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 186 17 FEBRUARY 2014

PAGES 22388 TO 22579



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	Page 22388		Page 22390
1	[PROCEEDINGS ON 17 FEBRUARY 2014]	1	decide how they do it and they were saying we will be
2	[09:10] CHAIRPERSON: Mr Mpofu, the witness, and	2	guided by you on what to do.
3	I, will find it very disturbing if your cell phones go off	3	MR VAN AS: Sorry, Mr Chairperson, that's
4	during the course of his cross-examination. The Commission	4	not what was said. What was said, we won't take any steps
5	resumes. Provincial Commissioner, you're still under oath.	5	without discussing the matter with you and taking guidance
6	MIRRIAM NOSAZISO ZUKISWA MBOMBO: s.u.o.	6	from you. They didn't say that they will be guided as to
7	CHAIRPERSON: Mr Mpofu?	7	what steps were going to be taken by the Provincial Commissioner.
8 9	CROSS-EXAMINATION BY MR MPOFU (CONTD.):	8 9	MR MPOFU: Chairperson, if you go to page
9 10	Thank you very much, Chairperson. Good morning, General. GENERAL MBOMBO: Good morning. Morning,	9 10	3 of HHH – or rather JJJ192, that's exactly the words that
11	Counsel.	11	is used. Mr Mokwena, "So if you ask what our plans are,
12	MR MPOFU: I just want to round off a few	12	our plans are we await your team to guide us and say we can
13	small topics before we deal with what is going to be quite	13	do what [inaudible]." That's exactly what he said. So
14	a biggish topic and hopefully the last one. We were, or	14	that's why I'm saying it's a circular, it would be having a
15	rather on Friday we dealt a little bit with your meeting	15	circular meeting. The one side would be saying well our
16	with Mr Mokwena. I just want to recap, and you'll agree	16	plans are that we'll be guided by you, and you say no, our
17	with me, where you agree or disagree where you do, the	17	plans are that you must tell us what you're going to do.
18	issue about the main topics that you wanted to raise, or	18	Do you understand that problem, General?
19	that you did raise in that meeting, you've already	19	GENERAL MBOMBO: But Chairperson, I've
20	indicated that one of the issues you wanted to discuss was	20	already responded to this question. I explained thoroughly
21	to ask them to communicate to the employees via some	21	that according to me when Mr Mokwena said so he was saying
22	pamphlets – well, you didn't prescribe the pamphlets, but	22	the guidance that he is expecting from me pertains to
23	what you wanted to do was for them to communicate with	23	security issues, pertaining to what their decision is what
24	their employees that they should return to work or there	24	they were going to do.
25	will be consequences, something to that effect, correct?	25	CHAIRPERSON: The question has been asked
	Page 22389		Page 22391
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	GENERAL MBOMBO: I was just making an	1	and answered, Mr Van As, so I don't have to rule on your
2	example.	2	and answered, Mr Van As, so I don't have to rule on your objection.
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	Page 22392		Page 22394
1	MR MPOFU: Yes, that's true, Chairperson,	1	questions and let's carry on –
2	but it's not the point. The point I'm making is that she,	2	MR MPOFU: Well, Chairperson, I –
3	a policeman, was advising Lonmin –	3	CHAIRPERSON: We'll get to the end much –
4	CHAIRPERSON: A policewoman.	4	yes, Mr Mpofu, to say to the witness you're evading my
5	MR MPOFU: - about those issues.	5	question is a comment, it's not a question. To say to the
6	CHAIRPERSON: Policewoman.	6	witness you're wasting the Commission's time is a comment,
7	MR MPOFU: Yes.	7	not a question. You're here to ask questions, not to make
8	CHAIRPERSON: Well, I'm not sure that she	8	comments. Please proceed appropriately.
9	advised them about no-work-no-pay, but anyway, carry on	9	MR MPOFU: General Mbombo, did you or did
10	with your cross-examination.	10	you not mention the word "no-work-no-pay" to Mr Mokwena?
11	MR MPOFU: Well, she has just accepted –	11	GENERAL MBOMBO: I mentioned such word,
12	maybe the Chairperson wants to contest the witness's	12	Chairperson.
13	answer. Did you advise them about no-work-no-pay?	13	MR MPOFU: Okay, thank you. I just
14	GENERAL MBOMBO: Not that way,	14	wanted to clarify that. And you accept that that topic
15	Chairperson. I was giving an example –	15	deals with a labour issue between an employer and employee?
16	MR MPOFU: Ja, in making that example did	16	GENERAL MBOMBO: I think so. I think so,
17	you say they must apply the no-work-no-pay rule?	17	Chairperson.
18	GENERAL MBOMBO: It would have been for	18	MR MPOFU: Thank you. Now apart from the
19	them to decide to do that.	19	no-work-no-pay, another topic that you covered in that
20	MR MPOFU: No, General, please answer my	20	meeting was to try and do away with the perception that
21	question. You're just wasting my time now. Did you – I	21	management was colluding with AMCU, correct? That was
22	know it was going to be their decision –	22	another topic which you discussed.
23	MR SEMENYA SC: No, Chair –	23	GENERAL MBOMBO: I think we did speak
24	MR MPOFU: Did you advice them to apply	24	about that, yes.
25	the no-work-no-pay in respect of which they were going to	25	MR MPOFU: Yes, and would you agree that
20			······································
	Page 22393		Page 22395
1	make a decision, yes or no?	1	that also is not a policing matter, whether or not the
2	MR SEMENYA SC: We need to protect the	2	management is siding with AMCU or whatever? Would you
3	witness. Mr Mpofu can't say the witness is wasting his	3	agree?
4	time.	4	GENERAL MBOMBO: Remembering, Mr
5	CHAIRPERSON: [Microphone off, inaudible]	5	Chairperson, that this was not a formal meeting. This was
6	MR SEMENYA SC: Mr Mpofu cannot say that	6	just a discussion.
7	the witness is wasting his time. That's not courteous –	7	MR MPOFU: General, please, I know I'm
8	CHAIRPERSON: I think that may be a two-	8	not allowed to make comments, but did you - or rather, do
9	edged sword. I would avoid that sort of point if I were	9	you accept that whether it was a meeting or whatever
10	you, but carry on with your cross-examination and don't	10	discussion you were having, that the - well, you've already
11	make comments of that sort again.	11	accepted that one of the topics that you wanted to cover
12	MR MPOFU: Yes, alright. Okay,	12	was this perception. The question I'm asking you now is do
13	Chairperson. General, okay, don't waste the time of the	13	you accept that the question of whether or not management
14	Commission then. Can you just answer a simple question -	14	was siding with AMCU or not, or colluding with AMCU, was
15	CHAIRPERSON: Mr Mpofu, I said you	15	not a policing matter? Yes or no?
16	mustn't make comments of that kind at all. Would you	16	GENERAL MBOMBO: It is so.
17	kindly desist in future? Don't make comments. Just ask	17	MR MPOFU: Thank you. A third topic that
18	your questions.	18	was raised in that meeting was the issue of political
19	MR MPOFU: Okay, well don't –	19	pressure which had been put on the Minister and
20	CHAIRPERSON: We'll get through the	20	communicated downwards to the National Commissioner and
21	cross-examination sooner.	21	yourself, agreed?
22	MR MPOFU: General, you are evading my	22	GENERAL MBOMBO: I'm not sure of the
23	question, okay?	23	pressure that you refer to, but I do know that there were
24	CHAIRPERSON: That's another comment.	24	concerns raised.
2	It's for me to decide whether there's evasion. Just ask	25	MR MPOFU: Okay, once again did you –
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#### Marikana Commission of Inquiry

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	Page 22396		Page 22398
1	CHAIRPERSON: The word "pressure" was	1	sure he accepts that, but the thrust of his question was
2	used. I mean I know you say it doesn't mean pressure, but	2	the desire to bring the matter to conclusion soon, quickly,
3	the word "pressurised" was used. You've said that you	3	was prompted by political considerations which you
4	understood that the, from the National Commissioner, that	4	mentioned to Mr Mokwena. That's the thrust of his question
5	Mr Ramaphosa had pressurised the Minister and you also	5	and you haven't answered that.
6	mentioned that Mr Ramaphosa was a high political	6	MR MPOFU: That's correct, Chairperson.
7	personality and so on. So you obviously dealt with the	7	GENERAL MBOMBO: Chairperson, my wish was
8	topic, so I don't think it helps just to get away from	8	that this matter should be solved as soon as it is possible
9	that. So Mr Mpofu is quite right in putting to you that	9	where it is, was because there were people that had already
10	the question of political pressure being brought to bear on	10	died in the matter and that there were people there who
11	the Minister and that being communicated, not necessarily	11	were not able to work as they wished and people who were
12	the pressure communicated but the fact that it had	12	not, who felt unsafe.
13	allegedly happened was communicated, the National	13	MR MPOFU: General, that may well be so,
14	Commissioner communicated it to you. That question as an	14	but please answer the question that I've put to you and the
15	introductory question is obviously correct.	15	Chairperson clarified. The -
16	MR MPOFU: That's correct, Chairperson.	16	CHAIRPERSON: Perhaps you could remind
17	GENERAL MBOMBO: As I'm saying,	17	her what she said in that regard.
18	Chairperson, that it's true that the Minister mentioned	18	MR MPOFU: Yes.
19	that Mr Ramaphosa phoned him, but I mentioned before this	19	CHAIRPERSON: The comment that she made –
20	Commission, Chairperson, that it was not the Minister who	20	MR MPOFU: That she made –
21	used the word "pressure." I used the word "pressure"	21	CHAIRPERSON: - upon which you based the
22	because this is just my ordinary way of talking, my usual	22	question.
23	way of saying things when people tell me about concerns	23	MR MPOFU: Yes, thank you, Chairperson.
24	they have.	24	I will do just that. Remember the question is that the –
25	MR MPOFU: Alright, we'll come back to	25	I'm saying that your decision to move at a particular speed
	Page 22397		Page 22399
1	that, but at least we agree that that was a topic that was	1	or time was directly linked to the political
2	discussed. We'll come back to whether you perceived it as	2	considerations. I just want you to understand that's where
3	pressure or not. For now all I'm asking you is that that	3	I'm going. I'm now, as the Chairperson has correctly asked
4	was one of the topics that was covered in that meeting,	4	me, I'm going to read you your words to Mr Mokwena. You
5	correct?	5	say that, "But when I was," meaning yourself, "when I was
6	GENERAL MBOMBO: It is correct, Sir.	6	speaking to Minister Mthethwa he mentioned a name who" –
7	MR MPOFU: And similarly with the others	7	CHAIRPERSON: I'm sorry, Mr Mpofu –
8	would you agree that that is not a matter that should	8	MR MPOFU: Oh, I'm sorry, Chairperson –
9	concern a person whose main focus is policing, whether or	9	CHAIRPERSON: Sorry to interrupt you. I
10	not Mr Ramaphosa "pressurised" the Minister, that that is	10	think you should give the page so that it can be put on the
11	not strictly speaking a policing matter, correct?	11	SCREEN.
12	GENERAL MBOMBO: As you say, yes,	12	MR MPOFU: Page 9, JJJ192, sorry,
13	Chairperson.	13	Chairperson.
14	MR MPOFU: Thank you. And then the	14 15	CHAIRPERSON: What's the page and the
15	fourth topic that you wanted to, that you did cover in the	15	line number?
16	meeting was, to use your words, your intention to kill this	16	MR MPOFU: The very last line on page 9,
17	thing because of the political pressure, among other	17	last two lines. In fact so that we don't come back to this
18	reasons, correct?	18	again, I'll read, Chairperson, from line 22. It will cover
19	GENERAL MBOMBO: As I have already	19 20	two points.
20	indicated, the word "kill" that I used, Chairperson, I was	20	CHAIRPERSON: Yes, yes, I think that's
21	referring to that this matter should be corrected at the	21	sensible.
- 17	place where it is.	22	MR MPOFU: Yes, thank you. This is you
22	In II I Print to I I all to	~~	
23	CHAIRPERSON: That's not the thrust of Mr	23	now, Commissioner, "You will clear yourself by ensuring
23 24	CHAIRPERSON: That's not the thrust of Mr Mpofu's question. I don't think Mr Mpofu suggests you used	24	that you defuse, you give out information that is related
23 24 25	CHAIRPERSON: That's not the thrust of Mr		

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	Page 22400		Page 22402
1	information" - this is the important part – "because I	1	being attributed directly to the political considerations
2	think even when we were trying to talk about it last night	2	which you said you needed to take into account? Do you
3	she," and that "she" is the National Commissioner, "she	3	accept that?
4	asked me a question that says, 'You know, well, this one	4	GENERAL MBOMBO: I hear you, Sir -
5	I'm not sure because the Lonmin shareholders, I do not know	5	MR MPOFU: No, I know you hear me –
6	much about them.'" Mr Mokwena says, "Yes." Then you say,	6	GENERAL MBOMBO: - as it is written
7	"But when I was speaking to the Minister Mthethwa he	7	there.
8	mentioned a name to me that is also calling him, that is	8	MR MPOFU: Yes, but do you accept, do you
9	pressurising him. Unfortunately it's a politically high,"	9	agree with what I'm saying?
10	I suppose you wanted to say politically high-placed	10	GENERAL MBOMBO: I do not want to agree
11	individual, or words to that effect, correct?	11	totally to this, Chairperson.
12	GENERAL MBOMBO: It should be, yes.	12	MR MPOFU: Okay, the part that you agree
13	MR MPOFU: And then Mr Mokwena says, "It	13	with me, does it involve the fact that the "hence" connects
14	is Cyril?" and then you say, "Cyril Ramaphosa, yes. Now	14	the intention to kill this thing, with what you just said
15	remember now when I was talking to the National	15	in the previous breath, which is that you have to take into
16	Commissioner last night she said to me, 'Look General, who	16	account political considerations?
17	are the shareholders here?' So I said I do not know the	17	GENERAL MBOMBO: I am not sure of that.
18	shareholders, but I know that when I spoke to the Minister	18	CHAIRPERSON: Mr Mpofu, are you now
19	he mentioned Cyril."	19	leaving the quotation, or are you going on?
20	[09:29] And then she says, "Now I got it," and we'll come	20	MR MPOFU: I'm carrying on, Chairperson.
21	back – that's the part that I said we'll come back to.	21	CHAIRPERSON: Alright.
22	"You know why she say she got it?" This is you now,	22	MR MPOFU: Right, so you say, "We need to
23	"Remember, Cyril was in the Appeal Committee of Malema,	23	kill this thing." "Hence we need to kill this thing."
24	remember?" "Yes," says Mokwena, and then you say, "And he	24	"Immediately, yes," says Mr Mokwena, and then you say – and
25	was very strong in terms of the decision that was made."	25	listen again carefully because again there's a connection –
1	Page 22401 Mr Mokwena, "Yes," "And remember that in Impala Malema	1	Page 22403 "When tomorrow we have to move in, if today we do not find
1	Mr Mokwena, "Yes." "And remember that in Impala Malema	1	"When tomorrow we have to move in, if today we do not find
2	Mr Mokwena, "Yes." "And remember that in Impala Malema came out with our Premier and spoke to those people about	2	"When tomorrow we have to move in, if today we do not find cooperation in these people we need to move in such that we
2 3	Mr Mokwena, "Yes." "And remember that in Impala Malema came out with our Premier and spoke to those people about that day should make their demands but in a way that, and	2 3	"When tomorrow we have to move in, if today we do not find cooperation in these people we need to move in such that we kill it because," okay, there's another important word,
2 3 4	Mr Mokwena, "Yes." "And remember that in Impala Malema came out with our Premier and spoke to those people about that day should make their demands but in a way that, and after that we, ourselves as the police, we managed, you	2	"When tomorrow we have to move in, if today we do not find cooperation in these people we need to move in such that we kill it because," okay, there's another important word, "because we need to protect a situation where any jick and
2 3 4 5	Mr Mokwena, "Yes." "And remember that in Impala Malema came out with our Premier and spoke to those people about that day should make their demands but in a way that, and after that we, ourselves as the police, we managed, you know, managed the situation after Malema came. Now our	2 3 4 5	"When tomorrow we have to move in, if today we do not find cooperation in these people we need to move in such that we kill it because," okay, there's another important word, "because we need to protect a situation where any jick and jiff from a political" –
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2 3 4 5 6 7	Mr Mokwena, "Yes." "And remember that in Impala Malema came out with our Premier and spoke to those people about that day should make their demands but in a way that, and after that we, ourselves as the police, we managed, you know, managed the situation after Malema came. Now our discussion with the National Commissioner," that means you and the National Commissioner, "was around this thing that	2 3 4 5 6 7	"When tomorrow we have to move in, if today we do not find cooperation in these people we need to move in such that we kill it because," okay, there's another important word, "because we need to protect a situation where any jick and jiff from a political" – CHAIRPERSON: That should be Jack and Jill, I think was –
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	Page 22404		Page 22406
1	GENERAL MBOMBO: When I say I do not	1	MR MPOFU: Yes, but in this case
2	agree with you, Chairperson, everything that I was saying	2	fortunately this was not a matter of speculation. Here you
3	there, this was an ordinary discussion. Whoever it brought	3	with your own words, you were referring to a person whose
4	in, my main idea, my intention was that an endeavour should	4	involvement previously had brought about a solution,
5	be made to brought this thing to an end then.	5	correct?
6	MR MPOFU: General Mbombo, please, I'm	6	GENERAL MBOMBO: It is correct.
7	going to try again, Madam. I need your assistance. I'm	7	MR MPOFU: So we can put aside the issue
8	saying to you, you on two occasions now which I've read out	8	of people who might come and spoil the issue. Not only
9	to you, you have used the word that "There's this political	9	were you referring to somebody who had brought about a
10	consideration, hence we must kill it," and then you say	10	solution, according to the discussion between you and the
11	again, "We must move in tomorrow because we do not want	11	National Commissioner that is exactly what you did not
12	people from a political arena coming to take advantage," or	12	want. You did not want that politician to bring a solution
13	whatever the rest of the sentence is. Now I'm asking you a	13	again, as you said, that "This thing now happening such
14	simple question. Do you accept that in those two	14	that again Malema come and defuse this thing." So you
15	statements you, General Mbombo, are using those words, were	14	didn't want this thing to be defused, correct?
16	linking causally and directly the issue of the political	16	GENERAL MBOMBO: Not altogether so,
17	considerations to the "killing of the thing"?	17	Chairperson.
18	GENERAL MBOMBO: That's why I say first	17	MR MPOFU: General –
10	of all I'm not very sure of – let me say I do not agree	18	GENERAL MBOMBO: Maybe let me explain why
			5 1 5
20 21	with you altogether. MR MPOFU: Okay, then we get to that	20	I say this.
21 22	5. 5	21	MR MPOFU: No, I understand what you are
22	problem again. I think if you use the word "altogether" it	22	saying. Again, once again you are using this "you don't
23	could be interpreted to mean that she doesn't agree	23	agree entirely" type of answer. I'm saying that does the
24 25	completely. I think she used the word "entirely."	24 25	part where you agree with me confirm that you did not want
25	MR MAHLANGU: Yes, it would, can also be	25	Mr Malema to come and defuse this thing, as you put it, "so
	Page 22405		Page 22407
1	Page 22405 interpreted as entirely.	1	Page 22407 that it becomes as if Malema has taken charge of the
1 2	-	1 2	
	interpreted as entirely.		that it becomes as if Malema has taken charge of the
2	interpreted as entirely. MR MPOFU: Okay, so you partly agree with	2	that it becomes as if Malema has taken charge of the mining." That's what, your discussion with the National
2	interpreted as entirely. MR MPOFU: Okay, so you partly agree with me. Now let's just forget the part where you don't agree	2 3	that it becomes as if Malema has taken charge of the mining." That's what, your discussion with the National Commissioner concerned that topic and those were your
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Page 2201         Page 2201           1         question, Sir?         MR MPOPU: You considered it an important         2         need to take into account. * You made that statement,           3         fact worth mentioning that the person who according to you         3         correct?         3           4         meaning in a political ergnination, the ANC, current?         6         GRNERAL MBOMBO: It is correct, yes         5         MR MPOPU: You considered that its not something           6         MR MPOPU: You work shready agreed that that is not something         9         8         MR MPOPU: You work shready agreed that that is not something         9         carrect?           10         you should have taken into account. The sying, and yet         10         GRNERAL MBOMBO: It is not account. You work shready agreed that it is a matter that           11         should pay to recle in your ordicaritons, you account it is is not a question of two you         11         GRNERAL MBOMBO: It is not a question of two you           12         orgnitation, while you account it is in the matter of a political         11         MR MPOPU: So take into account, 'soid in the context of the           13         should pay that, shif I context of a political         11         MR MPOPU: So take into account, 'soid in the context of the           14         should pay that, shif I context of a political         11         day. New what M Mpofu is you			1	
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1         fact worth mentioning that the person who according to you         3         correct?           4         was pressuring the Minister was also in the Appeal         5         GRNERCH MEDMBO: It's correct, Sir.           6         Committee of Malema, which is reference to a staciplinary         6         MR MPOFU: And you then connected it with           7         GENERAL MEDMBO: It's correct, Sir.         7         made the connection again. That connection again. That           9         us a one of the issues that that is not something         9         orarrect?           10         orarestifter is your considerations, you placed it         11         MR MPOFU: No. but I know you -           12         oragnistion for your descington, while you accordington is withing you go and the staces that were important, an important in         13         bearing Wr Mpofu. What Mr Mpofu is putting to you syou and the staces that the the lollowing it was need to take into account. You were in effect asying you and           18         person whoad all these connections. You are the following day. That's what Mr Mpofu is spatial connotation           19         making my decision.         The inthe something it was asson, not necessary the proving you accept that it a mater of a spatial stace thin account. You were in effect asying you and           14         person whoad all these connections. You are the something it was neads to rectious political           15         contarying made all these conne		•		
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10       you should have taken into account. I'm saying, and yet       10       GENERAL MBOMB0: I have you _ 1         11       while you accept that it's a matter of a political       11       NR MPOFU: No, but I know you _ 1         12       organisation, while you accept that it's a matter that       13       should play no role in your considerations, you placed it         13       should play no role in your considerations, you placed it       14       as one of the issues that were important, an important         16       consideration for your decision to kill this thing. Do you       15       we need to take into account." said in the context of the         16       agree?       17       GENERAL MBOMBO: I'm not sure where you       17       800 different ad done previously, is that by saying 'we need         16       agree you who made all these connections. You say that - you no you or war say.       18       10       take It into account. You uses in effect saying you did         17       remember?'' In other words you are making the connection.       Yee       12       11       GENERAL MBOMBO: As you say yes, that was.         18       addicader mathese and of the datone previously, is that by saying the say.       13       GENERAL MBOMBO: Chairperson, la gree         20       thing about this is that the weak you words. You are making the connection.       14       10       Non adpace saint sat abole.      <	8	MR MPOFU: Yes, now I'm saying that was	8	between all these things and the operation was made by you,
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14       as one of the issues that were important, an important       14       yourself said that "This is a serious political connotation         15       consideration for your decision to kill this thing. Do you       16       we need to take into account," said in the context of the         16       agree?       17       dex hand, my decision.       18       Budlender had done previously, is that by saying "we need         17       dex hand, my decision.       18       Budlender had done previously, is that by saying "we need         18       making my decision.       10       take it into account." You took serious political         20       MR MPOFU:       General, you know, the worse       10       take it into account. You took serious political         21       thing about this is that these are your words. You are the       20       take it into account. You took serious political         22       person who made all these connections. You are the       20       take it into account. You took serious political         23       the following day. That's what M Mpolu is putting to you.       24       its it in account. You took serious political         24       Ramaphosa, and then you say that - you on your own say.       24       its of its account. You took serious political         25       remember?" In other words you are making the connection.       16       connection M Mekwena, not the Minis	12	organisation, while you accept that it's a matter that	12	CHAIRPERSON: It's not a question of just
15       consideration for your decision to kill this thing. Do you         16       agree?         17       CENERAL MBOMBO: I'm not sure where you         18       put it as though, as if I considered it as important in         19       making my decision.         20       MR MPOFU: General, you know, the worse         21       thing about this is that these can your words. You are the         22       thing about this is that these can your words. You are the         23       calls you, Minister says I'm being pressurised by Mr         24       Ramaphosa, and then you say that - you on your own say,         25       "Remember?" In other words you are making the connection,         2       not anyone else, not Mr Mokwena, not the Minister, not the         3       adio adiscussion around this thing that connection,         7       MR MPOFU: Then you say that the source         6       GENERAL MBOMBO: It is so.         7       MR MPOFU: And you say that the source of the concerd,         7       MR MPOFU: And you say that the source of the presume, you and the National Commissioner, you and the National Commissioner decided,         13       CENERAL MBOMBO: It is so.         14       MR MPOFU: Mad you say that the source of the presum syng that.         7       MR MPOFU: And you say that the source of the concerd,	13	should play no role in your considerations, you placed it	13	hearing Mr Mpofu. What Mr Mpofu is putting to you is you
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17       GENERAL MBOMBO: I'm not sure where you       17       day. Now what Mr Mpofu is suggesting to you, as Mr         18       put it as though, as if I considered it as important in       18       Budlender had done previously, is that by saying 'we need         19       making my decision.       10       take into account' you were in effect saying you did         20       MR MPOFU: General, you know, the worse       10       take into account' you were in effect saying you did         21       thing about this is that these are your words. You are the       20       only reasons, but as reasons for a cling, immediately acting         23       calls you, Minister says I'm being pressurised by Mr       23       the following day. That's what Mr Mpofu is puting to you.         24       Ramaphosa, and then you say that - you on your own wasy.       11's not a question of whether you hear him. Do you accept         25       "Remember?" In other words you are making the connection,       7       GENERAL MBOMBO: As you say yes, that was       6       said.         5       GENERAL MBOMBO: As you say that the source       6       GENERAL MBOMBO: Correct, I do not agree with counsel.         10       Impala, "correct?       MR MPOFU: Then you say that the source       6       GENERAL MBOMBO: It is so.         12       MR MPOFU: And you say that the National       General, MBOMBO: It is so.       GENERAL MBOMBO: It is so	15	consideration for your decision to kill this thing. Do you	15	we need to take into account," said in the context of the
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18       put it as though, as if 1 considered it as important in         19       making my decision.         20       MR MPOFU:         21       thing about this is that these are your words. You are the         22       thing about this is that these connections. You say Minister         23       calls you, Minister says 1'm being pressurised by Mr         24       Ramaphosa, and then you say that - you on your own say,         25       "Remember Cyril was in the Appeal Committee of Malema,         26       remember?* In other words you are making the connection,         2       remember?* In other words you are making the connection,         2       remember?* In other words you are making that connection,         3       GENERAL MBOMBO:       As you say that - you on your own say,         4       correct?       2         5       GENERAL MBOMBO:       As you say that the source         6       of the pressure, or rather, "The source of the concern,       remember that this person caused a solution to be found in         10       Impala," correct?       MR MPOFU:       The source of the concern,         7       remember that this person caused a solution to be found in       In mota you asy that the source         10       Impala," correct?       MR MPOFU:       Then you say that the source	17	GENERAL MBOMBO: I'm not sure where you	17	
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<ul> <li>23 calls you, Minister says I'm being pressurised by Mr</li> <li>Ramaphosa, and then you say that – you on your own say,</li> <li>"Remember Cyril was in the Appeal Committee of Malema,</li> <li>Page 22409</li> <li>remember?" In other words you are making the connection,</li> <li>not anyone else, not Mr Mokwena, not the Minister, not the</li> <li>National Commissioner, but you are making that connection,</li> <li>cerret?</li> <li>GENERAL MBOMBO: As you say that the source</li> <li>of the pressure, or rather, "The source of the concern,</li> <li>remember that this person caused a solution to be found in</li> <li>Impala," correct?</li> <li>GENERAL MBOMBO: It is so.</li> <li>GENERAL MBOMBO: It is so.</li> <li>MR MPOFU: And you say that the National</li> <li>Commissioner, you and the National Commissioner decided,</li> <li>the sare in charge of mining, correct? You said that.</li> <li>GENERAL MBOMBO: It is so.</li> <li>MR MPOFU: And you say that the National</li> <li>Commissioner, you and the National Commissioner decided,</li> <li>the yare in charge of mining, correct? You said that.</li> <li>MR MPOFU: Yes, and you also made a</li> <li>connection between that potential to defuse this thing and then looks like</li> <li>GENERAL MBOMBO: I remember saying that.</li> <li>MR MPOFU: Yes, and you also made a</li> <li>says.</li> <li>GENERAL MBOMBO: I the nationalisation of mines. You made that connection, correct?</li> <li>GENERAL MBOMBO: I the nationalisation of mines. You made that connection, correct?</li> <li>GENERAL MBOMBO: I the nationalisation of mines. You made that connection, correct?</li> <li>GENERAL MBOMBO: I the nationalisation of mines. You made that connection, correct?</li> <li>GENERAL MBOMBO: I the nationalisation of mines. You made that connection, correct?</li> <li>GENERAL MBOMBO: I the nationalisation of mines. You made that connection, correct?</li> <li>GENERAL MBOMBO: I the nationalisation</li></ul>				-
24       Ramaphosa, and then you say that – you on your own say,       24       It's not a question of whether you hear him. Do you accept         25       "Remember Cyril was in the Appeal Committee of Malema,       24       It's not a question of whether you hear him. Do you accept         26       "Remember Cyril was in the Appeal Committee of Malema,       24       It's not a question of whether you hear him. Do you accept         25       "Remember Cyril was in the Appeal Committee of Malema,       24       It's not a question of whether you hear him. Do you accept         26       the correct?       The other words you are making the connection,       3       GENERAL MBOMBO:       Chairperson, I agree         3       National Commissioner, but you are making that connection,       4       GENERAL MBOMBO:       Chairperson, I agree         4       correct?       A MR MPOFU:       Then you say that the source       6       GENERAL MBOMBO:       Correct, I do not agree with counsel.         7       MR MPOFU:       Then you say that the source       7       with it entirely.       6       GENERAL MBOMBO:       Correct, I do not agree with counsel.         8       CHAIRPERSON:       Mr Mpofu, I must say I       9       think that you've got enough on record now to argue the       10       point you want to argue at the end of the day.       Were going         11       GENERAL MBO				
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25 connection you then made the statement that "This thing 25 Minister would phone you as Provincial Commissioner and				
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	Page 22412		Page 22414
1	share with you issues of political pressure or concern, or	1	CHAIRPERSON: How long did the
2	whatever you call it, or is it - in fact let me put it	2	conversation last?
3	directly; it's not something that happens usually. Is that	3	GENERAL MBOMBO: I am not sure,
4	correct?	4	Chairperson. But I don't think it exceeded five minutes.
5	GENERAL MBOMBO: It is correct,	5	Because I said to the Minister I am already busy with this
6	Chairperson.	6	operation.
7	MR MPOFU: So for the Minister to pick up	7	CHAIRPERSON: So what exactly did the
8	the phone and basically jump the National Commissioner –	8	Minister say to you, apart from what you told Mr Mokwena?
9	and I know that he did also speak to her, but speak to you	9	GENERAL MBOMBO: First she asked me if I
10	directly, is not something that happens all the time,	10	was aware of what was happening at Lonmin, Chairperson. I
11	correct?	11	said to him, yes I'm aware of it, I'm already busy working
12	GENERAL MBOMBO: It is do.	12	on it. He then mentioned that he had been phoned by the
13	MR MPOFU: So the Minister took this	13	Ramaphosa, telling him about this thing and then he said to
14	matter so seriously that he saw it fit to call you directly	14	me he was satisfied that I'm aware of it and I'm working on
15	and tell you that Mr Cyril Ramaphosa had pressurised him,	15	it.
16	correct?	16	CHAIRPERSON: Is that essentially the
17	GENERAL MBOMBO: I do not know if he did	17	whole of the conversation?
18	not phone the National Commissioner.	18	GENERAL MBOMBO: Yes, Chairperson, that
19	MR MPOFU: Yes, no, no, fair enough.	19	was –
20	Let's assume that he also phoned the National Commissioner,	20	CHAIRPERSON: What exactly did he say
21	but I'm saying he viewed this matter so seriously that he	21	had Mr Ramaphosa said to him, did he tell you at all what
22	felt that he must phone you directly as well, correct?	22	Mr Ramaphosa said to him in his conversation with Mr
23	GENERAL MBOMBO: I think so.	23	Ramaphosa?
24	MR MPOFU: And therefore this was indeed	24	GENERAL MBOMBO: He didn't tell me every
25	something that you had to take into account. It's not	25	part of the conversation he had with Mr Ramaphosa,
1	Page 22413		Page 22415
1	everyday that you get phoned by the Minister and he tells	1	Chairperson.
2	everyday that you get phoned by the Minister and he tells you that, you know, some chit-chat that, you know, I had a	2	Chairperson. CHAIRPERSON: What did he tell you?
2 3	everyday that you get phoned by the Minister and he tells you that, you know, some chit-chat that, you know, I had a call - by the way, the other day I had a call from Mr	2 3	Chairperson. CHAIRPERSON: What did he tell you? GENERAL MBOMBO: He only said that.
2 3 4	everyday that you get phoned by the Minister and he tells you that, you know, some chit-chat that, you know, I had a call - by the way, the other day I had a call from Mr Ramaphosa.	2 3 4	Chairperson. CHAIRPERSON: What did he tell you? GENERAL MBOMBO: He only said that. MR MPOFU: He only said that he had been
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		<b>I</b>	
1	Page 22416 interpreted it, Mr Chairperson.	1	Page 22418 MR MPOFU: Okay.
2	MR MPOFU: Yes, and the Minister for some	2	CHAIRPERSON: It's before that, it's
3	reason wanted you to know that he was under that pressure,	3	before the passage, presence, I think it's near the top of
4	quote unquote, correct?	4	the page.
5	GENERAL MBOMBO: What the Minister wanted	5	MR MPOFU: Page 10.
6	to know is what we were doing about it and asked if I was	6	CHAIRPERSON: Here we are, National
7	aware of what was happening.	7	Commissioner says to me, "look General who are the
8		8	shareholders here. So I said I did not know the
9	MR MPOFU: Yes, I accept that he wanted to know what you were doing but he also wanted you to know	9	shareholders." Then she, the question of Mr Ramaphosa
9 10	that he has been pressured or called by Mr Ramaphosa,	9 10	comes up. So I'm not sure that your paraphrase of what the
11	correct?	11	National Commissioner said was correct. But reformulate
12	GENERAL MBOMBO: Maybe it is so but he	12	your question and put it to her and let's move on to the
12	did not say he wanted me to know that there's pressure	12	
			point that you're getting ready to make.
14	brought to bear on him but he said to me Mr Ramaphosa had	14	MR MPOFU: Well firstly let me just ask
15	also phoned him.	15	you plainly when you spoke to the National Commissioner,
16	MR MPOFU: Yes, and you knew Mr Ramaphosa	16	did you get the impression that the Minister and her had
17	as a politically high placed individual?	17	had a conversation regarding the shareholders of Lonmin?
18	MR SEMENYA SC: Chair, this is just	18	GENERAL MBOMBO: No, that's not how I
19	argumentative. The document says exactly that –	19	understood it.
20	CHAIRPERSON: He's already said that,	20	MR MPOFU: Okay. Now your, the
21	you're just, Mr Semenya's right. She's already described	21	Chairperson is correct, when you say that you then, she
22	him as a high placed political figure, whether you	22	said to you who are the shareholders and you said well I
23	paraphrase what she said. So we've already got it on	23	don't know the shareholders but when the Minister called me
24	record that she regarded him as a political heavyweight.	24	he mentioned Cyril and she said to you, "now I've got it."
25	So I don't think you need make the point again.	25	What did you think she was referring to?
	Page 22417		Page 22419
1	MR MPOFU: I'm obviously going somewhere	1	GENERAL MBOMBO: She wanted to know who
2	else as I indicted when I started, Chairperson. I said I'm	2	the holders, shareholders are, Chairperson, because it
3	going to another, not that topic that I have already	3	sometimes happens that when we have a problem we sometimes
4	covered.	4	look at people that could have an influence. That are
5	CHAIRPERSON: Well let's go there.	5	close to the company that could be influential.
6	MR MPOFU: Yes. This is what I was	6	MR MPOFU: General Mbombo, when the
7	saying to you, General, when the, this is about the	7	National Commissioner said to you, when you identified this
8	National Commissioner really. When the National	8	particular shareholder, "now I've got it," what did you
9	Commissioner discussed this matter with you she said that	9	think she meant? What is it that she got or she understood
10	the minister had called her about shareholders, Lonmin	10	because I think that was the contents. You accept that
11	shareholders, correct?	11	that's what she was saying, when she says now I've got it,
12	GENERAL MBOMBO: No, that I don't	12	she means now I understand something, correct?
13	remember.	13	GENERAL MBOMBO: Yes. I thought she was
14	CHAIRPERSON: That's not what she said	14	saying possibly that Cyril is one of the shareholders.
15	in the transcript. She wanted to know who the shareholders	15	MR MPOFU: And that's the only reason you
16	were, or said she didn't know who the shareholders were but	16	thought she said now I've got it?
17	I'm not sure that it went further than that and I'm not	17	GENERAL MBOMBO: That's how I thought,
18	sure that your paraphrasing is correct. Let's have a look	18	yes.
19	at that passage.	19	MR MPOFU: But that's not what you said.
20	MR MPOFU: Ja.	20	You see, General, here the problem I have is that your
21	CHAIRPERSON: And then we can see	21	words contradict you. You say there you know why she says
22	whether your paraphrase is correct, I think, but I	22	she got it, you're asking a rhetorical question, and then
23	understand you're using it as a springboard to something	23	you answer that question. You say, "remember Cyril was in
24	else. So let's deal with it as quickly as we can. The	24 25	the appeal committee of Malema," remember, that's your
25	previous page of this.	25	answer. Your own answer to your own question, is that
	RCHIVE FOR JUSTICE	1	

