of what was clearly potentially going to 19 take place and the question is how did you see to it that 20 that went into the security network so as to ensure that 21 this potential event was dealt with in an appropriate way? 22 And I ask you that partly because Mr Blou, who as you know 23 has given evidence, said that he had not foreseen, even at 24 8 o'clock on Sunday morning he had not foreseen the 25 possibility of a retaliatory or revenge attack by this</p>	<p style="text-align: right;">Page 36552</p> <p>1 have put it – did I put it to Henry Blou personally? I 2 cannot recall, but it definitely would have been in our 3 planning through the Saturday, with respect many hours in 4 that, in and out, in and out of that when information like 5 this had come through, would have definitely been put in 6 and we would have tasked people, for instance Callie Miles 7 out on the ground, be aware there is possibly a revenge 8 attack; are you able to deal with this, and so we would 9 have dealt with it. Whether Henry, and why Henry missed it 10 I cannot comment on that, Sir. 11 CHAIRPERSON: What happens when you raise 12 the status of a particular operation to double red? 13 MR SINCLAIR: Ja. 14 CHAIRPERSON: To whom is that 15 communicated? 16 MR SINCLAIR: Okay, Mr Chair, this, in 17 this memo, I think this is the only place you will find 18 that word "double red." Ours is red, as I explained right 19 at the beginning when I came. So this double red was for 20 me to Frank Russo-Bello. I wanted to ensure that he was 21 reading the message the same as I was because obviously he 22 was our executive person going through. So that was a 23 point to him to say I'm seeing this as something that we 24 are very unsure of, but it has the potential to go there. 25 CHAIRPERSON: I don't understand that</p>

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1 answer.

2 MR SINCLAIR: Yes, Sir.

3 CHAIRPERSON: Here is a brief that you've

4 issued 7:30 on the Sunday morning.

5 MR SINCLAIR: Yes, Sir.

6 CHAIRPERSON: You say in the brief that

7 the security operation was stepped up on Saturday afternoon

8 to a double red status. So was that just something –

9 MR SINCLAIR: That was –

10 CHAIRPERSON: - that was in your mind

11 that you didn't communicate to anybody?

12 MR SINCLAIR: No, I definitely

13 communicated it to Mr Russo-Bello. For instance we had –

14 CHAIRPERSON: That was only at 7:30 the

15 next morning when you sent this brief. The question is did

16 anybody else on your staff –

17 MR SINCLAIR: Well, we have brought

18 that –

19 CHAIRPERSON: - know that you had raised

20 it to double red?

21 MR SINCLAIR: We had brought in, for

22 instance we had brought in the helicopter to assist us to

23 try and monitor what was going on, and remember your

24 question why didn't it go out to K4. So we had, in that

25 process of going to red status we had done a whole lot of

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1 things. We had tried to also bring in a whole lot of extra

2 vehicles. You will see – I don't know which brief it is,

3 but there's definitely a brief where I've highlighted that

4 we were having a huge problem in securing additional hard-

5 skin vehicles. So they would have been, it would have been

6 elevated to the teams and they would have been said to be

7 vigilant, to go out and see what they were doing, Sir.

8 CHAIRPERSON: I don't understand how –

9 MR SINCLAIR: I seem to be missing

10 something –

11 CHAIRPERSON: - Mr Blou, a senior

12 official as Mr Blou doesn't know, hasn't been told that

13 it's now double red and, what is more important, the reason

14 for that, namely this potential mass revenge conflict.

15 MR SINCLAIR: I cannot comment on why he

16 was missed in that equation, Sir.

17 CHAIRPERSON: But should he not have

18 been –

19 MR SINCLAIR: It should have been

20 communicated to him, Sir.

21 CHAIRPERSON: Yes, should it not have

22 been pertinently brought to his attention, to say look

23 here, not only the double red part –

24 MR SINCLAIR: Yes, Sir.

25 CHAIRPERSON: - but to say we've got

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1 information, which is very serious, that these people

2 according to our information are going to attack the NUM

3 representatives because it's a revenge situation and they

4 are very angry and this I what they're going to do and we

5 want to do something to stop it. Isn't that right?

6 MR SINCLAIR: Certainly if I had that

7 information it should have gone to him. Why it didn't I –

8 you know I am, but it would have gone through to the rest

9 of my officials that were on duty and there. Why he missed

10 it I cannot comment, and it's not good for me because he

11 should not have missed it, or I should have ensured that he

12 had that information, Sir. I should have. Now I don't

13 know, we had many things going on at the time, lots of

14 additional, way beyond what we had normally been doing with

15 the strikes, so we had a lot of tasks on our hands and we

16 had worked long hours. Why that had been missed I cannot

17 share with you, Sir.

18 CHAIRPERSON: He's your 2IC, isn't he?

19 MR SINCLAIR: He was my 2IC –

20 CHAIRPERSON: He's your chief of staff.

21 Is that right?

22 MR SINCLAIR: I agree. I agree with you,

23 Sir.

24 CHAIRPERSON: I mean surely the chief of

25 staff or the 2IC should be kept in the loop on all these

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1 important matters all the time. Is that right?

2 MR SINCLAIR: Chair, to the best of our

3 ability and the best of our knowledge we tried at all times

4 to do that. But there definitely would have been things

5 that we would have slipped on. Here if he has said he

6 wasn't aware of it, I believe that he wasn't aware of it.

7 I'm not going to dispute that, and that was then a

8 breakdown somewhere in our scenarios and our bits and

9 pieces to get it to every level. So yes, it can be a

10 severe criticism of we had a slip, but definitely the

11 people that were on the ground, it would have come from

12 them. That's why I would have had it and that's where we

13 would have put that out and this was elevating it through

14 to Russo-Bello. I don't know if I'd sent this brief on to

15 him, he probably wouldn't have seen it because we had very

16 little time to read emails over this period of time, Sir.

17 COMMISSIONER HEMRAJ: Revenge, mass

18 revenge referred to there, the revenge, who do you

19 understand it to be in relation to?

20 MR SINCLAIR: The, I was getting a feel

21 from people that I talked to on the mine, from our security

22 teams that there was something going on. Now was it going

23 to be at K3, was it going to be at the NUM offices, I

24 don't, I didn't mention the NUM offices because I didn't

25 think it was going to be there. But there was going to be

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1 revenge attacks. We had also, I can recall having many
 2 phone calls coming in from the vice presidents of the
 3 various units, from engineers, from people saying we're
 4 hearing this. There were many rumours that were coming in.
 5 This was something that out of those rumours I had deducted
 6 this from it and taken it forward and we had obviously had
 7 the planning sessions the night before, the morning, tried
 8 to deal with it, Sir.

9 COMMISSIONER HEMRAJ: So practically your
 10 deployments then as a result of this information would
 11 cater for the revenge factor?

12 MR SINCLAIR: Would cater for within our
 13 limitations, within our abilities, and that's why, I think
 14 it was the previous brief, I was very clear to say to my
 15 executive that we were trying to secure additional, because
 16 of, additional vehicles, additional things and we were
 17 having a hard time because they'd been taken up by many
 18 other companies. So yes, our planning would have been
 19 around that and we were trying to put this holistic picture
 20 over, Mr Chair.

21 COMMISSIONER HEMRAJ: The revenge would
 22 have been more likely against NUM considering the
 23 background, than against Lonmin structures and key points?

24 MR SINCLAIR: Definitely it would have
 25 been, we were focusing on that being against the NUM

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1 members and we weren't really focusing on our
 2 infrastructure, our people. We didn't, I worked, when I
 3 did this I did not believe that we were going to be subject
 4 of a revenge attack, my own personal opinion.

5 COMMISSIONER HEMRAJ: Thank you, Mr
 6 Sinclair. I'm so sorry to have interrupted you, Mr Tip.

7 MR TIP SC: Thank you, Commissioner.
 8 Chair, my time is up but there is with respect one
 9 necessary follow-up question. May I request –

10 CHAIRPERSON: We did take some of your
 11 time up. I think it only fair that I must –

12 MR TIP SC: Thank you, Chair.

13 CHAIRPERSON: - give you the benefit of
 14 that, not to debit you with it.

15 MR TIP SC: Yes, it's just one follow-up
 16 item. Mr Sinclair, thank you for the evidence you've
 17 given, which clarifies matter very substantially. There is
 18 one follow-up question that is important. Having
 19 identified the possibility of this potential mass revenge
 20 attack did you satisfy yourself as to what the practical
 21 planning steps were that would be implemented by Lonmin
 22 Security if indeed this potential revenge attack
 23 materialised? Specifically if it became apparent that a
 24 group of strikers were gathering, that it was evident at
 25 least that they might be gathering in order to carry out

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1 the sort of attack that you had identified, what was in
 2 place to deal with that situation if it materialised, and
 3 did you satisfy yourself as to the adequacy of whatever may
 4 have been planned?

5 MR SINCLAIR: Thank you. Mr Chairman, I
 6 was not in a comfortable space with the whole version, and
 7 I'll be very blunt with that, I was not in a comfortable
 8 space because we did not have with this thing that had
 9 happened on the march on the Friday and the issue on the
 10 Saturday, that we were now stretched across the whole of
 11 the property. This was virtually the first time that we
 12 had been that extended. That's why my brief about we are
 13 not able to get in resources that we require, and I believe
 14 it was the brief the day before this. However, we, with
 15 what we had we definitely had strategised on where best to
 16 place, and on the boards and the way we worked in that
 17 room, and I'm just sorry that you actually never came there
 18 and saw how we operated. It would have made this
 19 conversation a lot easier, but how we worked and how we
 20 were deployed and what was going on, I was on Friday and
 21 Saturday, if I had done this brief at this time I would
 22 have obviously had input from early in the morning, very
 23 early in the morning, that these were going on. So I
 24 believe we had things in place and who would be controlling
 25 what and who would be going where to deal with potentials,

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1 was, and where were the possibilities of this revenge
 2 attack taking place. So yes, I think – I hope I've
 3 answered your questions. Yes, there had been input by me.
 4 I do not know how Henry had missed it. There had been
 5 input by me. The teams in place, and I can't find those
 6 with the lists that you asked me to go back and find, can't
 7 find who were the actual response – I've got an example of
 8 how we do it.

9 [12:37] So I've got a very good example of how we did it
 10 in our format, who would have been in place and I was
 11 satisfied under the circumstances, not knowing what was
 12 going to – not knowing the exact outcomes and not going in
 13 and saying, well, this was a possibility and this was a
 14 possibility. Time was just against us to actually get
 15 those details in place but certainly I think we had put the
 16 maximum effort within our capabilities in place to deal
 17 with it, Mr Chair. Does that, did I answer the question –

18 MR TIP SC: Thank you, Mr Sinclair. We
 19 have the answer, Chair, thank you. Those are our
 20 questions.

21 CHAIRPERSON: Thank you, Mr Tip. Who is
 22 next, Mr Wesley? Ms Pillay applied – she said, she told me
 23 that she'd anticipated certain points would be raised by
 24 other counsel. Other counsel have decided not to utilise
 25 their time so she applied for an hour which I granted her.

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1 MR WESLEY: Thank you, Chair.
 2 MS PILLAY: Thank you, Chair. Just to
 3 kick off with a bit of housekeeping, Chair, we have one new
 4 exhibit which is annexure, file 2 tab 15 as an annexure to
 5 the ICAM report.
 6 CHAIRPERSON: [Microphone off, inaudible]
 7 MS PILLAY: It's file 2 tab 15 of the
 8 ICAM report, it's an annexure to the ICAM report, that's
 9 correct.
 10 CHAIRPERSON: And what will it be?
 11 MS PILLAY: It will be FFFF10.
 12 CHAIRPERSON: Yes. So FFFF10 will be
 13 file 2, tab 15 of the ICAM report.
 14 CROSS-EXAMINATION BY MS PILLAY: Good
 15 afternoon, Mr Sinclair.
 16 MR SINCLAIR: Hello, ma'am.
 17 MS PILLAY: Mr Sinclair, if we can kick
 18 off with DDDD2 which is the ICAM report and specifically
 19 page 1 of the report just so that we can be clear on the
 20 purpose of the ICAM report. Now we see from page 1, Mr
 21 Sinclair, that there are, the purpose is fourfold. It's
 22 firstly to identify the causes of the incidents which are
 23 dealt with in the report, secondly to identify contributory
 24 factors, thirdly to determine lessons learned and fourthly,
 25 to make recommendations on possible areas of improvement in

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1 order to improve management of security and emergency in
 2 order to prevent recurrence of those incidents. Do you see
 3 that?
 4 MR SINCLAIR: I see that, Mr Chair.
 5 MS PILLAY: And that is consistent with
 6 your understanding of the purpose of the ICAM report.
 7 MR SINCLAIR: That is what I understand,
 8 Mr Chair.
 9 MS PILLAY: Now we see further on page 1
 10 of the report, Mr Sinclair, that the ICAM report initially
 11 refers to nine incidents listed on pages 1 and 2 of the
 12 report, but we know that ultimately the ICAM report only
 13 dealt in any amount of detail with two incidents with – of
 14 the nine incidents it only dealt in detail with incident 2
 15 and incident – sorry, incident 2 and I'm just struggling to
 16 find a second incident – sorry, incidents 2 and 3, isn't
 17 that correct?
 18 MR SINCLAIR: Mr Chairman, my
 19 understanding of the report and the way this report was
 20 dealt with was through Henry Blou. He was the key figure
 21 in security that was dealing with the ICAM and the ICAM
 22 team, that they were dealing – my understanding is that
 23 they were dealing with four of, they had been tasked with
 24 four of the nine. That is my understanding. However, if
 25 you are now sharing with me that it's only two of the nine

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1 then – my understanding was that it was four of the nine.
 2 MS PILLAY: Well, if we look at the
 3 summary on page 1 and 2 of the report you will see that the
 4 ICAM team goes through each of the incidents they were
 5 meant to look at, incidents 1 to 9, and set out that
 6 essentially they didn't conduct thorough investigations
 7 into seven of the incidents because they were either
 8 subject to police investigation or they didn't have enough
 9 information to conclude the investigations. So they only
 10 concluded investigations in relation to incident 2 and
 11 incident 3.
 12 MR SINCLAIR: If I look at, which report
 13 that says –
 14 MS PILLAY: The same report where we are
 15 now, pages 1 and 2.
 16 MR SINCLAIR: This report?
 17 MS PILLAY: Yes.
 18 MR SINCLAIR: Yes?
 19 MS PILLAY: You'll see from the summaries
 20 which appear on page 1 and 2, that the ICAM team only made
 21 conclusions in relation to two of the incidents listed in
 22 the report.
 23 MR SINCLAIR: Mr Chair, I don't
 24 understand that and I think it would be appropriate for me
 25 to comment on that because to my understanding that there

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1 were four time lines and issues that were done.
 2 MS PILLAY: Alright –
 3 MR SINCLAIR: But I, but I stand
 4 corrected.
 5 MS PILLAY: We leave incident 1 aside now
 6 because that doesn't real with this Commission's terms of
 7 reference. I am referring specifically to the incidents
 8 relevant to this Commission's terms of reference. It's
 9 only conclusions in relation to incidents 2 and 3.
 10 MR SINCLAIR: Because of this
 11 Commission's – okay.
 12 MS PILLAY: The ones that are relevant to
 13 this Commission.
 14 MR SINCLAIR: So the ICAM, that is
 15 correct, the ICAM to my understanding, dealt with incident
 16 1 because it was prior -
 17 MS PILLAY: Yes.
 18 MR SINCLAIR: - and it would help them.
 19 It dealt with incident 2 definitely. It dealt with the
 20 incident at K4.
 21 MS PILLAY: That's Mr –
 22 MR SINCLAIR: And it dealt with the
 23 incident at Eastern Platinum with the man that was killed
 24 at the railway line. That is my understanding.
 25 MS PILLAY: Well, let's deal with the

<p style="text-align: right;">Page 36565</p> <p>1 last one, that's Mr – the incident relating to Mr Langa, is 2 that correct, that you're referring to? 3 MR SINCLAIR: That's what I'm referring 4 to, Mr Chair. 5 MS PILLAY: Well, that's dealt with in 6 the ICAM report as incident 4. 7 MR SINCLAIR: That's correct. 8 MS PILLAY: And if we look at the summary 9 on the first page of the report it states that, "Mr Langa 10 was found dead in the vicinity of the EPR pump station and 11 the railway line directly north of Saffy shaft, with stab 12 wounds after an anonymous tip-off was received at 13 approximately 8 o'clock in the morning. It is a suspected 14 case of intimidation as witnesses interviewed claimed that 15 he left his home at approximately 3 o'clock on his way to 16 work." 17 MR SINCLAIR: I hear that. 18 MS PILLAY: So if we go to the portion of 19 the report where incident 4 is dealt with and if I could 20 ask that we go down to where incident 4 is dealt with in 21 the ICAM report and if, you'll see from page 4 of the 22 report that where incident 4 is summarised it states there, 23 "Lonmin investigation docket, file 2 tab 14, not enough 24 information available to complete the investigation." Do 25 you see that?</p>	<p style="text-align: right;">Page 36567</p> <p>1 MS PILLAY: Now I'd like to brief, deal 2 briefly with this annexure, Mr Sinclair, and you'll see 3 from 2.4 that the date of the offence is on the 13th at 3 4 o'clock in the morning, do you see that? 5 MR SINCLAIR: I see that. 6 MS PILLAY: It's in between 3 o'clock and 7 10 o'clock in the morning. 8 MR SINCLAIR: I see that. 9 MS PILLAY: We see that the complainant 10 is Obed Meko who is a Lonmin investigator, is that correct? 11 MR SINCLAIR: That's, that's correct. 12 MS PILLAY: You see on the next page that 13 Mr Langa was occupied, his occupation was the production – 14 I think he was the production team manager, is that 15 correct? 16 MR SINCLAIR: Production team means he is 17 a production general worker, to my understanding of that 18 term. 19 MS PILLAY: Alright, I thought I saw 20 somewhere that he was the manager but we'll accept for now 21 that he was part of the production team and that he was 22 employed at Saffy shaft. 23 MR SINCLAIR: I see that. 24 MS PILLAY: Do you confirm that he was 25 employed at Saffy shaft?</p>
<p style="text-align: right;">Page 36566</p> <p>1 MR SINCLAIR: I see that on this report, 2 yes. 3 MS PILLAY: So you accept that there 4 hasn't been a completed investigation of Mr Langa's – 5 MR SINCLAIR: I see this and this is 6 tabulated, it must be correct, ma'am. 7 MS PILLAY: Now let's look at the 8 information that has been submitted in the ICAM report, Mr 9 Sinclair, and I've handed a bundle of documents to you 10 which has just now been marked as exhibit FFFF10. 11 MR SINCLAIR: Yes, Mr Chair. 12 MS PILLAY: Now just to state that our 13 records done have a file 2 tab 15 to the ICAM report, 14 although we were informed that we have the complete ICAM 15 report and the complete annexures, we don't have a file 2 16 tab 14 in our possession. What we do have, though is file 17 2 tab 15 which is the bundle of documents here before you. 18 MR SINCLAIR: Yes. 19 MS PILLAY: And which appears to be the 20 Lonmin investigation docket into Mr Langa's murder. Do you 21 see that? 22 MR SINCLAIR: I'm listening. 23 MS PILLAY: And that's the documents that 24 you have before you, yes. 25 MR SINCLAIR: Yes, ma'am. Yes, sir.</p>	<p style="text-align: right;">Page 36568</p> <p>1 MR SINCLAIR: Well, I've got – I see it's 2 there, I can't confirm that but I see it's there, yes. 3 MS PILLAY: Alright and if we can then go 4 to the investigation diary which is further down, two pages 5 down, you'll see that this is the investigation diary 6 relating to Mr Langa's murder and that it's stated, "The 7 African male person was stabbed by unknown people, 8 suspects, at around 3AM, following the information from 9 Simon Fundana." Do you see that? Do you see that, Mr 10 Sinclair? 11 MR SINCLAIR: Looking for it, but I 12 believe it's there. You know, I can't see it but yes. 13 MS PILLAY: "Who says that the deceased, 14 at the deceased's house" – sorry, in the same house – "he 15 alleged that the deceased weapons going to work at Saffy. 16 The deceased was identified as Julius Langa" and we've got 17 his number, his work number, "working as production team 18 leader." 19 MR SINCLAIR: I see that. 20 MS PILLAY: Do you see that he was 21 actually the team leader – 22 MR SINCLAIR: Okay, so now I see it's 23 there – 24 MS PILLAY: "The deceased had multiple 25 wounds around his body. As a result he could not help</p>

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1 himself. No suspect arrested and the Bethanie police as
 2 well as LCRC members were at the scene and no suspects were
 3 arrested."
 4 MR SINCLAIR: I see that.
 5 MS PILLAY: Now if you go to the next
 6 page of this bundle you'll see a statement from Mr Meko who
 7 states in paragraph (c) that on Monday the 13th of August he
 8 was informed by central operations at 9 o'clock that there
 9 is someone who is lying on the ground between EPC and the
 10 railway, do you see that?
 11 MR SINCLAIR: I see that.
 12 MS PILLAY: Now can you just confirm for
 13 me, Mr Sinclair, the positioning of Mr Langa's body, is
 14 that on a route that is quite popular for workers
 15 travelling to Saffy shaft?
 16 MR SINCLAIR: Mr Chair, I have not been
 17 to the scene but what I understand from information that I
 18 received, it was between the Eastern Platinum hotel, there
 19 is a road that goes from the hostel across to Sakwalane,
 20 over the railway line, that is frequently used by our
 21 people and community.
 22 MS PILLAY: That's correct and it would
 23 particularly be used by people walking to Saffy shaft
 24 because that is on the way to Saffy shaft.
 25 MR SINCLAIR: No, it would have not, that

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1 was not on the way to Saffy shaft, Mr Chairman, that would
 2 be on the way to Eastern Platinum hostel. So those people
 3 would walk across there to the hostel and then collect the
 4 bus service from the hostel to Saffy shaft, which was quite
 5 a considerable way away. Does that make sense?
 6 MS PILLAY: That does make sense, thank
 7 you for that.
 8 MR SINCLAIR: Thank you.
 9 MS PILLAY: Now we know that, if we go
 10 back to page 4 of the industrial relations we know that the
 11 ICAM investigators indicated that there was not enough
 12 information available to complete the investigation. From
 13 your side, from Lonmin security, was there any specific
 14 investigations done into Mr Langa's death?
 15 MR SINCLAIR: Mr Chairman, the only
 16 thing, when there was anything that was going to become a
 17 police case or a police case, we would be very careful as
 18 to our boundaries on dealing with those matters. So this
 19 document that you have read through would have been a
 20 typical way that, for our own information, that we would
 21 have gone out and got the brief information, got the thing
 22 through, where the call would have come through, and done a
 23 brief but we would not be involved in it because it weapons
 24 now a police matter. So we, the limits were – and that is
 25 the instruction at all times to our CPU and our

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1 investigation team and ourselves, Mr Chair. Is that the
 2 question you asked me?
 3 MS PILLAY: It's part of it, Mr Sinclair.
 4 What I'd like to focus on now is steps taken by Lonmin
 5 security before Mr Langa's death.
 6 MR SINCLAIR: Sorry, the state –
 7 MS PILLAY: The steps taken by Lonmin
 8 security before Mr Langa's death. Now you were that there
 9 had been information received by Lonmin security that
 10 workers at Saffy shaft were particularly vulnerable to
 11 attack.
 12 MR SINCLAIR: There were reports that had
 13 come through from just about all the shafts to that effect,
 14 not just Saffy or K4.
 15 MS PILLAY: But specifically in relation
 16 to Saffy shaft –
 17 MR SINCLAIR: Yes.
 18 MS PILLAY: - that there were, there was
 19 information available to Lonmin security that there was a
 20 specific threat directed at workers of Saffy shaft.
 21 MR SINCLAIR: It could have quite
 22 possibly been. I don't recall it right now that there was
 23 information to – but it could have been through to the
 24 security team, yes.
 25 MS PILLAY: Well, let's look

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1 specifically, Mr Sinclair, at the occurrence book.
 2 MR SINCLAIR: Yes.
 3 MS PILLAY: And if we could look at
 4 EEEE19 at the entries on the 12th of August and I'd like to
 5 specifically look at the entry at 13:35 and what we see at
 6 13:35, Mr Sinclair, is an entry, "Information received from
 7 Patricia that the crowd would be mobilising to Saffy shaft
 8 tomorrow." Now this entry is on the 12th, tomorrow would be
 9 the 13th. "The crowd would be mobilising to Saffy shaft
 10 tomorrow because the workers are still working." Do you
 11 see that?
 12 MR SINCLAIR: I see that.
 13 MS PILLAY: So from this it's quite clear
 14 that there was information coming through to Lonmin
 15 security that Saffy shaft in particular was a specific
 16 target because there were people working at Saffy shaft.
 17 MR SINCLAIR: I concur. Because of that
 18 entry I concur that that had been received, yes.
 19 MS PILLAY: On the 12th.
 20 MR SINCLAIR: Yes.
 21 MS PILLAY: Let's look further down at
 22 14:22 and we see another report, Mr Sinclair, "Received
 23 information from Michael Mokwena of Saffy that when the
 24 workers are going to work tonight they will be shot." Do
 25 you see that?

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1 MR SINCLAIR: Yes, I see that.
 2 MS PILLAY: So we see here, Mr Sinclair,
 3 a very specific report which raises very serious concerns
 4 about workers who are to report to duty at Saffy shaft
 5 about their health and safety, do you see that?
 6 MR SINCLAIR: I see that.
 7 MS PILLAY: Now before I ask specifically
 8 what weapons done by Lonmin security, Mr Sinclair, can I
 9 ask that we look at FFFF6.2 which is your security briefing
 10 and if we can look at paragraph 5 of the briefing
 11 specifically, we know that this was done on the 10th of
 12 August, Mr Sinclair, isn't that correct? I think you're
 13 going to have to verbalise your answer for the purposes of
 14 the record.
 15 MR SINCLAIR: Sorry. I presume it's at
 16 the top –
 17 MS PILLAY: That's right, at the top, it
 18 was done on the 10th.
 19 MR SINCLAIR: Yes, and it is correct.
 20 MS PILLAY: And in paragraph 5 we see you
 21 indicating that, "A full security plan activated to cover
 22 all affected areas across the Lonmin, taking into
 23 consideration employee safety, intimidation, transport
 24 disruption, access to shaft facilities and the like, while
 25 staff maintaining criminal preventative measures across the

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1 operation." So what we see here is that you're committing
 2 to a full security plan across Lonmin operations,
 3 specifically designed to ensure the protection of workers
 4 travelling to work. Do you see that?
 5 MR SINCLAIR: I see that.
 6 MS PILLAY: And again just for context,
 7 Mr Sinclair, it's true isn't it that at this stage and
 8 particularly by the 12th, Lonmin was encouraging its workers
 9 to come to work.
 10 MR SINCLAIR: If I can recall correctly
 11 from the human resources and management, that was what was
 12 happening, if I recall correctly, yes.
 13 MS PILLAY: In fact we see, Mr Sinclair,
 14 in EEEE19 an entry at 7:40 on the 12th of August. Towards
 15 the middle of that you'll see "Message broadcast." Do you
 16 see that, "Message broadcast through radio Masisa and
 17 North-West FM that people should go back to work."
 18 MR SINCLAIR: Yes, yes.
 19 MS PILLAY: So we see a deliberate
 20 campaign at this stage, Mr Sinclair.
 21 MR SINCLAIR: Yes.
 22 MS PILLAY: From Lonmin, encouraging its
 23 workers to go to work.
 24 MR SINCLAIR: Yes, I see that.
 25 MS PILLAY: Now in the context which we

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1 have described –
 2 MR SINCLAIR: Yes, ma-am.
 3 MS PILLAY: - where Lonmin was actively
 4 encouraging its members to come to work, where there are
 5 specific threats made in relation to employees at Saffy
 6 shaft.
 7 [12:57] And specific threats received by Lonmin security
 8 threatening the safety of those workers at Saffy shaft
 9 specifically. And in the context where we have already had
 10 a period of intense violence starting on the 10th
 11 specifically on the morning of the 12th and then the evening
 12 of the 12th with the fire at K4 shaft and the killing of Mr
 13 Mabebe. The question I want to pose to you, Mr Sinclair,
 14 is what steps was taken by Lonmin to ensure the safe
 15 passage of workers travelling specifically to Saffy shaft?
 16 MR SINCLAIR: Mr Chairman, just to put
 17 this into context, the murder that took place was some four
 18 kilometres away from Saffy shaft. Saffy shaft is in the
 19 middle of our property, we've got a huge slimes area and
 20 then Eastern Plats hostel and the murder of this person was
 21 very, very far from – this Saffy employee his murder took
 22 place a long way away from where Saffy shaft was. Just to
 23 clear that point up. What specifics were taking place, we,
 24 on our deployment sheets and on our information that we
 25 had, with the resources we had and given the extent of what

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1 was going on and if I understand this was on the 12th you
 2 asked.
 3 MS PILLAY: Well we know that Mr Langa
 4 was killed around 3 o'clock on the morning of the 13th.
 5 MR SINCLAIR: So we're talking about what
 6 specific was taking place on the 12th as the example is what
 7 I'm asked, is that correct?
 8 MS PILLAY: Leading up to the morning of
 9 the 13th.
 10 MR SINCLAIR: Okay so on the 12th, that
 11 was the Sunday, on the 12th with this that had taken place
 12 at Wonderkop, stuff the day before and across the whole
 13 property we deployed – we had a deployment where our
 14 security teams, we brought in whatever resources we could
 15 from the process security which I alluded to earlier when I
 16 was on the stand, we mustered as many people as we could.
 17 We brought our own teams onto extended hours of work to
 18 utilise what we had to then place them across the property
 19 to Eastern Plat's 3 shaft right the way through all the
 20 shafts to Karee 4 shaft. So we brought extended road
 21 patrols, extended surveillance and additional surveillance
 22 that could assist us around all of our shafts including
 23 this at Saffy. We would have had the patrols going in and
 24 out because Saffy is a little bit remote, you go down the
 25 main road and then you have to turn, so it's remote. We

<p style="text-align: right;">Page 36577</p> <p>1 would have ensured that there regular and visible patrols 2 outside and the security inside. So we took whatever steps 3 we could, bearing in mind that I have already in one of my 4 briefs said I wasn't able to get hold of everything that we 5 required. If I could just add to that, we then also had - 6 the police deployments had been started and activated by 7 that time particularly by Sunday afternoon. We had already 8 seen, if I recall, General Mpembe and his teams, his people 9 coming in, we were talking to him about where should they 10 be deployed to assist us because we were extended. So 11 Lonmin were extended to a very big degree across the 12 property. So we were doing that at the shafts and what we 13 could with our people and then those are the steps that we 14 took. Is that what I was asked? 15 COMMISSIONER HEMRAJ: Mr Sinclair, you 16 had information that there were threats to burn the buses 17 carrying the workers to the shafts. 18 MR SINCLAIR: Yes. 19 COMMISSIONER HEMRAJ: That would then put 20 it with the route from the hostel to the buses, now were 21 those routes covered by these contingencies? 22 MR SINCLAIR: The routes – with the 23 people and the infrastructure and the vehicles we had the 24 routes were definitely covered and monitored. We had, for 25 instance a little place that we were escorting out of where</p>	<p style="text-align: right;">Page 36579</p> <p>1 It is just not possible for us or us and the SAPS to 2 actually cover all of those routes in the circumstances 3 like this. 4 CHAIRPERSON: If you can't protect the 5 workers then they won't work. 6 MR SINCLAIR: Say again, Sir. 7 CHAIRPERSON: You say you couldn't 8 protect the workers on their way to work, you could protect 9 them some parts of the routes, but not – 10 MR SINCLAIR: And we took – we put into 11 what we've been asked about the scenario planning, we put 12 in our contingency planning where are the possibilities, 13 the buses, the Karee hostel loading through to 4 belt was a 14 particularly vulnerable area that we knew. The Eastern 15 Platinum loading at the hostel, from there we know that 16 there had been intimidation at that bus thing. So we put 17 measures in place to have visible policing within our 18 capacity and within our capability. If it was just a 19 strike area at Eastern Plats for instance we would have 20 been able to cover it far more effectively. 21 CHAIRPERSON: But you're not really 22 answering my question. The point is there was a strike 23 over the whole of the property. 24 MR SINCLAIR: Yes, Sir. 25 CHAIRPERSON: There was obviously an</p>
<p style="text-align: right;">Page 36578</p> <p>1 the loading zones were and where the drop off zones, that 2 was part of our security plan. We had drop off zones with 3 monitoring between points, we had tracking of the vehicles 4 to see that that – so all of those within our capabilities 5 and our capacity were put in place, Mr Chair. 6 MS PILLAY: Mr Sinclair, not only does 7 Lonmin fail to protect this particular route which you 8 started off your testimony today under cross-examination by 9 me, you started off confirming that this was a popular 10 route because it led to the bus depot where workers would 11 catch a bus to Saffy shaft. Now not only did Lonmin, self 12 evidently, fail to secure this particular route, but we 13 also know that the first time Lonmin discovers this body is 14 at 8:45 the morning. Despite the fact that Mr Langa, we 15 know, was killed at around 3 o'clock in the morning. 16 MR SINCLAIR: Mr Chairman, that route 17 from the hostel to the railway line and across is going 18 beyond our property. Although it's exactly the same as the 19 routes coming from Bapong we have many routes coming 20 through the remote areas from Bapong onto our property. We 21 have many areas coming from the Marikana West and the other 22 settlements and the other informal settlements, so that 23 route – there is not the capacity at Lonmin to cover every 24 one of those remote routes. And if you take the plan and I 25 explained on the plan you would see the vastness of this.</p>	<p style="text-align: right;">Page 36580</p> <p>1 intention on the part of the strikers and tried to ensure 2 there wasn't work done at any of the shafts, is that right? 3 MR SINCLAIR: Yes, Sir. 4 CHAIRPERSON: You didn't have the 5 resources to protect the whole of the property. You didn't 6 have the resources to protect all the workers all the time 7 when they were on their to work. 8 MR SINCLAIR: That is absolutely correct, 9 but we tried to plan our best to get to where we could 10 potentially anticipate these things to protect. So we 11 tried with our capacity to our best to get to those places 12 to do that, Sir. 13 CHAIRPERSON: Yes, yes I understand, so 14 you were trying to protect perhaps the majority of the 15 workers. Is that right? 16 MR SINCLAIR: Very difficult, Sir. 17 CHAIRPERSON: Ja I know. You see that's 18 why it was put to you that there is a difficulty when you 19 broadcast a message over three radio stations, sorry two 20 radio stations to the effect that people must come back to 21 work knowing full well that you're exposing them to risk, 22 that you can't protect all of them all the time over all 23 the routes. There's a distinct prospect with regard being 24 had to the fact that the information is that the strikers 25 are planning for war was is put in the report, but some of</p>