#### Marikana Commission of Inquiry

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	Page 22420		Page 22422
1	correct?	1	could take this very far with this witness. What, the
2	GENERAL MBOMBO: It is so.	2	National Commissioner is coming back, we've asked that she
3	MR MPOFU: So the answer that you've now	3	should come back, when the National Commissioner comes back
4	given to the Commission is not what you understood to be	4	you can perhaps ask her about it, obviously do so briefly.
5	why the National Commissioner said, "now I've got it." The	5	But I'm not sure this witness can help us in regard to
6	answer is what you said to Mr Mokwena, is that correct?	6	that. May I ask, while Mr Mpofu is looking for his next
7	GENERAL MBOMBO: According to me when she	7	point after this, you, what you said to Mr Mokwena was, at
8	asked about shareholders I thought she was saying maybe	8	line 9, "you know why she said she got it," now did she and
9	that Cyril is one of the shareholders. What I then	9	you in fact say she said to you, "now I got it," did she
10	responded to below there is one of the things that I was	10	tell you why she got it or how she got it?
11	thinking –	11	GENERAL MBOMBO: No, Chairperson, she did
12	MR MPOFU: No, I mean that answer is,	12	not articulate that.
13	can't make sense, General. If she knew that Mr Ramaphosa	13	CHAIRPERSON: So what you are saying in
14	was one of the shareholders, she wouldn't say, "now I've	14	this, to remember things, remember Cyril was in the appeal
15	got it." In other words the penny has now dropped because	15	committee and remember Mr Malema was involved in the, what
16	you told her and she says, "now I've got it" and you ask	16	happened at Impala, were this just your theory as to what
17	the question, "do you know why she said she got it" and	17	she meant when she said, "now I got it?"
18	then you answer your own question. So that is the reason,	18	GENERAL MBOMBO: You mean it was me who
19	that can be the only reason, it can't be the one that you	19	was discussing it, Mr Chairperson, and not the National,
20	want the Commission to now believe about a year and a half	20	not the Commissioner, National Commissioner.
21	later. Do you agree?	21	MR MPOFU: Yes, Chairperson, I'm
22	GENERAL MBOMBO: According to me when I	22	addressing the Commission now. The part that I'm looking
23	was talking to the National Commissioner I thought that she	23	for was, there was a discussion between the Chairperson and
24	had the belief that Cyril is one of the shareholders when I	24	myself in June around this issue and the Chairperson almost
25	mentioned that he had been in contact telephonically with	25	prophetically said that to me that if, if later I find any
	Page 22421		Page 22423
1	the Minister.	1	evidence to suggest this question of pressure then at that
2	MR MPOFU: Any way, once again	2	stage that would entitle me to apply for the recall of the
3	Chairperson, I think we go around in circles, I'll leave	3	National Commissioner. As it happens now the –
4	that point for argument, Chair. You see the problem here,	4	CHAIRPERSON: I've already indicated
5	General, is quite a big one. It is that when the National	5	that I have said that I want the National Commissioner back
6	Commissioner was testifying here she did not even allude,	6	-
7	in fact she disowned anything to do with political	7	
8			MR MPOFU: If I may, Chairperson –
	considerations and yet from this, at least we can guess	8	CHAIRPERSON: There's a particular topic
9	what she was referring to when she says now I've got it.	8 9	CHAIRPERSON: There's a particular topic that I have in mind but clearly it will be open to you to
10	what she was referring to when she says now I've got it. At least what we know is that she discussed with you this	8	CHAIRPERSON: There's a particular topic that I have in mind but clearly it will be open to you to apply then when she comes to deal with other topics and I
10 11	what she was referring to when she says now I've got it. At least what we know is that she discussed with you this question of political pressure as I call it, correct in the	8 9 10 11	CHAIRPERSON: There's a particular topic that I have in mind but clearly it will be open to you to apply then when she comes to deal with other topics and I will consider your application when you make it.
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1	Page 22424 clear to everybody that this, whenever people maybe saying	1	Page 22426 about the cooperation they got from Lonmin and the degree
1	outside this is not a cover-up commission.	2	to which if at all Lonmin was allowed to participate in
2	MR MPOFU: Yes.	2	discussions of tactics and so on. But this isn't the
4	CHAIRPERSON: We're here to get the	1	appropriate time I would've thought for that part of the
5	truth and the Minister will come, Mr Ramaphosa will come I	5	field to be re-ploughed.
6	hope not too much time will be spent because the issue is a	6	MR VAN AS: I merely object to the use of
7	narrow one with them but they will be here and they'll be	7	the word "collusion" at this stage, Mr Chair.
8	asked about these matters.	8	CHAIRPERSON: It's a phrase that he uses.
9	MR MPOFU: Yes.	9	He puts a meaning on it. Your counsel will later argue
10	CHAIRPERSON: And when the National	10	it's inappropriate but we can't decide that in advance. If
11	Commissioner comes back I have in mind another topic but	11	he wants to use the word I won't stop him.
12	I'm not prepared to say what it is at this stage but if you	12	MR MPOFU: Thank you.
12	wish to bring an application then your application will be	12	CHAIRPERSON: - understood that the fact
13	considered, it may well be opposed but whatever, your	14	I allow him to use the word means I've accepted it's
14	application will be considered.	14	correct, but anyone who has any experience in how courts
15	MR MPOFU: Yes, no, fair enough,	16	and commissions work would know that no such assumption can
17	Chairperson. I accept that, I'm not expecting the	17	be made.
18	application to be entertained now. I was simply saying	18	MR MPOFU: General, you know what
19	unlike Mr Ramaphosa and Minister Mthetwa she would be in a	19	collusion is. You accused management of Lonmin - you
20	different category because she'll be called for a specific	20	accused the management of Lonmin of running the risk of
21	topic. Thank you, Chairperson. Okay, fine I won't refer	21	being – of it being said that they were colluding with
22	you to what the National Commissioner said now that we had	22	AMCU, correct?
23	this discussion, we'll have the conversation with her, I	23	GENERAL MBOMBO: I remember that, yes.
24	think.	24	MR MPOFU: And you used that word. You
25	CHAIRPERSON: If your application is	25	said that management is colluding with AMCU. Correct?
	,		
	Page 22425		Page 22427
1	Page 22425 granted.	1	GENERAL MBOMBO: I remember that day,
1 2	-	1 2	GENERAL MBOMBO: I remember that day, something like that, yes.
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Arbitration

	Page 22428		Page 22430
1	[10:29] CHAIRPERSON: The commission resumes.	1	that's gone off or else someone has – is it – or someone's
2	Provincial Commissioner, you're still under oath. Mr	2	got earphones off and we can hear what's being said on the
3	Mpofu, I believe you have some more questions.	3	earphones. I think it was a cell phone ringtone. I've
4	CROSS-EXAMINATION BY MR MPOFU (CONT.):	4	previously ordered people to leave the chamber because they
5	That is correct, Chairperson. General, I know I made a	5	hadn't turned their cell phones off. I won't do it in
6	promise to the chairperson which I'm just about to break.	6	respect of this ringtone but I will in respect of the next
7	I just want to round off a point that we discussed which	7	so please all turn your cell phones off otherwise – I don't
8	the chairperson and I had agreed that the point is made	8	like asking people to leave the chamber because I know
9	enough is on the record, but I just want to put one more	9	they're here because they want to hear what's happening,
10	little aspect on the record in respect of that point. It	10	but we have to maintain some rules of decorum and not have
11	won't be long. And the topic I'm going back to is as I	11	unnecessary disturbance.
12	said the connection once again between your decision that	12	MR MPOFU: Yes, Chairperson –
13	the operation be speeded up and these external improper	13	CHAIRPERSON: Mr Tokota refers me to a
14	considerations as I will argue later. And for that I'll	14	passage at the top of page 5.
15	just refer you directly to the passage so that we don't	15	MR MPOFU: Page – it starts at page 4.
16	waste time. Firstly you agree, would you agree – that's a	16	CHAIRPERSON: Bottom of page 4, top of
17	topic I'll come to later. You agree that whatever your	17	page 5. It does say what you've said so you may proceed.
18	objectives were for the meeting Mr Mokwena, one of Mr	18	MR MPOFU: Thank you, Chairperson. Do
19	Mokwena's main things was that you should arrest people.	19	you remember the discussion that you had about Mr Mokwena,
20	That's what he kept on saying to you, arrest, arrest,	20	I'm paraphrasing now, suggested that they had a recording.
21	arrest.	21	They had evidence of who was responsible and that kind of
22	GENERAL MBOMBO: It is so, yes.	22	thing but that there was some audio evidence. Do you
23	MR MPOFU: Now, the – and you agreed that	23	remember that?
24	you would indeed do so, correct?	24	GENERAL MBOMBO: I remember him saying
25	GENERAL MBOMBO: When the time came, yes,	25	so, Chairperson.
1	Page 22429	1	Page 22431
1	when the time I arrived I agreed that we would see what can	1	MR MPOFU: And you said at the bottom of
2	when the time I arrived I agreed that we would see what can be done.	2	MR MPOFU: And you said at the bottom of paragraph 4 or you said that actually get that telephone
2 3	when the time I arrived I agreed that we would see what can be done. MR MPOFU: No, General, there's a	2 3	MR MPOFU: And you said at the bottom of paragraph 4 or you said that actually get that telephone and download this and then go and arrest them. In other
2 3 4	when the time I arrived I agreed that we would see what can be done. MR MPOFU: No, General, there's a difference between seeing what can be done and making a	2 3 4	MR MPOFU: And you said at the bottom of paragraph 4 or you said that actually get that telephone and download this and then go and arrest them. In other words you will get the evidence, download it and then go
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FOR JUSTICE

RCHIVE

#### Marikana Commission of Inquiry

1	Page 22432 remember clearly on this. If there's a passage that	1	Page 22434 That's our interest. So she's not saying we can arrest
1		2	people. She says we're going to address people if you give
2	supports you, you may proceed but if there isn't one I	2	us information which justifies the arrest which is a
3	won't allow you to ask the witness these questions. Page 2		slightly different proposition I think. And in relation to
4	around about line 20 Mr Mokwena in the course of what you	4	
5	describe as a fairly long speech talks about people having	5	this tape recording that was referred to at the beginning
6	to be arrested.	6	of the discussion there her evidence is, her attitude was
7	MR MPOFU: Ja.	7	if they've got a tape recording of that kind they must give
8	CHAIRPERSON: And expecting people to be	8	it to the detectives and the detectives will investigate
9	arrested and he says in line 23, "That is why I think it's	9	and do the necessary so I'm not sure it's fair to put to
10	very important for us. We want to see somebody arrested."	10	the witness that she agreed in terms as it were to arrest
11	Now, I'm not sure if he's talking about the tape recording.	11	anybody that Lonmin wanted to have arrested or agreed or
12	MR MPOFU: No.	12	consented to receive favourably the request that was being
13	CHAIRPERSON: "So that the message gets	13	put to her by Mr Mokwena.
14	across that the nine people who were killed," and so on.	14	MS PILLAY: Chair, I'm sorry, if I can
15	And then he talks about AMCU leaders are behind it. "If	15	just indicate there is now an agreed version of JJJ192
16	they do not get arrested and we do paperwork afterwards	16	which is slightly different from the version which we've
17	people gathered at the mountain will still believe their	17	been relying on to date.
18	leaders were doing this." That's what he says up to line	18	CHAIRPERSON: You see, but is it – are
19	30. Now, I couldn't see a passage thereafter where the	19	the difference material for the present discussion?
20	witness – could you just go onto the next page because we	20	MS PILLAY: For the current question,
21	have it in front of us on screen now – couldn't find a	21	yes. There are some differences. But maybe I could give a
22	passage where the witness agreed with that in terms. She	22	copy to Mr Mpofu during the tea adjournment and he can have
23	did say line 6, you simply said the word "issue" because	23	a look at it and decide.
24	that relates to the question of the court interdict. It's	24	CHAIRPERSON: Yes, yes, that's a very
25	true that she doesn't in terms disagree with Mr Mokwena –	25	practical suggestion and my sister Hemraj says she'd like a
	D 00100		5
1	Page 22433	1	Page 22435
1	MR MPOFU: Mr Commissioner –	1	copy as well as would the rest of us here at the table.
2	MR MPOFU: Mr Commissioner – CHAIRPERSON: But I couldn't find any	2	copy as well as would the rest of us here at the table. MR MPOFU: Thank you, Chairperson. Yes,
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	Page 22436		Page 22438
1	think the true position is this. This statement relates to	1	the protest. The one you're referring to now, Chairperson,
2	the perception that Lonmin are as it were encouraging AMCU	2	we were saying to them if there were problems, if you were
3	to do what they do and I have a clear recollection. I	3	doing a particular thing we will act this way.
4	checked the file of press cuttings that the government	4	MR MPOFU: General Mbombo, can you go to
5	provided me with. There was a statement issued by NUM at	5	paragraph 62.5 of your statement, sorry, the amplified one,
6	one stage alleging that the mining houses were actually	6	LLL1.
7	assisting AMCU because they wanted – I think it was put	7	CHAIRPERSON: What paragraph are you
8	also in the course of cross-examination – that they were	8	referring to?
9	assisting AMCU and they wanted AMCU to displace NUM as the	9	MR MPOFU: 65.
10	dominant trade union in this area. And clearly the police	10	CHAIRPERSON: 65.
11	attitude would be, look here, we can't come to help Lonmin	11	MR MPOFU: Or rather 62.5, Chairperson.
12	to put down a violent situation which they say AMCU are	12	CHAIRPERSON: 62.5 so it's in –
13	responsible for if in fact they are secretly assisting AMCU	13	MR MPOFU: It's on page 22.
14	to do what they do in order to displace NUM, so quite	14	CHAIRPERSON: Okay, thank you.
15	clearly the police wanted to know are Lonmin being straight	15	MR MPOFU: You say there – have you got
16	with us, are they – do they really just genuinely want us	16	it, General? Or you can use the screen.
17	to deal with this violent situation or are they secretly	17	GENERAL MBOMBO: I can see the screen.
18	somehow supporting AMCU and that was the perception. That	18	MR MPOFU: You say there, "Where I say
19	was in fact an allegation that was in effect being made by	19	that if protestors were to be angered by what is
20	NUM and she wanted clarity on that point before they could	20	communicated to be the attitude of Lonmin then SAPS was
21	proceed which seems perfectly sensible.	21	prepared to take a different direction I meant that SAPS
22	MR MPOFU: Ja, well, General, you know	22	would take appropriate steps to disarm and arrest the
23	that I represent people who were arrested, correct, among	23	protesters." Did you say that?
24	others?	24	GENERAL MBOMBO: I said that that is what
25	GENERAL MBOMBO: It is so, yes.	25	I'm saying.
	Page 22437		Page 22439
1	MR MPOFU: Ja. Now, I will suspend this	1	MR MPOFU: Okay, no, we'll come back to
2	questioning until we have the transcript, the proper	2	these things after tea. Right. Now, I want to go to where
3	transcript, but all I'm saying to you is that I want – my	3	once again you make or you make or you confirm the link
4	only interest in this is I want to know whether the people	4	between what you term for lack of a better word political
5	that I represent were arrested partly or wholly as a result	5	opportunism.
6	of this invitation I suppose is a light word but	6	CHAIRPERSON: That point has been covered
7	exhortation that people must be arrested so that a message	7	really fully.
8	must be sent out there. That's what I'm going to explore	8	MR MPOFU: Well, Chairperson –
9	with you, but for now your evidence is that you did not	9	CHAIRPERSON: I would've thought you've
10	agree with that people should be arrested.	10	got enough material on record –
11	GENERAL MBOMBO: Not at the time they	11	MR MPOFU: I don't.
12	said it, at the time they wanted it. Not that I'm saying	12	CHAIRPERSON: To argue it.
13	people would be arrested, Chairperson. When the time was	13	MR MPOFU: Well, that's the point I was
14	appropriate they would.	14	making. I said I needed to add one more despite my
15	MR MPOFU: And did you say for example if	15	agreement with you earlier, Chairperson, if you allow me
16	the pamphlets anger them you will move in a different	16	just to add one more point.
17	direction and did that include arresting?	17	CHAIRPERSON: Well, when you've asked the
18	GENERAL MBOMBO: No, not at all.	18	question, I will then rule that we carry on.
19	MR MPOFU: Didn't you say in your	19	MR MPOFU: Ja, okay, can we go to page 12
20	evidence in chief that when you used those words, we'll	20	of JJJ192? This is a short extract of the conversation
21	move in a different direction, you meant that the people	21	which I think for me is the most important issue which
22	would be dispersed and arrested?	22	links the D day to –
23	GENERAL MBOMBO: By the way the people we	23	CHAIRPERSON: Which line are you
24	are talking about here in the context of this transcription	24 25	referring to?
	it had to do with people that Lonmin alleged were leading	25	MR MPOFU: I'm starting at 17, 18, 19,

Arbitration

	Page 22440		Page 22442
	about 18, Chairperson. I'll read it out. So Mr Mokwena	1	And I think Mr Budlender asked you this question, but just
	says to you, "So I agree with you, Commissioner," underline	2	for my own clarity because I'm going to argue that it's
	that. "If we can arrest these people because the longer it	3	highly irregular that you would discuss this decisive piece
	goes it is giving all the other opportunity to commence and	4	of information with Lonmin and not the people that you
	seize the opportunity and then it gets out of control."	5	should be discussing it with, if it was proper, who are
	SAPS Commissioner, "That is it." That is what you say.	6	your commanders. What will you say when I argue that?
	And Mr Mokwena, "So I think, yes, let tomorrow be the D day	7	GENERAL MBOMBO: Remember even when I
	where we issue the ultimatum and say if you do not show up	8	answered then I said the purpose of my discussion with
	for work, sorry, that's it," and so on and so on. And	9	Lonmin was to find out what it is that they were doing in
10	remember now the, this – I don't want to go into all that.	10	order to bring this problem to an end.
11	Your advice is that you must issue this pamphlet so that	11	MR MPOFU: Well I'll leave I'll leave it
12	when we move in nobody has any doubt as to where the	12	with that answer and the answer you gave to Mr Budlender.
13	company stands – words to that effect. You remember that?	13	I was now saying, before the comfort break –
14	[10:49] GENERAL MBOMBO: May I correct the part	14	CHAIRPERSON: You were moving onto
15	where you speak of advice. Again I want to say I was	15	another point.
16	making there an example.	16	MR MPOFU: Yes, to the point that I was
17	MR MPOFU: Yes, Ma'am, I accept, let's	17	going to move on before the comfort break.
18	say it's an example, but I'm saying your example, so-	18	CHAIRPERSON: All right. You say you
19	called, was that they must issue the ultimatum so that when	19	didn't share these considerations that you said had to be
20	you move in the workers know what is expected of them by	20	borne in mind about the political connotation, didn't share
21	the company. I'm not quoting it directly. If you force me	21	that with the commanders, the operational commander and the
	to, I'll go to that passage, but was that generally what	22	overall commander and members of the JOCCOM. Did you
	you were saying to them, this example of yours?	23	mention them to the National Commissioner?
24	GENERAL MBOMBO: That is what I was	24	GENERAL MBOMBO: Chairperson, there was
		25	•
25	saving, ves.	25	
25	saying, yes.	25	just one thing that we spoke with the National
25		25	
25 1	Page 22441 MR MPOFU: Thank you. So now I'm saying	1	Page 22443 Commissioner, Chairperson, and it was that the Minister had
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Page 224441conversation had not surfaced through the work of the1MR MPOFU:She says against the line 12evidence leaders would you have revealed the discussion2"No I've never heard that conversation of Mokwena a3about Mr Ramaphosa, between you and the Minister?3Ramaphosa with the Minister." Now I said to her, I'l4GENERAL MBOMBO:Firstly, Chairperson,4assume in her favour that no names are mentioned a5before it came up I didn't even remember this discussion.5stage, but the point I'm making is that even if we as6The possibility is that I wouldn't have mentioned it6that no names were mentioned when the Minister sp7because I would not have remembered because I didn't even7her, she subsequently spoke to you and you revealed8remember this discussion.9GENERAL MBOMBO:It is so, yes.9CHAIRPERSON:The problem the word9GENERAL MBOMBO:It is so, yes.10revealed is a bit ambiguous in the context. The first10MR MPOFU:Ja, now I'm saying that if i11point is it didn't come up solely through the work of the11was not meant to be concealed really which is where12evidence leaders. It was Lonmin's counsel who very12going when I was having this discussion with the Na13properly drew it to the attention of the evidence leaders13Commissioner she would have said "Oh well the Mini14and said it was relevant. And despite the fact that it had14not have mentioned	and I at that sume boke to d the it e I'm tional ister may
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19 police very commendably. The second point is about19MR MPOFU:It's the same question that	on you
	t I
21 guestion about the conversation with the Minister and what 21 passage.	
22 the Minister said you would have mentioned what the 22 CHAIRPERSON: Yes and you've shown	me the
23 Minister told you? 23 passage, but how can she answer for the National	
24 GENERAL MBOMBO: If I remembered it yes, 24 Commissioner? The National Commissioner, I told ye	ou, is
25 Chairperson, I was going to mention it. 25 coming back and if it's appropriate in the circumstan	
8	Page 22447
1 CHAIRPERSON: And similarly, if you'd 1 you can ask her about it then, but I don't see how	
2 been asked about your conversation with the National 2 witness can help us to understand what was passin	
3 Commissioner in which the question of Mr Ramaphosa's 3 the mind of the National Commissioner when she g	jave this
4 involvement was discussed you would have mentioned it also. 4 answer to you.	
5 GENERAL MBOMBO: I would have mentioned 5 MR MPOFU: No that's not what I'm as	sking
6it if I remember it, Chairperson.6this witness, Chairperson, obviously.	
7 MR MPOFU: You see the reason I'm asking 7 CHAIRPERSON: I understand the point	nt as
8 you that question is because General Phiyega, I questioned 8 follows, the National Commissioner has said in this	
9 her around these issues and at that stage, before this 9 passage, that she'd never heard of any conversation	on Mr
10 transcript was revealed through the commendable work of 10 Ramaphosa had with the Minister, your point is that	at this
11 Lonmin counsel, she did not say that you and her had a 11 witness had told the National Commissioner, as she	e
12 discussion about the shareholders and Mr Ramaphosa. 12 mentioned, that she had been told by the Minister	that he
13 CHAIRPERSON: To be fair she wasn't asked 13 had a conversation with Mr Ramaphosa. So theref	ore, the
14 directly about it was she? 14 National Commissioner should have known about it	t. That's
15 MR MPOFU: She was, by me. 15 your point as I understand it.	
16 CHAIRPERSON: What did you ask her 16 MR MPOFU: That's part of the point,	
17 directly? What's the passage in the transcript to which 17 Chairperson, but just to allay your fears, Chairperson	on, I
18 you refer? 18 do accept that, I'm not expecting this witness to be	
19MR MPOFU:Let's go to 10586 of the day19reader of National Commissioners or other such lun	
19MR MPOFU:Let's go to 10586 of the day19reader of National Commissioners or other such lur2099, day 99.20All I'm saying is that I'm putting a point to her abord	out the
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19MR MPOFU:Let's go to 10586 of the day19reader of National Commissioners or other such lun2099, day 99.20All I'm saying is that I'm putting a point to her abo21CHAIRPERSON:You did give us the page2122reference, what was it again?22why I first asked her whether she would have reverted	out the /hich is ealed it
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1among other things, before it was revealed the National1in which he had mentioned to you that he'd been s2Commissioner did not even allude to the conversation with2by Mr Ramaphosa? At what stage did you remembra3her, let alone –3MR MBOMBO:Chairperson, at the time4CHAIRPERSON:Okay I have the point.4I made a statement in writing I did not remembra	age 22450
2Commissioner did not even allude to the conversation with 3 her, let alone –2by Mr Ramaphosa? At what stage did you remembre 33MR MBOMBO:Chairperson, at the tim 44CHAIRPERSON:Okay I have the point.44I made a statement in writing I did not remember	•
3 her, let alone –       3 MR MBOMBO:       Chairperson, at the tim         4 CHAIRPERSON:       Okay I have the point.       4 I made a statement in writing I did not remember	
4 CHAIRPERSON: Okay I have the point. 4 I made a statement in writing I did not remember	
5 What do you say to that point Mr Mpofu pow makes? He says I E discussion with the Minister	this
5 What do you say to that point Mr Mpofu now makes? He says 5 discussion with the Minister.	
6 that you wouldn't have mentioned it, there are two 6 MR MPOFU: You and I have already a	0
7 circumstances in which you could have mentioned it. Either 7 that this is a very big and unusual occurrence, you	being
8 spontaneously as it were, as part of your evidence in 8 phoned directly by the Minister, correct?	
9 chief, alternatively you could have mentioned it in 9 GENERAL MBOMBO: It is so, it's not e	every
10response to a direct question. Now you say if you'd been10day that he phones me.	
11 asked a direct question you would have mentioned it, but 11 MR MPOFU: And when you were at R	
12 you hadn't remembered it before, so you wouldn't have 12 retracing all these issues about this event you still	
13mentioned it in chief. That I understand to be your13not remember this important, unusual occurrence of	of you
14 evidence. Now what Mr Mpofu says, he suggests that there 14 being phoned by the Minister?	
15 was a deliberate attempt to conceal this conversation and 15 GENERAL MBOMBO: I was only at Ro	ots on
16 he put to you what the National Commissioner said and his 16 two occasions, Chairperson.	
17suggestion is that you would also have deliberately17MR MPOFU:Ja, well I don't mind how	
18concealed this if it hadn't come out through this18times you went there. The question I'm asking you	
19transcript. Now that's the allegation that he's putting to19CHAIRPERSON:No, no it's relevant to	
20 you, am I summarising correctly?20 know what was under discussion at Roots on the tr	NO
21MR MPOFU:Yes, Chairperson.21occasions when she was there.	
22 CHAIRPERSON: How do you respond to that? 22 MR MPOFU: I suppose it was the eve	
23 GENERAL MBOMBO: According to me I do not 23 Marikana in which 34 people were killed. Is there	
24 agree with this. As I said earlier had I remembered it I 24 else that was discussed at Roots that we might know	
25would have mentioned it.25GENERAL MBOMBO:According to me	I
	00454
Page 22449 P 1 MR MPOFO: Okay, what is more is that 1 Chairperson, on the first day that I was there I wasn't	age 22451
2 once again before this was revealed through the good work 2 part of the discussions. My being there was the offici	
3 of Lonmin counsel the Minister also did not mention the 3 opening of the meeting and explaining what the purp	
4 conversations with you about Mr Ramaphosa in his statement. 4 the meeting was, I then left.	
5 So the concealment goes even further. 5 MR MPOFU: General, I'm sorry, I don't	
6 CHAIRPERSON: She can't comment either 6 want to cut you short. I don't want to discuss the go	ngs
7 surely. That's something that you'll have to ask the 7 on at Roots. I'm saying to you Roots was called to re	-
	ries
8 Minister when he comes. Unless someone else asks him 8 the steps around the event of the killings and the inju	ries
8 Minister when he comes. Unless someone else asks him 8 the steps around the event of the killings and the inju	ries
<ul> <li>8 Minister when he comes. Unless someone else asks him</li> <li>9 before you do.</li> <li>8 the steps around the event of the killings and the inju</li> <li>9 of people, correct?</li> </ul>	ries
8Minister when he comes.Unless someone else asks him8the steps around the event of the killings and the inju9before you do.9of people, correct?10MR MPOFU:Yes, that I accept,10GENERAL MBOMBO:It is correct.	
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1	Page 22452 pressure which was widely publicised you didn't jog your	1	Page 22454 MR MPOFU: Yes.
2	memory?	2	CHAIRPERSON: - because I was proposing
3	GENERAL MBOMBO: Maybe during that time	3	to take the tea adjournment at a convenient stage, that's
4	or around December it came to my mind. I then thought I	4	all -
5	would be putting it in my supplementary statement when I	5	MR MPOFU: Yes. No, no, I think it's my
6	corrected it.	6	fault –
7	MR MPOFU: So you specifically thought in	7	CHAIRPERSON: - a stage that's
8	December 2012 that maybe one day in 2014 you will do a	8	convenient –
9	supplementary statement and then you'll mention this	9	MR MPOFU: Yes, it's my fault,
10	important fact.	10	Chairperson. What I said to the witness in the morning is
11	[11:08] GENERAL MBOMBO: According to me I was	11	that I'm going to deal with a number of points and then I
12	busy already with the supplementary statement. I don't	12	have a big topic which I will deal with as hopefully the
13	remember whether it was in 2013.	13	last topic. I'm not there yet. I'm still doing the
14	MR MPOFU: Yes, so your evidence is that	14	cleaning up, that cluster of points which I –
15	for a whole year you sat with this information between	15	CHAIRPERSON: How many of the cluster
16	December 2012 and December 2013, on the hope because you	16	points have you still got?
17	thought that maybe in a year's time there would be a	17	MR MPOFU: Well, some of them have kind
18	supplementary statement. Didn't you think this was now an	18	of sneaked in through, so I think I have two – let me just
19	important issue before this Commission?	19	explain to you, Chairperson. What I'm doing is I've said
20	GENERAL MBOMBO: It was something that I	20	that her topics in the meeting with Mokwena were these six.
21	had to say in my statement, yes.	21	We've now covered four of –
22	MR MPOFU: Did you bring it to the	22	CHAIRPERSON: I see. So you've got two
23	attention of your lawyers in December 2012 when it crossed	23	of those points to cover.
24	your mind, when your memory was jogged?	24	MR MPOFU: Yes, and then we –
25	GENERAL MBOMBO: I did not do so,	25	CHAIRPERSON: Alright, okay.
		_	5 - 1 - 5 - 5 - 5 - 5 - 5 - 5 - 5 - 5 -
	Page 22453		Page 22455
1	Page 22453 Chairperson.	1	Page 22455 MR MPOFU: And then I had what Mokwena's
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			Dama 22450
1	Page 22456 version," that's the way that one distinguishes it from the	1	Page 22458 party whom he represents.
2	one we've had up to now. Because there's been cross-	2	MR SEMENYA SC: It would be less amusing
3	examination on the earlier one I don't propose just	3	if you saw page 1 where Mr Mokwena speaks, but he's not in
4	replacing the exhibit because those who follow the cross-	4	agreement there. He just says Mmmm.
5	examination will be puzzled if they find the references of	5	CHAIRPERSON: There's no interpretive
6	the exhibit don't match up with the one that's before us.	6	comment in parenthesis or otherwise as to what he meant by
7	So that's why it's got to be in as a separate exhibit, but	7	"Mmmm." So what do you want me to do? Do you agree that
8	to avoid confusion it's JJJ192 bis.	8	these others are –
9	The main points of difference, as I understand,	9	MR SEMENYA SC: Well, it's clearly not
10	this is not intended to be an exclusive statement to the	10	evidence, so those were to be in square brackets –
11	points of difference, but at certain parts of the record	11	CHAIRPERSON: No, the transcript before
12	there are insertions of comments made by the witness which	12	us, do you want me to delete the expressions in brackets?
13	I quote one as an example, at the foot of page 2 she's	13	MR SEMENYA SC: Indeed, Chair.
14	recorded as having said "Mmmm," and then that four Ms and	14	CHAIRPERSON: Alright, I'll do that. The
15	then after that in brackets it says "in agreement," and	15	Mmmm, the four Ms stands, but the words which are the
16	then there are a number of other examples of that. So	16	transcriber's interpretation are deleted.
17	that's why Adv Pillay drew our attention to the fact that	17	MR MPOFU: Don't delete it too hard,
18	there are material insertions in the second proofread	18	Chairperson. You might have to reinstate it.
19	version of the transcript and that's why I'm referring to	19	CHAIRPERSON: [Microphone off, inaudible]
20	them now, and I understand Mr Mpofu is now going to return	20	ask the witness whether she was agreeing obviously –
21	to those because there was a point he left over until the	21	MR MPOFU: Yes, that's what I intend to
22	revised transcript was before us. But let me ask the	22	do.
23	witness - you're still under oath, Provincial	23	CHAIRPERSON: But one of the problems is
24	Commissioner –	24	I understand from what she says that she's only seen it
25	MIRRIAM NOSAZISO ZUKISWA MBOMBO: s.u.o.	25	now. I assumed that it had been, you know, agreed by
		1	
	Page 22457		Page 22459
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1	Page 22460	1	Page 22462 for the audio to be played.
1	Transcriptions. "On 20 November [she says] I prepared an accurate transcription that I can confirm is true and	2	CROSS-EXAMINATION BY MR MPOFU (CONTD.):
2	-	2	Yes, thank you, Chairperson. If I may just be permitted to
3	correct," and this is the document that was then	4	try a shortcut, and if it doesn't work then we'll stick
4	circulated. Is that right?		with what has been discussed here. General, let's take an
5	MS PILLAY: This is the document, Chair.	5	
6	In addition, AMCU listened very carefully to the tape as	6	example at page 3 of the new document – oh, now we've lost
7	well and asked for certain changes to be made and that was	7	the line numbering. Somewhere in the middle, this is
8	considered by the transcribers and then included in the	8	JJJ192 bis, Mr Mokwena says, "Tomorrow we want to issue an
9	final version.	9	ultimatum because we have a court interdict that we're
10	CHAIRPERSON: Yes, but did the police	10	actually about to issue," and you say, "Issue, Mmmm." Were
11	also see it?	11	you agreeing with Mr Mokwena?
12	MR SEMENYA SC: We're seeing it now,	12	GENERAL MBOMBO: Maybe I was trying to
13	Chair, for the first time.	13	ask whether it was issued.
14	CHAIRPERSON: Have you not seen it	14	MR MPOFU: And maybe you are agreeing?
15	before?	15	GENERAL MBOMBO: That's possible, but I'm
16	MR SEMENYA SC: No.	16	not sure.
17	MS PILLAY: Chair, this has been a	17	MR MPOFU: Well, if you were asking he
18	process that's been in the pipeline for months now, since	18	would have answered you, but he just carried on, says, "We
19	May last year, trying to find an accurate transcription of	19	want to give everybody the benefit of the doubt so your
20	192. We've given the parties numerous opportunities to	20	team are the only ones tomorrow which will need to advise
21	feed into the process –	21	us whether we should issue an ultimatum and ask the people
22	CHAIRPERSON: What you're saying is SAPS	22	to come to work," and you say, "Mmmm." Were you agreeing
23	have been given opportunities?	23	with him?
24 25	MS PILLAY: That's correct, Chair. CHAIRPERSON: Yes, now one of the	24 25	GENERAL MBOMBO: Mr Chair, I cannot be
25	CHAIRPERSON: Yes, now one of the	25	sure whether I was agreeing. This "Mmmm" in Xhosa, I'm
	Page 22461		Page 22463
1	Page 22461 remaining questions is whether this "Mmmm," when they	1	Page 22463 sure counsel knows, could mean being in agreement or being
1 2	6	1 2	0
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2	remaining questions is whether this "Mmmm," when they transcribe what I say they just have to put quotation marks	2	sure counsel knows, could mean being in agreement or being in shock.
2 3	remaining questions is whether this "Mmmm," when they transcribe what I say they just have to put quotation marks and four Ms, when the word "Mmmm" appears it's the	2 3	sure counsel knows, could mean being in agreement or being in shock. MR MPOFU: That I can confirm and it can
2 3 4	remaining questions is whether this "Mmmm," when they transcribe what I say they just have to put quotation marks and four Ms, when the word "Mmmm" appears it's the interpretation of the transcriber that that's in agreement.	2 3 4	sure counsel knows, could mean being in agreement or being in shock. MR MPOFU: That I can confirm and it can also mean a question. It could be "Mmmm" or "Mmmm?"
2 3 4 5	remaining questions is whether this "Mmmm," when they transcribe what I say they just have to put quotation marks and four Ms, when the word "Mmmm" appears it's the interpretation of the transcriber that that's in agreement. Now the question is whether that's accepted by SAPS and all	2 3 4 5	sure counsel knows, could mean being in agreement or being in shock. MR MPOFU: That I can confirm and it can also mean a question. It could be "Mmmm" or "Mmmm?" GENERAL MBOMBO: Mmmm.
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1	Page 22464		Page 22466
1	CHAIRPERSON: The only problem is of	1	says.
2	course Xhosa is a language, unlike English, where I	2	MR MPOFU: Yes.
3	understand the tone can alter the meaning quite	3	GENERAL MBOMBO: Mmmm.
4	dramatically.	4	MR MPOFU: Now that's –
5	MR MPOFU: No, but Chairperson –	5	COMMISSIONER TOKOTA: Somebody who
6	CHAIRPERSON: As I say that's a correct	6	doesn't speak Xhosa who listens to the audio will not
7	statement as far as the Xhosa language is concerned. It	7	understand.
8	resembles Chinese in that respect, I believe, but not	8	GENERAL MBOMBO: Mmmm.
9	English. So you've got tone problems as well here and	9	MR MPOFU: Ja, I accept that,
10	certainly it will be a very unsafe basis for us to proceed	10	Chairperson, but all I'm saying is that despite all these
11	where we've got "Mmmm" which could mean a number of things.	11	intonations and so on, the issue is that the context would
12	So I would have thought that the way forward is for perhaps	12	clearly say whether a person is agreeing or not, but the
13	the witness to listen to the recording and she might well	13	witness doesn't want to go along with that.
14	be able to say yes, I accept that that's, when I said that	14	CHAIRPERSON: So that will be a matter of
15	I meant I agree, and when I said that I mean carry on and	15	argument at the end -
16	1-	16	MR MPOFU: Yes, I'll leave it for now,
17	MR MPOFU: Yes, no –	17	yes. Thank you, Chairperson. And also the hearer would
18	CHAIRPERSON: - when I said the third	18	know which of those it is, but –
19	version of "Mmmm" I meant I understand, or whatever.	19	CHAIRPERSON: Yes, of course. There are
20	MR MPOFU: Yes.	20	other complications. There's what has been, the speech
21	CHAIRPERSON: But perhaps an exercise of	21	patterns –
22	that kind can be performed.	22	MR MPOFU: Yes.
23	MR MPOFU: Thank you, Chairperson –	23	CHAIRPERSON: But there are also levels
24	CHAIRPERSON: But it's not possible for	24	of Xhosa, the witness I understands speaks what's described
25	us to decide it here. You of course got the point that in	25	as very deep Xhosa, which is the same as Mr Tokota's Xhosa,
1	Page 22465 certain circumstances –	1	Page 22467
1		1	which is sort of aristocratic kind of speech and there are
2	MR MPOFU: Context –	2	other forms of Xhosa usage which can't be so described.
3	CHAIRPERSON: - where one would expect	3	MR MPOFU: Yes.
4	disagreement and there is no disagreement, you could argue	4	
- I	te contete conce	4	CHAIRPERSON: But these are all
5	in certain cases -	5	complications which are very difficult for the Commission
6	MR MPOFU: Yes.	5 6	complications which are very difficult for the Commission to resolve. I suspect the witness – I'm correct in saying
6 7	MR MPOFU: Yes. CHAIRPERSON: - that silence indicates	5 6 7	complications which are very difficult for the Commission to resolve. I suspect the witness – I'm correct in saying she speaks what's described as a deep Xhosa, aristocratic
6 7 8	MR MPOFU: Yes. CHAIRPERSON: - that silence indicates agreement or consent.	5 6 7 8	complications which are very difficult for the Commission to resolve. I suspect the witness – I'm correct in saying she speaks what's described as a deep Xhosa, aristocratic kind of Xhosa -
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#### Marikana Commission of Inquiry

4	Page 22468		Page 22470
1	CHAIRPERSON: In English, you know, you	1	between me and Mr Van As, refers to what I called the
2	have judges who you put a point to them and they say	2	collusion between the police and Lonmin regarding
3	"Mmmm," you think they're with you and you find out to your	3	deployment and I will now go into that and then it will be
4	horror at the end of the case when you get judgment they're	4	clear whether I'm justified to use that word or not. Do
5	merely understanding you and seeing the fallacy of what	5	you understand?
6	you're arguing. So I'm not sure if this is a line that's	6	GENERAL MBOMBO: I understand.
7	going to give us much profit –	7	MR MPOFU: Now if you go to the original
8	MR MPOFU: No, that's true.	8	JJJ192. Maybe I should preface it with this cross-
9	CHAIRPERSON: But anyway –	9	examination, if you'll forgive me, General, by saying that
10	MR MPOFU: But that's true in English as	10	when I say this amounted to a collusion, what I really I
11	well, not in Xhosa only. But anyway, be that as it may.	11	mean is that here you were almost, by the end of this
12	Okay, General, I won't ask you the questions as to whether	12	discussion you were talking about Lonmin and SAPS as one
13	you agreed or didn't agree with Mr Mokwena at certain	13	thing. In other words one of the issues was to align your
14	points, or at least I won't ask you based on the "Mmmm" or	14	plan and then as I've said in another context this almost
15	whatever it is. The only issue that I really want to	15	became like a joint operation and you were talking about
16	canvass with you on this is that - in case we never come	16	each other as one team as it were. Would that be a fair
17	back to this, because it might well not be pertinent – the	17	summary?
18	<b>c</b> .	18	5
	only issue I want to say is that as the Chairperson		5
19	indicated earlier, it would seem that there were two types	19	doing that way.
20	of arrests that were postulated in the discussion. The one	20	MR MPOFU: Okay, when you said, for
21	type was an arrest of Lonmin leaders because of what they	21	example, at page 9 –
22	may or may not have said in the audio material –	22	CHAIRPERSON: Is this page of the
23	CHAIRPERSON: [Microphone off, inaudible]	23	original –
24	not Lonmin leaders, AMCU leaders.	24	MR MPOFU: Of the original, yes,
25	MR MPOFU: Or rather AMCU – I'm sorry.	25	Chairperson.
	Page 22469		Page 22471
1	Yes, well it's a Freudian slip, Chairperson. Of AMCU	1	CHAIRPERSON: Let's see if we can find
1 2	Yes, well it's a Freudian slip, Chairperson. Of AMCU leaders because of something that was contained in some	2	CHAIRPERSON: Let's see if we can find the passage in the new one?
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2	Yes, well it's a Freudian slip, Chairperson. Of AMCU leaders because of something that was contained in some recorded evidence. You remember that? GENERAL MBOMBO: I remember that, Sir.	2	CHAIRPERSON: Let's see if we can find the passage in the new one?
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1	Page 22472 CHAIRPERSON: Perhaps we can proceed on	1	Page 22474 don't they know? Surely you were talking about – you were
2	the page where there isn't one –	2	using Lonmin and SAPS in the collective as one collective
3		3	to say our employees, meaning that you and Lonmin were one
	,		
4	CHAIRPERSON: Ms Pillay who seems to know	4	thing for the purposes of that sentence. Correct?
5	her way around the new document can keep an eye on that and		GENERAL MBOMBO: I was referring to my
6	if there's a significant difference she can turn her light	6	employees, the police and they would also be referring to
7	on and draw our attention to it.	7	their employees.
8	MR MPOFU: Thank you, Chairperson.	8	MR MPOFU: General, that is patently
9	CHAIRPERSON: If she doesn't mind having	9	untrue because you remember you were agreeing what Mr
10	that task imposed upon her.	10	Sinclair was talking about which we will go into now. It
11	MS PILLAY: I'll do so, Chairperson.	11	was about deployment of horses and all that and you're
12	CHAIRPERSON: Thank you.	12	saying you agree with Graham because this would show
13	MR MPOFU: Okay so for the purposes of	13	employees, all of them, in a balance that we are still in
14	you and I, General, we are on the original JJJ192. When	14	control. So there's no need to show the police that you
15	you say after this discussion about management being	15	are in control by deploying the same police. I mean that
16	separated from the perception and so on. Then you say that	16	is senseless.
17	"I want it to be very clear that any information that we	17	GENERAL MBOMBO: Mr Chair, what I was
18	get we should get so that we arrest the people, that is our	18	referring to here was the police, yes I did speak about the
19	interest because yourselves here as management, you will	19	police and Lonmin and its employees.
20	clear yourselves from this perception, you know" and so on.	20	MR MPOFU: Okay well I'll argue that but
21	When you say our interests who are you referring to?	21	that's just simply untrue. Can you go to page 14? Against
22	GENERAL MBOMBO: I think, Mr Chair, I was	22	the letter, about 18, Chairperson. There you say – okay
23	referring to us as the police.	23	again Graham Sinclair talks about moral support for the
24	MR MPOFU: Okay and when you say at	24	guys and so on and then it says "No they are going to – we
25	paragraph 13, the bottom of paragraph 13, line 28,	25	already deployed them because now they have to call them
	Page 22473		Page 22475
1	Page 22473 Chairperson, also.	1	Page 22475 back for this operation. We deployed them to key areas"
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2	Chairperson, also. GENERAL MBOMBO: Sorry, page 13?	2	back for this operation. We deployed them to key areas" and Graham says "Yes we deployed 110." So the we there
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	Page 22476		Page 22478
1	Lonmin security.	1	does not refer to a discussion with the Minister which
2	GENERAL MBOMBO: I thought he meant	2	might have happened on the Sunday or before the 13th, let me
3	Calitz was on top of the deployment of the police whilst he	3	put it that way. Would you agree?
4	was on top of the deployment of Lonmin security.	4	GENERAL MBOMBO: I saw it, that is
5	MR MPOFU: Okay last attempt. If you go	5	correct.
6	back to page 13 which is the original statement that you	6	MR MPOFU: Yes okay, and in fact the only
7	are agreeing with from Mr Sinclair. He says now we have	7	conversation he talks about regarding the Minister is at a
8	got now the horse units we want to deploy as well for	8	time when already policemen had been killed. Is that
9	visible policing. So visible policing must mean the	9	correct?
10	police, correct?	10	GENERAL MBOMBO: I do not remember now
11	GENERAL MBOMBO: According to that	11	whether –
12	terminology yes it refers to the police.	12	MR MPOFU: We can just have a quick look.
13	MR MPOFU: All right.	13	GENERAL MBOMBO: - his statement contains
14	MR VAN AS: Sorry, Mr Chairman. Policing	14	something like that.
15	in that context doesn't necessarily have to refer to	15	MR MPOFU: Yes, it's FFF32 –
16	police. Security -	16	GENERAL MBOMBO: Paragraph?
17	CHAIRPERSON: I think that's a matter for	17	CHAIRPERSON: Just let me understand
18	the witness to answer and not for you to answer from the	18	what's going on now. The are exhibits before us where the
19	bar.	19	affidavits made by the Minister and Mr Ramaphosa –
20	MR MPOFU: Thank you and the witness has	20	MR MPOFU: Yes, Chairperson –
21	answered. Okay can –	21	CHAIRPERSON: - now they are both going
22	COMMISSIONER HEMRAJ: Mr Van As does	22	to come and give evidence and they're going to be
23	Lonmin – sorry does Lonmin have any security officers on	23	presumably asked about these affidavits.
24	horseback?	24	MR MPOFU: Yes.
25	MR VAN AS: Not to the best of my	25	CHAIRPERSON: You may at some stage that
1	Page 22477	1	Page 22479
1	knowledge.	1	certain things appear from the statements, particular
2	knowledge. MR MPOFU: Thank you, Commissioner. Also	2	certain things appear from the statements, particular passages should be interpreted in a particular away, but
2 3	knowledge. MR MPOFU: Thank you, Commissioner. Also just to round off another point very quickly, I promise. I	2 3	certain things appear from the statements, particular passages should be interpreted in a particular away, but what's the point of asking this witness questions like
2 3 4	knowledge. MR MPOFU: Thank you, Commissioner. Also just to round off another point very quickly, I promise. I asked Mr Semenya last night to ask you to read from	2 3 4	certain things appear from the statements, particular passages should be interpreted in a particular away, but what's the point of asking this witness questions like that? I don't understand what's going on. There may a
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	Page 22480		Page 22482
1	see, that's the top left hand corner of the screen, FFF32.	1	was some discussion about aligning the plans in terms of
	What paragraph in that exhibit do you wish to draw the	2	deployment as well. Would you agree?
	witness's attention to?	3	GENERAL MBOMBO: I cannot dispute that.
4	MR MPOFU: Chairperson, maybe let me take	4	MR MPOFU: Yes, thank you. Now just to
	one step back. The only point I'm making now is that	5	get one thing out of the way, you've already said that you
	neither the Minister nor Mr Ramaphosa referred to the	6	were involved and approved of exhibit L and the opening
	conversation. As far as the Minister is concerned she has	7	statement. Were you also involved in the compilation of
	agreed that that's how she understood the statement. Now	8	the National Commissioner's report, or rather – okay, let
	all I'm saying now is that Mr Ramaphosa's reference to any	9	me put it this way. On the 17th it looks like there were
	conversation with the Minister would have happened where	10	two statements that were prepared. One was for the
	already there were murders, as he puts it, of policemen.	11	National Commissioner and the other one was for the
	And therefore it could only have been after the 13th.	12	President. There are small differences, but they more or
13	That's all, the only point I'm making.	13	less deal with the same thing.
14	CHAIRPERSON: I would have thought you	14	CHAIRPERSON: FFF4 and FFF5.
15	don't have to even make the point from the witness, the	15	MR MPOFU: And FFF5, that's correct.
16	point is self evident.	16	CHAIRPERSON: I'm not sure whether the
17	MR MPOFU: Well thank you, then in that	17	differences can be described as, some of them as little
18	case I'll move onto something else.	18	differences, but that's a matter that will be argued later.
19	CHAIRPERSON: There's no suggestion that	19	MR MPOFU: Yes. Okay, let's just say,
20	any policemen was killed at Marikana until the afternoon of	20	the Chairperson is right; there are similarities and there
21	Monday the 13th.	21	are differences –
22	MR MPOFU: Yes –	22	CHAIRPERSON: I think the evidence is
23	CHAIRPERSON: This witness, as I	23	that the one to the President, which is FFF4, was prepared
	understand it, said she had a conversation with the	24	on the evening of the 16th and sent to Mozambique where the
	Minister on the evening of Sunday –	25	President and the Minister of International Affairs, or
_			····· ·· · · · · · · · · · · · · · · ·
	Page 22481		Page 22483
1	Page 22481 MR MPOFU: Before the event –	1	Page 22483 International Cooperation were at a SADEC meeting, and the
1 2		1	International Cooperation were at a SADEC meeting, and the
	MR MPOFU:Before the event –CHAIRPERSON:- the 12th.		6
2 3	MR MPOFU:Before the event –CHAIRPERSON:- the 12th.MR MPOFU:That's correct, Chairperson.	2	International Cooperation were at a SADEC meeting, and the subsequent statement which the National Commissioner read
2 3 4	MR MPOFU: Before the event – CHAIRPERSON: - the 12th. MR MPOFU: That's correct, Chairperson. That's all right, Chairperson, I'll move on. Yes, you're	2 3	International Cooperation were at a SADEC meeting, and the subsequent statement which the National Commissioner read out – MR MPOFU: FFF5.
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	Page 22484		Page 22486
1	CHAIRPERSON: Brigadier Calitz made a	1	occasion was at a funeral, I think. Now did you make any
2	speech on the 18th.	2	suggestions as to points that could be made or should be
3	MR MPOFU: That's a different one, yes.	3	made in either of the speeches which the National
4	CHAIRPERSON: That's a different matter.	4	Commissioner delivered?
5	MR MPOFU: Yes.	5	GENERAL MBOMBO: I did not make any
6	CHAIRPERSON: I've got an idea - one	6	suggestions to her, Mr Chair, because she only told me that
7	should have these things at one's fingertips, but I'm	7	she wanted to go and talk to the police, tell them that
8	afraid I haven't – I've got an idea that the National	8	they should be tolerant under the circumstances they were
9	Commissioner spoke on the 20th.	9	in.
10	MR MPOFU: That's correct, Chairperson.	10	MR MPOFU: Yes, and part of the reason
11	I think I also have that date in mind.	11	was to boost their morale, or something to that effect,
12	CHAIRPERSON: Yes, Mr Pretorius assures	12	correct?
13	us it's the 20th, so we'll accept his word.	13	GENERAL MBOMBO: Yes, she said so in her
14	MR MPOFU: That's correct, then it must	14	speech.
15	be true.	15	MR MPOFU: Yes, and you agreed with this
16	GENERAL MBOMBO: I was present, Mr Chair.	16	intention of boosting their morale, correct?
17	MR MPOFU: Yes, thank you, and did you	17	GENERAL MBOMBO: I did not see anything
18	agree with the sentiments expressed by the National	18	wrong in her saying so and she had to speak to the police.
19	Commissioner?	19	MR MPOFU: Yes, and then you were also
20	GENERAL MBOMBO: No, Mr Chair, I cannot	20	present when she spoke at the funeral of Warrant Officer
21	say, put it that way; the National Commissioner was talking	21	Lepaaku, correct?
22	to the police in a way she saw fit to talk to them.	22	GENERAL MBOMBO: That is so.
23	MR MPOFU: Okay, did you find anything	23	MR MPOFU: Yes, and she was reported to
24	disagreeable in what she was saying, or did you agree with	24	have said there that "We are not sorry, the police are not
25	her?	25	sorry." Did you hear that?
1	Page 22485 GENERAL MBOMBO: There was nothing I	1	Page 22487 GENERAL MBOMBO: I do not remember. Mr
	GENERAL MBOMBO: There was nothing I	1 2	GENERAL MBOMBO: I do not remember, Mr
1 2 3	GENERAL MBOMBO: There was nothing I could not agree with her in what she was saying. She was		GENERAL MBOMBO: I do not remember, Mr Chair, because there she was reading a speech that was
2	GENERAL MBOMBO: There was nothing I	2	GENERAL MBOMBO: I do not remember, Mr Chair, because there she was reading a speech that was prepared for me.
2 3	GENERAL MBOMBO: There was nothing I could not agree with her in what she was saying. She was doing the talking. She knows why she was saying what she said.	2 3	GENERAL MBOMBO: I do not remember, Mr Chair, because there she was reading a speech that was prepared for me. MR MPOFU: Yes, no that I accept. I
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	Page 22488		Page 22490
1	MR MPOFU: Yes, you were not sure even in	1	documents the other day and I see that one at least of the
2	the case of the police, that's why you took them to EHW.	2	people, one at least, or two I think were allegedly found
3	I'm saying in your estimation were the protesters also	3	in possession of firearms on koppie 3. I didn't check up
4	affected emotionally?	4	in relation to dangerous weapons, but certainly at least
5	GENERAL MBOMBO: Maybe.	5	two of the persons are charged with possessing firearms and
6	MR MPOFU: And the events of the 16th you	6	there are dockets open in respect of that and they were
7	would agree were even more traumatic and graphic than those	7	arrested at koppie 3 and the firearms, there's photographs
8	of the 13th, at least in terms of numbers. Would you agree?	8	of the firearms in exhibit L. So I'm not sure the
9	GENERAL MBOMBO: That is so.	9	statement you make in its total ambit is correct.
10	MR MPOFU: And while you and the	10	MR MPOFU: Ja, okay. Do you think it's
11	Commissioner were boosting the morale, as you put it, of	11	reasonable to arrest 250 people for two firearms?
12	the troops - and I'm using that word loosely - did it occur	12	CHAIRPERSON: They weren't arrested for
13	to you that the protesters who were the only people who had	13	two firearms. There were specific people arrested for
14	lost on that occasion their friends and colleagues, could	14	firearms. Most of the others were arrested for public
15	have been even more traumatised?	15	violence, as I understand it.
16	GENERAL MBOMBO: Do you mean whether we	16	MR MPOFU: That's the point.
17	spoke about it or not?	17	CHAIRPERSON: And a charge of murder was
18	MR MPOFU: I don't know whether you spoke	18	added later, but I'm not sure that the opinion of this
19	about it or not, but did it occur to you?	19	witness whether it's appropriate to arrest or not is
20	GENERAL MBOMBO: According to me yes, I	20	something that's going to help us to answer the terms of
21	thought of it like that.	21	reference of this Commission.
22	MR MPOFU: Given your realisation that	22	MR MPOFU: Yes. General, was your
23	they would have been more traumatised, do you now think	23	evidence earlier on that everything that is done there,
24 25	that instead of being sent to EHW like the police, it was proper for them to be sent to police cells instead?	24 25	including the arrests and criminal investigations, you are ultimately responsible for?
25	proper for them to be sent to police cens instead?	20	
	Page 22489		Page 22491
1	GENERAL MBOMBO: You must remember, Mr	1	GENERAL MBOMBO: Please repeat the
2	GENERAL MBOMBO: You must remember, Mr Chair, some of them had to be arrested for being in	2	GENERAL MBOMBO: Please repeat the question.
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	1	
Page 22492		Page 22494
1 you are more concerned about the ones who are laughing	1	MR MPOFU: Okay, right, now the point I
2 around dead bodies than the ones who must have been	2	was making to you is that the people who had been, where
3 traumatised because they witnessed their friends being	3	the police had killed many people and those people were
4 butchered by your members.	4	colleagues - to put it generally - of the people, of the
5 CHAIRPERSON: No, I don't think the word	5	other protesters, of the people that I represent, you
6 "butcher" is an appropriate word to use in the	6	concerned yourself about the counselling of your members
7 circumstances –	7	who had laughed around the dead bodies, who had removed
8 MR MPOFU: Well, okay, massacred –	8	some of the weapons from the dead bodies, who some of them
9 CHAIRPERSON: It may be the subject of a	9	had said they would "pyp hom 'life,'" "Pyp hom 'life,'
10 finding later, it may not be -	10	daardie enetjie," and who maybe, at least one of them had
11 MR MPOFU: Massacred.	11	said "These people deserve to die," you thought it was a
12 CHAIRPERSON: - but I don't think you can	12	priority to counsel those people over the ones who had lost
13 state it as a fact.	13	their loved ones, correct?
14 MR MPOFU: Massacred? Is that better?	14	CHAIRPERSON: Were you aware of the fact
15 The people who were massacred by your members and your	15	that counsel has now put to you that somebody said they, at
16 members were laughing around them –	16	that stage someone had said they deserve to die and these
17 MR SEMENYA SC: Chair, that can't be	17	other points that were put to you by Mr Mpofu? Were you
18 stated. If, as the Chair correctly says, if that case is	18	aware of those allegations that people had laughed and so
19 made up somewhere we'll answer that, but he cannot use that	19	on? Were you aware of those allegations at the time that
20 word. We're not using murderers in relation to Dali's	20	you're now being asked about, just after the 16th?
21 clients.	21	GENERAL MBOMBO: I was not aware of these
22 MR MPOFU: You do. In exhibit L, as I	22	things raised by the counsel, Mr Chair.
23 demonstrated the other day –	23	MR MPOFU: Shame, I must apologise. Now
24 CHAIRPERSON: Mr Mpofu, Mr Mpofu, let's	24	that you know those things now, that people were laughing
25 just bring the temperature down a bit. I suggest you	25	around dead bodies, do you think it would have been
Page 22493		Page 22495
1 substitute the word "killed" and then carry on.	1	appropriate to prioritise their counselling, the ones who
2 MR MPOFU: Well, Chairperson, I will do	2	were laughing and who were kicking people, who were
3 that, but massacre –	3	dragging them on the ground while they were dead, and
4 CHAIRPERSON: At the end of the day –	4	
5	4	removing weapons from them, now that you know those things,
5 MR MPOFU: Massacre means the killing of	5	removing weapons from them, now that you know those things, do you think it would be appropriate?
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5 MR MPOFU: Massacre means the killing of	5	do you think it would be appropriate?
5 MR MPOFU: Massacre means the killing of 6 many people.	5 6	do you think it would be appropriate? [12:39] CHAIRPERSON: I don't know if there's any
<ul> <li>5 MR MPOFU: Massacre means the killing of</li> <li>6 many people.</li> <li>7 CHAIRPERSON: No, anyway –</li> </ul>	5 6 7	do you think it would be appropriate? [12:39] CHAIRPERSON: I don't know if there's any evidence of kicking. There are allegations of kicking,
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-	Page 22496		Page 22498
1	been equally –	1	and your initiative?
2	MR MPOFU: More.	2	GENERAL MBOMBO: That is not so, Mr
3	CHAIRPERSON: - or possibly more, but	3	Chair. I never was involved in that discussion.
4	anyway, we won't debate that either. There would have been	4	MR MPOFU: Yes, that's why I said, when
5	traumatic experiences suffered by those on what one can	5	the Chairperson was not listening I said the investigators
6	call the other side. The people who were arrested, the	6	for whom you are ultimately responsible, the record will
7	people who survived the shooting, the people who saw their	7	show that –
8	comrades killed and maimed, they would also have gone	8	CHAIRPERSON: I understand people for
9	through a wrenching traumatic emotional experience. They	9	whom she's responsible did things, but you were really
10	were in custody. They were detained in police cells which	10	asking her about her mental attitude in response to things
11	fell under your jurisdiction as the Provincial	11	and I thought it appropriate to establish whether it was
12	Commissioner. Did you consider it necessary or desirable	12	her initiative or the initiative of people for whose acts
13	or appropriate or human to make arrangements to see that they also receive counselling for the traumatic experiences	13	she may be responsible.
14 15	they undoubtedly underwent? That's counsel's question. I	14 15	MR MPOFU: Yes, in any event –
			CHAIRPERSON: You don't have to suggest I
16 17	put it a little bit at greater length than he did, but I think that is his question. If he doesn't agree with it,	16 17	wasn't listening. Sometimes – MR MPOFU: No, no –
18	he will tell me.	17	CHAIRPERSON: - I'm not able to hear
19	MR MPOFU: I agree. Mmmm.	19	everything, but –
20	CHAIRPERSON: I don't know what that	20	MR MPOFU: No, Chairperson, I was
20	"Mmmm" means, but what's your answer to the question,	20	criticising the witness, not you.
22	Provincial Commissioner?	22	CHAIRPERSON: Well, I'm afraid I was
23	GENERAL MBOMBO: Mr Chair, it is my	23	caught in the crossfire. I don't like that.
24	responsibility to have counselling for the police, that	24	MR MPOFU: I'm sorry.
25	they are counselled when they have been in such an	25	CHAIRPERSON: Don't do it again.
			~ ~
	Page 22497		Page 22499
1	operation. According to us, the police, we do not have	1	MR MPOFU: No, no, I'm sorry,
2			-
	facilities to counsel people who are not police officers	2	Chairperson. No, what I was saying, again like I said that
3	and who are arrested. Not disputing that they could have	2 3	Chairperson. No, what I was saying, again like I said that she's taking advantage opportunistically of something that
3 4	and who are arrested. Not disputing that they could have been traumatised, but our job there was to disarm and	2 3 4	Chairperson. No, what I was saying, again like I said that she's taking advantage opportunistically of something that you say. I'm not suggesting anything the way the
3 4 5	and who are arrested. Not disputing that they could have been traumatised, but our job there was to disarm and arrest people and that's what we were doing.	2 3 4 5	Chairperson. No, what I was saying, again like I said that she's taking advantage opportunistically of something that you say. I'm not suggesting anything the way the Chairperson took it.
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3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	and who are arrested. Not disputing that they could have been traumatised, but our job there was to disarm and arrest people and that's what we were doing. MR MPOFU: And instead you and the police for whom you are ultimately responsible took steps to ensure that those people are charged with the murder of their comrades, correct? GENERAL MBOMBO: That is what I heard, yes. MR MPOFU: Ja, so that's the point I'm making. I'm juxtaposing, and I'll accept for now that it's one thing not to arrange counselling for them because of the reasons you've explained, but what I'm talking to you is the things that you actually did, which was, (a), to have them arrested and also to take steps to intimate to the public prosecutors that they should be charged with the murder of the same people – CHAIRPERSON: Let's just clarify that. Did you do that? Did you – MR MPOFU: Van Zyl did that. CHAIRPERSON: Did you cause the – you	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	Chairperson. No, what I was saying, again like I said that she's taking advantage opportunistically of something that you say. I'm not suggesting anything the way the Chairperson took it. CHAIRPERSON: Well, you know if I maybe with a little bit of modesty can say if I sometimes, really infrequently make a good point there's no reason why the witness can't be entitled to take advantage of it. MR MPOFU: Absolutely. CHAIRPERSON: The trouble is if she takes advantage of my bad points – MR MPOFU: Yes, Chairperson. Thank you. No, what I'm trying to say, General, is you would at least agree with me if I put it like this; that some of the senior people who are answerable to you – in fact, let's just be direct. I'm talking about Brigadier Van Zyl. He in cooperation – I think let's use that word – with National Director of Prosecutions, and I'm saying that because I had to cross-examine him in the bail application, so I'm saying the police, including Brigadier Van Zyl, who are answerable to you, took steps, instead of arranging for counselling took steps that these people should be charged

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	Page 22500		Page 22502
1	GENERAL MBOMBO: That is what I heard, Mr	1	wouldn't say that the first robber was guilty of
2	Chair,	2	perpetrating a murder on the second robber. The legal
3	MR MPOFU: And when that happened you did	3	doctrine to which I've referred, if correctly applied on
4	not say, 'What nonsense is this? How can these people be	4	the facts could lead, in fact in the past has led to
5	charged with the murder of their own comrades when we know	5	convictions. But I don't think the question you're
6	who killed their comrades?' Did you?	6	asking –
7	GENERAL MBOMBO: Firstly I could not have	7	MR MPOFU: I'll leave it to –
8	been able to say so because the investigation was ongoing	8	CHAIRPERSON: - is essentially a bad
9	and secondly what I heard, when I heard it, that is when	9	one –
10	interventions were being done, that includes you.	10	MR MPOFU: That's fine.
11	MR MPOFU: No – yes, but those	11	CHAIRPERSON: But I think the question
12	interventions were made after about 10 days that the people	12	could be reformulated –
13	had been incarcerated and where your police officers had	13	MR MPOFU: I understand.
14	gone to oppose the bail application and in doing so	14	CHAIRPERSON: - in a way which avoids
15	produced a list of the 34 people who had died as being the	15	those objections.
16	victims of the alleged murder perpetrated by those people,	16	MR MPOFU: I understand, Chairperson.
17	by my clients.	17	Instead of –
18	CHAIRPERSON: I'm sorry to interrupt –	18	MR SEMENYA SC: Well, perhaps –
19	GENERAL MBOMBO: I do not understand –	19	MR MPOFU: Instead of perpetrated by –
20	CHAIRPERSON: - but I'm not sure that	20	I'm sorry.
21	it's correct to put the question the way it was, to talk	21	MR SEMENYA SC: Perhaps further to that
22	about murders perpetrated by your clients. There is	22	objection must be added the following, Chair –
23	authority for the proposition, the exact correctness of it	23	CHAIRPERSON: [Microphone off, inaudible]
24	I think may be subject to debate, but there certainly is	24	MR SEMENYA SC: I say perhaps I must add
25	authority, decision of the courts for the proposition that	25	to the objection, Chair, that the opinion of this witness
	Page 22501		Page 22503
1	for example if two persons go together to commit a robbery	1	about whether or not people can or cannot be prosecuted is
2	and in the course, and they foresee that the robbery may be	2	totally irrelevant. It doesn't -
3	resisted and there may be shots fired by the victims of the	3	CHAIRPERSON: Yes, yes, I understand. I
4	robbery, and if one of the robbers if then killed in the	4	wasn't quite sure that that was going to be the question.
5	course of the robbery, there's authority for the	5	If it had been I might have said something else, but I
6	proposition, people have been convicted of murder, the one	6	think Mr Mpofu is busy with a slightly different question.
7	robber has been convicted of murder of his colleague not	7	MR MPOFU: Yes.
8	because he actually shot at him, but because he foresaw	8	CHAIRPERSON: So reformulate your
9	that the enterprise upon which they were engaged might lead	9	question clearly so that Mr Semenya and I can understand
10	to the exchange of fire and the colleague might be killed,	10	it, and the witness, and then we can proceed.
11	and on the basis of recklessness, dolus eventualis, courts	11	MR MPOFU: Yes, thank you, Chairperson.
12	have convicted people in those circumstances. That I	12	Well, for the record, the doctrine to which you referred
13	assume was the doctrine relied on by the prosecution in the	13	was used in apartheid times and it's a bad doctrine, but
14	present matter. Whether it's a good doctrine –	14 15	I'll use instead of "perpetrated by" I thought I'd take the
15	MR MPOFU: It's a bad doctrine.	15	Chairperson's point, I'll use "guilty of," which will cover
16	CHAIRPERSON: - is a matter upon which I	16	the difference.
17	do not feel called upon to express an opinion.	17	The point I was making to you, General, is that
18	MR MPOFU: Yes.	18	the intervention – you said because of interventions in
19	CHAIRPERSON: Whether it applies in the	19 20	which I was involved, the people were released. You are
20	particular facts of this case is another question which we	20	right about that. But I'm saying those interventions came
21	can possibly look at later in the course of these hearings.	21	only after about 10 days, during which your senior
22	MR MPOFU: Yes.	22	policemen, in particular Brigadier Van Zyl, had opposed
23	CHAIRPERSON: But you certainly can't	23	bail, and in so doing had produced the list of the 34
24	say, it's inappropriate in those circumstances to talk	24 25	people who had died on the 16th as prima facie proof that
25	about a murder perpetrated by one person on another. You	25	the people that I represented were guilty of murder. So
1 million 100			