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1 your workers on the way to work, non-striking workers could
 2 be injured and possibly killed. Despite that you send a
 3 message over the radio to these people they must please
 4 come to work. Am I summarising the facts accurately?
 5 MR SINCLAIR: You are summarising
 6 correctly, Sir. The message was sent over the radio, there
 7 were additional plans put in. For instance the K3 and if I
 8 could just talk about that because it will cover –
 9 CHAIRPERSON: Would you forgive me if I
 10 suggest that we do that after lunch? It's already gone
 11 over to lunch time. Okay shortly explain. Give it now and
 12 then we know about it.
 13 MR SINCLAIR: For instance at the K3 and
 14 that would have happened across all the shafts, the
 15 managers would have tried where people are coming from the
 16 remote areas, like Bapong and those sort of areas, we said
 17 guys assemble there and move together or we would move off
 18 the property and we would get on together. So we did take
 19 other precautions, but yes I agree with your statement, I
 20 agree with what you put to us that it was extremely
 21 difficult bearing in mind the radio messages and those sort
 22 of things, Sir.
 23 CHAIRPERSON: Thank you. Advocate Hemraj
 24 is going to ask a question and then once we've got your
 25 answer we'll take the lunch adjournment.

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1 MR SINCLAIR: Thank you, Sir.
 2 COMMISSIONER HEMRAJ: Mr Sinclair, your
 3 realisation that you didn't have the capacity to protect
 4 the workers that had been asked to report to work, was that
 5 conveyed up the line?
 6 MR SINCLAIR: Ma'am, I believe so and I
 7 believe, I can look it up, but I believe it was in one of
 8 my briefs that it is there that –
 9 COMMISSIONER HEMRAJ: Sorry to interrupt
 10 you, but specifically that you were unable to protect all
 11 the workers –
 12 MR SINCLAIR: I don't know if I was
 13 absolutely specific, but definitely my direct report was a
 14 very knowledgeable man and he would have taken what I – to
 15 understand that as well I believe.
 16 COMMISSIONER HEMRAJ: I'd be most obliged
 17 if you could point that out after lunch.
 18 MR SINCLAIR: I'll find it, Ma'am.
 19 COMMISSIONER HEMRAJ: Thank you.
 20 CHAIRPERSON: You've got the whole of the
 21 lunch, three quarters of an hour to find that.
 22 MR SINCLAIR: It will take a few seconds,
 23 Sir. Thank you, Sir.
 24 CHAIRPERSON: All right, so you've got
 25 time for lunch as well. We'll take the lunch adjournment.

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1 We'll come back at ten to two.
 2 [COMMISSION ADJOURNS COMMISSION RESUMES]
 3 [13:55] CHAIRPERSON: The Commission resumes. Mr
 4 Sinclair, you're still under oath.
 5 GRAEME MILLER SINCLAIR: Yes, Sir.
 6 CHAIRPERSON: Before Ms Pillay asks you
 7 her next question, were you able to find the thing you were
 8 looking for?
 9 MR SINCLAIR: Yes.
 10 CHAIRPERSON: We gave you more than the
 11 time you asked for, so you can't claim you didn't have
 12 enough time.
 13 MR SINCLAIR: I will rush through it, Mr
 14 Chair, thank you.
 15 CHAIRPERSON: You have found the
 16 document?
 17 MR SINCLAIR: Thank you.
 18 CHAIRPERSON: Tell us what the –
 19 MR SINCLAIR: Mr Chair –
 20 CHAIRPERSON: It's one of these briefs
 21 that you issued, isn't it?
 22 MR SINCLAIR: Mr Chairman, it was about
 23 the resources and the lack of us being able to get
 24 resources. I think that's what we were talking about, and
 25 it's on 264.73. I don't know if that makes sense. It's

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1 not, it's my, one of my briefs, this brief number –
 2 CHAIRPERSON: What number brief? What's
 3 the number of the brief?
 4 MR SINCLAIR: The number of the brief is
 5 number 1.
 6 CHAIRPERSON: I see. Well, I think Ms
 7 Pillay will be able to tell us what the exhibit number is.
 8 MR SINCLAIR: Sir, that was just –
 9 CHAIRPERSON: [Microphone off, inaudible]
 10 on the screen?
 11 MR SINCLAIR: Must I wait? Okay, thank
 12 you.
 13 CHAIRPERSON: Is that the one you mean?
 14 MR SINCLAIR: Yes, Sir.
 15 CHAIRPERSON: Good.
 16 MR SINCLAIR: Sir, if you have a look at
 17 point number 3, "Mining security joint operational centre
 18 made a full operation at Middelkraal, and additional
 19 security resources mustered from Protea Coin – from process
 20 security and Protea Coin Security. Protea resources are at
 21 present stretched to their limits via demands from other
 22 mines and clients who are experiencing similar labour
 23 unrests, thus not all the Lonmin requirements can be met."
 24 An armoured vehicle deployed to Marikana from Protea Coin
 25 had caught fire in transit, so we didn't get that, and then

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1 with regard to the buses I just understood the concerns
 2 about our bus and our bus transport that I see under point
 3 9 that the buses had been consolidated instead of from
 4 their normal routes to assist with security in that, Mr
 5 Chairman. I don't know if that helps the Commission, but I
 6 think those points are relevant. So –
 7 CHAIRPERSON: Yes, thank you. There's
 8 also an entry further up that the armoured vehicle caught
 9 fire on route to Marikana.
 10 MR SINCLAIR: Ja.
 11 CHAIRPERSON: So presumably that didn't
 12 arrive.
 13 MR SINCLAIR: Well, that is –
 14 CHAIRPERSON: That's higher up, I forget
 15 which number.
 16 MR SINCLAIR: Ja, that was one of the
 17 things that, it was one that had been, we had managed to
 18 secure. That's why we only had the two on the property at
 19 the time. This would have been the third one and we had
 20 others that we were trying to secure but I think that is
 21 just to, how it, what precautions and what were we doing.
 22 We were trying to be as proactive as we could, Mr Chair.
 23 CHAIRPERSON: Yes, thank you.
 24 COMMISSIONER HEMRAJ: But there is no
 25 indication to the executive that you're unable to protect

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1 those very workers whom you are urging to return to work?
 2 MR SINCLAIR: That I did not, that I
 3 didn't, I only put down what we were trying to do and kept
 4 repeating that.
 5 COMMISSIONER HEMRAJ: Yes.
 6 MR SINCLAIR: As opposed to maybe I could
 7 have or should have highlighted that because we are so
 8 stretched we could be vulnerable. But there is, I noted in
 9 one of the other things that I did put a cautionary note
 10 out on one of the minutes that please, we need to let our
 11 employees know, and it is on brief number 4, on brief
 12 number 4 on item number 4, "All transport, tanker
 13 transport, bus services, commodity services, the likes, are
 14 being operated carefully and are being carefully monitored
 15 and supported by security. Employee and contractors need
 16 to remain vigilant while undertaking these activities and
 17 must immediately report incidents to," to the thing. So
 18 there were fragmented or small indications that we were
 19 saying that, but probably not sufficiently, Mr Chair.
 20 COMMISSIONER HEMRAJ: That paragraph 4
 21 does not cover the mineworkers.
 22 MR SINCLAIR: Well, employees and
 23 contractors is what I was saying –
 24 COMMISSIONER HEMRAJ: Employees, I see,
 25 yes.

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1 MR SINCLAIR: - I what I was saying in
 2 that, I was trying to say to my executive we need to try,
 3 and I know that they were saying please, you need to be
 4 vigilant on your way. I know it was a big safety portion
 5 of our security briefings whenever we had them, Mr Chair.
 6 COMMISSIONER HEMRAJ: Thank you, Mr
 7 Sinclair.
 8 MR SINCLAIR: Thank you.
 9 CROSS-EXAMINATION BY MS PILLAY (CONTD.):
 10 I think the further issue, Mr Sinclair, which you were
 11 meant to address was whether the problems with resources
 12 and the concerns that you had raised around employee
 13 safety, whether that had been escalated to higher up within
 14 Lonmin management.
 15 MR SINCLAIR: I'm missing your question,
 16 I'm sorry.
 17 MS PILLAY: No, that was the further
 18 question that you were asked to think about over the lunch
 19 adjournment –
 20 MR SINCLAIR: Yes.
 21 MS PILLAY: - was whether you had
 22 escalated these concerns and your problems with resources
 23 to higher up within Lonmin management.
 24 MR SINCLAIR: Mr Chair, besides these
 25 briefs that were sent out, Mr Chair, definitely in my one-

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1 on-one conversations, in my conversations with Henry and
 2 there with my direct reports and with the Human Resources
 3 and whoever we were talking to, we definitely would have
 4 said we have a concern that we cannot cover, and we made
 5 them aware that we cannot cover every eventuality, but we
 6 are doing our level best with the resources we have to go.
 7 Is that what the question was, Mr Chair?
 8 MS PILLAY: I think the question was
 9 directed more towards Lonmin executives, whether in fact
 10 you as the head of emergency and disaster management and
 11 security, whether you had alerted people higher up and not
 12 those below you, but those higher up about your challenges
 13 in relation to both resources and employee safety.
 14 MR SINCLAIR: Okay, Mr Chair, thank you.
 15 We were visited on a regular basis by the executive, from
 16 Mr Russo-Bello through to the executive teams were visited.
 17 We would have taken Henry, myself or whoever when they were
 18 visiting, taken them through what we we're going and what
 19 our challenges were. We certainly would have elevated
 20 those, whether they're on record or whether – but we would
 21 have taken them through our plans and said this is what
 22 we're doing, that's there, we would have listened to their
 23 concerns and we would have addressed definitely upwards.
 24 MS PILLAY: Mr Sinclair, the question
 25 isn't what would you have done –

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1 MR SINCLAIR: We did.
 2 MS PILLAY: The question is what did you
 3 do. Did you raise the concerns –
 4 MR SINCLAIR: We definitely raised issues
 5 of concerns going up. To say today we said this and said
 6 that and said that two years down the road, I didn't record
 7 all of that but certainly I know that we definitely raised
 8 concerns going forward.
 9 MS PILLAY: I think, Mr Sinclair, we're
 10 running out of time, so let's deal very quickly with
 11 incident 2 and 3 as it was dealt with in the ICAM report.
 12 So if I could ask you to look specifically at the events
 13 analysis in relation to incident 2, that's at page 16 of
 14 the ICAM report.
 15 MR SINCLAIR: Yes sorry, I've lost it.
 16 Yes, okay. Please ask me your question again.
 17 MS PILLAY: Now we know that – that's
 18 correct, incident 2, that's page 16 of DDDD2, and what we
 19 see here, Mr Sinclair, is an analysis of, in the first red
 20 block the organisational factors, the second red block the
 21 task or environmental conditions, the third red block
 22 individual team actions, and then the fourth red block is
 23 the key one which sets out absent or failed defences. Do
 24 you see that?
 25 MR SINCLAIR: Yes.

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1 MS PILLAY: Now if we can begin with the
 2 first issue that was dealt with, and that's inadequate
 3 intelligence network, and what we see here is that the ICAM
 4 investigators reached the conclusion that Lonmin has
 5 inadequate intelligence resources, and you see that in the
 6 last block under "Absent or failed defences." Now do you
 7 agree with that conclusion?
 8 MR SINCLAIR: I don't – Mr Chair, I don't
 9 actually agree with what they've recorded there. That was
 10 their, what their findings were. We have, under our
 11 auditing department we have a, information that is fed
 12 through to them. I don't know if we would call it
 13 intelligence, but I think they shouldn't have used that
 14 word "intelligence," but we have information that is fed
 15 through to that department, that is fed through to us. We
 16 also, Henry Blou and his teams have information sources
 17 that are coming through and obviously the investigators,
 18 even although we had two of our C5s sitting on that team,
 19 had not highlighted that to them that we have that
 20 capability of doing, within our legal ground and within our
 21 structures doing a certain amount of that. So that is not
 22 entirely correct.
 23 MS PILLAY: Now an issue that is not
 24 dealt with in the ICAM report which this Commission has
 25 seen, particularly in the last few days, Mr Sinclair, is

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1 that there seems to have been an inadequate use of
 2 intelligence that was coming through to Lonmin. Now we saw
 3 for example that there was information received from the
 4 undercover security officer on the 11th of August in
 5 relation to what was happening on the koppie and the war,
 6 in the words of the undercover agent, that the strikers
 7 were preparing for. We also saw reflected in EEEE19
 8 reference to intelligence coming through around attacks on
 9 K4 and attacks on Saffy Shaft, but what we don't see is
 10 specific action taken by Lonmin Security based on the
 11 intelligence reports.
 12 MR SINCLAIR: Mr Chairman, I know that
 13 that intelligence, that information sources were coming
 14 through and that's why the ICAM had it. I know that there
 15 were other information sources coming through. We had
 16 interaction with the SAPS for instance where we would
 17 exchange information coming through, and I know that Henry
 18 and his team were very diligent in dealing with that. Why
 19 it hasn't been captured in this ICAM, why it hasn't been
 20 recorded, I cannot say. But definitely there was a
 21 process, there was, there still is a process in place that
 22 that is dealt with and it is discussed at, when it is,
 23 needs to be it is discussed at the appropriate discussions
 24 and meetings. For instance at the morning meeting of the
 25 dayshift and nightshift, or at an appropriate meeting those

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1 things are discussed. Why it is not captured in here I
 2 cannot say, Sir.
 3 MS PILLAY: Mr Sinclair, the thrust of my
 4 question isn't around why that is not dealt with in the
 5 ICAM report. It's really around the fact that there has
 6 been evidence before this Commission that there seems to be
 7 a lack of contingency planning and execution by Lonmin
 8 Security based on the specific intelligence reports that
 9 were coming through.
 10 MR SINCLAIR: I'm at a short loss to say
 11 that there seems to be a lack of contingency planning.
 12 Whenever information is available, for instance the Saffy,
 13 there is definitely contingency planning put around it.
 14 Where it is recorded and how it is and why that impression
 15 has been put to the Commission, I can't – I, sitting here I
 16 can't explain that, but there is definitely processes in
 17 place to deal with information coming in from the shafts,
 18 from other sources, and then appropriately dealing with it
 19 at our level. So that is in place. Why it is being
 20 captured like this I cannot explain.
 21 COMMISSIONER HEMRAJ: If there had been
 22 action taken upon the intelligence received then you would
 23 have been better prepared for the events of the 12th?
 24 MR SINCLAIR: Ma'am, I believe that - Mr
 25 Chair, I believe that the information did come through and