1	Page 22504	1	Page 22506
1	the fact that those interventions were made does not	1	CHAIRPERSON: They can feel as strongly
2	absolve the police – that's what I will argue – does not	2	as they like and you can talk –
3	absolve your –	3	MR MPOFU: Well –
4	CHAIRPERSON: What exactly is the	4	CHAIRPERSON: Mr Mpofu, behave yourself.
5	question? The police, as I understand, relied on the legal	5	Your clients can feel as strongly as they like. The point
6	doctrine to which I've referred. Whether it applies to the	6	that you want to argue you will have ample opportunity to
7	facts of this case, whether it's a good doctrine in fact	7	argue at the end of the hearing. At the moment you are
8	may be a matter than can be argued. Certainly there's	8	busy asking questions of a witness –
9	legal authority in support of the doctrine. As I say,	9	MR MPOFU: Well, Chair –
10	whether it applies to the facts of this matter is a	10	CHAIRPERSON: - and this is not the
11	different thing altogether, but what exactly is the	11	occasion to insert in the middle of the questions some
12	question you're asking this witness?	12	presently irrelevant contention that your clients wish to
13	MR MPOFU: Well, Chairperson – okay,	13	have raised at a later stage. Ask your question. Once
14	well, I was trying to avoid this debate, but now let's have	14	we've heard the question, if the question is an appropriate
15	it. You see, Chairperson, whether that doctrine is a bad	15	one I'll ask the witness to answer it.
16	doctrine –	16	MR MPOFU: Chairperson, I will ask the
17	CHAIRPERSON: No –	17	question. What I want to do is to address the remarks
18	MR MPOFU: - and whether it is –	18	you've made to me about a certain doctrine. I'm entitled
19	CHAIRPERSON: Sorry, before we even get	19	to do that.
20	involved in the debate, let's hear what the question is.	20	CHAIRPERSON: No, you're not. This is
21	MR MPOFU: Well no, let me address you –	21	not appropriate to do so at this stage. I'll give you full
22	CHAIRPERSON: But there is –	22	opportunity to do so before the end of the Commission.
23	MR MPOFU: No –	23 24	MR MPOFU: But then, Chairperson – CHAIRPERSON: I determine that –
24 25	CHAIRPERSON: My colleague Adv Hemraj informs me of the case that I had in mind, a judgment –	24 25	CHAIRPERSON: I determine that – MR MPOFU: How am I going to justify the
25		23	
	Page 22505		Page 22507
1	MR MPOFU: Ja, we all know it. That's	1	question? Because I'm saying – you are saying the question
2	one case –	2	is irrelevant because of whatever you've said -
3	CHAIRPERSON: A judgment of the SCA.	3	CHAIRPERSON: No, I don't know what –
4	Apparently she says there are two decisions -	4	MR MPOFU: I want to show you that you
5	MR MPOFU: Sorry, there's two out of a	5	are wrong.
6	million, ja.	6	CHAIRPERSON: Mr Mpofu, I don't know what
7	CHAIRPERSON: - a field of law of which	7	the question is. Let's hear the question first.
8	she has considerable expertise. But the point, even if	8	MR MPOFU: Well then, Chairperson, then
9	there's only one case –	9	you shouldn't criticise my question if you don't know what
10	MR MPOFU: Ja.	10	it is, on the basis of some doctrine.
11	CHAIRPERSON: - I'm not sure that a	11	CHAIRPERSON: You made some introductory
12	prosecutor can be criticised for saying here's a case, if	12	remarks which I felt I couldn't allow to stand uncorrected
13	this case is right the accused is guilty of murder and I'm	13	because of the factors that I put on record. What is your
14	charging him with murder.	14	question?
			MR MPOFU: General, the 34 people were
15	MR MPOFU: No. Ja, Chairperson, I'm	15	
15 16	MR MPOFU: No. Ja, Chairperson, I'm sorry, I have to say this –	15 16	killed by the police, correct? To your knowledge.
16 17	MR MPOFU: No. Ja, Chairperson, I'm sorry, I have to say this – CHAIRPERSON: Anyway, let's hear what –		killed by the police, correct? To your knowledge. GENERAL MBOMBO: I know that people died.
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1	GENERAL MBOMBO: I cannot be sure, Mr	1	CHAIRPERSON: Well, anyway –
2	Chair, but the investigations will tell, give a definite	2	MR MPOFU: Ja, the point I'm making to
3	thing of what happened.	3	you, General, is simply this; the people, even if this non-
4	MR MPOFU: Do you know who shot the 34	4	apartheid doctrine applies, the people, it would never say
5	people dead?	5	that the people who actually shot the people must be left
6	GENERAL MBOMBO: Mr Chair, I've already	6	off the hook and on the basis of some non-apartheid
7	said that the police were there and they admit that they	7	doctrine you go and find their colleagues –
8	fired. People died. But I cannot be sure whether all	8	CHAIRPERSON: Now, Mr Mpofu, I don't
9	those people were killed by the police, but investigations	9	understand the –
10	will tell you.	10	MR MPOFU: Isn't that correct?
11	MR MPOFU: Do you know that the version	11	CHAIRPERSON: You're arguing the law with
12	of the police is that all those 34 people were shot dead by	12	the witness. In fact –
13	the police?	13	MR MPOFU: Well –
14	GENERAL MBOMBO: If that is the version,	14	CHAIRPERSON: - the example I gave you of
15	yes, because we did fire and they do not dispute that they	15	two robbers who go to commit a robbery, what each robber
16	fired.	16	foresees that there may well be shooting and his
17	MR MPOFU: Ja, now what I'm asking you is	17	colleague –
18	this; even assuming there's some farfetched doctrine on the	18	MR MPOFU: By guns.
19	basis –	19	CHAIRPERSON: - and his colleague may be
20	CHAIRPERSON: It's been upheld by the	20	killed.
21	Appellate Division, by the way, but anyway –	21	MR MPOFU: Yes.
22	MR MPOFU: Yes, during apartheid times	22	CHAIRPERSON: They proceed with the
23	mostly. Even assuming that they –	23	robbery and the victims defend themselves, the victims
24	CHAIRPERSON: No, no. No, no, that's –	24	fire. One of the robbers is killed. In that case -
25	MR MPOFU: Yes, that's correct.	25	MR MPOFU: By someone.
	Page 22509		Page 22511
1	Page 22509 CHAIRPERSON: That's not correct either.	1	Page 22511 CHAIRPERSON: Yes, in that case the dead
1 2	CHAIRPERSON: That's not correct either. MR MPOFU: It is correct.	1 2	-
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	Page 22512		Page 22514
1	during the apartheid era in 1980, correct?	1	mood.
2	GENERAL MBOMBO: You can say so, Mr	2	MR MPOFU: Now whether or not there were
3	Chair.	3	specific prescripts that compelled you to do so, shouldn't
4	MR MPOFU: And you worked for the	4	you have on the basis of just pure compassion and Ubuntu,
5	security branch, the Internal Security Branch, correct?	5	ensured that these people instead of being exposed to all
6	GENERAL MBOMBO: Yes, I once worked for	6	these other hazards, that they were assisted emotionally?
7	them.	7	GENERAL MBOMBO: Which people are you
8	MR MPOFU: Are you familiar with the	8	referring to?
9	concept of Ubuntu?	9	MR MPOFU: The ones which I represent,
10	GENERAL MBOMBO: I think so, Mr Chair.	10	the ones who were arrested and/or injured.
11	MR MPOFU: And the National Commissioner	11	GENERAL MBOMBO: I wouldn't be against
12	confirmed with me that one of the values that guides the	12	such assistance if there was such assistance available.
13	police is the value of Ubuntu. Would you agree with that?	13	MR MPOFU: Yes. No, I understand that.
14	GENERAL MBOMBO: That is so, yes.	14	I'm saying doesn't Ubuntu give you a duty to act rather
15	MR MPOFU: It is correct, isn't it, that	15	than a duty not to prevent? What you're telling us is if
16	when people are in your custody, in police custody, then	16	someone wanted to help them, counsel them, you wouldn't
17	both their physical and emotional wellbeing becomes your	17	have stood in their way. That's not what I'm asking. I'm
18	responsibility, correct?	18	asking you whether you didn't have a positive duty to see
19	GENERAL MBOMBO: Especially the physical	19	to it, just as you did with the police, that they are
20	part, yes.	20	assisted.
21	MR MPOFU: Yes, especially the physical,	21	COMMISSIONER HEMRAJ: This is the witness
22	but also the emotional, correct? Their health, total	22	in her personal capacity, Mr Mpofu?
23	health, is your responsibility, correct?	22	MR MPOFU: No.
23		23 24	COMMISSIONER HEMRAJ: As the –
24 25		24 25	MR MPOFU: That's why $I - I'm$ sorry,
20	MR MPOFU: You are aware that on top of	20	wik wroto. That's why i – thi sorty,
	Page 22513		Page 2251
1	all the things that I've said to you about what I will	1	Commissioner.
2	argue was the highhanded manner in which the people that ${\rm I}$	2	COMMISSIONER HEMRAJ: Are you putting
3	represent were treated, you are aware that there were also	3	this question to the witness in her personal capacity or as
4	allegations that they were assaulted in custody by among	4	SAPS as an organisation or –
5	others General Mpembe –	5	MR MPOFU: No, thank you, Commissioner.
6	CHAIRPERSON: Mr Mpofu, what's the	6	No, I'm putting it to her as SAPS because that's why I
7	relevance – there are two points I want to put to you.	7	prefaced it by saying that the National Commissioner
8	Firstly, what's the relevance of this to the terms of	8	accepted Ubuntu as one of their, as built in into the
9	reference, and secondly, is this one of the topics on which	9	prescripts. Do you understand the distinction, what the
10	I gave you leave to cross-examine?	10	Commissioner is putting? It might well be that you as a
11	MR MPOFU: Yes, Chairperson, it goes to	11	person you might have had one feeling or another. That's
12	the issue of - it will be clear now; it goes to the issue	12	not what I'm talking about. That's why I said once these
13	of the, what I call the revenge motive around the 13th.	13	people are in your custody as SAPS, they are your
14	CHAIRPERSON: Oh, I see.	14	responsibility. Their emotional and physical wellbeing is
15	MR MPOFU: Thank you, Chairperson.	15	your responsibility, to which you have agreed, and then
16	General, yes, were you aware that the people were allegedly	16	I've asked you about Ubuntu, that the National Commissione
17	assaulted by among others General Mpembe?	17	confirmed it's built into your prescripts. Now I'm saying
18	GENERAL MBOMBO: I heard about that, Mr	18	given those two issues, it's not sufficient to say if
19	Chair.	19	someone wanted to take them to counselling you wouldn't
20	MR MPOFU: And you know that General	20	have stood in their way. I want to suggest, and I'm going
20	Mpembe is – well, you and I have gone through the evidence	20	to argue that you had a positive duty to ensure that that
21	that suggests that General Mpembe would have been one of	21	happened. What is your comment?
LL	the people traumatised by the events of the 13th, correct?	22	GENERAL MBOMBO: Mr Chair, from what I
22		_∠3	
23			know and according to our proscripts what I know how we
24	GENERAL MBOMBO: It could have been like	24	know and according to our prescripts what I know how we
24 25			know and according to our prescripts what I know how we help arrested people is when they have health issues, they

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1	Page 22516 are injured or not feeling well. That is why I said we do	1	Page 22518 to be emotional as opposed to being physical, you had a
2	assist them physically. If there were injured arrested	2	similar duty to refer the people to outside assistance,
3	persons it was my duty to ensure that they are taken to a	3	correct?
4	doctor.	4	GENERAL MBOMBO: You can put it that way.
5	MR MPOFU: Yes, I understand that,	5	CHAIRPERSON: May I ask a question –
6	General. I understand it very well. But I'm not talking	6	MR MPOFU: And –
7	about that now. I'm putting aside the question of physical	7	CHAIRPERSON: Sorry, before you carry on.
8	injury. I'm only questioning you about the issue of	8	People who are in the police cells, people who are being
9	emotional injury. Yes, otherwise known as trauma.	9	detained in the police cells, does the district surgeon
10	CHAIRPERSON: Yes, sorry, let's draw a	10	come and examine them or see them while they're in the
11	distinction. Sorry to interrupt you, Mr Mpofu. The	11	police cells? Are there regular inspections of those who
12	injured ones, I'm not sure if all of them but many of them	12	are detained in the police cells by the district surgeon?
13	were in hospital. Is that correct?	13	GENERAL MBOMBO: Mr Chair, at the moment
14	GENERAL MBOMBO: That is so, yes.	14	we'll either ask the district surgeon to come and see them
15	CHAIRPERSON: A number of them were in	15	at the cells if there are many of them, or we would
16	hospital receiving medical treatment.	16	transport them to the doctor.
17	GENERAL MBOMBO: That is correct, Mr	17	CHAIRPERSON: Carry on, Mr Mpofu.
18	Chair.	18	MR MPOFU: Yes, I understand that,
19	CHAIRPERSON: And presumably the medical	19	General. In other words, and it's a fair point you're
20	authorities in the hospital would have, if they had	20	making. Your choice, because of the numbers it might have
20	perceived a need for them to receive counselling or	20	been too demanding to do what I was suggesting to you just
22	anything of that kind, or psychological therapy, that would	22	now, of transporting 250 people to some psychologist, but
23	have been provided if it was considered necessary by the	23	what you could and should have done is to bring somebody to
23	medical authority of the hospital. Is that correct?	23	where they were held in custody to assist them. Isn't that
24 25	GENERAL MBOMBO: If they had such help I	24	the obvious thing? Just as you would do if someone was
25		20	the obvious thing. Sust us you would up it someone was
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1	Page 22517 think that will be the situation, yes.	1	Page 22519 suffering, let's assume if they were all suffering from
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	Page 22520		Page 22522
1	who were in police cells in custody and were taken to see	1	that recommendation at the end and you may well find
2	the district surgeon, did they complain to the district	2	support even from the SAPS if you made such a
3	surgeon about their psychological problems?	3	recommendation.
4	MR MPOFU: No – well, I don't know	4	MR MPOFU: Yes, thank you, Chairperson,
5	anything about anyone who was taken to a district surgeon.	5	yes. No, no, that – yes, thank you, Chairperson. I just
6	CHAIRPERSON: [Microphone off, inaudible]	6	want to point out that the legal duty I have established, I
7	district surgeon normally is consulted, is he not, I mean	7	hope, through cross-examination. That's why I asked the
8	in the case of people who are detained in the police cells,	8	witness is it so that when people are in your custody, both
9	whenever there's a change of staff the new person in charge	9	their physical and wellbeing –
9 10		10	CHAIRPERSON: We heard the cross-
	has to see to it that the people are all well and there's a		
11	record made in the occurrence book of the police station,	11	examination.
12	and also prisoners are taken to the, in respect of whom	12	MR MPOFU: Yes, okay.
13	there's a problem, a health problem, are taken to the	13	CHAIRPERSON: I did hear that.
14	district surgeon and if, as the witness says it's not	14	MR MPOFU: Thank you. So the legal duty
15	practically feasible to do that then the district surgeon	15	is established and what I'm doing now is probably just –
16	comes to the police station. Isn't that correct? Let's	16	and I'm not going to spend more time on this - is something
17	ask the witness. Is that correct?	17	much more which says that –
18	GENERAL MBOMBO: That is correct, Mr	18	CHAIRPERSON: [Microphone off, inaudible]
19	Chair, if amongst the people detained there is someone who	19	the legal duty is a matter you can argue at the end. I
20	needs medical help or some kind of help.	20	hear you will contend that you did establish that from the
21	MR MPOFU: Yes, Chairperson, well my	21	facts you elicited from the witness.
22	instructions – and I'll confirm this – are that nobody was	22	MR MPOFU: Fine.
23	taken to any district surgeon, but from my own experience I	23	CHAIRPERSON: Anyway, I think we can move
24	can tell you that when you are in police cells, it might	24	on. You've –
25	happen like that in the book; you only get taken to a	25	MR MPOFU: Okay.
			D
1	Page 22521 district surgeon, or at least I was taken to a district	1	Page 22523
1	district surgeon, or at least I was taken to a district	1	CHAIRPERSON: You've put the facts on
2	district surgeon, or at least I was taken to a district surgeon when you are physically ill and in our case then	2	CHAIRPERSON: You've put the facts on record on which you will rely.
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	district surgeon, or at least I was taken to a district surgeon when you are physically ill and in our case then what would happen is that you'd raise that with the district surgeon, and this particular one used to give us a sleeping tablet, but my instructions on this - subject to correction – are that none of the people were visited, either them visiting or being visited by a district surgeon. CHAIRPERSON: Well, there are two points, aren't there? The first is whether there's any legal obligation on the police to do that, the way things are at the moment, and whether there's a legal obligation is a matter the witness can't testify on because she can't tell us what the law is. Then of course you may wish at the end of the hearings to suggest that we should make a recommendation that people who are traumatised in the psychological sense, steps should be taken and there should in fact be a duty on the charge office, you know, station commander under whom the charge office, the detention cells fall to see to it that the, not only the physical wellbeing of the prisoners but also the psychological wellbeing where there's reason to believe that there's trauma, should be looked into.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	CHAIRPERSON: You've put the facts on record on which you will rely. MR MPOFU: Yes. CHAIRPERSON: I don't know if the witness can help us any more than she has, but you will presumably have detailed submissions on this point - MR MPOFU: Yes. CHAIRPERSON: - which will elicit some reply from the police service. MR MPOFU: Fair enough, Chairperson. Yes, in any event, General, your answer is that it just didn't cross your mind, and my last question is that what did cross your mind was the fact that they should be charged with murder? CHAIRPERSON: No, I don't think she admitted that. Did you think they should be charged with murder? They'd been arrested on charges, we know that. They were taken into custody on particular charges which have been explained to us, and at a later stage a murder charge was added. We heard that the primary responsibility for that, according to what Mr Mpofu tells us, rests with the Brigadier Van Zyl. MR MPOFU: That's correct, Chair.

#### Marikana Commission of Inquiry

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	Page 22524		Page 22526
1	were you yourself personally involved in the decision to	1	that. It doesn't matter how it will anger them or whatever
2	add a charge of murder?	2	that is the policy of the company they know. But once
3	GENERAL MBOMBO: That is not correct, Mr	3	again also we're ready for tomorrow if it angers them in
4	Chair.	4	any way tomorrow we, obviously ourselves we're prepared to
5	MR MPOFU: Yes, let's understand each	5	move in a different direction." That's what she said.
6	other. Even when you say it didn't cross your mind to get	6	MR MPOFU: Yes.
7	them counselling, I don't necessarily mean you as a person.	7	CHAIRPERSON: What you put to her, to
8	It's you, and I'm talking about SAPS really, for which you	8	the witness was a very free and imaginative paraphrase of
9	are responsible. Do you understand that?	9	what she said which didn't convey fully and accurately the
10	GENERAL MBOMBO: I hear you.	10	precise meaning of what she said. So I suggest you
11	MR MPOFU: Okay, anyway, just help me	11	reformulate, well perhaps you can simply say you were, your
12	with this. You foresaw that if Lonmin drops the pamphlets	12	attitude is as set out in the passage at page 7, the
13	that might anger the protestors, correct?	13	original version of JJJ192 against lines 20 and following.
14	[14:17] GENERAL MBOMBO: Yes, I did think of it	14	So that's your point and then –
15	that way.	15	MR MPOFU: Yes.
16	MR MPOFU: And you were prepared to take	16	CHAIRPERSON: What follows from that?
17	that risk because you, even if they were angry you would	17	MR MPOFU: Well, Chairperson, I think
18	have then moved in and arrested them and so on, correct?	18	that's slightly unfair. I went further then to put what is
19	GENERAL MBOMBO: If there was a need for	19	on page 7. I put to the Commission, I decoded what she
20	that, yes.	20	says in the, paragraph 7 using her own words, Chairperson,
21	MR MPOFU: Yes, and you knew that if	21	which are in 62.5 of her own statement. I'll just go back
22	Lonmin had engaged them on the issue of wages that would	22	to that.
23	not anger them, it would make them happy, correct?	23	CHAIRPERSON: Alright, I haven't got a
24	GENERAL MBOMBO: It would have depended	24	problem if you put to her what appears here on page 7 of
25	on the negotiations.	25	JJJ192 and the paragraph in her statement. My complaint
	Page 22525		Page 22527
1	MR MPOFU: No, I'm not talking about the	1	was that I thought your summary had gone a bit further then
2	outcome of the negotiations, you knew that what would have	2	the ipsissima verba of those two documents.
3	made them happy is to be engaged at all, irrespective of	3	MR MPOFU: Okay.
4	the outcome, correct?	4	CHAIRPERSON: If you go back to those
5	GENERAL MBOMBO: I was not sure about	5	two documents, the ipsissima verba thereof I haven't got a
6	that, I was sure though that they should talk to their	6	problem.
7	people.	7	MR MPOFU: Fair enough. When, to
8	MR MPOFU: Okay and I'm, yes, so I want	8	paraphrase it, when you are saying we'll move in another
9	to, I'm going to criticise you at the end that you were	9	direction you meant stage 3, the tactical phase, correct?
10	prepared to discuss with Mr Mokwena to do something which	10	GENERAL MBOMBO: That is not what I was
11	in your estimation was likely to anger these people, but	11	saying, Chairperson. That is not what I was saying. But
12	you were not prepared to recommend something which you knew	12	what I was saying was that we'll devise means to protect
13	would make them happy and maybe end the violence. What	13	them if there is a problem.
14	will you say when I criticise you like that?	14	MR MPOFU: No, General, you meant, I put
15	GENERAL MBOMBO: I trust that Counsel	15	it to you that you meant exactly that, if it angers them
16	Semenya would disagree with you on that.	16	the issue of the pamphlets you'll move in with stage 3
17	MR MPOFU: Yes, but unfortunately Counsel	17	which involved their disarming and their arrest. Do you
18	Semenya is not the one who said if they get angry I'll move	18	disagree with that?
19	in another direction and shoot them.	19	GENERAL MBOMBO: I do not remember saying
20	MR SEMENYA SC: No, no, no.	20	exactly that.
21	CHAIRPERSON: Mr Mpofu, where is that in	21	MR MPOFU: Okay, well let me remind you.
22	the record? Where is that in the record? Using the old	22	Can you go once again to paragraph 62.5 of your statement,
22		23	of your amplified statement.
22	version of the transcripts at page 7. The line 20 the	23	or your unpillou statement.
	version of the transcripts at page 7. The line 20 the witness says, "then let us communicate what needs to be	23 24	CHAIRPERSON: What Mr Mpofu is
23			

## Marikana Commission of Inquiry

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1	Page 22528	1	Page 22530
1	62.5 of exhibit LLL1. What you say there was "where I say	1	encirclement plan, isn't that correct, which would involve,
2	that if the protestors were to be angered by what is	2	I'm not asking the question of you, Mr Mpofu, I'm asking –
3	communicated to be the attitude of Lonmin the SAPS was	3	MR MPOFU: Well I'm just shocked,
4	prepared to take a different direction. I meant the SAPS	4	CHAIPPERSON: Well behave vourcelf
5	would take appropriate steps to disarm and arrest the	5	CHAIRPERSON: Well behave yourself.
6	protestors. This was meant to make it plain that the	6	The, at that stage in your mind stage 3 was disarm, was
7	communications between the employer and the employees must	7	encirclement which would then involve disarming the people
8	happen but if things were wayward as police we would have	8	at the koppie and arresting them, is that right?
9	to disarm and arrest them" and what Mr Mpofu says that the	9	GENERAL MBOMBO: At the time I was
10	idea of disarming or the process of disarming and arresting	10	talking to them, Mr Chair, I knew that there was a plan
11	them was involved in stage 3. So what you were in effect	11	entailing encirclement but there were criticisms about that
12	saying in 62.5 is that if the strikers were angered by what	12	plan already.
13	was in the pamphlets then the SAPS would be prepared to	13	MR MPOFU: Yes, thank you very much.
14	move to stage 3, I think that's –	14	CHAIRPERSON: - refer to evidence on
15 16	MR MPOFU: 100% - CHAIRPERSON: A summary of his –	15	that. But any way but what we're concerned with, Mr Mpofu and I is when you said in the last line of paragraph 62.5
	CHAIRPERSON: A summary of his – MR MPOFU: 110%, Chairperson.	16 17	
17 18	CHAIRPERSON: Now what's your answer to	17 18	that if the strikers becomes angry and so forth, in consequence of the pamphlets then things were wayward as
19	that?	19	you put it then the police would have to disarm and arrest
20	GENERAL MBOMBO: Mr Chair, it appears in	20	them and that would have been one form of implementation of
20	my statement. What I meant there was that if, yes the	20	stage 3, is that correct?
22	dropping of the pamphlets angers them or whatever they do	22	GENERAL MBOMBO: I agree with you, Mr
22	not agree with each other we will be there to maintain law	22	Chair.
23	and order and if it is necessary we would have to effect	23 24	MR MPOFU: And it would be a form that
24	arrests and disarm them.	24 25	would involve the shedding of blood, correct?
	Page 22529		Page 22531
1	MR MPOFU: And that would be done in	1	GENERAL MBOMBO: That was not in my mind.
2	terms of stage 3, that part of the operation of disarming	2	MR MPOFU: General, that can't be
3	and arresting is stage 3, correct?	2 3	MR MPOFU: General, that can't be correct. Go to page 5 of JJJ192. You said after, if they
3 4	and arresting is stage 3, correct? GENERAL MBOMBO: You can say it is	2 3 4	MR MPOFU: General, that can't be correct. Go to page 5 of JJJ192. You said after, if they did not surrender their arms and Mr Mokwena says, I'm sorry
3 4 5	and arresting is stage 3, correct? GENERAL MBOMBO: You can say it is associated with stage 3.	2 3 4 5	MR MPOFU: General, that can't be correct. Go to page 5 of JJJ192. You said after, if they did not surrender their arms and Mr Mokwena says, I'm sorry Chairperson, I'm reading, around 25 or so, and then you say
3 4 5 6	and arresting is stage 3, correct? GENERAL MBOMBO: You can say it is associated with stage 3. MR MPOFU: What other stage do you think	2 3 4 5 6	MR MPOFU: General, that can't be correct. Go to page 5 of JJJ192. You said after, if they did not surrender their arms and Mr Mokwena says, I'm sorry Chairperson, I'm reading, around 25 or so, and then you say "their arms, their weapons, weapons will leave them, move
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3         going to be a show of force but if they didn't surrender in         3         discussed the dropping of pamphlets. You said if that           4         splic of that show of force then the point you make is         argers them then and they become wayward, things become           5         corract.         wayward the polic would dat, they wouldat, they would dat, they wouldat, they would dat, they would da
4       spite of that show of force then the point you make is       5       orrrect.         5       correct.       wayward the police would act, they would diarm and arrest,         6       MR MPOFU: Yes.       1       third wall be that blood would be she in consequence,         7       CHAIRPERSON: She then said that it's       5       So Mr Mpofu is trying to ite these together and saying to         9       MK MPOFU: Yes, fine I'll use the word       10       agreed that pamphlets boild be, angreed and you anticipated         11       so I'll use the word might. You were prepared that they       10       agreed that pamphlets boild be bood of let me put it this         12       would be angreed and you drow in and if they did not       11       that i'll was a possibility ou foresaw the possibility that         13       surrender then there would be blood,       16       GRNRAL MBOMBO: That's what I thought         16       GENRAL MBOMBO: That's what I thought       17       to say you and the othegen but M Mpofu accepts that and he         19       it was not your wish. All The skyou in any event asked. Lommin to       20       consequence of this chain of events that it might be a         10       appreciate the risk of bloodshed, and despite your       12       to asy out alcohables and despite your         11       appreciate the risk of bloodshed, and despite your       20       co
5       correct.       5       wayward the police would act, they would disarm and arrest,         6       MR MPOFU:       Yes.       it might well be that blood would act, they would disarm and arrest,         7       CHAIRPERSON:       She then said that it's       5       wayward the police would act, they would disarm and arrest,         9       MR MPOFU:       Yes, fine I'll use the word       7       that's all said in the transcripts. That's what you saic.         11       so I'll use the word might.       You were prepared that they       9       you that you were happy that the pamphiets should be.         12       so I'll use the word might.       You were prepared that they       10       aread that pamphiets being dropped and you anticipated         13       surrender then there would be blood of the meynt thith       12       a chain of events would the base the motion which might         14       way you knew that one of the possibilities would be blood,       16       onservet that, do you agree with that' 1 uderstood you         15       ICHARPERSON:       All might spart that bloodshed, and espite your       16       answer to that, do you agree with that' 1 uderstood you         10       appreciation of that risk you in any event asked Lommin to       20       consequence of this chain of events that and he         15       to do what might spark that bloodshed, anarely the dropping
6       MR MPOFU: Yes.       6       it might well be that blood would be shed in consequence,         7       CHAIRPERSON: She then said that it's       8       So Mr Mpofu is trying to the hose together and saying to         9       MR MPOFU: Yes, fine I'll use the word       9       you that you were happy that the pamphlets being dropped and you anticipated         10       might then If it assists. Yes, the Chairperson is correct       10       achain of events would be blood or lef me put it this         13       surrender then there would be blood or lef me put it this       achain of events would then be set in motion which might         14       way you knew that one of the possibilities would be blood,       14       motion which might         14       way you knew that one of the possibilities would be blood,       14       achain of events would then be set in motion which might         15       GENERAL MBOMBO: That's what 1 thought       16       answer to that, do you agree with that?       10         17       might happen but it was not our wish.       11       this would be set in motion. Do you agree with that?       12       achain of events would be shed in consequence,         17       appreciate the risk of bloodshed, and despite your       16       answer to that, do you agree with that?       10       achain of events would be       20         25       to do what might spark that blood
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18 the purpose of cross-examination as I understand it is 18 MR MPOFU: Sorry, sorry.
19 exactly to get the witness to either concede or dispute a 19 GENERAL MBOMBO: Of that happening also.
20 proposition that I'm going to argue at the end. It's true 20 MR MPOFU: Yes. But the dominant thing
21 that is something that I want to argue at the end, but I 21 that you foresaw was that the police would have to shoot,
22 can't be disentitled from giving the witness an 22 correct?
22 and attractive to the block of the mount contact in a class 1 22 CENERAL MROMPO. Not that the police
23 opportunity, maybe by blood she meant something else, I 23 GENERAL MBOMBO: Not that the police
232333343636373724don't know but in fairness to her I must give her the24alone would shoot, but I did expect some confrontation.

## Marikana Commission of Inquiry

	Page 22536		Page 22538
1	this question not, that is not significant. In any event	1	MR MPOFU: General, no. Although there
2	whoever was shooting who your, you foresaw that there would	2	is a new spelling there, what you are talking was the
3	be bloodshed, people would be injured or killed on either	3	Tatane incident where somebody was killed, correct?
4	side, correct?	4	GENERAL MBOMBO: That is so, yes.
5	GENERAL MBOMBO: Yes, there was a	5	MR MPOFU: And you say very clearly, once
6	possibility of that happening.	6	again you use the word because to make it clear what the
7	MR MPOFU: And in fact on the side of the	7	context is. You said, "let us beg now because remember we
8	police your view was that the, if it was not for the	8	are tied up by these new amendments in our law which says
9	irritation of the laws that prevent you from shooting you	9	we should not shoot, we should not do this. You know these
10	would do that much earlier, correct?	10	things. You know from Tatane's incident and all that.
11	GENERAL MBOMBO: What passage are you	11	What – under context, what you are saying here I'm going to
12	referring to?	12	argue that were it not for the laws that say you should not
13	MR MPOFU: It's, no but first answer the	13	shoot, you should not do this, you should not do that as
14	question, forget about the passage.	14	you put then you would have ordered the police to shoot
15	CHAIRPERSON: Please repeat the question	15	even earlier.
16	again.	16	GENERAL MBOMBO: I do not agree with you
17	[14:36] MR MPOFU: It was your view that were it	17	there.
18	not for the irritation or impediment of the laws that	18	CHAIRPERSON: What did you mean by saying
19	prevent the police from shooting you would have acted even	19	we're tied up by these new amendments? Now if the new
20	before the time that you contemplated the shooting would	20	amendments hadn't been on the statute book and therefore
21	happen, correct?	21	you weren't tied up by these new amendments what would you
22	COMMISSIONER HEMRAJ: I'm not sure I	22	have done?
23	understand that question, Mr Mpofu, would you just mind	23	GENERAL MBOMBO: Mr Chair, our prescripts
24	repeating it please?	24	are clear as to what we should do. What I was trying to
25	MR MPOFU: Okay. Was it ever your view	25	say on this point is that we also had to look carefully at
	Page 22537		Page 22539
1	Page 22537 that if it was not for the laws that prevent the police	1	Page 22539 the new amendments that's there.
1 2		1 2	-
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Page 22540 1 - of getting any further material which will form the basis	1	Page 22542 CHAIRPERSON: Do we know whether the
2 of an argument, so I think you've got enough for your	2	pamphlets were dropped? Perhaps Mr Van As can tell us. Mr
3 purposes. Whether it will be enough in the end for your	3	Van As?
4 argument to succeed is of course something we don't know	4	MR VAN AS: They weren't, they weren't,
5 the answer to. But I suggest that you might like to move	5	Mr Chairman.
6 on.	6	CHAIRPERSON: They were not dropped.
7 MR MPOFU: Thank you, Chairperson, I was	7	MR VAN AS: No.
8 just following up on your question, Chairperson, on what	8	CHAIRPERSON: So in fact whatever led to
9 she meant by tied up, ja.	9	the trouble was not the pamphlets.
10 COMMISSIONER HEMRAJ: General, is one of	10	MR VAN AS: No, Mr Chairman.
11 those amendments, would it be that the police were not	11	CHAIRPERSON: Well we've got some
12 allowed to use rubber bullets anymore?	12	evidence which I take it we can accept. Mr Mpofu?
13 GENERAL MBOMBO: Mr Chair, we are now	13	MR MPOFU: Ja well even I accept that,
14 allowed to use what we call reduced rubber. We are not	14	Chairperson, that's not the point. The point obviously is
15 allowed to use live ammunition.	15	that this witness was prepared –
16 MR MPOFU: Okay, look in any event the	16	CHAIRPERSON: I understand, it relates to
17 real point I'm making to you is this, you, General Mbombo,	17	her state of mind. I think –
18 were prepared to take a risk that these pamphlets might	18	MR MPOFU: It's important to know if it
19 anger the protestors and if they do you'd move in, into	19	in fact happened.
20 your situation which might result in the police shooting	20	CHAIRPERSON: I think she's conceded it
21 and bloodshed. And I'm saying that against this, on the	21	and if it's a good point it's a good point, if it's a bad
22 other side of the scale was a possibility of something	22	point it's a bad point, it doesn't get better or worse by
23 which would do the exact opposite. In other words we	23	being repeated. You've asked a question with a bit of help
24 should diffuse the situation. In fact there were two	24	from me, you've got the answer and that's it.
25 things that were likely to diffuse the situation. One was	25	MR MPOFU: No I haven't got the answer.
Page 22541		Page 22543
1 the exhorting Lonmin to engage with the protestors which	1	CHAIRPERSON: You accuse me of not
2 you failed to do. The second one which you knew might	2	listening, Mr Mpofu.
3 diffuse the situation and avoid the bloodshed by the	3	MR MPOFU: Maybe you can remind, Chair.
4 intervention of Mr Malema and both of those two things that	4	CHAIRPERSON: It was put to her, it was
5 you knew were likely to resolve the situation you rejected.	5	put to her that in relation to – you put it to her in relation to dropping the pamphlets, it might anger them, it
<ul><li>And you embraced the one thing that is likely to result in</li><li>bloodshed which indeed it did result in bloodshed because</li></ul>	6 7	might set in motion a chain of events and a possible
8 34 people died. Do you understand the proposition?	8	consequence at the end of that chain was bloodshed. And
9 GENERAL MBOMBO: I hear what he says.	9	she agreed with that, but she said that's not what she
10 CHAIRPERSON: You hear what he says, but	10	wanted. But I understood her to concede. Did I understood
11 what do you say about it. He says what you had on the	11	correctly, Provincial Commissioner? Do I understand
12 table in front of you is three possibilities. One, you go	12	correctly?
13 to Lonmin and say look here stop your nonsense, start	13	GENERAL MBOMBO: That is so, Mr Chair.
14 negotiating with these people. You know unless you	14	CHAIRPERSON: There you are you see,
15 negotiate this problem's going to go on. The second thing	15	you've got the point now. So you've got the concession
16 you do is you say let's wait for Mr Malema to come because	16	that you wanted. It's qualified, of course, by her
17 what he did at Impala or let's even invite him to come to	17	statement that it's not what she wanted to happen, but she
18 repeat what he did at Impala. That's the second	18	conceded the foresight and the possibility and she conceded
19 possibility says Mr Mpofu. The third possibility was the	19	the possibility of bloodshed at the end of the day. So
	20	that's what you've been trying to for the last I don't know
20 one you chose and what you chose was drop pamphlets on		
<ul><li>one you chose and what you chose was drop pamphlets on</li><li>them, it may set in motion a chain of events which may end</li></ul>	21	how many minutes to –
/ 1 Star 1 Star	21 22	how many minutes to – MR MPOFU: No, no, Chairperson, I'm
21 them, it may set in motion a chain of events which may end		-
<ul> <li>them, it may set in motion a chain of events which may end</li> <li>in bloodshed, but that's the one you chose. Now that's his</li> <li>point, what do you say about it? That's his proposition.</li> <li>GENERAL MBOMBO: Mr Chair, I did not</li> </ul>	22	MR MPOFU: No, no, Chairperson, I'm afraid you are wrong, Chairperson. That concession yes I got, I'm making a completely different proposition now.
<ul> <li>them, it may set in motion a chain of events which may end</li> <li>in bloodshed, but that's the one you chose. Now that's his</li> <li>point, what do you say about it? That's his proposition.</li> </ul>	22 23	MR MPOFU: No, no, Chairperson, I'm afraid you are wrong, Chairperson. That concession yes I

	Page 22544		Page 22546
1	possibility would result in bloodshed. Now, what I'm	1	say I rejected it, but let me just say whatever I rejected
2	saying is that this witness and I want her comment, if she	2	I did not reject because I wanted bloodshed.
3	had commented then I'm sorry, but as far as I'm concerned	3	MR MPOFU: But do you understand the
4	she has not yet commented. I'm saying to her so you had	4	notion of diffusing the situation meant the avoidance of
5	and the Chairperson did paraphrase my question, that she	5	bloodshed, correct?
6	faced with three possibilities, as the Chair says, one	6	GENERAL MBOMBO: According to me that's
7		7	what I thought I was saying, yes.
	would lead to bloodshed. The other, yes might lead to		
8	bloodshed, but the other two will almost definitely lead to	8	MR MPOFU: Yes, that's what I'm saying.
9	no bloodshed because according to her evidence they, and we	9	So if you reject something that would be likely to diffuse
10	went through this, this morning, they knew that if Mr	10	the situation you are rejecting something that is likely to
11	Malema had intervened the situation would be diffused. So	11	avoid bloodshed, correct.
12	that equals no bloodshed. That's they even went to say you	12	GENERAL MBOMBO: Repeat please.
13	remember in Impala he resolved it. So they actually did	13	MR MPOFU: You and I have agreed that
14	not want the situation to be resolved, at least to be	14	diffusing the situation means avoidance of bloodshed. So
15	resolved by him for whatever reason. We have gone through	15	I'm saying if you therefore rejected or acted to prevent
16	all that, ja. All I'm interested in now is that one equals	16	anything that would diffuse the situation you were
17	no bloodshed, okay. So I'm saying that's the second	17	therefore, thereby rejecting something that would avoid
18	possibility. Then I said the third possibility, and again	18	bloodshed. That's seems obvious, correct?
19	I went through this last week, involves the interaction	19	GENERAL MBOMBO: I hear what you say now,
20	which will please the strikers. That one also means no	20	yes that is correct.
21	bloodshed. So I'm saying when she has three things,	21	MR MPOFU: Okay, thank you. I think on
22	bloodshed, no bloodshed, no bloodshed, she went for option	22	Friday you and I when we had to break because we had to go
23	one equals bloodshed. Does she have a comment on that,	23	the airport, someone had to go to the airport, on Friday I
24	yes, General.	24	was busy talking to you about the role of General
25	GENERAL MBOMBO: I'm not sure if I	25	Annandale. I just want to round off that point. Who
20		20	
	Page 22545		Page 22547
1	Page 22545 understood the question correctly.	1	Page 22547 called General Annandale to Marikana?
1		1	-
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2	understood the question correctly. MR MPOFU: Okay, I'll summarise it or the	2	called General Annandale to Marikana? GENERAL MBOMBO: I don't know exactly who called him.
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1	Page 22548 crucial issue of executing and I'm using that word	1	Page 22550 CHAIRPERSON: Mr Budlender can give us,
2	advisedly –	2	save a bit of time. Mr Budlender, can you tell us, you did
3	CHAIRPERSON: You mean implementing.	3	indicate to me this evidence is going to be forthcoming.
4	MR MPOFU: Of executing the operation,	4	MR BUDLENDER SC: Chair, we're waiting
5	you gave that important task to someone who's presence you	5	for an affidavit from IPID confirming the text of the SMS,
6	did not know or you could not explain.	6	but we are informed that it is an SMS which refers to
7	GENERAL MBOMBO: Let me first say when he	7	bodies or injuries, the situation is bad. That's the
8	was there, present, he was now part of the police who were	8	nature –
9	doing their job.	9	CHAIRPERSON: I think she said IPID must
10	[14:56] And secondly to answer your question, I explained	10	be involved, I think –
11	that I spoke to someone who was in charge of the meeting.	11	MR BUDLENDER SC: Well, it's to IPID
12	MR MPOFU: Okay, so that's your evidence?	12	saying –
13	The most important decision, or the most important	13	CHAIRPERSON: Yes, yes.
14	instruction in your career you give to somebody, you say,	14	MR BUDLENDER SC: - you'll get involved.
15	oh well, seeing that you're here do this operation, which	15	CHAIRPERSON: So that's coming. So
16	might result in so many deaths, and which did result in so	16	apparently the SMS and apparently by some miracle I think
17	many deaths. Is that your evidence? Do you want us – are	17	it wasn't deleted, it was still on the telephone of the
18	you serious?	18	IPID member concerned, and that's going to be incorporated
19	GENERAL MBOMBO: You must remember I'm	19	in the affidavit. So –
20	saying I was first given a report by General Mpembe.	20	MR MPOFU: Thank you.
20	General Mpembe was attending the meeting with me. So when	20	CHAIRPERSON: I think - the evidence is
22	I came there and gave General Annandale, who was chairing	22	not before us yet, but it will be and I think you can
23	the meeting, they had there agreement with General Mpembe	23	proceed with your questioning on the basis that that's
24	as to how they were working, how they were doing their	24	something which in all likelihood will be established.
25	work. I then saw no reason why I should not say that to	25	MR MPOFU: Thank you, Chairperson. Thank
	<b>n</b>		I
	Page 22549		Page 22551
1	the person who's chairing the meeting, who was going to	1	Page 22551 you very much.
1 2	the person who's chairing the meeting, who was going to discuss it with the person in charge of the operation.	1 2	-
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	Page 22552		Page 22554
1	particular message was retrieved from the mobile phone of	1	she didn't know about it, she wasn't told, and Mr Budlender
2	the –	2	went into great detail who should have told her, and it was
3	MR MPOFU: IPID member.	3	disgraceful they didn't tell her, and that was fully dealt
4	CHAIRPERSON: - IPID member. So you can	4	with in the cross-examination.
5	accept that in all likelihood that will be evidence before	5	MR MPOFU: So, Chairperson, even in the
6	us and you can proceed with your questioning based on that.	6	advent of the SMS one should not touch the subject because
7	MR MPOFU: Thank you, Chairperson. Now	7	Mr Budlender dealt with it without knowing about the SMS?
8	General, the long and short of that evidence would be that	8	CHAIRPERSON: Mr Budlender asked
9	a few minutes after 4 when you were at or near the JOC the	9	questions on the assumption, which he suggested was a
10	- or rather, Brigadier Pretorius was already indicating to	10	realistic one and turned out to be correct, that that was
11	IPID that there were bodies down and people injured. Would	11	the subject of the SMS. So the questions that you are
12	you accept that?	12	asking at the moment are repetition of the ones that Mr
13	GENERAL MBOMBO: As it said, there is	13	Budlender asked.
14	such a thing, Mr Chair, yes.	14	MR MPOFU: Now, General, I'm now going to
15	MR MPOFU: Now what I want – the only	15	deal with my final topic, and that is you remember that I -
16	thing I want to put to you is just a question of what we	16	CHAIRPERSON: I'm sorry, Mr Mpofu, how
17	will argue at the end, and as I say because when all this	17	long is the topic – I know it's difficult to predict, but
18	is unravelled we don't want to have to recall you, so I'm	18	how long do you think the topic will be?
19	just going to ask you one or two questions. That would	19	MR MPOFU: Chairperson, I'm sorry, it's
20	indicate that the JOC in the person of Brigadier Pretorius	20	one of those that I can't say. So it's in relation to tea,
21	was already aware, so much aware that they had taken the	21	Chairperson?
22	extra step of informing IPID, wherever IPID might have been	22	CHAIRPERSON: Yes, that's why I'm asking
23	at that stage. That's logical, correct?	23	the question.
24	GENERAL MBOMBO: That's how I understand	24	MR MPOFU: No, it will certainly be – it
25	it, Mr Chair.	25	would necessitated the tea adjournment right now.
	Page 22553		Page 22555
1	MR MPOFU: And you being the most senior	1	CHAIRPERSON: Well, I like that word
1 2		1 2	
	MR MPOFU: And you being the most senior		CHAIRPERSON: Well, I like that word
2	MR MPOFU: And you being the most senior person in charge, I'm going to argue that that information	2	CHAIRPERSON: Well, I like that word "necessitate". We'll take the tea adjournment.
2 3	MR MPOFU: And you being the most senior person in charge, I'm going to argue that that information would have been relayed to you by that stage. What will	2 3	CHAIRPERSON: Well, I like that word "necessitate". We'll take the tea adjournment. MR MPOFU: Thank you. [COMMISSION ADJOURNS COMMISSION RESUMES] [15:23] CHAIRPERSON: The Commission resumes.
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		1	
	Page 22556		Page 22558
1	bloodshed. What would be your comment to that?	1	people, correct?
2	GENERAL MBOMBO: I am not quite certain	2	GENERAL MBOMBO: Yes, Sir.
3	which day you are referring to now.	3	MR MPOFU: And at that meeting you, there
4	MR MPOFU: No, I'm still referring to the	4	were deliberations initiated by you, or rather led by you.
5	14th. I'm saying, effectively what I'm saying is that – and	5	GENERAL MBOMBO: As I have already
6	I think I did put it to you in a different context – what	6	explained, yes, Sir.
7	I'm saying to you is knowing that these people might have	7	MR MPOFU: And you then made certain
8	been emotionally affected, knowing that emotions were high,	8	proposals.
9	as you said, and knowing that that might result in many	9	GENERAL MBOMBO: I made a report about
10	people being killed, you nevertheless chose that route over	10	what was happening and the decision that I'd taken.
11	the other possible solutions?	11	MR MPOFU: Did you make certain proposals
12	CHAIRPERSON: I'm sorry, hasn't that	12	regarding that decision you had taken?
13	question been put before?	13	GENERAL MBOMBO: I don't remember of
14	MR MPOFU: Yes, that's what I've just	14	proposals. What I do remember is that I told them, I
15	said.	15	mentioned to them that if we do not succeed in getting a
16	CHAIRPERSON: So why –	16	voluntary handing over of the weapons from these people,
17	MR MPOFU: I put it in another –	17	this is what I was going to do.
18	CHAIRPERSON: So why put –	18	MR MPOFU: Fine, and the meeting endorsed
19	MR MPOFU: - to her in another context.	19	your decision.
20	CHAIRPERSON: But why put it again?	20	GENERAL MBOMBO: They agreed with my
21	MR MPOFU: No, because that's not the	21	decision, Chairperson.
22	question. Chairperson, I'm making a different point today.	22	MR MPOFU: Yes. Now both in her evidence
23	CHAIRPERSON: Alright.	23	and in her statement the National Commissioner did not
24	MR MPOFU: I asked it on Thursday. I'm	24	refer to this meeting. Do you know that? I'm sure you've
25	now saying I'm juxtaposing that against –	25	seen her statement.
	Page 22557	1	Page 22559
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## Marikana Commission of Inquiry

Arbitration

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	Page 22560		Page 22562
1	I mean I know JJJ192 was also covered by Mr Budlender, but	1	that that was not correct, it was a law and order matter,
2	I've managed to cross-examine on it and come up with quite	2	and that she undertook to raise it with the Minister of
3	– even if I say so myself – substantial points. So if you	3	Police, Safety & Security at the cabinet meeting, who she
4	allow me to just ask one or two questions –	4	was meeting him at the cabinet meeting later that day and
5	CHAIRPERSON: One or two questions, one	5	she undertook to raise it with him. But the evidence
6	or two literally, hey.	6	doesn't go as far as dealing with, indicating that the
7	MR MPOFU: Yes. Essentially what I want	7	matter was discussed by the cabinet or referred to the
8	to put to you is that what happened at the meeting, the	8	President, but in relation to the first two points, namely
9	reason why you were all hiding this meeting is because in	9	that Mr Ramaphosa spoke to the Minister of Mineral
10	that, one of the issues that informed the decision that you	10	Resources and she undertook to speak to the Minister
11	took was what you and I discussed this morning, namely the	11	Mthethwa, I'll allow the question.
12	political pressure that was being put to bear on the senior	12	MR MPOFU: Yes, thank you, Chairperson.
13	police leadership. What will you say to that?	13	Well, then I'm afraid we have to go and show that my
14	GENERAL MBOMBO: No, there I do not agree	14	version is correct. Can you go to BBB4, which is one of
15	with you, Sir.	15	the documents that I asked you to read last night. Sorry,
16	MR MPOFU: And that you knew, or you	16	BBB4.
17	know, as you and I established last week, that the taking	17	GENERAL MBOMBO: I have it, Sir.
18	into account of political considerations on a matter such	18	MR MPOFU: You do have it, yes. It's one
19	as such this would be grossly improper and grossly	19	of the documents I asked you to read last night. Can you
20	irregular, as you confirmed last week, correct?	20	go to page 289(e) of that document?
21	GENERAL MBOMBO: There you are telling	21	GENERAL MBOMBO: I have it.
22	the truth, yes.	22	MR MPOFU: Yes, you see that this is an
23	MR MPOFU: So what I want –	23	email, it's the last of this series of emails about 3PM.
24 25	CHAIRPERSON: You asked your one or two questions, but I'll allow you to ask two more.	24 25	This is a series of emails which started at 1AM in the
25		20	morning. This one is 3PM from Mr Cyril Ramaphosa to those
	Page 22561		Page 22563
1	MR MPOFU: Thank you, Chairperson. The		
	wik wiforo. Thank you, chailpeison. The	1	people indicated there, and he says, "I have just had a
2	decision that you took, the decision that you had – we've	1 2	discussion with Susan Shabangu in Cape Town" –
2 3	decision that you took, the decision that you had – we've gone through this, I'm not going to go through it again.		discussion with Susan Shabangu in Cape Town" – CHAIRPERSON: I'm sorry, we haven't got
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3 4 5 6	decision that you took, the decision that you had – we've gone through this, I'm not going to go through it again. The decision that you had taken on the 14th to move on the 15th was clearly motivated by political considerations. I'm not going to canvass that with you. The proposition that	2 3 4 5 6	discussion with Susan Shabangu in Cape Town" – CHAIRPERSON: I'm sorry, we haven't got that one on the screen. MR MPOFU: Oh, sorry, Chairperson. CHAIRPERSON: That's the one we now have
3 4 5 6 7	decision that you took, the decision that you had – we've gone through this, I'm not going to go through it again. The decision that you had taken on the 14th to move on the 15th was clearly motivated by political considerations. I'm not going to canvass that with you. The proposition that I'm putting to you now is that because of what we know -	2 3 4 5 6 7	discussion with Susan Shabangu in Cape Town" – CHAIRPERSON: I'm sorry, we haven't got that one on the screen. MR MPOFU: Oh, sorry, Chairperson. CHAIRPERSON: That's the one we now have on the screen?
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## Marikana Commission of Inquiry

1	Page 22564 correct.	1	Page 22566 MR MPOFU: Yes, okay, but if the Minister
2	MR MPOFU: Thank you, Chairperson.	2	had promised Mr Ramaphosa – or let me put it this way. If
3	CHAIRPERSON: I'll allow you to put that	3	the Minister said well, we're going to act in a more
4	part as your question as well. It's not an indication it	4	pointed way - and I'm not saying whether that happened or
5	actually took place, but it's presumably a fair inference	5	did not happen – that would mean the National Commissioner
6	that it did.	6	and yourself, among others, because he was not going, he
7	MR MPOFU: Yes, it is, Chairperson. I	7	himself, to go and shoot the people, correct? Or conduct
8	think, unless if we really want to gild the lily, as they	8	the operation, sorry.
9	say.	9	GENERAL MBOMBO: Just repeat your
10	CHAIRPERSON: Yes, it's a fair inference	10	question again.
11	that it happened. He says that she said she'd do that and	11	MR MPOFU: Sorry, sorry, ja it was a bit
12	there's no reason to think that (a), she didn't say it; and	12	convoluted. I'm saying any undertaking by the Minister to
13	(b), she didn't do what she said she'd do.	13	act in a more pointed way, and I'm putting aside whether
14	MR MPOFU: Yes.	14	that undertaking was made or was not made will be answered
15	CHAIRPERSON: And when Mr Mthethwa comes	15	by the Minister, but any such undertaking would have
16	he will presumably tell us –	16	involved that those actions, those pointed actions being
17	MR MPOFU: And Shabangu, or Mr Ramaphosa,	17	taken by people such as the National Commissioner and
18	yes, I accept that.	18	yourself rather than by the Minister himself, correct?
19	CHAIRPERSON: Yes, if Mr Ramaphosa and	19	GENERAL MBOMBO: Procedurally yes, that
20	the Minister come – I can't remember whether the Minister	20	would have been so.
21	of Mineral Resources is coming, but anyway, Mr Mthethwa	21	MR MPOFU: Thank you. And I think the
22	will be able to deal with it.	22	Minister says himself that whenever he received these
23	MR MPOFU: Yes, Chair, anyone of the	23	"concerns" he would transmit them to the police via the
24	people mentioned here, Chairperson, will help, assist us	24	National Commissioner and I suppose via yourself, correct?
25	hopefully. I've even forgotten the point now. Now the	25	GENERAL MBOMBO: He sometimes comes to me
	Page 22565		Page 22567
1	point I was –	1	if he has not come into contact with the National
2	CHAIRPERSON: What Mr Mpofu is putting to	2	Commissioner.
3	you is an extra reason why the decision was, you made that	3	[15:43] MR MPOFU: Yes. So had he not been
4	decision or alternatively made that proposal at the meeting	4	bluffing, had he meant his promise to act in a more pointed
5	on the Wednesday night, was where the events which are	5	way, the logical people to have transmitted that evidence –
6	dealt with in this email we just looked at had taken place	6	sorry, that message to would have been either yourself or
7	earlier that day on the Wednesday afternoon and he wants	7	the National Commissioner.
8	your comment on that. Am I putting your question too	8	GENERAL MBOMBO: It is so, yes.
		0	
9	weakly for you, Mr Mpofu? That's the way you want it put?	9	CHAIRPERSON: Just to correct it; this
9 10	MR MPOFU: No, Chairperson, I think	9 10	email doesn't indicate that the Minister of Police had
10 11	MR MPOFU: No, Chairperson, I think that's sufficient. The Chairperson is correct; all I'm	10 11	email doesn't indicate that the Minister of Police had promised to act in a more pointed way. What Mr Ramaphosa
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## Marikana Commission of Inquiry

Arbitration

	Page 22568		Page 22570
1	something in order to comply with what he'd been requested	1	remind you just now of some of them – regarding your own
2	to do in that regard. That's your point, is it? But the	2	actions or inactions, and if it's necessary I'll separate
3	witness, Provincial Commissioner, you don't know anything	3	which ones are actions and which ones are omissions, we
4	about this. No-one got hold of you and said look here, the	4	have been instructed that one of the recommendations we
5	Minister of Police says you must act in a more pointed way.	5	should make to the Commission is that certain persons
6	You didn't receive any message of that kind. Is that	6	should be recommended for a charge of murder and we have
7	correct?	7	drawn a list of such people, and given all these things
8	GENERAL MBOMBO: No, I did not,	8	that I've canvassed with you, your name appears as accused
9	Chairperson. No, I did not.	9	number 4 on that list of those people, for the reasons
10	CHAIRPERSON: Did you get any	10	which I'll summarise just now, and some of which we have
11	communication from 2:58PM on the Wednesday afternoon – ${\sf I}$	11	gone through. You remember the discussions on the first
12	take it that time you were already at the management forum,	12	day about where I would put something and then say that
13	were you?	13	that would justify a charge at least, not necessarily a
14	GENERAL MBOMBO: It is so, Chairperson.	14	conviction, of murder?
15	CHAIRPERSON: Did you get any	15	GENERAL MBOMBO: I hear what you say,
16	communication from outside, as it were, apart from your	16	Sir.
17	discussions with Major General Mpembe did you get any	17	MR MPOFU: And as I say, I can't go
18	communications from outside, as it were, about what was	18	through all those things, but essentially it's your
19	happening and what was going to happen and what should	19	personal responsibility or accountability would attach to
20	happen at Marikana in relation to the problem with which	20	you insofar as you from all our discussions clearly foresaw
21	you were confronted?	21	the eventuation of bloodshed and despite that foresight
22	GENERAL MBOMBO: I do not remember, Mr	22	acted in such a way that it would result in the end, which
23	Chairperson.	23	it did. Do you understand that, even if you don't agree
24	MR MPOFU: Okay, well then let's go to a	24	with it?
25	situation which is more direct. Can you go to page 289(c)?	25	GENERAL MBOMBO: I hear what you're
	D 005/0		D 00531
1	Page 22569 GENERAL MBOMBO: I have it.	1	Page 22571 saying, yes, as you say it.
1 2	-	1	saying, yes, as you say it.
	GENERAL MBOMBO: I have it. MR MPOFU: At the bottom, the bottom		saying, yes, as you say it. MR MPOFU: Secondly, I will argue that
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2 3 4	GENERAL MBOMBO: I have it. MR MPOFU: At the bottom, the bottom email says that "The terrible events that have unfolded cannot be described as a labour dispute [we know that].	2 3 4	saying, yes, as you say it. MR MPOFU: Secondly, I will argue that that recommendation should be made in your case because according to the evidence and what you and I have
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## Marikana Commission of Inquiry

1	Page 22572	1	Page 22574
1	exactly because – underline because – of those political	1	GENERAL MBOMBO: I hear what you say,
2	considerations and for that reason you should be guilty, or	2 3	though I do not agree with you, Sir. MR MPOFU: Just to round off that point,
3	charged, correct? GENERAL MBOMBO: I believe that all those		
4		4 5	your evidence was that General Mpembe gave you a full account of what happened on the 13th. Is that correct?
5	things that you have mentioned, those are things we'll discuss with Mr. Samanya	_	
6	discuss with Mr Semenya. MR MPOFU: Yes, I will also say that the	6	
7	MR MPOFU: Yes, I will also say that the recommendation should be made because you acted recklessly,	7 8	Chairperson, yes. MR MPOFU: And that included the fact
8 9	and that's a legal term which simply means that when you	0 9	that the violence of that day was sparked by the teargas
10	appreciate something you act in accordance with that	9 10	from the police, correct?
11	appreciate something you act in accordance with that appreciation or against the appreciation, and the	10	GENERAL MBOMBO: I don't remember him
12	recklessness element will come as follows. I will argue	12	
	that when there was an option of taking action when there	12	saying it exactly as you say it. MR MPOFU: And were you aware of the
13	were fewer number of people when predictable fatalities,	13 14	-
14			controversy or disagreement that happened among the police,
15	even if they occurred, might have been fewer. You took a decision to do the operation when there was the highest	15 16	some of them saying General Mpembe gave the instruction and him saying he had not given the instruction? You remember
16			
17 18	number of people and that situation was caused by the fact that there was this interest in the report-back that Mr	17 18	the Chairperson read it out, it ended up with some threats being made between the General and Lieutenant Colonel
19	Mathunjwa had promised to bring the following day. But	19	Vermaak about him being arrested for intimidation? Were
20	forget the Mr Mathunjwa thing, but you knew that there were	20	you aware of that?
20	quite a large number of people on the koppie at that time.	20	GENERAL MBOMBO: I did not know it at
22	GENERAL MBOMBO: It's correct, I knew.	22	that time, Mr Chairperson, but now that I've seen the
23	MR MPOFU: Then on the side of omissions	23	statements I've become aware of it.
24	I will then say that you knew or ought to have known that	24	MR MPOFU: And I will also be arguing
25	Mr Mathunjwa's peace mission was still ongoing, because	25	that for the reasons I did not canvass this with you fully
			, , , , , , , , , , , , , , , , , , ,
		1	
	Page 22573		Page 22575
1	after all, Mr Mathunjwa in front of you had said he was	1	is because it has been canvassed exhaustively with other
1 2	after all, Mr Mathunjwa in front of you had said he was going to the koppie using his own vehicle, but you did not	1 2	is because it has been canvassed exhaustively with other witnesses, but I did touch on it, namely that your actions
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2 3	after all, Mr Mathunjwa in front of you had said he was going to the koppie using his own vehicle, but you did not care about the fate of that mission which would have prevented the bloodshed and you nevertheless gave the instruction, knowing that it might result in deaths and	2 3	is because it has been canvassed exhaustively with other witnesses, but I did touch on it, namely that your actions and your own collusion with Lonmin, more particularly Mr Mokwena, as evidenced by JJJ192, is clear evidence that, (1), you and him regarded this as a joint operation between
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	Page 22576		Page 22578
1	that toxic collusion is your discussions with Mr Mokwena.	1	CHAIRPERSON: I understood you to put
2	GENERAL MBOMBO: Again here I do not	2	them a few minutes ago in the context of your argument
3	agree with you in totally. I do not agree with you	3	which you will address to this Commission in due course,
4	entirely.	4	that we recommend that this witness be prosecuted on a
5	MR SEMENYA SC: Sorry, Mr Interpreter, is	5	charge of murder and you set out –
		6	MR MPOFU: Yes.
6	it entirely or –		
7	MR MPOFU: Entirely.	7	CHAIRPERSON: - in painstaking, in
8	MR SEMENYA SC: - or at all?	8	conscientious detail the factors upon which you rely.
9	GENERAL MBOMBO: Entirely.	9	MR MPOFU: Yes. Yes, and now,
10	MR MAHLANGU: Entirely, confirmed by the	10	Chairperson, I thought instead of [inaudible] I would get
11	General.	11	the – what I'm trying to do is to deal with the issue of
12	MR MPOFU: Thank you. No, the witness	12	toxic collusion in the most summarised fashion by simply
13	has just assisted. Thank you. "Kwapela." You just said	13	not going through all those –
14	entirely, General, didn't you?	14	CHAIRPERSON: Let's summarise quickly.
15	MR MAHLANGU: That is what the General	15	MR MPOFU: Yes.
16	explains, Sir, that where she says [African language]	16	CHAIRPERSON: Most summarised fashion.
17	"kwapela," not as used before, but this time it means	17	MR MPOFU: Thank you, Chairperson, yes.
18	altogether.	18	The point I'm making, General, is that all these - I won't
19	CHAIRPERSON: Don't agree at all.	19	go through the list again – all these and other pointers
20	GENERAL MBOMBO: I don't agree with you	20	will be used by me in evidence to support as the first
21	at all.	21	direct -
22	MR MPOFU: Well, did you just say to Mr	22	[16:02] CHAIRPERSON: [Microphone off, inaudible]
23	Mahlangu now the word "entirely"?	23	MR MPOFU: - in argument, yes, to support
24	GENERAL MBOMBO: I was saying that	24	as a first direct evidence of the collusion, toxic
25	thinking that "entirely" means altogether.	25	collusion between Lonmin and SAPS. What will you say to
_			5 5
	Page 22577		Page 22579
1	Page 22577 MR MPOFU: Well, okay look, fortunately	1	Page 22579 that?
1 2		1 2	5
	MR MPOFU: Well, okay look, fortunately		that?
2	MR MPOFU: Well, okay look, fortunately I'm a bit tired now; I don't want us to go back to that	2	that? GENERAL MBOMBO: I think Mr Semenya will
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## Marikana Commission of Inquiry

## Arbitration

				Page
A	22566:16,16 22570:2	22529:17 22565:7	22535:1,25 22556:23	22499:22
able 22398:11	22570:3 22571:14	22568:11	22557:1,9	answered 22391:1
22399:25 22427:12	22575:2	ago 22578:2	<b>alter</b> 22464:3	22398:5 22442:8
22464:14 22498:18	active 22447:21	agreed 22395:21	alternatively 22448:9	22462:18 22476:21
22500:8 22509:4	22559:10	22405:20 22408:9	22565:4	22533:15 22559:2
22535:17 22539:19	actively 22571:13	22428:8,23 22429:1	altogether 22404:20,22	22566:14
22549:8 22564:22	acts 22498:12	22431:23 22432:22	22406:16 22504:11	answers 22561:19
absolutely 22499:10	actual 22461:15	22433:3 22434:10,11	22576:18,25	answer's 22539:21
22569:15	22477:13 22481:21	22434:15 22441:6	ambiguous 22444:10	anticipated 22534:10
absolve 22504:2,3	ad 22471:14 22557:21	22450:6 22455:21	ambit 22490:9	22535:2
accept 22389:13	add 22439:14,16	22457:12,15	AMCU 22394:21	anticipating 22534:24
22394:14 22395:9,13	22497:25 22502:24	22458:25 22468:13	22395:2,14,14	anxieties 22519:14
22402:3,8 22403:15	22524:2	22480:8 22483:11	22426:22,25	anybody 22411:12
22404:14 22405:14	added 22490:18	22486:15 22515:15	22431:14 22432:15	22434:11 22443:18
22405:14 22408:11	22502:22 22523:20	22534:10 22543:9	22436:2,7,9,9,12,13	anymore 22465:16
22408:12 22410:24	addition 22460:6	22546:13 22558:20	22436:18 22460:6	22540:12
22411:21 22413:10	22565:18	22573:22	22468:24,25 22469:1	anyway 22392:9
22416:8 22419:10	additional 22547:11,13	agreeing 22441:22	amend 22457:8	22425:6 22431:7,25
22424:17 22440:17	22547:13 22561:13	22458:20 22462:11	amendments 22537:14	22451:14 22468:9,11
22447:18 22449:10	address 22434:2	22462:14,22,25	22537:18,18 22538:8	22493:7 22495:13
22449:22 22464:14	22504:21 22506:17	22466:12 22474:9	22538:19,20,21	22496:4 22505:17
22465:12,14 22466:9	22569:8 22575:23	22476:7	22539:1,3,3 22540:11	22508:21 22509:13
22484:13 22487:4,15	22578:3	agreement 22405:6	ammunition 22539:6	22510:1 22522:23
22497:13 22532:18	addressed 22483:23	22439:15 22456:15	22540:15	22524:11 22551:15
22542:12,13 22552:5	addressing 22422:22	22457:5,18 22458:4	<b>amount</b> 22545:6	22564:21
22552:12 22564:18	<b>adjourn</b> 22579:20	22459:15 22461:4,11	amounted 22470:10	<b>apart</b> 22394:18
22575:8	ADJOURNED	22461:12 22463:1	ample 22423:22	22414:8 22561:10
accepted 22392:11	22579:23	22465:8 22548:23	22506:6	22568:16
22395:11 22426:14	adjournment 22434:22	agrees 22429:9	amplified 22438:5	apartheid 22503:13
22461:5 22515:8	22454:3 22455:13,18	22563:10	22527:23	22508:22 22509:7,20
accepts 22398:1	22511:17 22554:25	airport 22546:23,23	amusing 22458:2	22510:4 22512:1
22495:12 22534:18	22555:2	align 22470:13	ANC 22408:6	apologise 22494:23
account 22401:15,17	ADJOURNS 22427:25	aligned 22481:22	and/or 22514:10	apparently 22444:15
22401:22 22402:2,16	22455:16 22511:19 22555:4	aligning 22482:1	anger 22437:16 22524:13,23	22505:4 22550:16,16 appeal 22400:23
22408:10 22410:2,15	admissions 22571:22	<b>alignment</b> 22481:11,17 22481:24 22577:4,4	22524.15,25 22525:11 22526:1	22408:4,25 22419:24
22410:19,20,21	admit 22508:7	alive 22573:25	22540:19 22543:6	22408.4,25 22419.24 22422:14
22412:25 22441:13	admitted 22523:16	allay 22447:17	angered 22438:19	appear 22461:13
22443:5 22560:18	Adv 22456:17	allegation 22436:19	22469:7 22528:2,12	22479:1
22571:23 22574:5	22461:18 22504:24	22448:19	22531:14 22532:12	appears 22459:2
accountability	22509:4 22579:9	allegations 22494:18	angers 22526:3	22461:3,22 22526:24
22570:19 accurate 22460:2,19	advance 22426:10	22494:19 22495:7	22527:15 22528:22	22528:20 22570:8
22531:19	advantage 22404:12	22513:4	22534:4	<b>Appellate</b> 22508:21
accurately 22461:24	22499:3,9,12	alleged 22437:25	angle 22559:24	application 22423:11
22526:9	advent 22554:6	22500:16	angry 22524:17	22423:18 22424:13
accuse 22543:1	advice 22389:14	allegedly 22396:13	22525:18 22530:17	22424:13,15,18,25
accused 22426:19,20	22392:24 22440:11	22490:2 22513:16	Annandale 22546:25	22499:20 22500:14
22505:13 22557:11	22440:15	alleging 22436:6	22547:1,15,21	22509:10 22511:13
22570:8	advise 22392:13	allow 22405:23	22548:22	applied 22502:3
act 22399:25 22401:20	22462:20 22463:9	22426:14 22429:17	answer 22389:4	applies 22391:23
22401:23 22410:16	advised 22392:9	22432:3 22439:15	22392:13,20	22501:19 22504:6,10
22438:3 22514:14	advisedly 22548:2	22507:12 22534:1	22393:14 22398:14	22510:4
22534:5 22563:11,25	advising 22392:3	22551:14,16 22560:4	22406:23 22419:23	apply 22392:17,24
22566:3,13 22567:4	Advocate 22433:18	22560:25 22562:11	22419:25,25 22420:3	22423:2,10
22567:11,14,24	Affairs 22482:25	22564:3	22420:6,12,18	apportioning 22411:11
22568:5 22569:18	affect 22567:14	allowed 22395:8	22442:12,12	appreciate 22477:14
22572:10	affidavit 22479:19	22426:2 22540:12,14	22446:23 22447:4	22532:20 22572:10
acted 22536:19	22550:5,19	22540:15	22476:18,18	appreciation 22511:12
22537:19 22546:15	affidavits 22478:19,23	allude 22421:6 22448:2	22490:20 22492:19	22532:21 22572:11
22570:22 22572:8	affliction 22517:20	alluded 22557:11	22495:10 22496:21	22572:11
acting 22410:22,22	afraid 22484:8	alright 22393:12	22506:15 22523:11	approach 22517:16
action 22441:2 22569:8	22498:22 22543:23 22562:13	22396:25 22401:15 22402:21 22425:6	22528:18 22534:16 22536:13 22540:5	<b>appropriate</b> 22425:16 22425:22 22426:4
22569:9 22572:13	African 22576:16	22402:21 22423:0	22542:24,25	22425:22 22426:4 22437:14 22438:22
actions 22453:4,4	<b>afternoon</b> 22413:19	22463:24 22493:16	22542.24,25 22548:10 22557:2	22437.14 22438.22
22495:8 22537:2	22455:23 22480:20	22526:23 22534:15	answerable 22499:16	22490:25 22490:15
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## Marikana Commission of Inquiry

#### Arbitration

				Page 2
22495:1,5 22496:13	22515:25 22516:2	22519:1 22549:8	22487:14 22526:21	blood 22530:25
22498:11 22506:14	22517:15 22523:17	22567:22	22527:4 22531:7	22531:10,17,22
22506:21 22528:5	22524:18 22574:19	assumed 22458:25	22555:14 22577:2	22532:8,13,14
appropriately 22394:8	arresting 22431:18	assuming 22423:15	background 22491:19	22533:7,9,23 22534:6
approved 22451:19	22437:17 22528:10	22508:18,23	<b>bad</b> 22499:12 22501:15	22534:13,17,17
22482:6	22529:3 22530:8	assumption 22425:3	22502:8 22503:13	22535:8
area 22403:9 22405:19	22535:5	22426:16 22554:9	22504:15 22542:21	<b>bloodier</b> 22571:7
22436:10 22475:12	arrests 22433:19	assure 22487:5	22542:22 22550:7	bloodshed 22532:15,20
areas 22475:1	22468:20 22490:24	assured 22483:24	22577:14	22532:22 22533:2
<b>arena</b> 22404:12 <b>aren't</b> 22521:10	22491:5,7,19 22528:25	assures 22484:12 attach 22570:19	<b>bag</b> 22537:6 <b>bail</b> 22499:20 22500:14	22534:25 22536:3 22540:21 22541:3,7,7
argue 22411:9,10,16,16	arrival 22557:5	attempt 22448:15	22503:23	22541:22 22543:8,19
22426:9 22428:14	arrived 22429:1	22476:5	<b>balance</b> 22473:14	22544:1,7,8,9,12,17
22420.9 22420.14	articulate 22422:12	attend 22455:19	22474:13	22544:21,22,22,22,23
22465:4 22474:20	22481:12	attended 22519:9	bar 22476:19	22545:6,8,9,10,13,15
22493:10 22504:2	aside 22406:7 22471:17	attending 22548:21	base 22571:11	22545:20,22 22546:2
22506:6,7 22513:2	22516:7 22566:13	attention 22433:19	based 22398:21	22546:5,11,14,18
22515:21 22519:7	asked 22390:25	22444:13,18	22468:14 22552:6	22556:1 22570:21
22522:19 22533:20	22399:3 22400:4	22452:23 22456:17	basic 22495:13	22571:15,16 22573:4
22533:21 22538:12	22414:9 22416:6	22459:10 22472:7	basically 22412:8	22573:18
22539:23 22552:17	22420:8 22422:2	22480:3 22561:15	<b>basis</b> 22464:10	bloody 22571:5
22553:2 22557:19	22424:8 22425:25	attitude 22433:6,10	22501:11 22507:10	bluffing 22567:4
22571:2 22572:12	22439:17 22442:1	22434:6 22436:11	22508:19 22510:6	bodies 22491:24
22573:11 22575:20	22444:20 22445:2,13	22438:20 22498:10	22514:4 22540:1	22492:2 22494:7,8,25
argued 22482:18	22447:22 22448:11	22526:12 22528:3	22550:23 22553:15	22549:21 22550:7
22504:8	22460:7 22477:4,22	attorneys 22459:22	22553:24	22552:11
arguing 22468:6	22478:23 22494:20	attributed 22402:1	<b>BBB4</b> 22562:14,16	book 22520:11,25
22510:11 22574:24	22515:16 22522:7	audible 22444:16	bear 22396:10	22538:20
argument 22421:4	22532:21 22533:15	audio 22430:22	22416:14 22560:12	<b>boost</b> 22486:11
22465:13 22466:15 22505:20 22540:2,4	22542:23 22547:7 22553:25 22554:8,13	22459:22 22461:15 22461:22 22462:1	<b>bears</b> 22431:19 <b>beg</b> 22537:13 22538:7	<b>boosting</b> 22486:16 22488:11
22575:22 22578:2,23	22556:24 22559:2	22466:6 22468:22	22539:10	<b>borne</b> 22442:20
argumentative	22560:24 22562:15	August 22455:23	beginning 22434:5	<b>bottom</b> 22430:16
22416:19 22533:14	22562:19	22459:24	22471:13	22431:1 22467:16
arises 22457:10	asking 22389:15	authorities 22516:20	behalf 22505:18	22471:7 22472:25
aristocratic 22467:1,7	22395:12 22397:3	authority 22500:23,25	22579:9	22569:2,2
arms 22531:4,6	22404:13 22419:22	22501:5 22504:9	<b>behave</b> 22506:4	brackets 22456:15
arrange 22497:14	22430:8 22445:7	22516:24	22530:5	22457:7,8 22458:10
22519:9	22447:5 22450:18	available 22514:12	<b>belief</b> 22420:24	22458:12
arrangement 22477:9	22453:25 22462:17	avoid 22393:9 22456:8	<b>believe</b> 22420:20	branch 22512:5,5
arrangements	22479:3,16 22498:10	22471:17 22504:14	22428:3 22432:17	break 22427:10,23
22496:13	22502:6 22504:12	22541:3 22545:15	22433:14 22464:8	22428:6 22442:13,17
arranging 22499:22	22505:23 22506:8	22546:11,17	22495:16 22521:22	22459:5,7 22546:22
arrest 22428:19,20,20	22508:17 22509:17	avoidance 22546:4,14	22572:4	22555:11
22428:21 22431:3,5	22514:17,18 22530:2	avoiding 22573:17	<b>believer</b> 22409:21	breath 22402:15
22433:14,25 22434:1	22530:2 22547:11,14	avoids 22502:14	<b>benefit</b> 22462:19	brief 22563:13,24
22434:3,10 22435:8,9 22435:9 22438:22	22554:12,22 <b>asks</b> 22449:8	await 22390:12 aware 22414:10,11,14	<b>best</b> 22476:25 <b>better</b> 22425:10	briefed 22565:19 briefly 22422:4
22435:9 22438:22 22440:3 22468:21	asks 22449:8 aspect 22428:10	<b>aware</b> 22414:10,11,14 22416:7 22433:3	22439:4 22492:14	<b>Brigadier</b> 22484:1
22469:9 22472:18	assaulted 22513:4,17	22410:7 22455:5	22542:22 22577:13	22499:17,21
22409.9 22472.10	assembled 22485:25	22512:25 22513:3,16	big 22421:5 22450:7	22503:22 22523:22
22527:17 22528:5,9	assist 22433:15	22552:21,21	22454:12 22531:25	22503.22 22523.22
22529:8,23 22530:19	22511:13 22516:2	22574:13,20,23	bigger 22565:15,22	22549:17 22552:10
22534:5	22518:24 22564:24		biggish 22388:14	22552:20
arrested 22429:5,8	assistance 22403:25	B	bis 22455:21 22456:8	bring 22398:2
22431:21,22 22432:6	22404:7 22514:12,12	<b>b</b> 22564:13 22571:16	22459:13,13 22462:8	22406:12 22409:21
22432:9,10,16	22518:2 22547:7	back 22389:6,13,18	Bishop 22573:12	22424:13 22442:10
22433:4,8,24	assisted 22433:16	22396:25 22397:2	<b>bit</b> 22388:15 22411:11	22452:22 22475:11
22434:11 22435:5,7	22514:6,20 22571:6	22399:17 22400:21	22429:16 22431:10	22479:17 22492:25
22435:16,20	22576:13	22400:21 22422:2,3,3	22444:10 22492:25	22518:23 22572:19
22436:23 22437:5,7	assisting 22436:7,9,13	22423:5 22424:11	22496:16 22499:7	bringing 22405:25
22437:10,13,22	assists 22532:10	22428:11 22439:1	22527:1 22542:23	broad 22477:12
22481:10 22489:2,17	associated 22529:5,8	22446:25 22455:19	22550:2 22566:11	brought 22396:10
22490:7,12,13,14	22529:13	22467:16 22468:17	22577:2 <b>B</b> :	22404:3,5 22406:4,9
22491:12 22496:6	assume 22412:20	22475:1,11 22476:6	<b>Bizarre</b> 22495:19	22416:14 22519:3
22497:3,17 22514:10	22446:4,5 22501:13	22479:17 22480:5	blame 22411:11	22573:15
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**RealTime Transcriptions** 