<p style="text-align: right;">Page 36593</p> <p>1 we tried in our capacity as I explained, with this huge 2 change in events, this huge overload, we tried to take that 3 and deal with that and put contingencies in place to deal 4 with those. We did not succeed with all of them, 5 definitely. We were incapable of dealing with and getting 6 them all, but definitely the information would not have 7 been ignored when we could, Sir.</p> <p>8 CHAIRPERSON: One of the problems appears 9 to be K4.</p> <p>10 MR SINCLAIR: Yes.</p> <p>11 CHAIRPERSON: And I understand your 12 sources were stretched, you may well not have been able to 13 adequately protect K4, but in that event you should have 14 closed the shaft and you should have not allowed the 15 workers to come to, like Mr Mabebe –</p> <p>16 MR SINCLAIR: Yes.</p> <p>17 CHAIRPERSON: - to come to work because 18 you were in fact exposing him to danger. In fact you did 19 expose him to danger and he died. Isn't that so? I know 20 it's hindsight.</p> <p>21 MR SINCLAIR: Yes, I say –</p> <p>22 CHAIRPERSON: And I know, I understand 23 that, but still it is a fact, is it not?</p> <p>24 MR SINCLAIR: I hear it is a fact and 25 our, my understanding in our security thing is that K4 was</p>	<p style="text-align: right;">Page 36595</p> <p>1 would regard as the boundaries of the shaft, but he was in 2 the car park –</p> <p>3 MR SINCLAIR: Yes.</p> <p>4 CHAIRPERSON: - when he was assaulted and 5 Mr Janse van Vuuren was also assaulted, but he was able to 6 hide behind a wall and he wasn't fatally assaulted, but the 7 very serious consequence for Mr Mabebe that he wasn't told 8 in advance don't come to work, it's not safe.</p> <p>9 MR SINCLAIR: I hear your concern about 10 should have been told in advance and I concur with you. 11 Whether he was in the car park and to us we had never had, 12 never experienced an attack like that within our perimeter 13 fences. We've had it outside on the roads to work, 14 etcetera, and we were focusing on that, although we were 15 monitoring CCTV, etcetera, to try and manage that as you 16 have rightly said, with our resources that we had in place, 17 Sir. So yes, there was, there were, there is concern 18 there.</p> <p>19 MS PILLAY: Can we go to the second issue 20 highlighted in the event analysis, Mr Sinclair? It's the 21 lack of consideration of risk associated with supplier and 22 contractor equipment and services, and just to summarise 23 what we see dealt with under this heading, is that Lonmin 24 did not have its own armoured vehicle and that it relied on 25 Protea Security's two armoured vehicle, and what the ICAM</p>
<p style="text-align: right;">Page 36594</p> <p>1 effectively closed with the exception of key people that 2 needed to go to work and that's why they would go meet, 3 they had evacuation plans in place, they had trading, they 4 had communication. I am concerned about the comments that 5 I heard somewhere along the line that they weren't able to 6 get their communication out, so they had those in place and 7 there was limited people going, that we were patrolling the 8 roads, anticipating that their attack would come on the 9 roads, not in the shaft. So for us to close the shaft down 10 with essential services pumping, there's certain things 11 that we have to try and maintain, not production and bulk 12 work, Mr Chairman, but limited – now I'm not sure those, 13 that group that were going to work, were they normal shift 14 or were they additional shift. I'm not sure of that, but –</p> <p>15 CHAIRPERSON: [Microphone off, inaudible] 16 I can't tell you that, but what I do know is that Mr –</p> <p>17 MR SINCLAIR: Yes, Sir.</p> <p>18 CHAIRPERSON: - we'll find out, reread 19 the relevant sections of the evidence, but what we do know 20 is that Mr Mabebe was fatally assaulted –</p> <p>21 MR SINCLAIR: Yes, Sir.</p> <p>22 CHAIRPERSON: - in the car park.</p> <p>23 MR SINCLAIR: Yes.</p> <p>24 CHAIRPERSON: He hadn't actually gone 25 into the shaft itself. I don't know what technically you</p>	<p style="text-align: right;">Page 36596</p> <p>1 does is it identifies two challenges. The first is 2 mechanical problems with one of the Protea armoured 3 vehicles, but also in relation to the other armoured 4 vehicle that there was limited communication with that 5 armoured vehicle and I assume that's between Lonmin 6 Security and the personnel in that armoured vehicle.</p> <p>7 MR SINCLAIR: That's what they have 8 identified. I can assure you that we have a very – firstly 9 just to put it into proper perspective, we have a very good 10 communication radio system. However, there are areas that 11 fail. Two are, firstly it's in some isolated areas, for 12 instance behind our dumps, which we are addressing, and 13 secondly sometimes there is a shortage of radios when we 14 are bringing in people, they haven't had the allocation 15 given to them. That has subsequently been addressed, but 16 there were those circumstances that took place. However, 17 the people in those vehicles, we definitely made sure that 18 they were in cell phone communication, which the Protea 19 Coin guy with whoever the Lonmin reportee was, that they 20 had cell phone communication and that I know was in place 21 with the RUs and the RU supervisor team. It wasn't picked 22 up by the investigators on the ICAM, Ma'am.</p> <p>23 MS PILLAY: The third issue which is not 24 reflected in this chart, Mr Sinclair, is that there seems 25 to have been a difficulty with the armoured vehicles not</p>

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1 being easily accessible to Lonmin Security, that there was
 2 a protocol that had to be followed before Lonmin Security
 3 could access the Protea armoured vehicles.
 4 MR SINCLAIR: Mr Chair, the vehicles were
 5 under the direct control of whoever was the field officer
 6 out there. So he was in the field. He might have not been
 7 with the CPU unit or whatever, but he was in and he was
 8 directing. We couldn't have everybody giving that person
 9 instructions, or that vehicle instructions, so that's how
 10 it operated. There was a line of command in place. It's
 11 also been effective and it was in place over there.
 12 [14:15] So I understand they are saying that in the ICAM
 13 but there's definitely a procedure in place for them to
 14 communicate and get those vehicles. However, sometimes
 15 those vehicles are slow, they can't always get from A to B
 16 as fast as a bakkie or a Livina, et cetera and that could
 17 have induced this comment.
 18 MS PILLAY: Alright, if we can move on to
 19 the third topic dealt with and that's "Ineffective
 20 contingency plans for this type of condition or situation"
 21 and you'll see that the ICAM investigators raise a few
 22 issues which they put under the topic of ineffective
 23 contingency planning. The one I'd like to draw your
 24 attention to is that there was no SAPS presence at the
 25 Wonderkop hostel and this specifically the team acting for

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1 Mr Mabebe asked me to ask the question, that particularly
 2 in relation to the threat that was expressed in respect of
 3 K4, why it is that there was an inadequate SAPS presence at
 4 K4.
 5 MR SINCLAIR: Mr Chair, already on – I
 6 think it's been clearly put to the Commission – already on
 7 the, that was on the Sunday night that that took place, on
 8 the Sunday afternoon General Mpmembe and others had already
 9 started arriving at Middelkraal, they had already started
 10 deploying. I know that there were SAPS deployments,
 11 exactly where they were to – I know that there were SAPS
 12 deployments already been sent out to critical areas,
 13 whether they had arrived at K4 or on the road to K4 I
 14 cannot there – I know that they had been to the hostels
 15 earlier, I'm talking about 6, 7 o'clock because I was on
 16 site, that they had been to that area. Whether they had
 17 been out to, the SAPS people had been out to K4 with the
 18 Lonmin security people, that I cannot comment on but
 19 already General Mpmembe and his team were busy deploying and
 20 drawing people in, so there was a presence out. Exactly
 21 where, as I sit here I cannot say to you it was
 22 specifically to K4 or to the hostel or wherever.
 23 MS PILLAY: The ICAM investigators also
 24 raise the lack, what they see as a lack of leadership in
 25 the JOC and in the field. Can I ask you to comment on

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1 that?
 2 MR SINCLAIR: I am disturbed about that
 3 because there was definite leadership in the JOC at all
 4 times. If you go back to the documents that you asked me
 5 to find and I couldn't find them but I found an example of
 6 the sheet and I have it here, where we had a definite
 7 structure in place in the JOC that, who is in charge, who
 8 is to communicate, who is out on the field. So there is a
 9 structure so again because I haven't reviewed this ICAM
 10 thing and I'm not sure if Henry has subsequently reviewed
 11 this and sorted this out, but because I haven't reviewed
 12 this I cannot say why they put that in. I didn't get that
 13 briefing from them but I can assure you there was a
 14 definite structure in place at all times and that was
 15 already from the 9th, I believe, that we started to move to
 16 an orange mode at the JOC, at the operational centre, Mr
 17 Chairman. So from there, there was a structure in place.
 18 MS PILLAY: Mr Sinclair, I don't think
 19 that the ICAM investigators are disputing that a Lonmin JOC
 20 existed as a structure. I think what they've raised is the
 21 lack of leadership from personnel in the JOC –
 22 MR SINCLAIR: Let me just –
 23 MS PILLAY: - to people in the field.
 24 MR SINCLAIR: - change my answer. Not
 25 the structure in place, there was a leadership, there was a

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1 hierarchy leadership structure in place to lead the JOC.
 2 There was, at all times that was in place.
 3 CHAIRPERSON: I think the criticism is
 4 not that there wasn't a leadership structure. The
 5 criticism was, as I understood it and Mr Blou, as far as I
 6 can recollect, didn't quarrel when the proposition was put
 7 to him, the problem was that the leadership structure
 8 didn't lead. I mean it's all very well having a leadership
 9 structure in place –
 10 MR SINCLAIR: Sir –
 11 CHAIRPERSON: - but if they don't lead,
 12 well then you've got poor leadership.
 13 MR SINCLAIR: That is, yes, because we
 14 are dealing with people and we draw, remember we've drawn
 15 people in from process who haven't always been within our
 16 teams. So yes, maybe there was that element involved in
 17 it, Mr Chair, yes.
 18 MS PILLAY: The next issue which I just
 19 need your comment on, Mr Sinclair, is the block just below
 20 that one and it's dealing with lack of communication from
 21 the JOC to inform the protection services personnel on the
 22 field of what was happening. Now we know this is
 23 particularly crucial in the light of the evidence of Mr Van
 24 Vuuren and Martin Vorster that they relayed the message
 25 back to the JOC of what, of the attack on them and their

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1 assessment that the strikers were very dangerous and yet we
 2 don't see that that message was conveyed back to protection
 3 services to give them forewarning that the strikers were
 4 very aggressive and actually posed a huge threat to them.
 5 MR SINCLAIR: Mr Chair, I have obviously
 6 heard that comment, I don't know about – and if that has
 7 taken place, I've got to concede that that was a
 8 possibility that that took place and the message was not
 9 correctly – but we do have cell phones, radios and other
 10 means of communication in place. Why it wasn't done, that
 11 I can't say, sir.
 12 MS PILLAY: The next issue that was dealt
 13 with by the ICAM investigators, Mr Sinclair –
 14 MR SINCLAIR: Yes, ma'am.
 15 MS PILLAY: - is the absence of a system
 16 that ensures training requirements are managed so that
 17 employees and contractors are competent to meet the risks
 18 applicable to the responsibilities. Are you able to
 19 comment on that?
 20 MR SINCLAIR: Yes, so it's the lack of
 21 training?
 22 MS PILLAY: Well, it's a comment raised
 23 by the ICAM investigators that the personnel weren't
 24 adequately trained or experienced to deal with the risks
 25 which were prevalent at the time.

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1 CHAIRPERSON: And then you see, sorry,
 2 you see on the screen –
 3 MR SINCLAIR: Yes.
 4 CHAIRPERSON: - from this exhibit you see
 5 there are three arrows.
 6 MR SINCLAIR: Yes.
 7 CHAIRPERSON: That point to three
 8 different blocks to amplify that and then there are three
 9 more arrows that amplify those as well. So it's not just -
 10 what Adv Pillay has read you is the first block and then
 11 from that we get these other points which are on the screen
 12 in the exhibit. I don't know whether I have to read them,
 13 perhaps I should –
 14 MR SINCLAIR: Mr Chairman, I think I can
 15 comment correctly on that. I would like to use K4 as the
 16 example. What we do on a regular basis and on a definite
 17 basis is, we go out and we put emergency contingency plans
 18 in place with the shafts. We go out and we train the
 19 control rooms and their people on how to activate emergency
 20 situations, be it security or underground because obviously
 21 we're very, we have a lot of accidents underground as well,
 22 how to activate that. We make sure that there are systems
 23 in place and we've got trainers that go out and do that.
 24 And then how do they make calls? We train them on how to
 25 make calls, we train them on – we train our operators

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1 receiving the calls on how to record and help them bring
 2 these things in. Now because the K4 for instance was an
 3 absolute violent, that there – often we have, not often, we
 4 have experienced from time to time that people fail to
 5 follow those procedures. So there are definite procedures
 6 and that in place. Why they failed that night and have the
 7 investigation from the ICAM that are doing it followed up
 8 to see where the shortcomings were and why we had those
 9 failures, we don't know. But it's the same as the panic
 10 situation you would get when your home is attacked. You
 11 might have an alarm thing and you might have a system to
 12 sort out but when you get attacked you do very different
 13 things and I believe that that is part of the reason why
 14 this is there, that this was just such a horrific, in our
 15 fences, inside event, that those people never went –
 16 particularly the banksmen and those people on duty who had
 17 systems to go by. I did go back and look after the time at
 18 the calls coming in, the response calls, the times of
 19 ambulances, how the calls were handled and I followed up to
 20 that. Some of the things were done but it's systems that
 21 we train and try and prepare our people for, there were
 22 shortcomings in that, sir.
 23 MS PILLAY: Mr Sinclair, this was not a
 24 surprise event on the 12th. We see that the violence had
 25 started on the 10th already and we see an escalation of that

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1 violence over a period of time. We see Lonmin security
 2 receiving information beforehand of exactly the nature of
 3 the crowd it was dealing with and the threat posed by the
 4 crowd. So when the event happened on the 12th it's not
 5 something which came out of the blue. It's not something
 6 for which Lonmin security should not have been prepared.
 7 It's something which Lonmin security knew was coming and
 8 they had sufficient intelligence at that stage to assess
 9 the extent of the threat that it faced.
 10 MR VAN AS: Sorry, Mr Chairperson, before
 11 the witness answers the question, is my learned friend
 12 suggesting that Lonmin security should have foreseen that
 13 1 000 heavily armed strikers would march to Lonmin, to
 14 NUM's office on the Sunday morning, because there's no such
 15 evidence before this Commission.
 16 MS PILLAY: Chairperson, on the contrary,
 17 our submission is that the information from the undercover
 18 security agent on the 11th was exactly that, that there was
 19 a large number of strikers who were now turning violent and
 20 were dead set on a war in order to seek revenge. Now we
 21 say within those facts Lonmin security ought to have
 22 recognised the extent of the threat that it faced.
 23 CHAIRPERSON: That's a permissible
 24 question. What do you say about that, Mr Sinclair?
 25 MR SINCLAIR: Mr Chair, I think Lonmin

<p style="text-align: right;">Page 36605</p> <p>1 security and the emergency teams had taken cognizance of 2 this information coming through. We had put what we 3 perceived to be the correct things at the time place, for 4 instance the patrolling between K3 and K4, in those remote 5 areas, that was our anticipation of where – not inside the 6 fence. When and although the people at the shaft were 7 aware that there could be something going on, when this 8 absolutely violent attack was breaking through, came 9 through and it was so violent, that then disrupted the 10 training and the way they should have behaved and some of 11 those things that took place, but certainly I believe that 12 we had trained. We were aware, we were trying to be 13 prepared for that. Is that answering your question, Mr 14 Chair? I'm not sure I've answered it.</p> <p>15 CHAIRPERSON: I won't press you to alter 16 your answer or to give more detail. The adequacy of the 17 answer will be considered when we write our report but –</p> <p>18 MR SINCLAIR: Yes, sir.</p> <p>19 MS PILLAY: Mr Sinclair, the next issue I 20 just need to very briefly deal with is the lack of risk or 21 change management processes applied across the department 22 and just to draw your attention to a specific finding made 23 by the ICAM investigators that the dayshift protection 24 service commander disobeyed the warning of Dewald Louw not 25 to engage with the crowd in the Wonderkop hostel area and</p>	<p style="text-align: right;">Page 36607</p> <p>1 event we were busy preparing and doing documentation and 2 getting it done. For instances the fences, the response – 3 and that document that we talked about the last time I was 4 here where you found some things that I said I would go 5 back and correct, we were putting this mass of documents – 6 and in security, if I recall correctly, between documents, 7 procedures, standards, there's something like about 2 or 8 300 documents that had been put together that we are 9 working through to say, does this fit our business and go 10 in. So we are putting those in and while we're putting 11 them in we're also saying to the guys, this is what we're 12 putting in the documents, this is how we want you working 13 till these are finalised and signed off and that process 14 takes a long time. What is – I think I need to just bring 15 to your attention to help you on this matter, what I 16 noticed and it was a concern when I went back and I was 17 asked to go and look for additional documents, I saw a 18 meeting request that was done on the 8th of August. It was 19 from Kellerman to all of our senior security team to book 20 us for the 14th and the 15th of August, ironically, of 2012 21 to do a complete review from A to Z of all our things which 22 would have included documents. So we had actually planned 23 that following week when this broke out, to go and do and 24 we were in the process of doing that. So when this was 25 put, I think it was put by the advocate to me that this is</p>
<p style="text-align: right;">Page 36606</p> <p>1 I've been specifically asked to raise with you, by the team 2 acting for Mr Mabelane, that there is no evidence before 3 this Commission that the warning of Mr Louw actually 4 reached Mr Mabelane or any of the other protection services 5 officers on the day. Do you accept that?</p> <p>6 MR SINCLAIR: I cannot say whether it did 7 or not but I understand from the evidence tabled that that 8 warning, there was a breakdown in that warning going 9 through. Whether that is correct or not, I cannot say.</p> <p>10 MS PILLAY: But we definitely have no 11 evidence that the warning reached –</p> <p>12 MR SINCLAIR: That the warning reached to 13 –</p> <p>14 MS PILLAY: - the security officers.</p> <p>15 MR SINCLAIR: I do not have any.</p> <p>16 MS PILLAY: Now the second last issue 17 raised is the inadequate document management system and 18 that the standards and procedures for E&DM are not signed 19 off. Can you comment on that?</p> <p>20 MR SINCLAIR: Yes. Mr Chairman, in brief 21 just to explain, in 2011 we were very – I explained to you 22 about the split in security and the whole thing – in 2011 23 we were very aware that there was a huge amount that we 24 needed to put in place, to put processes and that in place. 25 So we designated a person and from 2011 right up until this</p>	<p style="text-align: right;">Page 36608</p> <p>1 a Lonmin process, yes, it's a Lonmin procedure that we're 2 in the process of trying to finalise. I think a lot of 3 them have been finalised subsequently, that's why we had a 4 better security and emergency arrangement now over this 5 massive strike period we've just had, but we were going to 6 and it is a long task, normally a two to three to four year 7 task to get that whole process. The shooting, the firearm 8 things that we've talked about, all of those into place, 9 ma'am. So yes, I think there were substantial documents in 10 place, not signed off but disseminated, we were working on 11 them, we were coaching people while we were getting to the 12 finals where we wanted to get to.</p> <p>13 MS PILLAY: Mr Sinclair, a lot of the 14 criticisms that relate to incident 2 also relate obviously 15 to incident 3 and I've covered some of them with you.</p> <p>16 MR SINCLAIR: Yes, ma'am.</p> <p>17 MS PILLAY: I've been through the event 18 analysis conducted by the ICAM investigators in relation 19 specifically to incident 3 and there don't appear to be any 20 systemic ones which I specifically want to put to you today 21 but is there any comment you want to make about the event 22 analysis in respect of incident 3?</p> <p>23 MR SINCLAIR: Sorry, I've missed 24 something in your question. I didn't – just about the 25 event analysis?</p>

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1 MS PILLAY: All I'm putting to you is
 2 that the event analysis in relation to incident 3 don't
 3 appear to raise, apart from what we've already discussed,
 4 don't appear to raise any special systemic issues in
 5 respect of Lonmin security and its arrangement in relation
 6 to the incident at K4 shaft. So there are no specific
 7 issues other than what we've discussed already, a lot of
 8 which applies to the K4 shaft issue. And because I've run
 9 out of time I just want to specifically go to the last page
 10 of the, I'm sorry, the second last page of the ICAM report
 11 where we see the ICAM investigators indicate under
 12 "Recommendations and Action" that the corrective action is
 13 to be made by the head of E&DM and security. Now as I
 14 understand it, you are the head of E&DM and security. Can
 15 we understand what corrective action or recommendations
 16 you've made specifically in response to the recommendations
 17 of the ICAM investigators?
 18 MR SINCLAIR: Mr Chair, to my
 19 understanding, the ICAM recommendation points 8, 9, 10 and
 20 11 I think or 9, 10, 11 and 12 of our ICAM flow chart,
 21 there were things that weren't completed in that. I know
 22 Henry was addressing those in 2012 and the beginning of
 23 2013. When we had, for instance like we've talked about
 24 the radios where we saw that concern, we have gone out and
 25 addressed those specifics while we wait, while they were

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1 concluding this ICAM report. So we have gone into the
 2 scenario planning. There's one, that we've reviewed that
 3 outside of those and trying to do, with the documents I'm
 4 saying and put things in place and that would have been why
 5 we were leading up to that event on the 14th and 15th of
 6 August to review, have we actually covered all of these,
 7 have we covered these things and we would have had follow-
 8 up reviews after that. Normally we tried to have three or
 9 four a year specifically to address things like this that
 10 were brought to our attention. We would immediately have
 11 taken immediate action, a middle term and then a long term
 12 action to address them, Mr Chair.
 13 COMMISSIONER HEMRAJ: Mr Sinclair, you
 14 have today taken issue with a number of the findings in the
 15 ICAM report.
 16 MR SINCLAIR: Yes, ma'am.
 17 COMMISSIONER HEMRAJ: You say a number of
 18 them are incorrect. Now how do you implement the
 19 corrective action if you're not prepared to accept that
 20 there were these shortcomings?
 21 MR SINCLAIR: Ma'am, I had taken, I
 22 didn't want to go – I had been in to the ICAM team with
 23 Henry, he was in charge of it. We had assisted them on
 24 restructuring and getting focused on going because at the
 25 start they were going off on a long way.

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1 [14:35] We were then taking these issues up directly with
 2 Jacques Erasmus, who is their senior, and addressing any
 3 issues that came through with him without, while they were
 4 going through their process, so we took those issues
 5 whenever they came to us through those channels to address
 6 them. We also, remember, had allocated a very senior C5 to
 7 sit in that ICAM and our security safety and, safety
 8 representative, who were continuously coming back to us and
 9 saying this is an issue, what should we do to address it.
 10 Does that answer your question, Ma'am?
 11 COMMISSIONER HEMRAJ: Well, are you
 12 saying that there is merit in the criticism –
 13 MR SINCLAIR: I can't –
 14 COMMISSIONER HEMRAJ: Are you now saying
 15 that there is merit in some of the criticisms levied in the
 16 ICAM report?
 17 MR SINCLAIR: No, Ma'am, I'm not
 18 criticising. I'm saying because I –
 19 COMMISSIONER HEMRAJ: No, no, no, perhaps
 20 we're at –
 21 MR SINCLAIR: Oh, alright.
 22 COMMISSIONER HEMRAJ: Are you now saying
 23 that there is merit that some of the findings, some of the
 24 criticisms in the ICAM report in the event analysis, that
 25 some of them do in fact have merit?

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1 MR SINCLAIR: Some of those we would have
 2 found that there might have been a radio communication
 3 between the RUs that we would arrest, yes. There could
 4 have easily been some of those in the ICAM report and they
 5 would have then been addressed through the ICAM. That's
 6 why we have the ICAM report, Ma'am - Mr Chairman, I'm
 7 sorry. Does that answer –
 8 MS PILLAY: And Mr Sinclair, lastly –
 9 MR SINCLAIR: Sorry?
 10 MS PILLAY: As I understand your answer
 11 just now it is true then that you made input into the ICAM
 12 investigation process?
 13 MR SINCLAIR: I – no, what I said is
 14 Henry and I on a regular basis, because they were sitting
 15 at our offices, we've allocated offices to them, we've
 16 allocated people to them. We would on our walkabouts in
 17 the morning out of courtesy stop in to say how are you
 18 going, what's going on, tell us your progress, is there
 19 anything we can help you with, do you need any assistance
 20 from us. So that was the input, and if they had asked for
 21 something obviously we would have allocated - yes, they
 22 need reports, for instance, or they need a procedure, we
 23 would allocate somebody, like Gean Kellerman who's
 24 responsible for that, to go and get it for them and get –
 25 so that was what I say, so they get on with the process but

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1 we were there to assist them if they needed it.
 2 CHAIRPERSON: May I ask you this
 3 question –
 4 MR SINCLAIR: Sir?
 5 CHAIRPERSON: I take it the ICAM report
 6 came not only before the EXCO but must have come before the
 7 board of Lonmin. It's sufficiently important surely –
 8 MR SINCLAIR: Mr Chair, I can't comment
 9 on that. The ICAM report came through to Henry. I don't
 10 know where the final report was, because remember at that
 11 stage I was busy handing over security because I was
 12 supposed to go on pension 2012, so I was busy handing over
 13 and, so Henry was doing that. Frank Russo-Bello had
 14 resigned from the mine at that time. There was an interim
 15 vice chairman and then Mike Da Costa was appointed, so I'm
 16 not a hundred percent au fait with exactly where the finals
 17 went to and did it go to the board.
 18 CHAIRPERSON: So I take it we can assume
 19 that it went to some level above you.
 20 MR SINCLAIR: It definitely went to –
 21 CHAIRPERSON: Ja, alright.
 22 MR SINCLAIR: It definitely went to, I
 23 should imagine in the end would have gone to Mike Da Costa
 24 after Frank Russo-Bello's resignation and the other
 25 processes, Sir.

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1 CHAIRPERSON: Yes, alright. Well what I
 2 want to ask you is this; there were some serious criticisms
 3 in the report, were there not?
 4 MR SINCLAIR: There's a lot of criticism
 5 in the report, yes, Sir.
 6 CHAIRPERSON: Now at page 387 what we see
 7 is this; "The purpose of this ICAM is to identify the
 8 causes and contributing factors which led to a
 9 situation/situations that was/were conducive to the deaths
 10 of 44 people" -
 11 MR SINCLAIR: Yes, Sir.
 12 CHAIRPERSON: - "during an unfortunate
 13 sequence of events from 10 August 2012 up to 11 September
 14 2012 at the Lonmin Platinum Mine located in the Marikana
 15 district. The specific focus would be to determine lessons
 16 learned and to make recommendations with regard to possible
 17 areas of improvement that could lead to improved management
 18 of security and emergency response in order to prevent
 19 reoccurrence of similar situation." I take it you read
 20 that at some stage when you saw the report.
 21 MR SINCLAIR: I read that, Sir, yes.
 22 CHAIRPERSON: Now what I'm interested in
 23 is this; regard being had to the fact that you concede that
 24 the document must have landed up at some point above you in
 25 the organisation, and regard being had to the passage I've

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1 read you, the idea of making recommendations to prevent
 2 this kind of thing happening in the future, I would have
 3 expected some kind of document to be produced either by you
 4 or by those under you, or possibly your successor after you
 5 retired, answering the specific recommendations and saying
 6 this recommendation is correct, this criticism is correct,
 7 this recommendation won't work, this criticism is invalid,
 8 and so forth, for the guidance of those above you who had
 9 to commission this investigation and obviously wanted to
 10 make sure what the position was, what criticisms were
 11 valid, what could be done to prevent this happening again.
 12 Was any such document to your knowledge prepared?
 13 MR SINCLAIR: Mr Chairman, I don't recall
 14 seeing a document as you have now described it. What I do
 15 know that has taken place is between Henry Blou, Jacques
 16 and the team and our teams, was that they addressed these
 17 issues. Now whether they had a document where they listed
 18 them and ticked them off, that I cannot say, and we have
 19 seen subsequently because those issues have been addressed
 20 that's why we had a very, very different process in place
 21 from January until April this year with that horrific
 22 strike, and remember we still had four murders, even though
 23 we had this huge change in our system we still had another
 24 four murders. So there was a huge amount of work done
 25 against the ICAM and a whole lot of other things that were

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1 picked up, our incident reports, our internal incident
 2 reports on dealing with things. So those were definitely
 3 done. Is there a final document, has it been submitted, I
 4 can't comment on that, Sir.
 5 CHAIRPERSON: Well, perhaps we can invite
 6 the representatives of Lonmin to ask someone of sufficient
 7 seniority, a position above the position you held, to make
 8 an affidavit setting out in detail what was done about the
 9 criticisms and recommendations, which were accepted and
 10 which were not, to guide us in assessing –
 11 MR SINCLAIR: Yes, Sir.
 12 CHAIRPERSON: - the ICAM. But anyway, I
 13 don't have to say to you, I'm speaking obviously to
 14 Lonmin's representatives –
 15 MR SINCLAIR: Well, that's is through our
 16 legal department.
 17 CHAIRPERSON: Yes, yes, they must see –
 18 Mr Van As is here.
 19 MR SINCLAIR: Yes, Sir.
 20 CHAIRPERSON: He's nodding his head; I'm
 21 sure what I've asked for will be done. Is that right, Mr
 22 Van As?
 23 MR SINCLAIR: Thank you, Sir.
 24 CHAIRPERSON: I'd like it in affidavit
 25 form.

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1 MR VAN AS: I'll take instructions.
 2 Thank you, Mr Chair.
 3 COMMISSIONER HEMRAJ: Mr Sinclair, for
 4 the recommendations to be implemented with regard to any
 5 improved management of security and emergency procedures
 6 and responses, that would have to be sanctioned at the
 7 highest level, wouldn't it?
 8 MR SINCLAIR: That would have to be
 9 sanctioned, Henry, myself, Peter Drysdale. We would be
 10 responsible for doing that and then informing our direct
 11 reports, and then they would take process forward if they
 12 were so, if they felt it was required. For instance the
 13 hard-skin vehicles that we've already discussed those
 14 documents, that would go then and then it would go forward,
 15 Ma'am.
 16 COMMISSIONER HEMRAJ: Who would the ICAM
 17 report have been commissioned – who would have commissioned
 18 the ICAM report?
 19 MR SINCLAIR: What I understand on this
 20 process, not what I don't – I know, it came from Mark
 21 Munroe, gave directions, he had asked has it been started.
 22 I think Jacques Erasmus at that stage who was the security
 23 head was away. It then went to, if I remember seeing the
 24 brief I'll tell you the gentleman's name in a sec who was
 25 in Jacques Erasmus's place. He then tried, he then put the

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1 teams together and I know there is a document that he
 2 battled to get some senior people into that team and then
 3 the process went on from there. Henry and I then, it came
 4 to Henry Blou because he had to then manage it. I then
 5 when he needed my assistance would assist him and we tried
 6 to help the team work forward. That's the process that it
 7 followed.
 8 CHAIRPERSON: Perhaps I should also say
 9 for the benefit of Mr Van As that I would expect the
 10 document that I've asked for to contain as annexures any
 11 resolutions of the board or the EXCO – I know the EXCO
 12 doesn't always have minutes recording its resolutions, but
 13 I assume this would have been of sufficient importance to
 14 justify that. So any decisions taken at executive level
 15 dealing with the points I've made which are recorded in
 16 writing, I would also appreciate if we could see that.
 17 Those are your questions, Ms Pillay?
 18 MS PILLAY: Those are my questions, thank
 19 you, Chair.
 20 CHAIRPERSON: Mr Ramphele, I think you
 21 said you wanted to ask questions for five minutes,
 22 clarifying a point. Ms Pillay has dealt with the point you
 23 raised, but –
 24 MR RAMPHELE: [Microphone off, inaudible]
 25 CHAIRPERSON: Alright.