				Page
Budlender 22410:18	carefully 22402:25	22563:12 22569:6	cluster 22454:14,15	<b>comment</b> 22393:24
22442:1,12 22550:1,2	22459:22 22460:6	characterised 22569:6	colleague 22501:7,10	22394:5,6 22398:19
22550:4,11,14	22538:25	charge 22401:10	22504:24 22510:17	22449:6 22457:17,19
22551:4,8,11,18	carried 22462:18	22407:1 22409:16	22510:19	22458:6 22473:9
22553:8,12,14	<b>carries</b> 22475:9	22490:17 22497:25	colleagues 22488:14	22515:22 22544:2,23
22554:1,7,8,13	carry 22392:9	22519:15 22520:9	22494:4 22499:24	22545:13 22556:1
22559:2,13 22560:1	22393:10 22394:1	22521:18,19	22510:7 22529:16	22565:8
22579:7 Boollander 202550.4	22439:18 22464:15	22523:20 22524:2	collective 22473:18,19	commented 22544:3,4
Budlender's 22559:4	22493:1 22518:7,17	22548:11 22549:2	22474:2,2	comments 22393:11,16
<b>building</b> 22449:11 <b>built</b> 22515:8,17	<b>carrying</b> 22402:20 <b>case</b> 22406:1 22423:15	22553:2 22570:6,13 22578:5	<b>collectively</b> 22435:19 22481:8	22393:17 22394:8 22395:8 22456:12
bullets 22540:12	22459:2 22463:11	charged 22490:5	colluding 22394:21	22595.8 22450.12 22509:14
busy 22414:5,11	22468:4,16 22480:18	22497:8,18 22499:23	22395:14 22426:21	commission 22388:4
22452:12 22453:22	22488:2 22492:18	22500:5 22523:14,16	22426:25	22393:14 22396:20
22503:6 22506:8	22501:20 22504:7,25	22571:22 22572:3	<b>collusion</b> 22425:11,14	22420:4,20 22421:23
22529:19 22546:24	22505:2,9,12,13	charges 22523:17,18	22425:15,18 22426:7	22422:22 22423:17
butcher 22492:6	22509:3,10 22510:24	charging 22505:14	22426:19 22470:2,10	22424:2 22425:18
butchered 22492:4	22511:1 22520:8	check 22490:3	22575:3,21 22576:1	22427:11,25,25
	22521:2 22534:23	checked 22436:4	22578:12,24,25	22428:1 22451:24
С	22553:6 22571:3	<b>chief</b> 22437:20 22448:9	<b>Colonel</b> 22574:18	22452:19 22453:8
cabinet 22561:12,21	cases 22465:5	22448:13	combination 22575:24	22455:16,16,17
22562:3,4,7 22563:13	category 22424:20	Chinese 22464:8	22575:24	22467:5 22490:21
22563:19,23	caught 22498:23	chit-chat 22413:2	<b>come</b> 22389:6,18	22506:22 22511:13
Calitz 22475:22,25	causally 22404:16	choice 22518:20	22396:25 22397:2	22511:19,19,20
22476:3 22484:1	cause 22405:24	22545:14	22399:17 22400:20	22526:19 22555:4,4,5
22547:10	22425:20 22467:10	chose 22541:20,20,22	22400:21 22401:8	22570:5 22578:3
call 22389:5 22412:2,14	22497:23,24	22545:12 22555:15	22403:10 22405:23	22579:10,13,23
22413:3,3 22415:23	22545:13	22555:22 22556:10	22406:8,14,25	Commissioners
22421:11 22423:16	caused 22407:15	circles 22411:11,12	22407:7,14,22	22447:19
22427:5 22474:25	22409:9 22572:17	22421:3	22409:15 22422:3	Commissioner's
22479:14 22496:6	causes 22401:18 cell 22388:3 22429:25	circular 22390:14,15 circulated 22457:15	22424:5,5 22425:20	22482:8 commissions 22426:16
22513:13 22531:16 22540:14 22545:8	22430:3,5,7	22460:4	22425:24 22428:17 22436:11 22439:1	<b>Commission's</b> 22394:6
22547:4,4,13,14	cells 22488:25	circumstances	22430.11 22439.1	commit 22501:1
22549:5,6,11	22496:10 22517:6	22425:22 22446:25	22444.11 22447.23	22510:15
22565:14	22518:8,9,11,12,15	22448:7 22465:1	22461:10 22462:22	committee 22400:23
called 22416:10	22519:4 22520:1,8,24	22486:8 22492:7	22463:10 22467:16	22408:5,25 22419:24
22417:10 22418:23	22521:19	22501:12,24	22468:16 22478:22	22422:15
22424:20 22440:19	certain 22456:11	clarified 22398:15	22479:10 22518:10	<b>common</b> 22425:20
22451:7,13,14	22457:21 22460:7	clarify 22394:14	22518:14 22531:7	communicate 22388:21
22453:17 22470:1	22465:1,5 22467:11	22497:20	22535:4 22541:16,17	22388:23 22389:16
22501:17 22547:1,3	22468:13 22479:1	<b>clarity</b> 22436:20	22557:20 22560:2	22391:6 22525:24
calling 22400:8	22506:18 22556:2	22442:2	22564:20 22567:1	communicated
calls 22408:23 22441:5	22558:7,11 22570:5	cleaning 22454:14	22572:12	22395:20 22396:11
canvass 22468:16	certainly 22451:18	clear 22399:23 22424:1	comes 22418:10	22396:12,13,14
22561:6 22574:25	22464:10 22490:4	22433:21,24 22436:3	22422:3 22423:10	22438:20 22519:16
canvassed 22423:19	22500:24 22501:23	22446:15 22469:13	22424:11 22449:8	22525:25 22528:3
22570:8 22575:1,17	22504:8 22554:24	22470:4 22472:17,20	22520:16 22564:15	communication
<b>can't</b> 22393:3 22425:10	<b>certificate</b> 22459:20	22475:16 22513:12	22566:25 comfort 22427:10,22	22568:11,16 communications
22426:10 22431:25 22436:11 22467:2	<b>chain</b> 22534:12,20 22541:21 22543:7,8	22538:6,24 22539:2 22545:3 22559:10	22442:13,17	22528:7 22568:18
22492:17 22499:9	chairing 22548:22	22575:4 22575:4	coming 22404:12	company 22419:5
22501:23 22521:13	22549:1	clearly 22403:23	22422:2 22423:21,21	22440:13,21 22526:2
22521:13 22531:2	<b>Chairman</b> 22425:13	22423:9 22432:1	22427:8 22446:25	compare 22459:25
22551:7 22554:20	22476:14 22542:5,10	22436:10,15 22458:9	22455:19 22550:15	compared 22459:12,13
22564:20 22570:17	Chairperson's	22466:12 22475:3	22564:21	comparing 22459:9
capable 22461:6	22503:15	22495:15 22503:9	<b>commander</b> 22442:21	compassion 22514:4
capacity 22514:22	chamber 22430:4,8	22538:5 22561:5	22442:22 22519:15	compelled 22514:3
22515:3	22549:14	22570:20	22521:19	compilation 22482:7
Cape 22563:2	chance 22459:6	clients 22492:21	commanders 22425:25	complain 22520:2
capture 22459:16	22379.14	22500:17,22	22441:23 22442:6,21	complaint 22526:25
captured 22461:24	change 22471:24	22505:25 22506:5,12	<b>commence</b> 22440:4	completely 22404:24
care 22573:3	22520:9 22539:19	Cliffe 22459:21	commendable	22471:18 22543:24
career 22548:14	changed 22555:11	clinic 22519:3	22445:10	22577:21
0 100110 00	changes 22460:7	clip 22459:22 22461:15	commendably	compliance 22444:15
careful 22449:20		-	-	
careful 22449:20 22471:19,23	-characterisation	close 22419:5	22444:19	complications