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1 MR RAMPHELE: If you'll allow me.
 2 CHAIRPERSON: I told you, you could have
 3 five minutes.
 4 CROSS-EXAMINATION BY MR RAMPHELE: Mr
 5 Sinclair, don't you find it strange that on the 12th there
 6 was, according to your logbook there was a chopper, there
 7 was a Nyala, police Nyala, there was a police Combi, and in
 8 the run up, or at the time when there was an attack on the
 9 two securities we don't have any information on exactly
 10 what happened to what I call a resource, these resources
 11 that were available for that day?
 12 MR SINCLAIR: Mr Chair, I can't define
 13 what duties the chopper had been allocated that day. That
 14 obviously was controlled from the JOC. The Nyala, I don't
 15 know whose Nyala, is that an SAPS Nyala, where the SAPS
 16 Nyala was when that takes place. I'm not sure was it at
 17 Eastern Plats, because there had been, my understanding
 18 there had been a, the security teams had moved to Eastern
 19 Platinum for a callout there, which turned out to be what
 20 we believe is a decoy incident. So I don't know exactly
 21 where the Nyala was placed. The police Combi I, and I
 22 don't know where the police Combi was with the, and who –
 23 was it a POPS, was it, who – I am not, I don't know where
 24 those were with our people, with our teams. I don't
 25 believe that they were with our teams at the time, is the

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1 information that I recall.
 2 CHAIRPERSON: Yes, thank you.
 3 MR RAMPHELE: It will be helpful if you
 4 just answer the question. The question is, is it not
 5 strange that you have all of these resources and that at a
 6 critical moment there is no communication with these
 7 resources. We don't hear anything about resources. They
 8 are nowhere to be found at a point where they are needed.
 9 That is the question that I'm asking you.
 10 MR SINCLAIR: Mr Chairman, if those
 11 resources were on the property it is extremely strange that
 12 there's no communication with those resources.
 13 CHAIRPERSON: I think that's the answer –
 14 MR SINCLAIR: Extremely strange, and I
 15 don't have an answer why.
 16 CHAIRPERSON: Yes, I think that's your
 17 question, Mr Ramphele.
 18 MR RAMPHELE: The second question is you
 19 say at K4, by the time this happened there was a large
 20 contingency of police. Now we know from the record that
 21 there was communication about an impending attack on K4.
 22 Don't you find it strange that –
 23 CHAIRPERSON: Mr Ramphele, we've had this
 24 before. What the witness finds strange isn't going to help
 25 us. Surely we must make findings ourselves. I can

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1 understand – you’re really arguing your case to the
 2 witness.
 3 MR RAMPHELE: Okay. It’s okay. Well,
 4 what I would like to ask is whether, because the witness
 5 indicated that General Mpembe was there, everybody was
 6 there, whether there was any communication about this to
 7 the police, to the large contingency of police that was
 8 there, but if you disallow the question it’s okay. Now I’m
 9 going to ask you, because there is –
 10 CHAIRPERSON: You set out the question.
 11 Is it in a form for him to be able to answer?
 12 MR RAMPHELE: Well Sir, Chair, if you
 13 allow him to answer it’s okay. If you don’t it’s still
 14 okay.
 15 CHAIRPERSON: No, I want to know are you
 16 satisfied that you formulated the question in a way which
 17 is sufficient for you to get the answer that you wish to
 18 obtain from the witness. If you are then we’ll get him to
 19 answer, otherwise put the question crisply so he can give a
 20 crisp answer.
 21 MR RAMPHELE: Alright. Okay, in your
 22 evidence you said that the police were deployed at the
 23 hotspots in the evening. Can you give a comment on why
 24 after notification of the impending attack on K4, K4 was
 25 not regarded as a hotspot that evening?

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1 MR SINCLAIR: Mr Chairman, I cannot say
 2 that K4 was not decided as a hotspot. K4 and all the other
 3 shafts were decided as hotspots. What I did say was the
 4 police were mobilising. General Mpembe and his teams, and
 5 I can’t remember who came first and who came second, but
 6 they came in. We definitely would have highlighted
 7 whatever information we had where we were deployed, what
 8 our concerns were, what we would have requested, what
 9 assistance we would have felt was necessary from the SAPS
 10 and then they would have then assessed that and done their
 11 deployments in accordance with that, and for instance I
 12 know that at another, although K4 became a really tragic
 13 event with one of our employee’s life lost and somebody, a
 14 few people injured, the hostel and K3 area was an even
 15 bigger concern to us that particular day because there were
 16 far more people, we knew that and everything and we were
 17 patrolling the roads, as I’ve already said. Now where the
 18 police deployed and how they deployed, they would have tied
 19 up with our security guys on the road and with that, and
 20 remember they were busy mobilising. So they had people
 21 coming in. It was an incredibly busy time to try and
 22 facilitate all of this going on with the resources we had,
 23 and we had already been going for three day.
 24 MR RAMPHELE: The witness has not
 25 answered the question, Mr Chair. I don’t want to know what

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1 was happening. There is an impending attack on K4 –
 2 CHAIRPERSON: Well, this is what –
 3 MR RAMPHELE: There is a large
 4 contingency of police. Why is Lonmin not informing the
 5 police that we have an impending attack at K4? That is
 6 what I want to know.
 7 CHAIRPERSON: That’s the question. What
 8 he puts to you is that you never informed the police that
 9 there was an impending attack on K4. Were you aware of the
 10 fact – I know one of your workers got some information
 11 which he passed on to, that he’d sent to security. We
 12 don’t know who in security, but were those who were dealing
 13 with the police, giving them information, were they aware
 14 of the fact that there was what was being described as an
 15 impending attack or a threatened attack on K4, and if they
 16 did know that, why didn’t they tell the police that?
 17 That’s the question.
 18 MR RAMPHELE: Yes.
 19 MR SINCLAIR: Mr Chairman, I’m very
 20 confident that when the police were coming in, when they
 21 were in the JOC, where we had our concerns those would have
 22 been, that information would have been passed on to the
 23 police for them to go. To say it was given to that person
 24 in that form, I cannot here say, but definitely whatever
 25 information, because we had our planning sheets up and the

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1 police would have come in and said to us give us an update,
 2 give us a sitrep, so that they could start their thing. So
 3 definitely K4 would have been told to them that we have a,
 4 we have information about this, we are doing this, we are
 5 doing that, and there would have been - on what, how should
 6 we address it from there on. But what those outcomes are I
 7 can’t say.
 8 CHAIRPERSON: Were any minutes kept of
 9 what happened in the JOC?
 10 MR SINCLAIR: Sir, that –
 11 CHAIRPERSON: Of what was conveyed to the
 12 police for example?
 13 MR SINCLAIR: Sir, that afternoon was
 14 absolutely chaotic. I can’t say if the minutes, and that
 15 was why that document has become very important to the
 16 Commission, that, you know the one-line mind jogger that
 17 Henry and I keep referring to. That’s why we’re now
 18 realising how important that was. Now whether it is on
 19 there I can’t recall, and because it was so busy
 20 eventually, I think at about 3 o’clock that morning we
 21 moved the police out of that JOC into what we call Larry’s
 22 Lapa next door, because we just couldn’t cope with this,
 23 everybody wanting everything and the next. So I believe
 24 the information was passed on. Who then reacted on it and
 25 how it was reacted, that I can’t comment on, Sir.

<p style="text-align: right;">Page 36625</p> <p>1 CHAIRPERSON: I take it you can't tell us 2 under oath that it definitely was passed on. The most you 3 can say, if I assess your answer correctly, is you think it 4 would have been done, it should have been done, and you – 5 can I say you would like to believe it was passed on – 6 MR SINCLAIR: I've said that, Sir. I 7 believe that it would have been – I don't believe – 8 MR RAMPHELE: Thank you. 9 MR SINCLAIR: - that we would have missed 10 that. 11 MR RAMPHELE: Thank you. 12 MR SINCLAIR: However, it is a 13 possibility. 14 MR RAMPHELE: Thank you. Let me ask you 15 the last question, because I'm – 16 CHAIRPERSON: This is your last – 17 MR RAMPHELE: - going to make a 18 submission to the Commission that the Commission must find 19 that Lonmin did not do what it was supposed to do when 20 Mabebe and Mabelane – 21 CHAIRPERSON: What's the question you 22 want to put to the witness? 23 MR RAMPHELE: Yes, I'm coming to the 24 question, but this witness sometimes doesn't understand the 25 question and he goes on and on. So just to be very</p>	<p style="text-align: right;">Page 36627</p> <p>1 metres. 2 CHAIRPERSON: I must admit that was my 3 impression also from my memory when we were there but there 4 was some evidence – 5 MR SINCLAIR: It was about 8 – I know the 6 area extremely well. 7 CHAIRPERSON: Thank you, I think you're 8 probably – 9 MR SINCLAIR: They had communicated with, 10 we hear, from the radios and that. The security guys that 11 had come in from the bottom under whoever was in command 12 had made the thing that they were competent, capable and 13 okay to go and stop those marches coming through to them. 14 I understand from I have read and from what I have reviewed 15 that they were very competent, that they were able, with 16 their shotguns and rubber be able to stop those guys 17 advancing. That turned out and we know what happened and 18 why it happened because these guys just kept coming. They 19 had been exposed to that on many occasions, that's why they 20 made that decision. They had stopped people before in 21 those circumstances and had that repelled. Now that – 22 CHAIRPERSON: Sorry to interrupt you. 23 You were actually busy on another point. I understand the 24 point you're making that they were effectively over 25 confident and their over confidence was based upon what had</p>
<p style="text-align: right;">Page 36626</p> <p>1 precise, you see, and in order to assist him I'm going to 2 make an example. If as an employer you know that at a 3 particular place there's a rock fall and two of your 4 employees actually had to run to flee because of the rock 5 fall, and you know that there are other employees who may 6 not be knowing, going to the same shaft, you have an 7 obligation to go and rescue them from probable danger. Now 8 Mabebe – I mean Fundi and Mabelane were not aware that the 9 strikers were attacking security officials. 10 [14:55] Where Louw and Vorster were attacked is three 11 kilometres from where Fundi and Mabelane were attacked and 12 I want to put it to you that the employer, in that three 13 kilometres, had an opportunity to actually go to Mabelane 14 you are facing danger, don't face this crowd. That did not 15 happen and that obligation rested with Lonmin. 16 CHAIRPERSON: What's your response to 17 that, Mr Sinclair? 18 MR SINCLAIR: Mr Chairman, the distance 19 between Louw I think was probably about 800 metres. It was 20 at a very confined space, it was at the hostel, I mean at – 21 CHAIRPERSON: This was between Louw and – 22 MR SINCLAIR: And our deceased 23 colleagues. 24 CHAIRPERSON: Yes it was 800 metres – 25 MR SINCLAIR: It plus or minus 800</p>	<p style="text-align: right;">Page 36628</p> <p>1 happened successfully in the past. I understand that, but 2 Mr Ramphele is asking a slightly different question. He is 3 concerned about what he's described there was a lack of 4 communication, the fact that what they would have done if 5 they had got the warning is really what you're dealing 6 with, but he's dealing with another matter. He's 7 suggesting to you that there was a duty of the Lonmin who 8 knew about the attack on Mr Louw and his colleague to 9 inform Mr Mabelane and Mr Fundi that that had happened so 10 that they could then make a judgment based upon that 11 information amongst others. What's your answer to that? 12 MR RAMPHELE: Especially, Chair, if you 13 look at the first briefing it was not only the Lonmin 14 miners that were involved. The first briefing clearly 15 indicates that you had Lonmin miners, but you had other 16 miners from outside. So obviously it is a complete 17 different picture. 18 CHAIRPERSON: Yes but your concern is 19 that Louw and his colleague didn't tell Mabelane either 20 directly or via the centre that this had happened and 21 therefore they should be especially on their guard. I 22 think that's basically your point isn't it? What's your 23 response to that? 24 MR SINCLAIR: I don't know whether they 25 got the message or didn't, but I understand that they</p>

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1 didn't and they should have got the message, yes, from
 2 directly via the radios or via the telephone or via the
 3 call centre. And that didn't happen.
 4 CHAIRPERSON: You're effectively agreeing
 5 with the point being put to you that they should have got
 6 the message, you don't know whether they didn't, but if
 7 they didn't they should have.
 8 MR SINCLAIR: Under that intense
 9 circumstances that day with this thing happening why they
 10 didn't get the message that I can't comment on.
 11 CHAIRPERSON: That's something we'll have
 12 to look in due course.
 13 MR SINCLAIR: Yes, Sir.
 14 CHAIRPERSON: Thank you. I think those
 15 are your questions, Mr Ramphele. Is it now time for re-
 16 examination? But it's 3 o'clock. Mr Van As how long are
 17 you going to be in your re-examination?
 18 MR VAN AS: Ten minutes, Mr Chair.
 19 CHAIRPERSON: All right. Shall we have a
 20 cup of tea first. And the witness too I suppose would
 21 appreciate it. You'll obviously enjoy your re-examination
 22 better if we do that. Adjourn for 15 minutes for tea.
 23 [COMMISSION ADJOURNS COMMISSION RESUMES]
 24 [15:24] CHAIRPERSON: The Commission resumes. Mr
 25 Sinclair, you're still under oath. Mr Van As?

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1 GRAEME SINCLAIR: (s.u.o.)
 2 RE-EXAMINATION BY MR VAN AS: Thank you,
 3 Mr Chairperson. Mr Chairperson, can we please have exhibit
 4 GGGG6.3 on the screen? Mr Sinclair, this is a bird's eye
 5 view of K4 shaft. Can you just give the Commission some
 6 sort of idea of how much security you would have needed to
 7 patrol and protect the perimeter fence around K4 shaft in
 8 the middle of the night?
 9 MR SINCLAIR: I just want to orientate
 10 myself, the incoming, the fence – Mr Chairman, it is a huge
 11 area. I can't remember the exact perimeter fence distance.
 12 In conjunction with that, there is other activities with
 13 the belt that goes up to the slime dam, you can't see it,
 14 down to where Google Earth is at the bottom, there's a belt
 15 going out there. You would need – we have 12 people,
 16 sorry, 12 people daily, six in the morning, six at night
 17 covering this area. The gate, the access gates coming in,
 18 the access gates at the back and then the two roaming.
 19 Ideally to cover that fence, at the drop of a hat we would
 20 probably require at least another four double persons, two-
 21 two, to make it six patrolling around to have an effective
 22 patrol around there. Not only that one but every other
 23 shaft around Lonmin. Now up until this incident what we
 24 had there was sufficient. It stopped the criminal
 25 activities and the people breaking, trying to break through

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1 the fence for copper theft and those, so to sit here and
 2 say we would ideally need that many, it would be very
 3 difficult for me to do a risk assessment as I'm sitting
 4 here on that question but the six we had was two, two and
 5 then there was also at the back, right at the top just out
 6 of the top of the picture, there were contract people there
 7 and they had informal security on their gates at the back.
 8 I don't know if that answers your question, sir.
 9 MR VAN AS: And if a group of heavily
 10 armed strikers decided to flatten the fence and enter the
 11 car park whilst the security guard was patrolling around
 12 the other side of the perimeter, would it have made any
 13 difference?
 14 MR SINCLAIR: It wouldn't. That's why we
 15 had this, it wouldn't have made any difference. That's why
 16 we had the CCTV to assist us and the lighting and those
 17 type of issues to try and assist but it is a huge area to
 18 effectively police.
 19 MR VAN AS: Alright. And then the
 20 Chairperson also put it to you that perhaps you should
 21 have, Lonmin should have closing the shaft down. Can you
 22 just give the Commission an indication, what does closing
 23 of the shaft entail? Are there still people who have to
 24 remain at work and what do they have to do?
 25 MR SINCLAIR: Sir, we would not have

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1 closed the shop but we could close production down, but
 2 certainly the way I've already alluded to, the essential
 3 services, the pumping of water to stop flooding, the
 4 ventilation, the lamp houses. There are some critical
 5 areas that you can't – that's why from the banksman's cabin
 6 which is the central point, I know this shaft in particular
 7 because I was involved in that – the banksman's cabin to
 8 their secure area which is in that block. That U block
 9 where you can see the building at the back there where the
 10 tree is, that is their safe area where they would
 11 demobilise to. So the essential people, the underground
 12 people wouldn't be able to mobilise but the hoist drivers,
 13 the banksman, the people in the compressor house, the
 14 people in the refrigeration plants that require 24/7
 15 personnel to be there, would not be able to just leave that
 16 area, sir.
 17 MR VAN AS: You also testified that you
 18 did not anticipate a second attack on the NUM office. Why
 19 not?
 20 MR SINCLAIR: I, the NUM, for an attack
 21 on the NUM office, the NUM offices to me was a small
 22 building with a couple of offices next to the satellite
 23 police station. An attack, and that's why I did not
 24 specify in my one brief "the NUM office," I specific NUM
 25 which could have been anywhere around. The NUM members,

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1 some of them stayed in some of the hostel blocks, some of
 2 them stayed close by and – but I, in my estimate with the
 3 information coming to me, I didn't expect anybody to come
 4 down and go out and go to the NUM office and do anything to
 5 that actual office. Most of the time that office would
 6 have been empty anyway.

7 MR VAN AS: And even if you had
 8 anticipated this attack, what sort of security force would
 9 you have needed to avert an attack by 1 000 heavily armed
 10 strikers who believed that bullets wouldn't affect them?

11 MR SINCLAIR: Sir, we saw 120 people with
 12 16 or 20 police vehicles with properly, well, with heavily
 13 trained policemen, so I cannot say what sort of size force
 14 we would have needed to stop that, that operation. I think
 15 we would have to really go into a full team effort to come
 16 up with that number, of what size we would need but it
 17 would – where they, where that attack was just completely
 18 blatant, they're coming through to attack and they're not
 19 going to stop, with that amount of people you cannot stop
 20 them.

21 MR VAN AS: And you were also accused of,
 22 or Lonmin security were also accused of displaying a lack
 23 of leadership. Had you ever experienced something like
 24 that before?

25 MR SINCLAIR: Mr Chairman, the team that

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1 I've worked with including those from [indistinct], they
 2 are extremely committed. In fact, if you have a look at
 3 one of my briefs you will see how I've said that through to
 4 our executive about how committed, how driven they are and
 5 how focused they are on their job. I have in my life
 6 worked with many teams underground and surface and all
 7 over. That emergency and security team at Lonmin are
 8 extremely committed to their work and doing their work
 9 absolutely to the best of their ability.