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**RealTime Transcriptions** 

## Marikana Commission of Inquiry

#### Arbitration

22466:20 22467:5 compromise 22463:12         conscientious 22578:8 consente 122463:8         22433:6 22439:20 22433:6 22433:6 22433:6 8         22433:6 22439:20 22433:6 22436:8         22433:6 22439:20 2243:12 22436:8         22433:6 22439:20 2243:12 2246:1 22436:8         22423:14 2256:22           compromise 22466:1         consequence 22580:18         22447:12 22446:1         22466:1 22467:19 22467:19 22467:19 22467:19 22461:1 22477:18         22433:6 22439:20         22439:22 22467:1 22449:12 22467:19 22467:19 22449:12 22477:18         22449:14         22430:12 22467:1 22462:9 22597:3           22449:5 22557:13,20         consider 22408:11 conceide 12240:12         consider 22480:1 22487:1 22467:1 22487:1         22462:9 22351:10         22469:1 22469:12 22469:1 2259:11           conceide 12542:20         consider atlos 22398:3         conversations 2249:4         conversations 2249:4         convers 2397:15 2239:11         22468:1 22469:12           conceide 22542:20         consider atlos 22398:3         conversations 2249:4         convered 2239:11         court convers 239:11         22448:12 2240:12           conceide 22542:20         consider 22408:12         conviction 2250:5         conviction 2250:5         court convers 239:11         22449:220:12         22449:12           conceide 22542:20         consider 22408:12         conviction 2250:5         court convers 239:11         court convers 239:11         court convers 239:11         court convers 239:11         couv					Page
comprovise 22486:1         consert 22465:8         22443:22 22441:21         22435:22 2246:2         22443:32 22446:2         D           comprovise 2246:1         consequence 22381:1         22445:12 22461:1         22245:12 2245:12         22461:12 2245:22         22461:12 2245:22         22441:12 2245:22         22461:12 2245:22         22461:12 2245:22         22461:12 2245:22         22461:12 2245:22         22461:12 2245:22         22461:12 22461:12         22461:12 22461:12         22461:12 22461:12         22461:12 22461:12         22461:12 22461:12         22461:12 22461:12         22461:12 22461:12         22461:12 22461:12         22461:12 22461:12         22461:12 22461:12         22461:12 22461:12         22461:12 22461:12         22461:12 22461:12         22461:12 22461:12         22	22466:20 22467:5	conscientious 22578:8	22433:6 22439:20	22431:17 22432:4	22422:14 22562:25
compromise 22463:17         conserted 22443:12         22445:122446:12         224473:122464:22         D           concred 22446:13         223473:132464:22         22346:19 224671:19         D 22439:22 22440:1           concred 22446:11         223897:18 22333:3         224473:12 22457:12         2251:14 22540:4         danardie 22494:10           concred 22446:11         223897:18 22333:3         224473:12 22457:12         22351:14 22570:4         danardie 22494:10           concred 22446:12         consideration 22406:12         22478:7 22479:13         2246:9:22309:14         danardie 22494:10           concred 22495:10         consideration 22406:10         consideration 2240:10         conversions 2240:10         conversions 2240:10           concred 22451:20         consideration 2240:10         conversions 2240:11         conversions 2240:11         conversions 2240:11         conversions 2240:12         conversions 2					
comrade 22496:8         consequence 2230:18         22447:913 22448:2         2246:19 22407:10         22447:913 22449:2           concecide 22448:15         consequences 2238:25         22449:25 2245:15         2255:11 2255:11         Consecide 2248:16         22547:16 22547:16         Control 2247:224         Control 2247:2255:12         Control 2247:224         Control 2247:2249:2240:11         Control 2247:2249:2240:12         Control 2247:2255:12         Control 2247:2249:2240:12         Control 2247:2239:22240:11         Control 2247:2239:22240:12         Control 2247:2239:2239:2239:12         Control 2247:2239:12         Control 2247:2239:12         Control 2247:12         Control 2247:12 <t< td=""><td></td><td>consented 22434:12</td><td>,</td><td></td><td>D</td></t<>		consented 22434:12	,		D
224979 22500:5,6         225346.20 225438         22448:15 22491:14         225011-22540:4         daardie 22496:10           22488:18 22453:5         conseider 22498:10         2253191.22540:4         daardie 22490:10           22499:11         conseider 2449:11         22467:14 22477:18         225319:12250:12         daardie 22490:10           22499:11         conseider 2429:11         22476:17.024         22511:5         22511:5         22449:12           22539:11         consider 2429:11         consider 2429:11         conseider 2429:11         conseider 2429:11           concerde 2240:22         consider 2409:13         conseider 22519:15         conseider 22519:12         conseider 22519:12         conseider 22519:12         conseider 22519:12         conseider 22519:12         conseider 22519:12         conseider 22519:				,	<b>D</b> 22439:22 22440:7
concecid 22448:15         consequences 22388:25         2249:25 22451:15         22537:14 22540:4         Dai's 2249:20           22484:18 22453:5         consider 2243:11         22467:14 22477:18         courted 2247:237:8:3         Dai's 2249:20           22489:2557:13.20         22493:11 22496:12         22478:7 22470:13         22469:20         dangerous 22489:17           concender 2249:110         consideration 22400:10         22475:7 1257:19         courtes 2239:7         datardity 2259:12           concender 2259:110         consideration 22400:10         conversations 22449:4         courtes 2246:15         22484:17           concentrate 2259:124         2240:12 3240:11         22471:10         22500:12 3229:11         day 2240:13 5240:10           concentrate 2259:14         convers 2239:11         cover 2239:11         cover 2239:11         2241:13 2244:13         22447:13 2244:13         22447:10         2249:13<2244:13			-		
concended 22446:11         22389:71.8 2253:39         22451:12 22452:22         22578:31         Diffs 22492:20           2248:81 2243:55         consider 2443:11         22467:14 22477:18         22467:14 22477:18         22467:14 22477:18         22469:22 290:24         22490:24 2249:23           2249:51 2259:11         consideration 22409:11         22478:71 22470:13         22571:51 22:551:22         data crat/statistic           conceder 2239:11:0         consideration 22309:32         contris 2240:21         22399:14         22444:11           conceder 2259:12:0         consideration 22309:33         contris 2240:21         22444:13         22449:13         22444:13         22449:22240:15           concert 2240:22         22441:13         convert 2249:14         convert 2239:14         22445:12         2244:13         2244:13         2244:13         2244:12         22490:12         2244:12         2249:14         2249:14         2249:14         2244:12         2249:14         2244:12         2249:12         2245:15         2244:12         2249:14         2244:12         2249:12         2244:12         2249:12         2244:12         2249:12         2244:12         2249:12         2244:12         2249:12         2244:12         2249:12         2244:12         2249:12         2244:12         2249:12         2244:12 <td>,</td> <td></td> <td></td> <td></td> <td></td>	,				
22448:18 22453:15         consider 2243:11         22467:14 22477:18         control 2243:224         dangerous 22489:11           22469:12247:12         22477:12247:13         22469:12243:12         22481:122249:12           22495:12255:11         consideration 22491:12         22478:12249:11         22530:122393:7         datacrdi 22569:12           22530:122543:10         conversations 22489:11         conversations 22489:11         conversations 2249:11         22590:12230:11         datacrdi 2248:12           concervable 2259:24         conversations 2249:11         conversations 2249:11         conversations 2249:11         conversations 2249:11         2241:12:241:241:241:241:241:241:241:241:		-			
22557:13.20         22493:11 22496:12         22478:7 22479:13         22429:2290:24         22490:4 2249:13           22493:12 2259:11         consideration 22404:10         22575:19         count's 2249:62:15         22444:12           2253:19 22543:10         consideration 22398:3         22479:11         count's 2249:62:15         22444:11           2254:22 2259:24         consideration 22398:3         22477:10         2253:66         22397:15         22399:14         2244:33         2247:12           concervine 2259:24         consideration 2249:14         convertain 2250:16:1         count's 224:220:16:7,12         count's 224:11         count's 224:11         count's 224:12					
concenter 22447:5         considerable 2250:8         224407:10.24         22511:5         22511:5         concerts 22393:7         distardiy 22569:5           concede 22531:10         22409:5         22409:7         22495:12         2249:11         2249:11         2249:11         2249:11         2249:11         2249:11         2249:11         2249:11         2249:11         2249:12         2249:11         2249:12         2249:11         2249:12 <t< td=""><td></td><td></td><td></td><td></td><td>8</td></t<>					8
22449-5 22559:11         consideration 22404:10         22575:19         conretous 22393:7         conretous 22393:7         conretous 22393:7         conretous 22393:7         conretous 22393:7         conretous 22393:10         22409:2 2240:11         conretous 22393:7         conretous 22393:11         22403:2 2240:12         conretous 22393:11         conretous 22393:11         conretous 22393:14         conretous 22493:12         22403:2 2241:13         conretous 22491:12         conretous 22393:14         conretous 22393:14         conretous 2240:13         conretous 22393:14         conretous 22493:12         conretous 2249:14         conretous 2240:12         conretous 22391:14         conretous 22461:12         <	-				
concede 22391:10         22405:9 22408:15         conversations 22494;         convers 22426:15         2248:11           2253:10 2253:10         22399:2 22402:1,16         convery 2241:20         convert 2240:15         2247:10 2250:11         day 2240:3 2240:13           concerviable 2255:24         2240:17 22408:13         2247:10 2250:69         22397:15 22397:18         2241:3 22422:14           concerviable 2255:24         2244:13 2242:14         conveyed 2251:15         2241:74         2245:10 2245:11           concerviable 2255:29         2257:12 3 2257:22         conviction 2251:1-5         2241:74 2242:83         2244:12 2240:12           concerviable 2260:12         2251:1-3         convictions 2250:25         2245:27 2259:1-4         2245:10 2245:11           concerned 2400:73         2250:10         constint 2240:12         2245:15 21 2240:12         2256:10         2256:11         2256:11         2256:11         2256:12         2256:12         2256:12         2256:12         2256:12         2256:12         2256:12         2256:12         2256:12         2256:13         2244:12         2240:12         2245:12         2240:12         2256:12         226:12         2256:13         2256:12         226:12         2256:12         226:12         2256:12         226:12         2256:12         226:12         225:12 <td></td> <td></td> <td></td> <td></td> <td></td>					
22533:19         considerations 22398:3         22479:11         cover 22300:25 2250:11         day 22401:3 22400:           2000:25 2250:11         22500:25 2250:12         cover 22307:15 22395:11         22410:3 22410:3 22410:           concerivable 2559:24         22441:13 22442:19         converted 2250:16,7,12         cover 22397:15 22397:18         22447:12 2245:18           concerivable 2559:24         22441:13 22442:19         convicted 2250:16,7,12         cover 22397:19         22445:19,20           concerivable 2250:27         convicted 2250:16         22417:12 2245:8         22445:19,20         22445:19,20           concerivable 22407:2         considera 22407:23         convicted 2250:12         2245:12,2245:12         22445:19,20         22445:19,20           22407:12 22409:12         22465:12 2245:63         convoluted 2256:12         2245:12,2245:12         2245:12,2245:12         2245:12         2245:12         2245:12         2255:12         2255:12         2255:12         2255:12         2255:12         2255:12         2255:12         2255:12         2255:12         2255:12         2256:12         2256:12         2256:12         2256:12         2256:12         2256:12         2256:12         2256:12         2256:12         2256:12         2256:12         2256:12         2256:12         2256:12         2256:12					
concedd 2254:2:0         22392:22402:116         cover 22491:12         2240:023 2241:12           2244:18 2245:7         2240:17 2240:81:3         22477:10 2250:9         22397:15 22399:18         2243:32 2247:10           concentrale 22405:4         2241:13 2242:19         convered 22519:15         22394:19 22397:4         22445:19,20           concent 2251:2         convietion 22511:5         22477:10 2250:66:12         22397:14         22439:12 02495:1         22445:12 2240:10           concert 2230:7         considered 22407:73         22570:14         22396:22 2440:1         22485:12 22485:1         22496:10 22485:1           22412:1 22409:19         2240:12 2244:15         22445:15 21 2240:1         convietion 22403:2         22495:12 2249:12         22495:12 2249:16         22499:12 2490:1         22495:12 2249:12         22495:12 2249:12         22495:12 2259:14         2255:3 2256:4         2255:12 2259:14         2255:12 2259:14         2255:12 2259:14         2255:12 2259:12         2256:12 2259:12         2256:12 2259:12         2256:12 2259:12         2256:12 2259:12         2256:12 2259:12         2256:12 2259:12         2249:12 2249:12         2259:22         2259:22         2259:24         2259:24         2259:24         2259:24         2256:12         2249:12         2256:12         2256:12         2249:12         2256:12         2249:12         225					day 22401:3 22410:17
22543:18,18 225457:         224047:17 22408:13         22477:10 2250:69         22397:15 22399:18         2243:3 2242:14           concervatie 22405:3         2241:8 2248:14         convered 2251:5         2244:23 2250:13:15         2243:13 2244:19           concervatie 22405:3         22570:14         22570:14         2239:19 22397:4         2245:18 2246:17           concervatie 22407:3         22570:14         22490:12 2240:3         22490:12 2240:1         22495:12 2240:1           22407:12 22400:3         2256:13         convoluted 2250:15:1         22497:12 2250:14         22495:12 22490:1         22495:12 22490:1         22490:12 22492:12 22490:1         22490:12 22492:12 22490:1         22490:12 22492:12 2250:1         22490:12 2250:1         22490:12 2250:1         22495:12 2240:1         22550:18         22570:12         22560:1         22560:1         22560:1         22560:1         22560:12         22570:12         22560:1         22560:1         22560:12         22570:12         2260:12         22570:12	conceded 22542:20	22399:2 22402:1,16	<b>convey</b> 22441:20	cover 22395:11	22410:23 22411:10
concentrate 22405:4         22441:13 22442:19         convicted 2250:67,12         covered 22389:14         22445:12 2250:14         2245:12           concept 2251:29         22570:12 2250:12         22570:12 22570:2         22470:12 22470:12         22450:18 22451:12         22450:18 22452:8         22452:8 224579:2           concept 2251:29         22570:14         22390:12 22490:1         22490:12 22490:1         22490:12 22490:1         22490:12 22490:1         22490:12 22490:1         22490:12 22490:1         22490:12 22490:1         22490:12 22490:1         22490:12 22490:1         22490:12 22550:3         22556:3 2250:1         2256:1 22482:1         22490:1         2256:1 22482:1         22490:1         2240:1 2492:1         2240:1 2492:1         2240:1 2492:1         2240:1 2492:1         2240:1 2492:1         2240:1 2492:1         2240:1 2280:1         2256:1 2292:1	22543:18,18 22545:7	22404:17 22408:13		22397:15 22399:18	22413:3 22427:1
2247:12 2250:14         22304:19 22307:4         22450:10 22451:2           concerpt 2251:9         22571:23 22572:2         conviction 2251:5         2247:12 2245:2         22450:10 2245:2           22407:17 22409:19         22408:12 2240:3         22451:2 2245:5:1         22455:2,7 22481:6         22490:1 22492:1           22407:17 22409:19         22432:15 22440:8         convictions 2250:25         22455:2,7 2253:7,223         22490:1 22492:1         22490:1 22492:6         corverup 22424:22256:12         22556:3 2255:7,223         22493:1 22492:1         22455:1,2 122426:1         corverup 22424:2255:13         22579:10 2257:9         22455:1,2 12250:11         22555:1 2255:9,14         22577:19 2257:49         dass 2240:7         22509:24         22509:24         22579:12         2255:59:14         22509:24         22509:24         22579:12         2255:59:18         22509:12         22508:51:12 2557:91         dass 22407:4         22579:12         22509:257:91         22493:18 2250:13         correction 22525:16         criticise 2250:10         2241:5 2250:12         22498:13         22491:16 2247:24         22493:16 2247:24         22493:18 2250:12         22493:18 2250:12         22493:18 2250:12         22436:12 2251:14         22436:12 2253:12         22436:12 22426:12         22436:12 22426:12         22436:12 22436:12         22436:12 22426:12         22436:12 22426:12         22436:12 2256:12	-	22421:8 22428:14	conveyed 22519:15	22454:23 22503:15	22439:22 22440:7
concerp 22512:9         22571:23 22572:2         conviction 22511:5         22417:4 2245:8         22452:8 22445:1           22407:17 22409:8         22439:6 2245:27         22439:6 2245:27         22439:6 2245:27           22407:17 22409:8         22432:18 2242:14         conviction 2250:5         22445:27,7 22481:6         22490:01 22492:3           22407:12 22407:3         22439:12 2240:8         conviction 2250:5         2245:27,7 22481:6         22490:1 22492:3           22492:1 2249:16         constitutional         22439:12 2240:1         core-up 2244:2         2256:7 2250:1           22492:1 22551:12         consulted 2250:7         correctio 22397:1         correctio 2239:1         correctio 2239:1         correctio 2239:1         correctio 2250:7	concentrate 22405:4	22441:13 22442:19	<b>convicted</b> 22501:6,7,12	covered 22389:14	22445:19,20
concert 22512:9         22571:23 22572:2         conviction 22511:5         2247:74 2245:8         22452:8 2245:4           22407:17 22409:8         22483:18 2242:14         conviction 2250:5         22445:2.7 72481:6         22490:12 22492:23           22407:17 22409:8         22432:15 2240:3         conviction 2250:5         22445:2.7 72481:6         22490:12 2255:7           22446:7 22407:3         c22407:3         c22493:12 2240:2         22556:12         22556:71         22565:7         22565:7         22565:7         22565:7         22565:7         22570:14         22570:14         22570:14         22570:12         22555:7         22565:7         22570:12	22427:12 22509:14	22560:18 22561:5	22511:4	22394:19 22397:4	· · · · · · · · · · · · · · · · · · ·
concern 22397:9         considered 22407:23         22570:14         22439:6 22439:24         22439:6 22439:21         22448:12 22489:21           concerned 22407:3         22408:17, 822424:14         convoluted 22566:12         22553:7 22559:4,7,23         22493:4 22439:13           concerned 22407:3         22500:12         constantly 22471:23         correstion 22403:2         22560:1         22556:3 22562:4           22492:1 22480:7         constantly 22471:23         correstion 22439:1         corrobber 22511:3         correbber 22471:23         22577:19 22574:12         22557:19 22574:12         22560:21         correbber 2256:18         correstinal 22400:41:5 2250           2259:20 22530:15         consulted 22407:24         correction 22397:21         correction 22551:6         criticise 2250:19         deat 22481:12 2256:12         correction 2251:6         criticise 2250:12         corratiand 22449:24         correction 2251:6         criticise 2250:12         corriticise 2250:12         corratiand 22469:2         correstina 22478:13         22448:10 22448:1         correction 2251:6         criticise 2250:12         corratiand 22469:2         coratiand 22469:2         corratiand 22469:2<	concept 22512:9		conviction 22511:5	22417:4 22425:8	
22407:17 22409:8         22408:2.18 22424:14         convoitions 22502:5         22457:27 22481.6         22409:1 22492:23           22442:12 22469:19         22556:3 22562:4         convoition 22403:2         22553:7 22559:4,7.23         22494:23           22492:12 22494:6         constitutional         2243:12 2249:18         corrother 2241:13         22566:13         22567:12 22579:12           22492:12 22494:6         constitutional         2243:12 2249:18         corrother 2251:13         22567:12 22579:12           22529:12 02253:01:5         consulted 22520:7         corrected 22397:21         22563:11 22509:5,18         22509:21 2253:25           22543:12 22479:11         contact 22402:25         corrected 22397:21         22563:11 22400:24         deal 22491:24 2249           22431:12 22479:11         contact 22407:24         corrected 22397:21         criticisme 2250:12         22408:5,12 22511           22469:12 22479:14         contact 22409:24         corrected 22399:3         criticisme 2250:11         22494:7,82 2244           22566:12 22511:2         contact 22409:12         contact 22409:12         conset 2240:12         corrected 22399:3         criticisme 2250:11         22478:12 22458:11         22478:12 22458:11         22478:12 22458:11         22478:12 2252:11         22458:17 22454:12 22452:27           contact 2240:12 22515:12         contact 224				22439:6 22454:21	22481:20 22485:17
22412:1 22469:19         22424:15 22460:8         convoluted 22566:12         22559:4, 22559:4, 723         22493:4 22556:23 22562:4           22464:7 22480:7         constantly 22471:23         22435:15,21 22426:1         22452:15,21 22426:1         22557:22571:9 2257:9           22492:1 22494:6         Constitutional         22435:15,21 22426:1         correction 22415:23         22509:20 22530:15         consulted 2250:7:0         correction 22397:21         22552:9,14         22449:122257:9           2254:15.23         CONT 22428:4         correction 22397:21         correction 22397:21         c22525:9,14         22491:22 22419:21           22396:23 22407:4         contacted 22497:24         correction 22397:21         c22535:42 22551:4         cathold 2249:2242:42           concers 22395:24         contacted 22497:24         correction 22397:31         cathold 22456:1         correction 22305:21         certiticsing 2250:12         cathold 22457:1           concession 22543:15,23         contacted 22497:24         correcting 22399:33         criticsing 2250:12         cathold 22457:4           concession 22543:15,23         contacted 22497:24         correcting 22400:2         cathold 22452:3         cathold 2245:3           condiat 22566:7         cotacted 22400:25         correcting 22400:2         cathold 2245:22         corresting 22400:2         corresting 22498:21         cat			convictions 22502:5		22490:1 22492:23
concerned 22407:3         22516:23         cooperation 22403:2         22560:1         22550:1         22550:3         22563:1         22550:3         22563:1         22550:3         22563:1         22550:1         2240:10:2         22511:1         2240:10:2         22511:1         2240:10:2         22511:1         2241:10:1         2241:10:1         2241:10:1         22451:1         22451:12         22551:1         22451:12         22551:1         22451:12         22551:1         22451:12         22551:1         22451:1         22451:1 </td <td></td> <td>-</td> <td></td> <td></td> <td>22493:4 22543:19</td>		-			22493:4 22543:19
22449:7 22491:6         constantly 22471:23         22425:15.21 22426:1         cover-up 22424:2         2255:7 22570:13           22492:1 22494:6         Constitutional         2250:2         2250:13         correctop 2251:3         correctop 2251:3         2250:2         2240:2         2250:2         2240:2					
22492:1 22494:6         Constitutional         22483:1 2249:18         corobic 72511:3         22572:19 22574:2           22592:0 22530:15         construed 22415:23         construed 22415:23         correct 22480:1         criticise 22507:9         days 2241:52250:2           22530:12         contact 22420:25         correct 22397:21         criticise 22507:9         certicise 22507:9         dead 22491:24 22494:7,825224           22536:23         contact 22420:25         correction 2251:16         criticisms 22530:11         certicisms 22530:11         deal 22388:13           22566:23         contained 22497:24         correction 2250:3         2240:16 22417:2         certicisms 22530:11         deal 22388:13           concession 22543:15,23         contactin 22497:24         correction 2250:3         2240:16 22407:24         certer 2249:17         cores 2245:23         certer 2240:17:2         ceres 2240:17:2         ceres 2240:17:2					22565:7 22570:12
22529:20 22530:15         construed 22415:23         22579:12         22563:11 22569:5,18         2250:21 22579:12           22544:3 22550:18         consulted 22520:7         corner 22480:1         corriticise 2250:7.12         22432:6 22471:21         criticise 2250:7.12         22432:6 22471:21         center 2248:2         22432:6 22471:21         center 2252:9,14         22439:3,252:4         22432:6 22471:21         center 2252:6 22471:21         center 2252:6 22471:21         center 2252:6 2249:218         correction 22521:6         center 22498:21         center 22498:21         center 22498:21         center 22478:13         center 22478:12         center 22478:12         center 22478:12         center 22478:12         center 22478:12         center 22478:12         center 22479:11         center 22438:23         center 22479:11         center 22438:23         center 22479:11         center 22438:23         center 22479:11         center 22438:23         center 2246:12         center 2248:12 <td>22492:1 22494:6</td> <td></td> <td></td> <td></td> <td>22572:19 22574:9</td>	22492:1 22494:6				22572:19 22574:9
22529:20 22530:15         construed 22415:23         22579:12         22563:11 22569:5,18         2250:21 22579:12           22544:3 22550:18         consulted 22520:7         corner 22480:1         corriticise 2250:7.12         22432:6 22471:21         criticise 2250:7.12         22432:6 22471:21         center 2248:2         22432:6 22471:21         center 2252:9,14         22439:3,252:4         22432:6 22471:21         center 2252:6 22471:21         center 2252:6 22471:21         center 2252:6 2249:218         correction 22521:6         center 22498:21         center 22498:21         center 22498:21         center 22478:13         center 22478:12         center 22478:12         center 22478:12         center 22478:12         center 22478:12         center 22478:12         center 22479:11         center 22438:23         center 22479:11         center 22438:23         center 22479:11         center 22438:23         center 22479:11         center 22438:23         center 2246:12         center 2248:12 <td></td> <td></td> <td></td> <td></td> <td>days 22441:5 22500:12</td>					days 22441:5 22500:12
22551:23         CONT 22428:4         corrected 22397:21         22525:9,14         224947;8,25 2247           concerns 22395:24         contact 22420:25         22452:6 22471:21         criticising 22498:11         22508:5,12 22511           22431:23 22479:11         contact 22497:24         correction 22521:6         criticising 2248:12         22438:13           22431:23 22479:11         contanet 22499:2         correction 22521:6         criticising 2248:21         22423:10           concession 22543:15,27         contanet 22499:2         correction 2251:12         22470:10         224242:4           conduct 22566:7         22462:2 22511:24         correctiness 22410:25         crossed 22452:23         22454:12         22482:1           confine 22491:17         contend 22579:8         contend 22579:8         contend 22579:8         22500:23         22478:8         22554:15         2256:12         2246:12         2249:1	22529:20 22530:15	construed 22415:23		22563:11 22569:5,18	22503:21 22573:25
concerns 22395:24         contact 2240:25         22452:6 22471:21         criticisme 22505:12         22508:5,12 22511           2233:2 22479:11         correction 2251:6         correction 2251:6         criticisme 22498:21         deal 22388:13           2243:2 22479:11         contaste 2249:22         22448:20 22492:18         cross 22456:2,4         22423:10 22425:4           concusion 22543:15,23         contains 22478:13         22493:18 22502:3         22470:8 2252:20         22443:17 22454:1           concomitant 22566:7         22462:2 2511:24         correctness 22410:25         crossed 22452:23         22454:12 22482:1           confine 22491:17         contend 22556:20         correctness 22410:25         crossed 22452:23         22454:12 22482:1           confine 2249:12         content 2255:20         correspondence         crossfer 22498:23         22554:15 22561:2           confirm 2240:24         content 22579:8         content 22479:11         22433:2 2250:12         22388:48 22392:10         22578:11           confirm 22459:20         content 22419:10         22561:12         22436:8 22462:2         deals 22394:15         deals 22394:15           confirming 22550:2         contest 2239:12         contents 2246:11         22446:2         deals 22394:15         deals 22394:15           confirming 22550:20         contest 2239:1	22544:3 22550:18	consulted 22520:7	corner 22480:1	<b>criticise</b> 22507:9	<b>dead</b> 22491:24 22492:2
22396:23 22407:4         22535:4 22567:1         correction 22521:6         criticising 22498:21         deal 22388:13           22431:23 22479:11         contated 22497:24         correctly 22399:3         cross 22456:24         22410:16 22417:2           22056:23         containe 22498:21         containe 22492:18         cross 22456:24         22427:10 16 17           conclusion 22398:2         containe 22478:13         22493:18 22502:3         22470:8 22522:10         22427:10 16,17           conduct 22566:7         22555:9         2250:23         cross 22425:23         22453:8 22519:11         22485:20,22           confine 22498:23         contend 22550:20         correspondence         crossfire 22498:23         22564:12 22564:2           confire 22490:22         content 22579:8         contention 22411:17         22433:2 22507:12         22393:10,21         dealing 22479:11           22463:3 2250:22         contents 22419:10         22561:14         22436:8 22402:2         dealing 2249:15         22569:17           confirm 22459:20         contents 22419:10         22561:14         22436:8 2240:2         dealing 2238:15 2235         22487:13 22559:12         22533:18 22553:8         22487:13 22554:3           22512:12 22515:17         22483:12         content 22410:15         22444:12,18         22533:18 22553:8         22487:13 22554:3<	22551:23	<b>CONT</b> 22428:4	corrected 22397:21	22525:9,14	22494:7,8,25 22495:3
22431:23 22479:11         contacted 22497:24         correctly 22399:3         criticisms 22530:11         22410:16 22417:2           22566:23         contained 22469:2         22448:20 22492:18         cross 22456:2,4         22423:10 22425:1           concession 22398:2         contraine 2248:13         22493:18 22502:3         22523:12,13 2252:10         2247:10.16,17           conduct 22566:7         2255:9         2250:23         22453:8 22519:11         22458:12 22458:12           confine 22491:17         contemplated 22536:20         correspondence         crossere 22452:23         22454:15 22561:2           confirm 22490:24         content 22579:8         couldn't 22432:19,21         cerossere.xamination         22561:22 22561:2           22453:3 22520:22         22506:12         22559:21,22         2247:15 22428:4         22562:62 62569:17           confirm 2249:20         content 22411:17         22433:2 22507:12         22437:14         22553:10.21         dealing 22479:11           22453:3 22520:22         22506:12         22551:1         22438:14         2251:12:4 2252:77         dealing 22479:11           22463:3 22520:22         2250:12         22411:3 22426:9         22437:18 22553:8         22479:12           confirm 22465:2.17         22483:12         counsel 2238:11         22559:12         dealt 22548:15 225	concerns 22395:24	contact 22420:25	22452:6 22471:21	criticised 22505:12	22508:5,12 22511:1
22566:23         contained 22469:2         22448:20 22492:18         cross 22456:2,4         22423:10 22425:4           concession 22398:2         contains 22478:13         22470:8 22525:10         22470:1016,17           concound 22566:7         22462:2 22511:24         correctness 22410:25         crossed 22452:23         22436:17 22248:1           confine 22491:17         contemplated 22536:20         correspondence         crossed 22452:23         22458:12 2255:11         22458:20,22           confire 22491:17         contend 22522:20         22547:10         crossed 2249:23         22554:15 2256:12           confirm 22406:24         contend 22522:20         22547:10         crosse-examination         22578:11           confirm 22406:24         content 22579:8         couldn't 22432:19,21         22388:4,8 22392:10         22578:11           confirm 22459:20         contents 22411:17         22433:2 22507:12         22437:15 24248:4         2256:26 22569:17           confirming 22550:5         context 22410:15         counel 22388:11         22443:8 2248:2         deals 2239:4:15           conforming 22550:5         context 22410:15         22444:12,18         22554:4 2255:9         22559:12 2256:6:0           confirming 22550:5         context 22410:15         22444:11:22449:3         2254:4 2255:9         22559:12 2256:6:0	22396:23 22407:4	22535:4 22567:1	correction 22521:6	criticising 22498:21	deal 22388:13
concession 22543:15,23 conclusion 22398:2         contains 22478:13 CONTD 22388:8         22493:18 22502:3 22543:11,12 22543:1         22470:8 22522:10 2253:12,13 22524:6         22472:10,16,17 22432:12,13 22524:6           conclusion 22398:2 concentar 2256:7         22452:22         22462:2 22511:24         correspondence correspondence         crossed 22452:23         22445:22         22483:20,22           confine 22491:17         contemplated 22536:20         correspondence         crosserexamination         22554:15 22561:2           confire 22487:23         content 22579:8         couldn't 22432:19,21         22388:4,8 22392:10         22554:15 22561:2           confirm 22459:20         content 22411:17         22433:2 22507:12         22388:4,8 22392:10         22578:10           confirm 22459:20         content 22419:10         22551:14         22471:15 22428:12         22471:15 22428:12         2250:12         22511:24 2252:7         dealing 22479:11           22519:8 22560:20         context 22410:15         coutst 2249:12         22441:12,18         22455:14         22559:4         22559:12         22559:12         22559:12         22559:17           confornation         22444:10 22463:7         22445:11 22449:3         22559:4         22559:17         22466:11 2259:17           confornation         22470:14 22473:16         22495:14,22 22517:12         conse-examinain	22431:23 22479:11	contacted 22497:24	correctly 22399:3	criticisms 22530:11	22410:16 22417:24
conclusion 22398:2 concomitant 22569:7,9 conduct 22566:7 contemplated 22536:20 contemplated 22536:21 22547:10 contemplated 22562:20 content 22579:8 content 22579:8 contents 22419:17 22559:21,22 22559:21,22 22559:21,22 22559:21,22 22559:21,22 22559:21,22 22559:21,22 22559:21,22 22559:21,22 22559:21,22 22559:21,22 22559:21,22 22559:22447:15 22443:12 22551:24 22559:2255:9 context 22410:15 context 22410:15 22444:10 22444:10 22444:10 22444:10 22444:10 22444:10 22444:10 22444:10 22453:12 22559:4 death 22559:12 22559:4 death 2259:17 death 2259:17 death 2259:12 22559:22559:12 22559:22559:12 22559:22559:12 22559:	22566:23	contained 22469:2	22448:20 22492:18	cross 22456:2,4	22423:10 22425:4
concomitant 22569:7,9         22462:2 22511:24         correctness 22410:25         crossed 22452:23         22454:12 22482:1           confine 22491:17         contemplated 22536:20         correspondence         crossfire 22498:23         2255:11         22485:20,22           confine 22487:23         contend 2252:20         contend 2252:20         cossfire 22498:23         22554:15 22561:2           confirm 22406:24         content 22579:8         couldn't 22432:19,21         22388:4,8 22392:10         22578:11           c24433:3 22520:2         22506:12         22559:21,22         22477:15 22483:4         22562:6 22569:17           confirm 22499:20         contents 22419:10         22561:14         22436:8 22462:2         dealing 22479:11           225112:12 22515:17         context 2239:12         couldn't 22483:1         22511:24 22522:7         dealt 22388:15 2233           22576:10         context 22410:15         coutext 22410:15         22444:12,18         22554:4         22559:2         22573:525           conformation         22446:12 22473:16         22495:14,24 22497:2         22467:17 22499:20         22573:525         22471:13 22437:24         22495:14,24 22497:2         22467:17 22499:20         22573:525         22471:14 22473:16         22554:4         22550:2         22573:525         22491:14 22497:2         22461:14 22455:8	concession 22543:15,23	contains 22478:13	22493:18 22502:3	22470:8 22522:10	22427:10,16,17
conduct 22566:7         22555:9         22500:23         22453:8 22519:11         22485:20,22           confine 22491:17         contemplated 22536:20         correspondence         crossfre 22498:23         22554:15 22561:2           confirm 22406:24         content 22579:8         couldn't 22432:19,21         22388:4,8 22392:10         22578:11           22439:3 22460:2         contents 22419:10         22453:2 22507:12         22333:10,21         dealing 22479:11           22451:12 22515:17         22483:12         counsel 22388:11         22551:24 22552:7         dealt 22389:15 2236:22           22576:10         context 22410:15         22444:12,18         22559:4         22559:4         22487:13 22554:3           22576:10         context 22410:15         22444:12,18         22554:4 22555:9         22559:12 22563:6           confirming 22550:5         22411:3 22437:24         22465:12 22463:1         cross-examine 22455:8         dealt 22388:16,17           22535:24         22470:14 22473:16         22495:14,24 22497:2         22513:10 22560:2         dealte 22459:17           confixed 22561:9         22476:15 22537:25         22514:16 22517:12         cross-examinaig         2246:14 22469:2           confirming 22456:8         22538:7,11 22556:6         22525:15,17 2253:2         22461:14 22496:2         dealt 22389:2 <td>conclusion 22398:2</td> <td>CONTD 22388:8</td> <td>22543:11,12 22545:1</td> <td>22523:12,13 22524:6</td> <td>22436:17 22454:11</td>	conclusion 22398:2	CONTD 22388:8	22543:11,12 22545:1	22523:12,13 22524:6	22436:17 22454:11
confine 22491:17 confined 22487:23         contemplated 22536:20 content 22579:8         correspondence 22547:10         crossfire 22498:23 cross-examination         22554:15 22561:2 22561:22 22564:2           22439:3 22460:2         content 22579:8         couldn't 22432:19,21         22388:4,8 22392:10         22578:11           22439:3 22500:22         22506:12         22507:12         22393:10,21         22388:4,8 22392:10         2256:22 22569:17           confirmed 22459:20         contents 22419:10         22551:12,22         22477:15 22428:4         22562:6 22569:17           22519:8 22560:20         contest 22392:12         22411:3 22437:24         22437:24         22455:29         2259:12 2255:8           22576:10         contest 22410:15         22444:12,18         22554:4 2255:9         22487:13 22546:2           confirming 22550:5         22411:3 22437:24         22445:11 2249:3         22559:4         death 22529:17           confornation         22476:15 22537:25         22513:10 22560:2         debate 22459:17         death 22529:17           confironed 22568:21         22476:15 22537:25         22513:10 22560:2         debate 22459:17         debate 22459:17           confironed 22568:21         22476:15 22537:25         22513:10 22560:2         debate 22459:17         debate 22459:17           confironed 22568:21         22476:15 22537:	concomitant 22569:7,9	22462:2 22511:24	correctness 22410:25	crossed 22452:23	22454:12 22482:13
confined 22487:23 confirm 22406:24         contend 22522:20 content 22579:8         22547:10 couldn't 22432:19,21         cross-examination         22561:22 22564:2           22439:3 22460:2         contention 22411:17         22433:2 22507:12         22393:10,21         dealing 22479:11           22463:3 2250:22         22506:12         22561:12         22550:12         22393:10,21         dealing 22479:11           22512:12 22515:17         22483:12         counsel 22388:11         225512:12 422522:7         deality 22388:15 2239           22576:10         context 22410:15         22441:13 22446:9         22559:4         dealty 2259:17           confirming 22550:5         22411:3 22437:24         22465:2,15 22436:1         22445:11 22499:3         22559:4         dealty 2259:17           confrontation         22444:10 22463:7         22445:12 22497:2         22467:17 22499:20         22573:5 22573:5         22573:5 22573:25           confronted 22568:21         22470:14 22473:16         22495:14,24 22497:2         2251:10 22560:2         deabty 2250:17           consecta 22511:9         22476:15 22537:25         2251:17 22534:2         22467:17 22499:20         22573:5 22579:13           confurdid 22568:21         22470:14 22473:16         22495:14,22 22497:2         2251:12 2250:2         deabty 2250:2           confusion 22401:19         224	conduct 22566:7	22555:9	22500:23	22453:8 22519:11	22485:20,22
confirm 22406:24         content 22579:8         couldn't 22432:19,21         22388:4,8 22392:10         22578:11           224339:3 22460:2         22506:12         22506:12         22433:2 22507:12         22393:10,21         dealing 22479:11           22463:3 22520:22         22506:12         22505:21,22         22427:15 22428:4         22562:6 22569:17           confirmed 22459:20         contents 22419:10         22561:14         22438:12         dealing 22479:11           22511:2 22515:17         22483:12         context 22388:11         22551:24         22559:22,7         dealt 22388:15 2236           22576:10         context 22410:15         22444:12,18         22559:4         death 22529:17         death 22529:17           confirming 22550:5         22411:3 22437:24         22445:17 2249:3         22559:4         death 22529:17           confrontation         224465:2,15 22466:11         22495:14,24 22497:2         22513:10 22560:2         death 22548:16,17           2553:5:24         22457:24         22457:25 22465:21         2249:14 22479:20         22573:525         death 22548:16,17           2553:5:24         22465:21 52537:25         22551:14,22 22497:2         22513:10 22560:2         death 2259:17           confusion 22456:8         22538:7,11 22556:6         22525:15,17 22534:2         22496:10	confine 22491:17	contemplated 22536:20	correspondence	crossfire 22498:23	22554:15 22561:20
22439:3 22460:2         contention 22411:17         22433:2 22507:12         22393:10,21         dealing 22479:11           22463:3 22520:22         22506:12         22559:21,22         22477:15 22428:4         22562:6 22569:17           confirmed 22459:20         contents 22419:10         22561:14         22436:8 22462:2         deals 22394:15           22512:12 22515:17         22483:12         counsel 22388:11         22511:24 22522:7         deals 22394:15           22576:10         context 22410:15         22444:12,18         22554:4 2255:9         22487:13 22554:3           confrontation         22445:17 22463:7         22463:17 22463:1         22447:17 22499:20         22579:12 22561:16           confrontation         22447:14 22473:16         22499:14,24 22497:2         22513:10 22560:2         death 22529:17           confusion 22456:8         22538:7,11 22556:6         22525:15,17 22534:2         22467:17 22499:20         22578:5         22461:14 22469:2           connectio 22401:19         22476:15 22537:25         22514:16 22517:12         cross-examining         22461:14 22469:2           connectio 22401:19         22476:15 22578:2         22537:11,16         current 22434:20         22509:10 22577:3           connectio 22401:19         22473:15,25         22495:1,24 22497:14         22512:16,16 22513:4         22452:16,16,		<b>contend</b> 22522:20			22561:22 22564:22
22463:3 22520:22       22506:12       22559:21,22       22427:15 22428:4       22562:6 22569:17         confirmed 22459:20       contents 22419:10       22561:14       22436:8 22462:2       deals 22394:15         22519:8 22560:20       context 22392:12       context 22388:11       22511:24 2252:7       deals 22388:15 2235         22576:10       context 22410:15       22444:12,18       22554:4 22555:9       22487:13 22554:5         confirming 22550:5       c22411:3 22437:24       22444:12,18       22559:4       dealt 22329:17         confornation       22465:2,15 22466:7       22495:14,24 22497:2       22559:4       death 22529:17         confused 22511:9       22470:14 22473:16       22495:14,24 22497:2       22513:10 22560:2       death 2259:17         confusion 22456:8       22570:13       22476:15 22537:25       22514:16 22517:12       cross-examine 22450:2       death 22499:20       22564:4 2260:24         confusion 22456:8       22538:7,11 22556:6       22525:15,17 22534:2       22429:18 22579:13       22466:4 2260:24         connected 22410:5       contract 22551:13,16       counselled 22489:8,11       current 22434:20       22504:14,20 2250         connected 22410:5       contradict 22419:21       contradict 22419:21       current 22434:20       22509:10 22577:3         connection 22401:					
confirmed 22459:20 22512:12 22515:17 22519:8 22560:20contents 22419:10 22483:12 context 22392:12 22411:3 22426:9 22411:3 22426:9 22411:3 22426:9 22444:10,15 22444:10,15 22444:10,22463:7 22455:24 confrontation 22444:10 22463:7 22451:12 22451:1 22455:24 confronted 22568:21 22470:14 22473:16 22470:14 22473:16 22556:19 22578:2 22471:17 connection 22401:19 22476:15 2256:6 22556:19 22578:2 22471:17 2256:19 22578:2 22471:17 22556:19 22578:2 22471:17 22556:19 22578:2 22409:12,25 22409:12,25 22409:12,225 22409:12,225 22409:12,225 22409:12,225 22409:12,225 22409:12,225 22409:12,225 22409:13 22409:2250:12 22578:2 22409:12,225 22409:13 22400:12,2409:13 22409:22578:2 22409:13 22409:22578:2 22409:12,225 22409:13 22400:12,22409:13 22400:12,225 22409:13 22400:12,225 22409:13 22400:12,225 22409:13 22400:12,225 22409:13 22400:12,225 22409:13 22400:12,225 22409:13 22400:12,225 22409:13 22400:12,225 22409:13 22400:12,22578:2 22409:13 22400:12,2250:1225228 22409:13 22400:12,2250:1225228 22409:13 22400:12,2250:1225228 22409:13 22400:12,2250:1225228 22409:13 22400:12,2250:1225228 22409:14,15 22496:2250:122517:14 22496:22497:14 22496:2250:1225228 22409:13 22400:14,14,19 22451:6 22430:12,2250:12250:12 22409:12,2250:1225228 22409:12,2250:1225228 22409:13 22400:14,14,19deals 22394:15 deals 22394:15 deals 22394:15 22452:16,16,23 22452:16,16,23 22496:2250:1225228 22496:14 22506:12 22517:19,14 22496:22201:125228 22490:12,2201:125228 22490:12,2201:125228 22409:12,2201:125228 22409:12,2201:125228 22409:12,2201:125228 22409:12,2201:125228 22409:12,2201:125228 22409:12,2201:125228 22409:12,2201:1251				-	
22512:12 22515:17 22519:8 22560:20 22576:10       22483:12 contest 22392:12 22411:3 22426:9       counsel 22388:11 22535:24       22511:24 2252:7 22533:18 22553:8       dealt 22388:15 2239 22487:13 22554:3         confrontation 22535:24       22411:3 22437:24       22444:12,18       22559:4       death 22509:17         confrontation 22535:24       22444:10 22463:7       224357:722463:1       cross-examine 22455:8       22578:20         confrontad 22568:21       22470:14 22473:16       22494:12,15,22       22511:10 2250:20       death 22509:17         confusion 22456:8       22538:7,11 22556:6       22559:14,224 22497:20       22578:20       death 22509:17         connection 22401:19       22470:15 22537:25       22511:10 2250:22       death 22469:17       22446:14 22469:2         connection 22401:19       contract 22551:13,16       counselled 22489:8,11       current 22434:20       22509:10 22577:3         22400:12,24       contract 22551:13,16       counselled 2249:6:14       custody 22496:10       22452:16,16,23         22400:225 22409:1,3       22473:15,25       22499:12 42497:14       2250:12250:12250:12250:12250:12250:12250:12250:12251:4       22452:16,16,23         22410:7,7 22428:12       control 22469:18       control 22409:18       22499:23 22515:19       22523:18       22390:12 22392:19         22410:7,7 22428:12       controversial 22469:18 <td></td> <td></td> <td></td> <td></td> <td></td>					
22519:8 22560:20         contest 22392:12         22411:3 22426:9         22533:18 22553:8         22487:13 22543           22576:10         context 22410:15         22444:12,18         22559:4         22559:12 2256:6           confrontation         22444:10 22463:7         22445:11 22449:3         22559:4         death 22529:17           confronted 22568:21         22447:15 22466:11         22494:12,15,22         22467:17 22499:20         22573:5 22575:25           confusion 22456:8         22470:14 22473:16         22495:14,24 22497:2         22513:10 22560:2         death 22459:17           confusion 22456:8         22538:7,11 22556:6         22525:15,17 22534:2         2249:18 22579:13         22496:4 22500:24           connected 22410:5         contract 22551:13,16         counselled 22489:8,11         current 22434:20         22509:10 22577:3           counected 22410:5         control 22440:5         22473:15,25         22495:1,24 22496:14         22512:16,16 22513:4         22452:16,16,23           22402:25 22409:19,22,25         22474:14,15         22496:25         current 22434:20         22509:10 22577:3           22400:19,22,25         22474:14,15         22496:14         22513:13 22518:24         22453:9           22400:19,22,25         22474:14,15         22496:24 22497:14         2250:1 225218:24         22453:9					
22576:10         context 22410:15         22444:12,18         22554:4 2255:9         22559:12 2256:6           confirming 22550:5         22411:3 22437:24         22445:11 22449:3         22559:4         death 22529:17           confrontation         22444:10 22463:7         22453:7 22463:1         cross-examine 22455:8         death 22529:17           confronted 22568:21         22470:14 22473:16         22494:12,15,22         22467:17 22499:20         22573:5 22575:25           confusion 22456:8         22538:7,11 22556:6         22525:15,17 22534:2         22429:18 22579:13         22496:4 22500:24           connected 22410:5         contract 22551:13,16         contract 22551:13,16         counselled 22499:8,11         current 22434:20         22509:10 22577:3           connection 22401:19         contradict 22419:21         counselled 22496:14         22512:16,16 22513:4         22452:16,16 22513:4           connection 22401:19         control 22440:5         22473:15,25         22473:15,25         22495:1,24 22496:14         22515:13 22518:24         22452:16,16 22513:4           connection 22409:19,22,25         control 22440:5         22473:15,25         22495:12,4 22496:14         22515:13 22518:24         22452:16,16 22389:22           connections 22409:24         control 22469:18         22492:2516:21 22517:9,14         2250:1 2252:8         decide 22389:22 <td></td> <td></td> <td></td> <td></td> <td>dealt 22388:15 22396:7</td>					dealt 22388:15 22396:7
confirming 22550:5 confrontation22411:3 22437:24 22444:10 22463:7 22465:2,15 22466:11 22496:2,15 22466:11 22495:14,222497:2 22465:2,15 22466:11 22495:14,24 22497:2 22467:17 22499:20 22467:17 22499:20 22513:10 2250:2 22513:10 2250:2 death 22573:5 22575:25 debate 22459:17 22573:5 22575:25 debate 22459:17 22461:14 22469:2 22513:10 2250:2 debate 22459:17 22461:14 22469:2 22461:14 22469:2 22461:14 22469:2 22471:17 connected 22410:5 connected 22410:5 contradic 22419:21 22401:21,24 22402:25 22409:1,3 22402:25 22409:1,3 22473:15,25 22473:15,25 22474:14,15 22496:24 22495:1,24 22496:14 22496:24 22497:14 22496:24 22497:14 22496:24 22497:14 22501:122522:8 22513:10 22501:122522:8 decide 22389:22 22452:16,16,23 22452:16,16,23 22452:16,16,23 22402:25 22409:1,3 22473:15,25 22474:14,15 22496:24 22497:14 22496:24 22497:14 22501:122515:13 22518:24 22501:122522:8 22452:16,16,23 22452:16,16,23 22452:16,16,23 22452:16,16,23 22402:25 22402:13 connoction 22401:14 22455:1422410:7 22452:16,16,23 22496:24 22497:14 22501:122522:8 22496:24 22497:14 22501:122522:8 2253:18 22390:1 22392:19 2253:18 22390:1 22392:19 22393:25 2246:19 22393:25 2246:19 22393:25 2246:19 22434:23 2246:19 22434:23 2246:19 22464:25					,
confrontation22444:10 22463:722453:7 22463:1cross-examine 22455:8deaths 22548:16,1722535:2422465:2,15 22466:1122494:12,15,2222467:17 22499:2022573:5 22575:25confronted 22568:2122470:14 22473:1622495:14,24 22497:222513:10 22560:2debate 22459:17confusion 22456:822538:7,11 22556:622525:15,17 22534:222429:18 22579:1322496:4 22500:2422471:1722556:19 22578:222537:11,16crucial 22548:122504:14,20 2250connected 22410:5contradic 22419:2122496:25current 22434:2022509:10 22577:3connection 22401:19contradic 22419:2122496:25custody 22496:10December 22452:4,22402:25 22409:1,322473:15,2522495:1,24 22496:1422515:13 22518:2422452:16,16,2322409:19,22,2522474:14,1522496:24 22497:1422520:1 2252:8decide 22389:2222410:7,7 22428:12controversial 22469:1822499:23 22515:1922523:1822390:1 22392:19connection 22401:14convenient 22454:3,822524:7cut 22451:622393:25 2246:1connection 22401:1422455:1422524:7cut 22451:622393:25 2246:1					22559:12 22565:6
22535:2422465:2,15 22466:1122494:12,15,2222467:17 22499:2022573:5 22575:25confronted 22568:2122470:14 22473:1622495:14,24 22497:222513:10 22560:2debate 22459:17confusion 22456:822537:2522514:16 22517:12cross-examining22461:14 22469:222471:1722556:19 22578:222537:11,16crucial 22548:122500:24connection 22401:19contrad 22551:13,16contrad 22551:13,16counselled 22489:8,11current 22434:2022509:10 22577:322401:21,24control 22440:5control 22440:5counselling 22494:622512:16,16 22513:422452:16,16,2322409:19,22,2522473:15,2522495:1,24 22496:1422515:13 22518:2422453:922409:19,22,2522474:14,1522496:24 22497:1422520:1 22522:8decide 22389:2222410:7,7 22428:12controversial 22469:1822499:23 22515:1922523:1822390:1 22392:19connections 22408:22controversy 22574:1422516:21 22517:9,14cut 22451:622393:25 22426:19connection 22401:1422455:14Coursel's 22495:14Cyril 22400:14,14,1922464:25					
confronted 22568:21 confusion 22456:8 22471:1722470:14 22473:16 22476:15 22537:25 22538:7,11 22556:6 22556:19 22578:2 connected 22410:5 connection 22401:1922476:15 22537:25 22556:19 22578:2 contradic 22419:21 contradic 22419:21 22402:25 22409:1,3 22402:25 22409:1,3 22473:15,25 22474:14,15 controversial 22469:18 connections 22402:26 22402:13 connections 22402:12 connections 22402:13 connection 22401:1422470:14 22473:16 22496:25 22496:24 22497:14 22496:24 22496:14 22496:24 22497:14 22520:1 22522:8 22496:24 22497:14 22520:1 22522:8 22490:12 22515:13 22518:24 22390:1 22392:19 2253:18 conselien 22452:40 22393:25 22426:1 22393:25 22426:19 22393:25 22426:19 22434:23 2246:29 22434:23 2246:19 22434:23 2246:19 22434:23 2246:19 22434:23 2246:19					
confused 22511:9 confusion 22456:8 22471:1722476:15 22537:25 22538:7,11 22556:6 22556:19 22578:2 22537:11,1622514:16 22517:12 22525:15,17 22534:2 22537:11,16cross-examining 22429:18 22579:13 crucial 22548:1 current 22434:2022461:14 22469:24 22496:4 22500:24 22509:10 22577:3connection 22401:19 22401:21,24 22402:25 22409:1,3 22409:19,22,25 22409:19,22,25contradict 22419:21 22473:15,25 22473:15,25counselling 22494:6 22496:24 22496:14current 22434:20 22512:16,16 22513:4 22512:16,16 22513:4December 22452:4, 22509:10 22577:322409:19,22,25 22474:14,1522473:15,25 22474:14,1522496:24 22497:14 22496:24 22497:1422520:1 22522:8 22520:1 22522:8December 22452:4, 22453:9connections 22408:22 connections 22408:22 connection 22401:14controversial 22469:18 22455:1422499:23 22515:19 22524:722523:18 cut 22451:6 cuttings 22436:4 Cyril 22400:14,14,1922393:25 22406:19 22434:23 22461:9		,			
confusion 22456:8 22471:1722538:7,11 22556:6 22556:19 22578:2 22556:19 22578:2 connected 22410:5 contract 22551:13,1622525:15,17 22534:2 22537:11,1622429:18 22579:13 crucial 22548:1 current 22434:20 22509:10 22577:3connection 22401:19 22401:21,24contradict 22419:21 control 22440:5counselled 22489:8,11 22496:25current 22434:20 custody 22496:10December 22452:4, 22512:16,16 22513:422402:25 22409:1,3 22402:25 22409:1,322473:15,25 22473:15,25custelling 22494:6 22496:24 22497:1422515:13 22518:24 22496:24 22497:1422452:16,16,23 22520:1 22522:822401:7,7 22428:12 connection 22408:22 connection 22402:13 connection 22402:13controversial 22469:18 custody 22496:1422516:21 22517:9,14 22520:1 22522:822390:1 22392:19 22523:18connection 22401:14convenient 22454:3,8 22455:14custody 22496:4 22524:7 custody 22400:14,14,1922434:23 22461:9 22434:23 22461:9					
22471:1722556:19 22578:222537:11,16crucial 22548:122504:14,20 2250connected 22410:5contract 22551:13,16counselled 22489:8,11current 22434:2022509:10 22577:322401:21,24control 22440:5control 22440:5counselling 22494:622512:16,16 22513:422452:16,16,2322402:25 22409:1,322473:15,2522495:1,24 22496:1422515:13 22518:2422453:922409:19,22,2522474:14,1522496:24 22497:1422520:1 22522:8decide 22389:2222410:7,7 22428:12controversial 22469:1822499:23 22515:1922523:1822390:1 22392:19connection 22400:23controversy 22574:1422516:21 22517:9,1422523:1822393:25 22426:19connects 22402:13convenient 22454;3,822524:7cuttings 22436:422434:23 22461:9connotation 22401:1422455:14counsel's 22495:14Cyril 22400:14,14,1922464:25					
connected 22410:5 connection 22401:19 22401:21,24contract 22551:13,16 control 22440:5counselled 22489:8,11 22496:25current 22434:20 custody 22496:1022509:10 22577:33 December 22452:4, 22451:6,16,2322402:25 22409:1,3 22409:19,22,2522473:15,25 22473:15,2522495:1,24 22496:14 22496:2422512:16,16 22513:4 22496:2422452:16,16,23 22495:1,24 22496:1422409:19,22,25 22474:14,1522474:14,15 22496:2422496:24 22497:14 22496:24 22497:1422520:1 22522:8 22523:18decide 22389:22 22390:1 22392:19connections 22408:22 connects 22402:13 connection 22401:14controversy 22574:14 22455:1422516:21 22517:9,14 22524:7 counsel's 22495:14cut 22451:6 cuttings 22436:4 Cyril 22400:14,14,1922434:23 22461:9 22434:23 22461:9		-			
connection 22401:19 22401:21,24 22402:25 22409:1,3 22409:19,22,25contradict 22419:21 control 22440.5 22473:15,2522496:25 counselling 22494:6 22495:1,24 22496:14 22495:1,24 22496:14custody 22496:10 22512:16,16 22513:4 22515:13 22518:24 2250:1 22522:8 22520:1 22522:8December 22452:4, 22453:9 decide 22389:22 22453:9connections 22408:22 connections 22408:22 connects 22402:13 connection 22401:14controversial 22469:18 22455:1422499:23 22515:19 22516:21 22517:9,14 22526:1 22517:9,14 22524:7cut 22451:6 cuttings 22436:4 Cyril 22400:14,14,1922434:23 22461:9 22434:23 22461:9					
22401:21,24 22402:25 22409:1,3 22409:19,22,25control 22440:5 22473:15,25counselling 22494:6 22495:1,24 22496:1422512:16,16 22513:4 22496:1422452:16,16,23 22515:13 22518:2422409:19,22,25 22410:7,7 22428:1222473:15,25 22474:14,1522496:24 22497:14 22496:24 22497:1422520:1 22522:8 22523:18decide 22389:22 22390:1 22392:19connections 22408:22 connects 22402:13 connects 22402:13controversial 22469:18 convenient 22454:3,8 22455:1422516:21 22517:9,14 22524:7cut 22451:6 cuttings 22436:4 Cyril 22400:14,14,1922434:23 22461:9 22434:23 22461:9			-		
22402:25 22409:1,3 22496:19,22,2522473:15,25 22474:14,1522495:1,24 22496:14 22496:24 22497:1422515:13 22518:24 22520:1 22522:822453:9 decide 22389:2222410:7,7 22428:12controversial 22469:18 connections 22408:22controversial 22469:18 connects 22402:13 convenient 22454:3,8 22455:1422499:23 22515:19 22516:21 22517:9,14 22524:722523:18 cut 22451:6 cuttings 22436:4 Cyril 22400:14,14,1922493:25 22426:19 22393:25 22461:9					
22409:19,22,2522474:14,1522496:24 22497:1422520:1 2252:8decide 22389:2222410:7,7 22428:12controversial 22469:1822499:23 22515:1922523:1822390:1 22392:19connections 22408:22controversy 22574:1422516:21 22517:9,14cut 22451:622393:25 22426:1connects 22402:13convenient 22454:3,822524:7cuttings 22436:422434:23 22461:9connotation 22401:1422455:14counsel's 22495:14Cyril 22400:14,14,1922464:25	-			-	
22410:7,7 22428:12controversial 22469:1822499:23 22515:1922523:1822390:1 22392:19connections 22408:22controversy 22574:1422516:21 22517:9,14cut 22451:622393:25 22426:1connects 22402:13convenient 22454:3,822524:7cut tings 22436:422434:23 22461:9connotation 22401:1422455:14counsel's 22495:14Cyril 22400:14,14,1922464:25			-		
connections 22408:22 connects 22402:13controversy 22574:14 convenient 22454:3,8 22455:1422516:21 22517:9,14 22524:7cut 22451:6 cuttings 22436:422393:25 22426:1 22434:23 22461:9connotation 22401:1422455:1422516:21 22517:9,14 22524:7cut 22451:6 cuttings 22436:422393:25 22426:1 22434:23 22461:9					
connects 22402:13convenient 22454:3,822524:7cuttings 22436:422434:23 22461:9connotation 22401:1422455:14counsel's 22495:14Cyril 22400:14,14,1922464:25					
connotation 22401:14         22455:14         counsel's 22495:14         Cyril 22400:14,14,19         22464:25	/ 31 1 1 22				
	1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1				
22401.10 22410.14 [CONVCISATION 22413.13 ] 22490.13 [ 22400.25 22407.17 ] UCCIDED 22409.15	La La La portan			-	
					22509:3 22571:25
22442:20         22413:17,19 22414:2         country 22565:20         22408:25 22412:15         22509:5 22571:25           connotations 22410:1         22414:17,22,25         course 22388:4         22418:24 22419:14         decision 22390:23					
The marter barrent to barrent to The		Proc. Wand and and Arrow Long			22392:22 22393:1
22410.21 22445.5 22416.17 22424.25 22429.22,22 22419.25 22420.9,24 22592.22 22595.1			~~~~ <i>~</i> ~.~	2271 <i>7.23</i> 22420.7,24	22372.22 22373.1

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RealTime Transcriptions

## Marikana Commission of Inquiry

#### Arbitration

				Page
22398:25 22400:25	<b>desire</b> 22398:2	22402:1 22403:16	22557:12 22568:17	22535:20
22408:15,19	desist 22393:17	22404:16 22412:3,10	22570:11,20 22576:1	don't 22389:3,12,18,20
22428:12 22489:5	despite 22439:14	22412:14,22	disentitled 22533:22	22391:1 22393:10,13
22500:25 22524:1	22444:14 22453:8	22428:15 22440:21	disgraceful 22554:3	22393:17,19 22396:8
22548:13 22558:10	22466:10 22532:20	22445:14,17 22450:8	disowned 22421:7	22397:24 22399:17
22558:12,19,21	22570:21 22571:24	22457:25 22547:14	dispersed 22437:22	22403:23 22405:3
			-	
22560:10 22561:2,2,4	detail 22477:12	22561:15,17	displace 22436:9,14	22406:22 22414:4
22561:17,21,21	22554:2 22578:8	Director 22499:19	dispute 22461:25	22418:23 22423:14
22565:3,4 22572:16	detailed 22523:6	directors 22421:15	22482:3 22508:15	22428:15 22430:7
decisions 22505:4	detained 22496:10	disagree 22388:17	22533:19 22561:25	22439:11 22440:10
decisive 22442:3	22517:5 22518:9,12	22432:25 22435:5	22563:11 22569:4	22452:12 22456:3,6
decoded 22526:19	22520:8,19	22453:10 22485:6,8	22579:3	22458:17 22461:9
<b>decorum</b> 22430:10	detectives 22434:8,8	22525:16 22527:18	disputing 22497:3	22463:17 22467:11
<b>deep</b> 22466:25 22467:7	detention 22521:19	22573:20	distinction 22515:9	22467:13,21
defend 22510:23	determine 22506:24	disagreeable 22484:24	22516:11	22469:16 22488:18
<b>definite</b> 22508:2	devise 22527:12	disagreement 22465:4	distinguishes 22456:1	22492:5,12 22495:6,9
definitely 22544:8	didn't 22388:22	22465:4 22574:14	distribute 22531:14	22496:20 22498:15
defuse 22399:24		disarm 22438:22	22533:8	
	22390:6 22406:15			22498:23,25 22502:5
22401:9,22 22406:14	22413:10 22414:24	22497:4 22528:5,9,25	<b>district</b> 22518:9,12,14	22507:3,6,9,20,24
22406:25 22409:15	22417:16 22437:19	22529:11,23 22530:6	22520:2,2,5,7,14,15	22510:8 22511:10
22409:19	22452:18 22467:23	22530:19 22534:5	22520:23 22521:1,1,4	22517:19 22520:4
defused 22406:15	22468:13 22490:3	disarming 22527:17	22521:7	22523:4,15 22524:7
defusing 22401:18	22514:18 22523:12	22528:10,10 22529:2	disturbance 22430:11	22533:24 22551:12
degree 22425:21	22524:6 22526:9	22529:8 22530:7	disturbing 22388:3	22552:18 22555:14
22426:1	22529:17 22531:15	22535:5	Division 22508:21	22558:13 22567:20
Dekker 22459:21	22532:3 22534:17	disciplinary 22407:18	dockets 22490:6	22568:3 22569:22
delay 22455:19	22553:9 22554:1,3	22408:5	doctor 22516:4	22570:23 22574:11
delete 22458:12,17	22559:22 22564:12	discipline 22555:25	22518:16 22519:10	22576:19,20 22577:2
deleted 22458:16	22564:13 22568:6	disclose 22421:22	doctors 22519:4	22579:14
22550:17	22504.13 22508.0	disclosed 22444:15	doctrine 22501:13,14	dot 22475:10,10
				-
deliberate 22448:15	<b>die</b> 22494:11,16	discover 22493:21	22501:15 22502:3	doubt 22440:12
deliberately 22448:17	died 22398:10	discuss 22388:20	22503:12,13 22504:6	22462:19
deliberations 22558:4	22500:15 22503:24	22421:13 22425:10	22504:7,9,15,16	download 22431:3,4
delivered 22486:4	22507:17 22508:8	22441:20 22442:3	22506:18 22507:10	downwards 22395:20
demanding 22518:21	22541:8 22573:24	22451:6 22525:10	22508:18 22509:8,8	drafting 22485:14
demands 22401:3	difference 22429:4	22549:2 22557:10	22509:20 22510:4,7	dragging 22495:3
22573:13	22434:19 22456:9,11	22572:6	22511:12	dramatically 22464:4
demonstrate 22465:18	22459:16,17 22472:6	discussed 22394:22	document 22416:19	draw 22472:7 22480:2
demonstrated	22503:16	22397:2 22407:6	22457:9 22460:3,5	22516:10
22492:23	differences 22434:21	22417:9 22421:10	22462:6 22472:5	drawn 22570:7
demonstrates 22431:17	22482:12,17,18,21	22428:7 22441:14	22402:0 22472:5	drew 22433:18
denied 22407:8	different 22424:20	22445:4 22450:24	22562:20	22444:13,18
22557:17	22434:4,16 22437:16	22462:5 22463:7	documents 22459:9,12	22456:17
denying 22407:5	22437:21 22438:21	22534:3 22560:11	22490:1 22527:2,5	drive 22444:17
Department 22517:16	22459:14 22469:8	22562:7 22563:23	22562:15,19	drop 22541:20
depended 22524:24	22484:3,4 22503:6	22571:5,12	22579:12	dropped 22420:15
deploy 22475:10	22504:11 22526:5	discussing 22390:5	doesn't 22391:24	22446:16 22534:10
22476:8	22528:4 22543:24	22422:19 22442:5	22396:2 22403:12	22542:2,6
deployed 22474:25	22556:6,22 22577:21	discussion 22395:6,10	22404:23 22411:5,16	dropping 22528:22
22475:1,2,7	<b>difficult</b> 22467:5	22401:6 22404:3	22432:25 22462:4	22532:22 22534:3
deploying 22474:15	22554:17	22406:10 22407:2	22466:6,13 22496:17	22543:6
22481:24 22555:22	difficulties 22467:11	22400:10 22407:2	22503:2 22509:19	drops 22524:12
deployment 22425:11				due 22539:10 22578:3
1 0	<b>diffuse</b> 22540:24,25	22424:23 22427:5	22514:14 22551:13	
22427:6 22470:3	22541:3 22546:9,16	22430:19 22434:6,19	22551:16 22561:8,20	duty 22514:14,15,18
22474:11 22475:24	diffused 22544:11	22442:8 22443:9,12	22562:6 22563:22	22515:21 22516:3
22475:25 22476:3,4	diffusing 22546:4,14	22443:14 22444:2,5,8	22567:10,14,20	22518:2 22521:18
22482:2 22575:7	direct 22401:24	22445:12 22446:12	doing 22416:6,9	22522:6,14,19
22577:7,18	22444:20 22448:10	22449:21 22450:5,20	22427:16 22432:18	22537:8
<b>describe</b> 22432:5	22448:11 22499:17	22468:20 22470:12	22438:3 22442:9	dying 22489:12
22443:11	22568:25 22578:21	22472:15 22478:1	22454:13,19	dynamite 22539:18
	22578:24	22482:1 22498:3	22470:19 22485:3	<b>D-day</b> 22561:18
described 22416:21	direction 22437:17,21	22555:13,15	22497:5 22500:14	· · · · · ·
described 22416:21 22466:24 22467:2,7				F
22466:24 22467:2,7	Y M I Y Y H M	22557.14 22561.21	22503.23 22522.15	E
22466:24 22467:2,7 22482:17 22561:25	22438:21 22469:8	22557:14 22561:21 22563:2 22565:12 25	22503:23 22522:15 22548:9 24 22575:22	
22466:24 22467:2,7 22482:17 22561:25 22569:4	22438:21 22469:8 22525:19 22526:5	22563:2 22565:12,25	22548:9,24 22575:22	earlier 22413:21
22466:24 22467:2,7 22482:17 22561:25 22569:4 deserve 22494:11,16	22438:21 22469:8 22525:19 22526:5 22527:9 22528:4	22563:2 22565:12,25 <b>discussions</b> 22421:23	22548:9,24 22575:22 dolus 22501:11	earlier 22413:21 22431:10 22439:15
22466:24 22467:2,7 22482:17 22561:25 22569:4	22438:21 22469:8 22525:19 22526:5 22527:9 22528:4 <b>directly</b> 22399:1	22563:2 22565:12,25	22548:9,24 22575:22	earlier 22413:21