10 MR VAN AS: Let me perhaps ask the
 11 question again. Had Lonmin security ever experienced
 12 anything similar to what happened on the Sunday morning?

13 MR SINCLAIR: We have never. We've had
 14 the Bapo that I – that was violent but we were able to
 15 contain it. We've never experienced anything like Sunday
 16 morning, the attack on Sunday night here, breaking through
 17 and that violence we had never been exposed to, to that.
 18 And within the circle of the other mine security around us
 19 that we interact, I had not understood that, with the
 20 exception of an event that had taken place at Aquarius that
 21 we had analysed but that was very different to what we
 22 experienced here.

23 MR VAN AS: Thank you, Mr Chairperson,
 24 those are my questions.

25 CHAIRPERSON: Thank you, Mr Van As.

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1 Thank you, Mr Sinclair, you'll be excused on the basis that
 2 if we have to get you back, I don't know that we will but
 3 if we ask you to come back you'll come without our having
 4 to serve a subpoena on you.

5 MR SINCLAIR: No problem.

6 CHAIRPERSON: And if you give me that
 7 undertaking –

8 MR SINCLAIR: I give you that undertaking
 9 -

10 CHAIRPERSON: Thank you very much.

11 MR SINCLAIR: - sir, and God bless to all
 12 of you.

13 CHAIRPERSON: Thank you.

14 [NO FURTHER QUESTIONS – WITNESS EXCUSED]

15 CHAIRPERSON: Mr White? Sorry, I
 16 actually – I should ask Ms Le Roux. You recall Mr White,
 17 do you?

18 MS LE ROUX: Yes, Chair, and perhaps if
 19 we could just have a minute for Mr White to arrange his
 20 files where he's going to be seated.

21 CHAIRPERSON: Sorry, we've decided to sit
 22 until quarter past four to gain, it gives us a little bit
 23 more time. If the witness can arrange his files without
 24 our adjourning I'd appreciate it.

25 MS LE ROUX: I'm sure he can.

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1 CHAIRPERSON: We won't expect him or you
 2 to do anything until he's ready. Mr White, I suppose you
 3 were here such a long time ago, I'd better swear you in
 4 again. Would you please stand? Do you swear the evidence,
 5 the continued evidence you will give before this Commission
 6 will be the truth, the whole truth and nothing but the
 7 truth. Please raise your right hand, say "I swear, so help
 8 me God."

9 MR WHITE: I swear, so help me God.

10 CHAIRPERSON: Thank you, you may – please
 11 be seated. Mr Semenya?

12 CROSS-EXAMINATION BY MR SEMENYA SC (CONTD.):

13 Thank you, Chair. Good afternoon again, Mr White.

14 MR WHITE: Good afternoon.

15 MR SEMENYA SC: Now having seen the
 16 visuals of the 16th just moments before the shooting at
 17 scene 1, as this group comes around the kraal and we spent
 18 some time defining what group it is, that if some of the
 19 evidence is accepted they were meaning to go and kill the
 20 police. With that as a background, what help measures were
 21 available to contain that threat?

22 MS LE ROUX: Chair, if I could just ask
 23 my learned friend to clarify when he says the visuals of
 24 scene 1, if he could identify either which footage he's
 25 referring to or which aspect of the crowd moving he's

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1 referring to, just with a little bit more clarity.
 2 MR SEMENYA SC: I just said, Mr White,
 3 just moments before the shooting by the TRT as they come
 4 around the bend. We have seen many of those, are you
 5 familiar with them?
 6 MR WHITE: I've seen both still
 7 photographs and also some video images of the group that I
 8 think that you're referring to.
 9 MR SEMENYA SC: Ja. Having defined what
 10 type of group it was and what intent it had, the last time
 11 – last time we described what type of group it is and what
 12 utterances of killings they uttered before that, right?
 13 MR WHITE: Well, I do specifically
 14 recall, Chair, that we talked about, at least a number of
 15 them were in tight formation. I think actually I'd
 16 misinterpreted something that you'd asked me. I think I
 17 thought you said attack and you hadn't said that, but the
 18 issue then basically became an issue around intent and
 19 you've just talked about intent. I don't know what the
 20 intent of the group was but specifically on the evidence
 21 that I've been asked to look at, I think I had conceded
 22 that there were at least some of them that were close
 23 together.
 24 MR SEMENYA SC: Ja, my question is a
 25 different one though, I'm saying assuming the evidence, the

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1 Commission ultimately accepts the description of the crowd
 2 was as we say it was, it accepts that the evidence of their
 3 threats were made, it accepts that the evidence that some
 4 of the witnesses say their intention was to kill the
 5 police, assuming that to be a factual predicate for my
 6 question, the question I'm asking, moments before the
 7 shooting as they come around the kraal what POP measures
 8 could contain such a threat?
 9 MR WHITE: Just for clarity, assuming all
 10 of those things that Mr Semenya talks about are accepted
 11 and I understand that there is some evidence to the
 12 contrary but assuming, if it's helpful, then what we're
 13 dealing with is a crowd who are armed as I think we've
 14 said, with sharp traditional and dangerous weapons,
 15 depending on the gap that exists between police officers
 16 and the people who are approaching them, I mean my
 17 understanding is that the POP officers, which I think is
 18 specifically what you asked me to refer, to look at, are
 19 equipped with a range of what are referred to as less
 20 lethal methods, rubber rounds, stun grenades and teargas
 21 and I appreciate that there are water cannons in the area
 22 although I don't think the water cannons are available to
 23 engage with the crowd, what Mr Semenya is specifically
 24 talking about at this particular moment in time, but they
 25 have a range of tactics –

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1 MR SEMENYA SC: We know, we know that
 2 there was teargas fired at that time, there were stun
 3 grenades fired at that time, there were rubber bullets
 4 fired at that time. All of that given, I'm just asking
 5 were there other measures, POP measures that could have
 6 contained that attack without fatalities and the
 7 consequences we know?
 8 MR WHITE: I'm not sure that I actually
 9 understand the question in the sense that you're saying to
 10 me with all of those mechanisms, are there other mechanisms
 11 that could have contained a threat.
 12 MR SEMENYA SC: Which are POP techniques.
 13 MR WHITE: Well, I think I've listed all
 14 of the POP techniques or tactics that were actually
 15 available to the officers on that day, so therefore I've
 16 exhausted that list so there are no more.
 17 MR SEMENYA SC: But we know those did not
 18 contain the threat, don't we? We see POP members running
 19 to the Nyalas.
 20 MR WHITE: But I don't know if, and again
 21 I'm trying to follow your line of questioning, Mr Semenya,
 22 if you'll indulge me for one second, I don't know that
 23 those weapons, those tactical options were used at the
 24 front of the crowd to prevent them from coming towards
 25 where ultimately the TRT line was. Now if you are asking

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1 me to engage with the set of facts that you're suggesting
 2 that for the purposes of this question we need to accept
 3 that they were, if having gone through almost to a
 4 graduated use of force, in other words verbal warnings
 5 don't work and things like teargas doesn't work, impact
 6 rounds, well then once they've exhausted all of those
 7 mechanisms and if the threat is still there, well then
 8 they've exhausted those mechanisms so nothing has worked
 9 and therefore there are no other less lethal options that
 10 are potentially going to work.
 11 MR SEMENYA SC: If those facts are
 12 established, are you willing to change your opinion in
 13 relation to the conclusions you arrived at in relation to
 14 scene 1?
 15 MR WHITE: My conclusions at scene 1 were
 16 based on the fact that, a number of things. First of all –
 17 MR SEMENYA SC: Sorry to interrupt you,
 18 Mr White, that's why I don't want us to go there. I'm
 19 asking you assuming the Commission finds those facts as I
 20 presented them to you to be correct, would that change your
 21 opinion? That's my question.
 22 MS LE ROUX: Chair, could I just ask for
 23 clarity on the assumption that Mr Semenya would like Mr
 24 White to make? Is it that each of the POP measures
 25 available, water cannon, teargas, stun grenades, rubber

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1 were available, there were no others available or is it
 2 also, is he talking about how they were actually used on
 3 the day, whether they were used against the lead group with
 4 sufficient time and whether they had any effect, I just
 5 want to be clear on what the assumption is that he would
 6 like Mr White to assume.
 7 MR SEMENYA SC: Mr White, do you have
 8 difficulties with my question?
 9 MR WHITE: I'm grateful for Ms Le Roux's
 10 interjection with regards to just getting absolute clarity
 11 so that I can give absolute clarity to you by way of
 12 answer. I would have also said could you please just
 13 clarify for me which assumption you're asking me or which
 14 criticism you're asking me to change?
 15 MR SEMENYA SC: No, I'm operating with
 16 limited time. You remember we took the –
 17 CHAIRPERSON: Mr Semenya, sorry, can I
 18 interrupt you? Perhaps in the hope of shortening things
 19 can I ask the question slightly differently? Mr Semenya
 20 has asked you to assume that they had water canon
 21 available, teargas, stun grenades and those are the three
 22 things you've got, is that right?
 23 MS LE ROUX: And rubber, Chair.
 24 MR SEMENYA SC: And rubber.
 25 CHAIRPERSON: Sorry, and rubber bullets,

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1 yes. Assuming all those had been used, what is your
 2 opinion, essentially on two matters – firstly if, would a
 3 combination of those four things in your view, based on
 4 your experience, have been enough to stop the advance of
 5 these people who, on the assumption you've been asked to
 6 make, were intending to attack the police? Would they have
 7 successfully in your opinion, on the probabilities I take
 8 it, have been able to ward off this attack by a combination
 9 of those four things?
 10 MR WHITE: I think that given the images
 11 that I've seen, the nature of that crowd is that in my
 12 opinion it'll be likely that the range of less lethal
 13 options that we've talked about could potentially have
 14 stopped that crowd. If it's helpful to Mr Semenya and,
 15 more importantly, to yourself, Mr Chairman, I think he was
 16 asking me to assume that those mechanisms hadn't stopped
 17 the crowd.
 18 CHAIRPERSON: That's why I was coming
 19 with the second part. Your opinion is those four things
 20 might have done the trick, if I can put it colloquially.
 21 If they hadn't, what then? Would there still have been an
 22 imminent – there still, I take it, would have been an
 23 imminent threat. Would there have been any other way which
 24 could have been employed by the policemen concerned, POP,
 25 to prevent the threat being implemented?

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1 [15:44] MR WHITE: Well, if those mechanisms
 2 hadn't have worked and those mechanisms had have been used
 3 against a group running at you in the way that Mr Semenya
 4 described, and I understand that there's conflicting
 5 factual evidence as to whether or not that happened. But
 6 if, well then naturally I think that you look at three
 7 things; 1, given that the question is, now you've got to be
 8 in the mind of the police officer, is do we resort to
 9 lethal force and bearing in mind all the international
 10 standards in relation to the use of lethal force, absolute
 11 necessity, last resort. So the question then becomes can
 12 we retreat. This is the first thing. But if not, then
 13 there may be a situation where potentially you may need to
 14 engage that crowd, or people who are representing a clear
 15 imminent threat to life with lethal force.
 16 But the last part of Mr Semenya's question was
 17 would I change, given those circumstances, would I change
 18 my criticism or opinion –
 19 CHAIRPERSON: It was to avoid that point
 20 that I reformulated the question the way I did, but
 21 obviously you must now engage the question as Mr Semenya
 22 put it to you, do you still stand by your criticisms in
 23 regard to that particular issue?
 24 MR WHITE: Well, I'm therefore asking
 25 just which specific, particular criticism that I have made

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1 is he asking me to reconsider.
 2 MR SEMENYA SC: Let's go it piecemeal.
 3 We do see POP members run away. Is that what should be
 4 encouraged to happen in those circumstances?
 5 MR WHITE: If you say we see POP members
 6 running away, I'm not sure that I've seen that –
 7 MR SEMENYA SC: We have –
 8 MR WHITE: I'm not disputing. I'll
 9 accept then if you tell so that POP members run away. Are
 10 you asking me, if you're asking me should that be
 11 encouraged, that's a decision for the officers to make
 12 themselves as to in terms of what capability do I now have
 13 to engage this threat, because we certainly wouldn't ask, I
 14 don't think we'd ask a police officer basically to stand
 15 there with there is imminent threat to his life and he
 16 couldn't do anything else about it. So in one of the
 17 issues that you do give consideration to in relation to use
 18 of lethal force is the potential for retreating.
 19 MR SEMENYA SC: No, I accept if they are
 20 able to retreat in that way they can avert any harm. That
 21 is what the law requires them to do. That's not what I'm
 22 asking. I'm asking you as an expert that when confronted
 23 as a police POP member by a threat as we describe you would
 24 encourage all of them to run away, because they can use no
 25 other measure beyond the rubber bullet, as you concluded.

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1 MR WHITE: No, I –

2 CHAIRPERSON: Forgive my interrupting

3 you, but you know, I'm not sure that question is helpful

4 because the law of self-defence is if you can run away you

5 must run away. If there are some people approaching you to

6 attack you and you can run away, then the law as I

7 understand it says you must, generally speaking. And of

8 course this is a little bit removed from the facts of our

9 matter –

10 MR SEMENYA SC: No –

11 CHAIRPERSON: - because the POP people

12 did run away. They jumped into their Nyalas. What then

13 happened, in fact only one POP man stayed in position and

14 that was Kuhn, as we can see it in the videos. What

15 happened was they came on, the strikers came on in the

16 direction of the TRT people, who were the ones who fired.

17 I don't want to interrupt your cross-examination unduly,

18 but we've got to bear in mind what the facts are.

19 MR SEMENYA SC: No, I accept, Chair.

20 That's why I'm qualifying the question by saying, Mr White,

21 I want to examine whether there is a police tactic,

22 technique, that we should be recommending before self-

23 defence is really there now, i.e. when there's imminent

24 threat and the facts are there for self-defence and private

25 defence, we know what the law says. I'm excluding that. I

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1 want to see if there's an intermediate police procedure you

2 know about where we should encourage them to run away.

3 MR WHITE: No, I think the reason I was

4 trying to establish which particular of my criticisms did

5 you ask me to revise, is that – but my, you know one of the

6 key criticisms I had was in relation to how this issue,

7 this event was planned, and I'm not trying to widen this

8 out, so specifically I made criticisms in relation to how

9 the POP officers were backed up by a line of 60 TRT

10 officers. Now I would say to you that if the POP officers

11 in accordance with the plan, as the Chair has pointed out,

12 had to withdraw to their Nyalas, the next tactic was that

13 they would be confronted with a line of TRT officers. I

14 was critical of that at the time and even with the question

15 that you put to me I remain critical of that. So if your

16 question was which of my criticism, would I revise those;

17 no, I wouldn't.

18 MR SEMENYA SC: Let's forget what I asked

19 in the past and let's focus on what I'm asking now. Even

20 if the TRT people were POP officers in that line, what POP

21 measure would they employ to thwart the imminent threat on

22 their lives?

23 MR WHITE: If less lethal options haven't

24 worked then the question has to come, depending on the

25 threat, do I use lethal weapons, and if that's the question

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1 being asked then I'll say yes, there are occasions when you

2 may have to revert to lethal weapons. But there are a

3 number of factors that you need to put in there. One is,

4 as you've said, Chair, if you can retreat, withdraw to the

5 safety in your Nyalas or run away, then you must do that.

6 MR SEMENYA SC: Ye.

7 MR WHITE: Beyond that there's the issue

8 of being confronted with this line of 60 people armed with

9 R5 rifles. So I've been asked a question is there some

10 intermediary. I think that in my statement I made

11 reference to being engaged in circumstances where you're

12 facing a crowd where there is, and they're a threat,

13 sometimes actually the threat manifests with firearms and

14 in preparing for that I give details in my statement as to

15 how we would have actually planned for that and actioned

16 that.

17 MR SEMENYA SC: Yes, that's why I'm

18 trying to take advantage of your expertise and I know these

19 theories exist, the legal framework exists, circumstances

20 under which those can or cannot be justified. I understand

21 all that. I'm inviting your opinion as an expert now that

22 moments before the shooting, if the circumstances are what

23 we see, are you suggesting there are other POP measures

24 which could have contained that without the consequences we

25 know? That's my question.

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1 CHAIRPERSON: Mr Semanya, I take it by

2 POP measures you mean measures which involve the employment

3 of non-lethal force.

4 MR SEMENYA SC: Correct.

5 MR WHITE: Two points in that; one I've

6 already said earlier on that the police officers there, the

7 POP police officers there had exhausted, I think had used

8 all of their less lethal mechanisms, so they had nowhere

9 else to go. If the question you're asking me, are there

10 other less lethal mechanisms that perhaps South African

11 police don't have or didn't have deployed on the day, again

12 I've given evidence in my statement with regards to impact

13 rounds and the fact that they might be over something like

14 rubber.

15 I said to you, Chair, also as part of this answer

16 do I think that less lethal mechanisms would have been

17 sufficient to contain that crowd against the images that

18 I've seen approaching the police officers. I think

19 potentially it could have been had they been properly

20 organised and had been properly planned.

21 MR SEMENYA SC: Again you're bringing

22 properly organised and properly planned. I'm trying to

23 invite you that we work with the facts as they obtained.

24 MR WHITE: Well, if –

25 MR SEMENYA SC: Could on the facts had

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1 they – as you use the expression “properly planned” – they
 2 could have properly planned that the crowd was going to go
 3 around the kraal during the 16:30 planning meeting?
 4 MR WHITE: No, I don't think you can
 5 absolutely plan where a crowd is going to go. You can put
 6 measures in place in order to encourage crowds to go
 7 certain ways, but in one of the issues that I've been
 8 strong on throughout my engagement with this evidence is
 9 about contingency planning and about thinking about the
 10 what-ifs. So I don't know that you could have planned with
 11 absolute certainty that the crowd would have come around
 12 the kraal, no.
 13 MR SEMENYA SC: Even at that level, Mr
 14 White, are you saying they should have provided for a
 15 contingency that Nyala 4 would close to the kraal and
 16 therefore the group would go around the kraal? Is that a
 17 type of contingency plan you say there should have been at
 18 14:30?
 19 MR WHITE: I think, Chair, in fairness,
 20 what Mr Semenya is now asking me to do is basically almost
 21 do something that I think that the policing expert for SAPS
 22 has criticised me for, which is using the benefit of
 23 hindsight. I've been asked to look at every eventuality
 24 that's happened and say should there have been a
 25 contingency plan for it. My criticisms in relation to

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1 planning for this particular event was that there were
 2 certain things that I think were predictable that weren't
 3 necessarily planned for. You cannot plan for every single
 4 eventuality. My criticism in relation to the timing for
 5 this exercise was that it was deficient, and considerably
 6 deficient in that I don't think that there was anywhere
 7 near enough attention given to the things that could have
 8 been planned for and reasonably foreseen.
 9 MR SEMENYA SC: Well, we'll later go and
 10 look at your individual criticisms, but I thought we could
 11 deal with the big picture issues first. Can I rest on your
 12 expert opinion to say on all the available evidence that
 13 you have seen you did not come across anything that
 14 suggested there was a plan by the SAPS to execute people on
 15 that day?
 16 MR WHITE: If I understand you correctly
 17 you're asking me in looking at all the evidence do I think
 18 that the police had a predetermined intent to kill people
 19 from the very outset. No, I don't.
 20 MR SEMENYA SC: There is no such evidence
 21 that points to that conclusion. Am I right?
 22 MR WHITE: I certainly don't say that is
 23 the evidence. That's not how I engaged with it.
 24 MR SEMENYA SC: And you do accept that
 25 what seems to have transpired at scene 1, whether correctly

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1 or wrongly handled, was an attempt to contain a very fluid
 2 situation for which the police were caught off-guard, if I
 3 use that expression?
 4 MR WHITE: I certainly think that, ja,
 5 this was a fluid situation and I think the police were
 6 caught off-guard. That would be correct.
 7 MR SEMENYA SC: Sorry, Sir, I couldn't
 8 hear.
 9 MR WHITE: I am agreeing with you.
 10 MR SEMENYA SC: Academic writers who
 11 write on crowd behaviour, I see that they always emphasise
 12 that this type of research is context and social specific.
 13 You need to know what community you're dealing with before
 14 you can describe whether or not a particular crowd is
 15 acting consistent with predictable group behaviour. Am I
 16 right?
 17 MR WHITE: I'm not being awkward, but I
 18 haven't read all of the literature in relation to people
 19 who study crowds. Whether it would be fair to say that you
 20 have to know the crowd, I think it always helps, I mean
 21 certainly from a professional policing point of view it
 22 helps significantly if you understand the type of community
 23 you're dealing with.
 24 MR SEMENYA SC: And at times it has their
 25 own social nuances, there may be a particular way

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1 mineworkers operate as a cohesive entity or behave in a
 2 cohesive entity far different from how others in the
 3 Northern Ireland could behave. That's a fair statement to
 4 make?
 5 MR WHITE: I don't know that I'm
 6 qualified to answer that, Chair, to be honest with you. I
 7 say that I don't actually know that I'm qualified to answer
 8 that question, if I'm being honest.
 9 MR SEMENYA SC: Okay. Your opinion about
 10 whether the challenges that the SAPS had faced were of a
 11 particular kind, you ought reasonably to have known a
 12 number of things. Let me cite them in sequence. The level
 13 of police training there was to deal with that issue, would
 14 that be a relevant factor?
 15 MR WHITE: I think that would be
 16 relevant.
 17 MR SEMENYA SC: Did you as a matter of
 18 fact know what training was had by those who were to
 19 contain this operation?
 20 MR WHITE: In the evidence that was
 21 provided to me on the original hard drive there were
 22 documents that related both to policy training, the type of
 23 training and also my recollection is that there were
 24 training records in relation to, my specific focus was on
 25 the people who were involved in planning, commanding and

<p style="text-align: right;">Page 36653</p> <p>1 running the organisation as – the operation, I beg your 2 pardon, as opposed to the individual officers who were 3 physically within the units. But yes, I engaged with 4 evidence of that nature. 5 MR SEMENYA SC: Were you satisfied that 6 the police who were to manage the operation in Marikana had 7 adequate experience and training to do so? 8 MR WHITE: I think one of the criticisms 9 that I made was that specifically in relation to the 10 planning for the operation actually, well the chief planner 11 did not seem to have a significant background in Public 12 Order Policing and there was also then very little evidence 13 to suggest that he had been substantially assisted in the 14 planning by people who did. 15 MR SEMENYA SC: Apart from – that's where 16 I'm going. Apart from the fact that the plan compiler, who 17 was Colonel Scott, did you form a view or an opinion that 18 there was inadequate experience and expertise on POP issues 19 to be doing that planning of that operation? 20 MR WHITE: Yes, effectively I did form 21 that opinion, Mr Chairman. 22 MR SEMENYA SC: You formed the opinion 23 that? 24 MR WHITE: I stated this in my, at some 25 considerable length in what's referred to as my final</p>	<p style="text-align: right;">Page 36655</p> <p>1 didn't just hear the end of your sentence. 2 MR SEMENYA SC: Ja, I say I'm quite alive 3 to the fact that you were critical about stage 3 in the 4 whole permutation of its manifestations. I'm aware of 5 that, but I want us to break it in part so that I am clear 6 what your professional opinion is on the matter. Are there 7 POP elements missing in the plan that was adopted 14:30 on 8 the 16th of August 2012? 9 MR WHITE: When you say are there POP 10 elements, what do you mean by elements, so that I can be – 11 MR SEMENYA SC: So that if there were POP 12 members who were vigorously interrogating this and they 13 spent a whole five hours talking about it, they would have 14 included things missing in it. 15 MR WHITE: Well, I think in the first 16 instance there is the issue of engaging a crowd of in and 17 around 3 000 people, of whom in and around 300 we 18 anticipate are heavily armed, and the intelligence, limited 19 as it is, would say that at least that group are 20 potentially likely to resist with force and engagement. 21 [16:04] I think that the first issue is, is it a good 22 idea then to actually go and engage that crowd and at the 23 time it happened, and actually one of the people who has 24 some involvement, a limited involvement I would stress, Mr 25 Chairman, in the planning of the operation who has</p>
<p style="text-align: right;">Page 36654</p> <p>1 statement, except that it wasn't my final statement in the 2 end, but that actually I did feel that Lieutenant-Colonel 3 Scott was placed in a difficult position insomuch as I 4 questioned whether or not he was the right person to have 5 been the chief planner insomuch as given his background. I 6 point to a number of issues that I think that his judgment 7 may well have been questionable, not in terms of his 8 professional ability - I'm sure Lieutenant-Colonel Scott is 9 a very capable officer - but perhaps in a slightly 10 different field, and then I also made comments with regard 11 to the limited input of other officers who would have had 12 much more public order command and planning experience. 13 MR SEMENYA SC: Ja, we're going to deal 14 with your report in relation to those elements. I'm just 15 trying to ascertain is it your opinion that the total sum 16 of expertise and experience on POP matters was during the 17 planning of the operation there or not? 18 MR WHITE: I think I've made that clear 19 that yes, I do think that in terms of the planning there 20 was inadequate engagement with experienced public order 21 commander/planners. 22 MR SEMENYA SC: Okay, now I know you're 23 very critical of the plan for the operation, particularly 24 stage 3. 25 MR WHITE: Apologies, Mr Semenya, I</p>	<p style="text-align: right;">Page 36656</p> <p>1 significant public order experience it would seem is – 2 forgive me, keep me right on the rank here – Mr Merafe. 3 I'm not quite sure of the rank, I think it's Colonel? 4 CHAIRPERSON: Yes. 5 MR WHITE: And Mr Merafe in his oral 6 evidence as I understand actually said when protesters are 7 looking for confrontation it's not necessarily the best 8 time to intervene. So given what the limited intelligence 9 actually says and given the number of people on the hill at 10 that time, I would question whether or not the whole basis 11 of the plan in terms of do we go and do this and do we go 12 and do it now was well conceived. As I say, that seems to 13 be backed up by the view of one of the people who actually 14 does have public order experience. 15 MR SEMENYA SC: Mr White, let us not 16 conflate two things. There are two things; you can either 17 say the proper avenue, given all of those facts, lack of 18 intelligence and 3 000 people, etcetera, the decision to go 19 on stage 3 is wrong. That's one thing. But you can say 20 having decided to go through with that operation given 21 those facts, there is something inadequate in your 22 planning, and I'm trying to explore the second. 23 MR WHITE: Okay, then forgive me. Then 24 let's move to the second. The way that it was planned was 25 that stage 3 was to some extent a bit of a continuation of</p>

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1 stage 1 and stage 2. Stage 1 was the negotiation, stage 2
 2 then was sort of a more show of force and then stage 3 was
 3 to be this proactive, I think I wouldn't use the term but
 4 the term that seems to be used within the evidence is going
 5 tactical.
 6 Now at stage 1 when the police first arrived
 7 close to the koppie to do the negotiation we see a reaction
 8 from the crowd and there's evidence to suggest that people
 9 come forward, including I think it's Mr Noki comes forward
 10 and is aggressive, but I think I've congratulated the
 11 tactical use of negotiators, Mr McIntosh and so forth, and
 12 they managed to get that situation calmed down.
 13 In the interest of brevity, rolling on through to
 14 sort of stage 2 when the police up the profile somewhat,
 15 i.e. that the Nyalas that have the wire appear - not that
 16 the wire has been deployed at this stage, this is much
 17 earlier, but again you know the police make an action and
 18 we see a reaction from the crowd. People come forward,
 19 again expressing, you know their frustration, concern and
 20 threats are actually issued.
 21 Then what happens is at the beginning of stage 3
 22 the idea is that this wire will be rolled out, which
 23 Lieutenant-Colonel Scott says is a defensive measure to
 24 protect the police and the media, a safe holding area
 25 effectively, and what he said is that - as I understand it

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1 - that the wire will be rolled out and then at the time
 2 choosing after that of Mr Calitz, who's the operational
 3 commander, then he would give a warning.
 4 So Mr Scott talks about that the wire should be
 5 rolled out simultaneously, very quick, with a warning, and
 6 in some respects he goes on to talk about it's merely sort
 7 of a case of, to use the phrase, is you shock them off, and
 8 there will be a sort of psychological intimidating factor
 9 around this.
 10 I would say that, (a), based on the evidence that
 11 I've already given, you know in a public order situation it
 12 tends to be that when the police make a, take an action
 13 there will be a reaction to that and this is why I say, you
 14 know I'm sure Mr Scott is a very professional officer and
 15 his background is in the Special Task Force. His
 16 background is in, I'm sure therefore planning for firearms
 17 type exercise or operations. So I think he misjudged what
 18 potential reaction might have been when the wire went out.
 19 Not only that; by the evidence of some of his colleagues it
 20 was totally inappropriate for the wire to have been rolled
 21 out that way, and I think both Mr Calitz and also Mr
 22 [inaudible] I think police officers, they then instigated
 23 the rollout of the wire consecutively and give the
 24 rationale and the reason for doing that, and I don't argue
 25 with their rationale and reason for doing it.

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1 So I'm giving that to you as an example whereby
 2 Colonel Scott, who's the chief planner in this, I think
 3 makes certain assumptions which actually, if you look at
 4 people who are much more used to dealing with public order,
 5 they took a different view on this.
 6 MR SEMENYA SC: Mr White, with respect,
 7 and I can understand why you're going and explaining
 8 yourself. My question is a very straightforward one. If
 9 there was a plan in terms of Standing Order 262 that there
 10 must be a written plan for a POP operation, okay, my
 11 question is, and the decision has been made to go and
 12 disarm, as you put them, 3 000 people, what would you
 13 expect to see written in that written plan that you find
 14 missing in this operation that was verbally given?
 15 MR WHITE: Apology, Chairman, that puts
 16 me in a difficult position. It puts me in a difficult
 17 position because if I was a senior police officer engaged
 18 in this operation then I wouldn't have been doing, I would
 19 not have been following through in this act. So Mr Semenya
 20 is asking me a question, saying but the fact remains the
 21 decision has come from on high that this is what we're
 22 going to do, what would you expect to put in the plan.
 23 Well, as I say, it puts me in a very difficult position
 24 from the point of view that I think that the act of doing
 25 this was incredibly dangerous, so -

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1 CHAIRPERSON: Can I rephrase the
 2 question? We know the decision was not made by anybody on
 3 the spot. We know it was in fact made the night before.
 4 The real question is this; assuming that the people in the
 5 JOCCOM are faced with a decision from on high, which is an
 6 assumption which is justified on the facts, and they're
 7 told they must execute it, is it possible for an
 8 appropriate responsible and relatively risk-free plan to
 9 have been worked out? You see, as I understand it Mr
 10 Semenya's question has to two parts. I understand the
 11 first part is you say that the decision was a bad decision.
 12 On the other hand if one assumed that the
 13 decision is a given, there's nothing you can do about it,
 14 is it possible to implement the decision in an appropriate
 15 relatively risk-free way? If the answer to that is no,
 16 well then there are no elements I take it which one can
 17 suggest to improve the plan because in any event the plan
 18 is going to be fundamentally flawed.
 19 What Mr Semenya, as I understand it, is asking
 20 you, are there elements, are there things that can be
 21 suggested which would have improved the plan, which in fact
 22 was the plan which was on the table and accepted by the
 23 JOCCOM, were there things that could have been suggested
 24 which would have improved the plan and made it possible to
 25 implement the decision which had been taken by other

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1 people?
2 MR WHITE: And I think, Chair, it comes
3 back to the hub of the matter. You've very helpfully
4 broken this down into two. Come back to the first part,
5 and so if the decision is made on high that we're going to
6 do this, is there anything that can be done basically to
7 make this risk-free. Well, the reason that I said that I
8 think it's a bad decision to go and do that at that time is
9 because that obviously leads to the, you know, the second
10 issue which is, you know, this is, if you do this it is
11 inherently high-risk, so don't.

12 Now if it's helpful then if we move on and say
13 well magically I'm now forced in a position that I need to
14 do this, and maybe there might have been circumstances in
15 which the police may have had to go in. If say for example
16 a fight had broken out on that koppie between rival groups
17 and there was a right-for-life issued, you know, the
18 requirement to protect life, well then the police would
19 have to go in.

20 It's very difficult for me to sit here and simply
21 say well, if you did this it would all be fine. What I've
22 done in relation to this evidence is engaged very carefully
23 with that plan as it was set out, and I've said in relation
24 to various aspects of it I think that this tactic, this
25 approach, this particular part of the plan was questionable

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1 and here is why.
2 So like I said, and I'm more than happy to talk
3 about that, but given my, the first part of my answer it's
4 extremely difficult for me to put myself in a hypothetical
5 situation and say well, if we now have to do this could you
6 make it a lot less risky. I think it would have been a lot
7 less risky, but this comes back to the point that I make in
8 and around being critical of particular tactics, it would
9 have been a lot less risky in relation to the potential
10 requirements for the use of lethal force if you didn't have
11 a tactic of lining up 60 people with rifles.

12 CHAIRPERSON: Mr Semanya, can we take
13 this debate on, we can continue with the debate tomorrow
14 morning.

15 MR SEMENYA SC: Indeed, Chair.

16 CHAIRPERSON: So we will adjourn now
17 until 9 o'clock tomorrow morning.

18 [COMMISSION ADJOURNED]

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20 .
21 .
22 .
23 .
24 .
25 .

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