Tel: 011 021 6457 Fax: 011 440 9119

**RealTime Transcriptions** 

22468:19 22490:23         engagement 22573:14         22571:15         22489:12 22538:10         224471:12           22537:3,19 2258:15         22469:15,21,23         22492:12         22457:15         22457:12           22557:3,19 2258:15         22468:1,10         everydody 2242:11         22479:12         22479:12           early 22425:18         enguiry 22551:24         evidence 22437:9,20         exhortation 22437.7         22499:1           early 2243:13         22515:21 22516:3         22448:12         exhortation 22437.7         22499:1           edged 22393:9         ensure 22497:8         22443:6 22437:9,20         22535:24         22510:1           22400:12 22436:19         entailing 2250:11         22449:12 2249:24         22536:7         22240:12         22440:13         22536:7         22240:12         22440:13         22537:12         22536:7         22440:13         2257:12         22428:12         22440:13         2257:12         22440:13         2257:12         22440:13         2257:12         22440:13         2257:12         22440:13         2257:12         22440:13         2257:12         2248:12         22440:13         2257:12         22440:13         2257:12         2248:12         2248:12         2248:12         2248:12         2248:12         2248:12         2248:12	Page 22436:13,19 2 22444:14 5 22452:10 22456:17 22492:13 4 22495:12 6 22502:4 7 22509:19
22468:19         22490:23         engagement 22573:14         22571:15         22482:02         2240:03         22451:12           22537:3,19         22538:10         English 22464:2.9         everybody 22424:1         22492:22         22453:1         22453:1         22453:1         22453:1         22453:1         22453:1         22473:1	2 22444:14 5 22452:10 22456:17 22492:13 4 22495:12 6 22502:4
22468:19         22490:23         engagement 2273:14         22571:15         22482:12         2249:12         2249:12         2249:12         2249:12         2249:12         2249:12         2249:12         2249:12         2249:12         2249:12         2249:12         2249:12         2249:12         2249:12         2247:13         2247:15         2247:15         2247:15         2247:15         2247:12<	2 22444:14 5 22452:10 22456:17 22492:13 4 22495:12 6 22502:4
22491:12 22536:10         English 22464:2.9         everyhody 22424:1         22492:12 22528:11         22451:2           22557:3.19 22430:23         22469:12 2462:19         exhibits 22477:5         22478:6           early 0acs 22430:23         ensure 22490:7.8         eury 22430:11         22478:6           edged 22393:9         ensure 22490:13         22455:12 22430:21         exhorting 22541:1         22499:1           edged 22393:9         ensure 22490:13         22436:21 22430:21         expected 22413:5         22535:24         22501:1           22400:11 22403:11         entangled 2249:16         224424:12,13         expected 22413:5         22535:24         22501:1           22400:12 22436:19         entangled 2240:13         224478:10         224478:10         224478:10         224478:10         224478:10         224478:10         224478:10         224478:10         22436:12         22440:3         22440:3         22440:3         22440:3         22440:3         224478:10         22542:12         224478:10         22457:12         224478:10         22457:12         224478:10         22447:12         22447:12         22447:12         22447:12         22447:12         22447:12         22447:12         22447:12         22447:12         22447:12         22447:12         22447:12         22447:12 <t< td=""><td>5 22452:10 22456:17 22492:13 4 22495:12 6 22502:4</td></t<>	5 22452:10 22456:17 22492:13 4 22495:12 6 22502:4
22537:3.19         22538:15         22467:15.21.23         22459:122402:19         exhibits 22477:5         22438:8           22565:7         22468:1,10         everyday 22413:1         exhortation 22437:7         22494:1:           early 22425:18         enguiry 22551:24         exhortation 22437:7         22494:1:         exhortation 22437:7         22494:1:           early 2243:13         22515:21 22516:3         22445:20 22430:21         exhortation 22437:7         22490:1           edged 22393:9         ensured 22514:5         22434:6 22437:9,20         22535:24         22500:1           22400:12 2243:14         expectage 2243:14         22440:20         22536:7         22536:7           22440:12 2243:14         22440:20         22536:7         22540:1         22440:20         22536:7           22440:12 2243:14         22440:15         22457:1         22440:20         22536:7         22557:1           22528:11,24         enterprise 22501:9         22469:36 2249:7         22447:17 2432:8         22557:4         factor 224           effectively 22431:22         22404:7,15 2206:4         22495:7 2251:18         22557:4         factor 224           effectively 2249:12         22576:25         22576:25         22576:25         22578:8         22578:8         22550:25 <td< td=""><td>22456:17 22492:13 4 22495:12 6 22502:4</td></td<>	22456:17 22492:13 4 22495:12 6 22502:4
22565:7         22468:1,10         everyday 22413:1         22478:18         22478:18         22478:18           earlpones 22430:2,3         ensure 22497:8         22492:1         exhorting 22534:1         22499:1           eage 22393:9         ensure 22497:8         22430:2,2         22430:2         22431:2         expect 22465:3         2250:1           edged 22393:9         ensure 2259:15:2         22543:1         22440:12         expect 22465:3         2250:1           22400:11         22430:22         22441:12         22530:1         22444:12         22450:1         expect 2241:5         22530:2           22440:13         22440:13         expect 2240:14         22449:10         2249:17         22432:8         22572:1           22528:11,24         enterprise 22501:9         22469:36         22479:10         22482:2         22441:18         22517:20         22572:1           22542:14         2249:15         22563:1         22490:2         22471:18         22517:20         22575:1           2249:24         2249:11:5         22576:6         2249:12         2249:12         2249:12         2249:12         2249:12         2249:12         2249:12         2249:12         2249:12         22479:12         2249:14         22575:21         2250:12	22492:13 4 22495:12 6 22502:4
early 22425:18         enquiry 22551:24         evidence 22430:1         exhortation 22437:7         22494:1           earplones 22430:23         ensure 2247:8         2245:20 22430:21         exhortation 22437:7         22499:1           eagy 22433:13         22515:12 122516:3         22430:22         22431:4         expect22465:3         22504:1           edge 22393:9         ensuring 22399:23         22444:212,13         expected 22413:5         22536:7           22440:11 22486:11         entaning 2250:11         22449:14 2248:10         expected 22413:5         22536:7           22440:13 22486:11         enterprise 22501:9         22469:36 22478:22         22447:18 22517:20         22572:1           effectively 22431:22         entertined 2242:18         22495:7:12         22487:5         22495:7:12         22487:6         22575:1           effect 22556:5         22406:7:16 22507:6:4         22529:18,18,19,20         22507:3         22578:12         22489:6 22496:9         22578:12           either 2249:25         22576:25         22549:12 22544:9         experience 2246:51         facte 2240           22449:7 2249:32         entitie 22575:23         22547:12 22549:3.1         experience 2246:514         facte 2250           either 2249:05         22576:25         22549:12 22549:3.2         experience 2246	4 22495:12 6 22502:4
early 22425:18         enquiry 22551:24         evidence 22430:1         exhortation 22437:7         22494:1           earplones 22430:23         ensure 2247:8         22425:20 22430:21         exhortation 22437:7         22499:1           edged 22393:9         ensure 2247:8         22425:20 22430:21         expected 22465:3         22504:1           edged 22393:9         ensuring 22399:23         22444:212,13         expected 22413:5         22536:7           22440:11 22403:11         entailing 22560:16         22452:14 22458:10         expected 22413:5         22556:7           22440:13 22486:11         enterprise 22501:9         22469:36 22478:22         22447:18 22517:20         22572:1           effectively 22431:22         entertrained 22424:18         22495:73 22496:1         22575:1         22495:73         22495:73           effectively 22431:22         experience 2246:15         22495:73         22495:73         22495:73         22495:73         22495:73         22495:73         22549:13         experience 2246:51         factor 224           either 2249:25         22576:25         22549:12 22544:9         experiences 22496:514         facts 2250           22449:249:25         22576:25         22549:12 22549:3         experiences 22496:514         facts 2250           22449:22 2256:3         22566:15	4 22495:12 6 22502:4
earpines 22430:2,3         ensure 22497:8         22452:02 02430:21         expert 22465:3         22490:1           easy 22433:13         22515:21 22516:3         22430:22 22431:4         expert 22465:3         22504:1           effect 22388:25         ensured 22390:23         22444:2,12,13         expect 22465:3         22535:1           22400:11 22436:19         entailing 22530:11         22444:2,12,13         expect 22437:9,20         22536:7           22440:13 22486:10         enterprise 22501:9         22449:3,6 22478:22         22447:18 22517:20         22572:1           effectively 22431:22         entreprise 22404:24         22489:6 22486:22         22447:18 22517:20         22572:1           effectively 22431:22         entreprise 2240:23         22490:23 22491:3         experience 2249:15         factor 224           22485:24 22519:10         22575:12,15 22576:4         22509:18,18,19,20         2250:23         22564:7           22448:7 22449:6         22575:25         2250:47         22540:12 2254:9         experiencing 2266:12         2250:47           22448:7 22449:6         22575:23         22547:21 22548:12         experiencing 2266:12         2250:47           22448:7 22449:6         22575:23         22549:14 22479:7         faited z250:22         22523:1           22448:12,21223         <	6 22502:4
easy 22433:13         22515:21 22516:3         22430:22 22431:4         expect 22465:3         22506:1           edged 22393:9         ensurid 22514:5         22434:6 22437:9,20         22535:24         22510:1           22440:11 22403:11         entanije 22399:23         22444:2,12,13         expected 2241:35         22535:24         22535:24           22440:12 22436:19         entangled 22469:16         22452:14 22458:10         expecting 22390:22         22542:22           22440:12 22431:22         enterprise 22501:9         22469:3 6 22487:52         2247:17 22432:8         2257:12           22545:12 22556:5         22405:1,15 22406:23         22490:23 2249:1         factor 224           ether 2257:15 22576:5         22495:7 22513:21         2249:6 2249:6         22575:52           ether 22429:25         22576:67,9,10,14,23         22530:14 22531:13         experiencing 22563:12         22504:7           22467:12 2248:48         entitie 22575:23         2254:12 22544:9         experiencing 22563:12         22504:7           22448:7 2249:6         22576:5         2254:12 2254:9         experiencing 22563:12         22504:7           22467:12 2254:8         entitie 22423:2         2254:14 22550:3,21         experiencing 2250:3:12         22504:7           22467:12 2254:61         2256:15         2254:17	
edged 22393:9         ensured 22514:5         22434:6 22437:9,20         22535:24         22510:1           effect 22388:25         ensuring 22399:23         22444:2,12,13         22440:20         22535:24         22535:1           22410:19 22436:11         entariling 22530:11         22448:8,14 22449:24         22440:20         22535:2         2255:1         2255:1         2255:1         2255:1         2255:1         2255:1         2255:1         22480:2         2242:1         2254:1         2255:2         2257:1         2254:2         224:1         224:1         224:1         225:1         225:1         225:1         225:1         225:1         225:1         225:1         225:1         225:1         224:1         224:1         224:1         224:1         224:1         224:1         224:1         224:1         224:1         224:1         224:1         224:1         224:1         224:1         224:1         224:1         224:1         224:1         225:1         225:1	/////
effect 22388:25         ensuring 22399:23         22444:212.13         expected 22413:5         22536:1           22400:11 22403:11         entailing 22530:11         22448:8,14 22449:24         22440:13 22436:10         22536:1         22536:1           22440:13 22486:11         enterprise 22501:9         22469:3.6 22478:22         22424:17 22432:8         22557:1           22522:11,24         enterprise 22501:9         22469:3.6 22478:22         22442:17 22432:8         22557:1           225252:11,24         enterprise 22501:9         22469:3.6 22478:5         22457:15         22557:4         factors 22           2249:24         22401:1,7 22406:23         22490:23 22491:3         experience 22496:15         factors 22           2249:24         22411:5,7 22435:6         22559:18,18,19,20         22580:23         22578:8           either 2249:25         22576:25         22547:12 22548:12         experience 22496:5,14         facts 2250           22448:72 2249:6         entitle 2243:2         22547:12 22548:12         experience 2250:8         22511:8           22485:23 22486:3         entitle 2243:2         22547:12 22548:12         experience 2250:5         22496:19         2250:12           22485:23 22486:3         entitle 2243:2         2256:120 2256:2         22481:17 22491:16         fattalt2252	
22400:11 22403:11         entailing 22530:11         22448:8.14 2249:24         22440:20         22536:7           22440:12 22436:19         entargies 2250:19         22452:14 22458:10         22442:17 22432:8         22557:1           22528:11,24         enterpise 2250:19         22449:12 2248:22         22447:17 22432:8         22557:1           effectively 22431:22         entirely 2240:24         22449:12 22447:18 22517:20         22577:1         factor 224           22449:24 22519:10         22575:12,15 2260:62         22495:7 22513:21         22489:6 22496:9         22575:14           22448:7 22449:6         22576:62,7,9,10,14,23         22550:14 22531:13         experiences 22496:5,14         factor 224           22448:7 22449:6         22576:25         22542:12 22548:12         expertinecs 22496:5,14         factor 224           22448:7 22449:6         22576:25         22549:14 22550:3,21         22406:19 22454:19         factor 224           2248:23 22486:3         entitile 22499:9         22549:14 22550:3,21         22406:19 22454:19         factor 224           22518:14 22519:9         22506:18         22557:5 22571:4         factor 224         failed 225           2253:8         equaly 22487:16         22567:5 22571:4         22449:7         failed 2249:1           2253:8         equals 2544:12,16,2	2 22521:18
22410:19 22436:19         entangled 22469:16         22452:14 22458:10         expecting 22390:22         22542:8           224240:13 22480:11,24         enterprise 22501:9         22464:17 22432:8         225257:1         225257:1         225257:1         225257:1         22557:4         factor 224           effectively 22431:22         catheryrise 22501:1,15 22576:4         22490:23 22491:3         catheryrise 2250:12         22557:4         factor 224           2249:24         22411:5,7 22435:6         22495:17 22531:21         22489:6 22496:9         22575:12         22557:4         factors 22           2249:25         22576:6,7,9,10,14,23         22530:14 22531:13         experiences 22496:5,14         facts 2250           22448:7 2249:25         22576:2         22548:17 22548:12         experiences 22496:5,14         facts 2250           22448:12 2219:9:3         entitle 2243:2         22548:17 22549:3,4         experiance 2245:19         factualty 2           22518:14 22519:9:         22560:18         22557:22         2249:14 22559:22         factualty 2         factualty 2           22561:15 22567:6         equalty 22487:16         22557:22         22578:20         22449:12 22491:16         fatualty 2           22561:15 22567:10         ecalate 22405:25         ecythery 22457:4         22559:22         fati 22451:2 <td>3 22532:2</td>	3 22532:2
22410:19 22436:19         entangled 22469:16         22452:14 22458:10         expecting 22390:22         22542:8           224240:13 22480:11,24         enterprise 22501:9         22464:17 22432:8         225257:1         225257:1         225257:1         225257:1         22557:4         factor 224           effectively 22431:22         catheryrise 22501:1,15 22576:4         22490:23 22491:3         catheryrise 2250:12         22557:4         factor 224           2249:24         22411:5,7 22435:6         22495:17 22531:21         22489:6 22496:9         22575:12         22557:4         factors 22           2249:25         22576:6,7,9,10,14,23         22530:14 22531:13         experiences 22496:5,14         facts 2250           22448:7 2249:25         22576:2         22548:17 22548:12         experiences 22496:5,14         facts 2250           22448:12 2219:9:3         entitle 2243:2         22548:17 22549:3,4         experiance 2245:19         factualty 2           22518:14 22519:9:         22560:18         22557:22         2249:14 22559:22         factualty 2         factualty 2           22561:15 22567:6         equalty 22487:16         22557:22         22578:20         22449:12 22491:16         fatualty 2           22561:15 22567:10         ecalate 22405:25         ecythery 22457:4         22559:22         fati 22451:2 <td>22540:24</td>	22540:24
22440:13 22486:11         enterprise 22501:9         22469:3,6 22478:22         22424:17 2243:8         2257:1           22528:11,24         entertained 22424:18         22479:10 22482:22         22447:18 22517:20         2257:1           effectively 22431:22         22405:1,25256:5         22405:1,15 22406:23         22490:23 22491:3         experience 22426:15         factors 22           either 22429:25         2257:6:6,7,9,10,14,23         22530:14 22531:13         experiences 22496:5,14         facts 225           22448:7 22449:6         22576:25         22542:12 22544:9         experiences 22496:5,14         facts 225           22446:12 2248:8         entitie 22423:2         22549:14 22550:3,21         experience 22496:5,14         facts 2250:18           22496:4 22509:1         entitle 22423:2         22549:14 22550:3,21         experise 22505:8         22551:18           22551:8:14 22519:9         22566:18         22567:5 22571:4         explained 22390:20         e24243:19           22535:9 22536:3         equally 22487:16         22575:25 22578:20         22449:16         failer 224           22561:12 22567:6         22467:12         explained 22390:20         e24243:19         failer 224           22531:1         ectaller 22407:23         2257:42         2257:46 22557:4,2257:40         22449:16         failer 224 <td>,19 22545:23</td>	,19 22545:23
22528:11,24         entertained 22424:18         22479:10 22482:22         22447:18 22517:20         2257:17           effectively 22431:22         22447:18 2257:12         22467:12 22483:6 22487:5         2257:12         factors 22           22449:24 22519:10         22577:51 2,15 22576:4         22529:18,18,19,20         22578:22         22576:67,9,10,14,23         2250:23         22489:6 22496:9         22578:12           22448:7 22449:6         22576:67,9,10,14,23         22530:14 2251:13         experiences 22496:5,14         facts 2250           22448:7 22449:6         22576:25         22547:21 22548:12         experiinecing 22563:12         2250:47           22485:23 22486:3         entitie 22429:2         22561:20 2250:3,21         22454:19         facturally 2           22518:14 22519:9         2506:18         22551:5 2257:52         22448:17 2249:14         failed 225           22536:3         equally 22487:16         22567:5 2257:4         22459:14 2249:15         failed 225           22537:12         equals 22406:25         evidenced 22575:4         22578:6         22448:1           elicited 2252:21         escalate 22405:25         evidenced 22575:4         2253:16 20257:4         2253:16 20257:4         22454:19           elicited 2252:21         escalate 22406:25         evidenced 22575:4         22557:4	
effectively 22431:22         entirely 22404:24         22483:6 22487:5         22557:4         factor 224           22547:15 22556:5         22405:1,15 22406:23         22490:23 22491:3         experience 22426:15         factors 22           EHW 22488:2,24         22411:5,7 22435:6         22495:7 22513:21         22489:6 22496:9         22575:12           22492:25         22575:12,15 22576:4         225291:81,18,19,20         22520:23         22538:12           either 22429:25         22576:25         22542:12 22544:9         experiences 22496:5,14         facts 2250           22448:7 22449:6         22576:25         22547:21 22548:12         experise 2250:23         225231:12           22486:4 22509:1         entitle 22423:2         22549:14 22559:3,21         22446:19 22454:19         factually 2           22531:1 2250:31         equally 22499:9         22561:20 22562:5         22481:17 22491:16         failure 22:           22551:1 2253:19         eigleptic 22519:2         22576:20         224151:12 22491:16         failure 22:           22551:2 22571:4         22531:12 22548:10         explaimed 22390:20         22424:1           22551:1 22553:8         22531:12 22578:20         22415:12 22491:16         2253:19         2253:19           22561:20 22521:1         ecqually 2248:11         22557:52 22578:20<	
22547:15         22405:1,15         22406:23         22490:23         22491:3         experience         22426:15         factors         22           EHW         22488:2,24         22411:5,7         22435:6         22495:7         2253:12         22485:6         2257:5:12         2257:5:2         2257:5:12         2257:5:2         2257:5:2         2257:5:2         2257:5:2         2256:1:2         2256:1:2         2256:1:2         2257:1:4         2257:1:4         2257:1:4         2257:1:4         2257:1:2         2248:1:7         2249:1:16         failure 22:7           2251:1:15         2250:1:2         2256:1:2         2257:1:4         2257:1:4         2257:1:4         2257:1:4         2257:1:4         2257:1:4         2257:1:4         2257:1:4         2257:1:4         2257:1:4         2257:1:4         2257:1:4         2257:1:4         2257:1:4         2257:1:4         2257:1:4         2257:1:4         2257:1:4	
EHW 22488:2,2422411:5,7 22435:622495:7 22513:2122489:6 22496:922575:1222495:24 22519:1022576:2522576:6,7,9,10,14,2322530:14 22531:132250:2322578:222448:7 2249:622576:2522576:2522542:12 22544:13experiencing 2263:122250:4722467:12,21 22483:8entite 22423:222542:12 22548:12experiencing 2250:3:122250:7.322485:23 22486:3entite 22423:222548:17 2259:3,2122405:12 22548:1222481:1622518:14 22519:922506:1822552:5,8 22558:222481:17 22491:16fatualug 22522521:7 22533:19epileptic 22519:222561:20 22562:522481:17 22491:16failure 22522535:9 22536:3equalug 22487:1622577:52 22571:422548:6 2259:22fair 2241:1222561:15 22567:622496:1 22519:2322578:2422523:19 22548:1022445:11elicit 22523:8era 22512:122578:2422573:12 22497:1522434:9elicit 22523:8era 22512:1expelained 22390:2022448:10elicit 2252:21escalate 22405:25evidenced 2257:422557:4,6 22558:622481:122565:6 22567:10essentially 2211:19,21exact 22500:23explaining 22451:322563:2322562:2422498:11 2252:2022416:12 2249:12explaining 22451:19failres 2222562:2422498:11 2252:2022416:19 22423:12explaining 22451:19fail2232122562:2422498:11 2252:2022416:19 22423:12explored 22437:8falla 2250:222562:2422498:12 2250:23	
22495:24 22519:1022575:12,15 22576:422529:18,18,19,2022520:2322578:8either 22429:2522576:6,7,9,10,14,2322530:14 22531:13experiences 22496:5,14facts 225022448:7 22449:622576:2522542:12 22548:12experiencing 22563:1222504:722467:12,21 22483:8entities 22575:2322547:21 22548:12experise 22505:822511:822485:23 22486:3entite 22499:922547:21 22549:3,4experise 22505:822511:822496:4 22509:1entited 22499:922549:14 22500:3,2122406:19 22454:19factually 222511:8 14 22519:922506:1822552:5,8 22558:2222481:17 22491:16failure 2222535:9 22536:3equally 22487:1622567:5 22571:422548:6 22559:22failed 22522551:15 22567:622496:1 22519:2322575:2 22578:2022415:12 22497:1522434:9elicit 22523:8era 22512:122578:24225253:19 22548:1022445:11elicit 22523:8era 22405:25evidenced 22575:422557:46 22558:622481:1elicit 2252:21escalate 22405:25evidenced 22575:422557:46 22558:622481:1elicit 2252:23especially 22512:19,21exact 22500:23explains 22455:19fairness 2222569:322502:8 22560:7exact 22309:10,1322576:16fairness 2222569:322502:8 22560:7explains 22451:23explains 22451:3fall 2253:2embraced 22541:622549:922407:23 22544:17,20explains 22451:12fall 2253:222409:12 2250:2422498:11 2252	507:13
22495:24 22519:1022575:12,15 22576:422529:18,18,19,2022520:2322578:8either 22429:2522576:6,7,9,10,14,2322530:14 22531:13experiences 22496:5,14facts 225022448:7 22449:622576:2522542:12 22548:12experiencing 22563:1222504:722467:12,21 22483:8entities 22575:2322547:21 22548:12experise 22505:822511:822485:23 22486:3entite 22499:922547:21 22549:3,4experise 22505:822511:822496:4 22509:1entited 22499:922549:14 22500:3,2122406:19 22454:19factually 222511:8 14 22519:922506:1822552:5,8 22558:2222481:17 22491:16failure 2222535:9 22536:3equally 22487:1622567:5 22571:422548:6 22559:22failed 22522551:15 22567:622496:1 22519:2322575:2 22578:2022415:12 22497:1522434:9elicit 22523:8era 22512:122578:24225253:19 22548:1022445:11elicit 22523:8era 22405:25evidenced 22575:422557:46 22558:622481:1elicit 2252:21escalate 22405:25evidenced 22575:422557:46 22558:622481:1elicit 2252:23especially 22512:19,21exact 22500:23explains 22455:19fairness 2222569:322502:8 22560:7exact 22309:10,1322576:16fairness 2222569:322502:8 22560:7explains 22451:23explains 22451:3fall 2253:2embraced 22541:622549:922407:23 22544:17,20explains 22451:12fall 2253:222409:12 2250:2422498:11 2252	7 22577:19
either         22429:25         22576:6,7,9,10,14,23         22530:14 22531:13         experiences         22496:5,14         facts         2250           22448:7         22449:6         22576:25         22542:12 22544:9         experiencing         2256:12         22504:7           22467:12,21 22483:8         entitle         22472:2         22548:17 22549:3,4         experise         2250:8         22511:8           22496:4         22509:1         entitle         22499:9         22549:14 22550:3,21         22406:19 22454:19         factually 2           22518:14         22519:2         22561:20 22562:5         22481:17 22491:16         failed         225           2253:1         22567:6         22496:1 22519:2         22571:4         22548:6 2259:22         fair         22411           22561:15         22567:6         22496:1 22519:23         22578:24         22523:19 22548:10         2244:1           element         22571:14,14         escalat         22405:25         evidence         22573:2         22573:6         2244:1           eliminated         22571:14,12         escalat         22405:25         evidence         22573:12         22575:9         22523:1           22562:24         especially         22512:10,21         escalat	
22448:7 22449:622576:2522542:12 22544:9experiencing 22563:1222504:7.222467:12,21 2248:8entities 22575:2322547:21 22548:12expertise 22505:822511:822495:23 22486:3entitle 22423:222548:17 22549:3,4explain 22405:2222523:122496:4 22509:1entitle 22499:922549:14 22550:3,2122406:19 22454:19factually 222518:14 22519:922506:1822552:5,8 22558:2222449:14 22479:7failed 22522535:9 22536:3equally 22487:1622567:5 22571:422548:6 22599:22failer 22222551:15 22567:622496:1 22519:2322574:4 22575:4,20explained 22390:2022424:1122501:15 22567:6equally 22487:1622575:2 22578:2022415:12 22497:1522434:9elicit 22523:8era 22512:122578:2422557:4,6 22558:6224451:1elicit 2252:21escalate 22405:25evidenced 22575:422557:4,6 22558:6224451:1elicit 2252:21escalate 22405:25evidenced 22575:422557:3,12 22575:922523:1122566:6 22567:10essentially 2241:1622500:23explaining 22451:322563:22256:22establish 22493:1822407:23 2244:7,1022576:16fairnees 222256:22422498:11 22522:022416:19 2243:12explore 22437:8fallacy 22422256:22422499:922429:21 22504:4:1422557:15,20explore 22437:8fallacy 224222515:14 22516:922543:25 22549:1022553:16,20 22572:1expressing 22445:12fare424222515:14 22516:9<	
22467:12,21 22483:8 22485:32 22486:3entities 22575:23 entitle 22423:222547:21 22548:12 22548:17 22549:3,4expertise 22505:8 explain 22405:2222511:8 22523:122496:4 22509:1 22518:14 22519:9entitled 22499:9 22518:14 22519:922506:18 22552:58 22558:2222406:19 22451:19 22496:14 22579:14 22491:16fature 225 failed 22522535:9 22536:3 22535:9 22536:3 equally 22487:16 elicit 22572:12equally 22487:16 22567:5 22571:422567:5 22571:4 22548:6 2259:22failure 225 failed 223element 22572:12 elicit 2252:21 escalate 22405:25 escalate 22405:25explained 22300:20 22445:1222442:11 22578:24elicited 2252:21 escalate 22405:25 essentially 22512:19,21 ez566:70 22569:3escape 22467:25 essentially 22512:19,21 escate 22500:23explaining 22451:3 explaining 22451:4 explaining 22451:4 explaining 22451:4 explaining 22451:4 explaining 22451:3 explaining 22451:3 explaining 22451:3 explaining 22451:4 explaining 22451:3 explaining 22451:4 explaining 22451:3 explaining 22451:4 explaining 22451:4 explaining 2246:12 2250:23 explaining 22451:4 explaining 22451:4 explaining 2246:12 2250:23 explaining 22451:4 explaining 22451:4 explaining 2246:72 explaining 22451:4 explaining 2246:72 explaining 22451:4 explaining 2246:72 explaining 22437:8 explaining 22451:4 explaining 2246:72 explaining 22446:8 explaining 22446:8 explaining 22446:8 explaining 22446:8 explaining 22446:8 explaining 22446:8 explaining	
22485:23 22486:3 22496:4 22509:1entitle 22423:2 entitled 22499:922548:17 22549:3,4 22549:14 22550:3,21explain 22405:22 22406:19 2245:1922523:1 failed 2257 failed 225722518:14 22519:9 22535:9 22536:322506:18 equaly 22487:16 22561:15 22567:622496:1 22519:23 22575:12 22567:5 22571:422567:5 22571:4 22548:6 22590:22 22481:17 22491:16 failere 22522481:17 22491:16 failere 225 fair 22411 22561:2 22575:4 22575:2 22578:2022481:17 22491:16 22548:6 22590:22 fair 22410 22548:6 22590:2022424:10 22445:12 22445:12 2243:19 22445:12 22573:19 22548:1022442:10 22445:12 22445:12 2243:19elicit 22522:1 eliminated 22571:14,14 email 22562:23 22565:6 22567:10 22565:6 22567:10 essentially 22414:16 22560:23 22562:23 essentially 22414:16 22560:7 22562:24escape 22467:25 evident 22406:11 22407:10 22560:7 exactly 22390:10,13 22576:16explaining 22451:3 explains 22455:19 22549:9 22406:11 22407:10 22549:9 22406:11 22407:10 22562:24 explaned 22514:5 explains 22455:19 failez 223fail 22521: failez 224 failez 224 failez 22422561:23 22562:23 22562:24 embraced 22541:6 22549:9 22498:11 22522:20 22549:9 22498:11 22522:20 2246:12 2253:16,20 22571:17 22563:19 2253:16,20 22571:17 22563:19 22549:10 22573:16,20 22571:17 22560:24 22560:17 expressing 22418:12 22561:20 22561:17 22560:24 22560:17 22560:24 22560:17 expressing 22448:18 22560:17 expressing 22448:18 22560:17 expressing 22448:18 22560:17 expressing 22448:18 22560:17 expressing 22448:18 22560:17 expressing 22448:18 22560:17 expressing 22448:12 22561:20 22470:9 22522:11 22561:	
22496:4 22509:1 22518:14 22519:9entitled 22499:9 22506:1822549:14 22550:3,21 22552:5,8 22558:22 22459:14 22479:7factually 2 failed 225 22459:14 22479:722517: 22533: 19 22535: 9 22536:3 equally 22487:16 22561:15 22567:6epileptic 22519:2 22496:1 22519:2322567:5 22571:4 22567:5 22571:422481:17 22491:16 22567:5 22571:4failure 222 22488:6 2259:22 fair 2241:1element 22572:12 element 22572:12 elicit 22523:8 era 22512:11 elicit 22522:21 escalate 22405:25 escalate 22405:25evidenced 22575:4 evidenced 22575:4explained 22390:20 22424:10 22553:19 22548:1022445:12 22434:9elicit 22522:21 escalate 22405:25 especially 22512:19,21 email 22562:23 especially 22512:19,21 essentially 22414:16 22540:23 22549:23 essentially 22414:16 22540:23 22549:23 establish 22493:18 establish 22493:18 22407:13 22562:24 22498:11 22522:20 22416:19 22423:12 explored 22451:24 explored 22541:6 22549:9 22429:21 22504:4,11 explored 22451:3 explored 22451:34 explored 22451:4fail 22521: failly 2244:12 explored 22451:34 explored 22451:34 explored 22549:9 22569:72 22549:922406:11 22407:10 22407:13 2257:15,20 explored 22425:19 explored 22425:19 failly 2244:22 failly 2244:12 2250:17 2250:24 2259:77 2250:17 2250:17 2250:17 2250:17 2250:24 2259:77 2250:17 2250:17 2250:17 2250:12 2250:17 2250:17 expression 22488:12 expression 22488:	22522:21
22518:14 22519:922506:1822552:5,8 22558:2222459:14 22479:7failed 22522521:7 22533:19epileptic 22519:222561:20 22562:522481:17 22491:16failure 22522535:9 22536:3equally 22487:1622567:5 22571:422548:6 22559:22fair 2241122561:15 22567:622496:1 22519:2322573:4 22575:4,20explained 22390:2022424:14element 22572:12equals 22544:12,16,2322578:2422531:9 22548:1022445:12elicited 22522:21escalate 22405:25evidenced 22575:422557:4,6 22558:622481:14eliminated 22571:14,14escape 22467:25evidenced 22575:422573:12 22575:922523:19email 22562:23especially 22512:19,21exact 22500:23explaining 22451:322563:222565:6 22567:10essentially 22414:1622540:23 22549:23explaining 22451:322563:222562:23establish 22493:1822406:11 22407:10explanations 22495:8failacy 22422562:2422498:11 2252:2022416:19 22423:12explore 22437:8failacy 22422569:922549:922429:21 22504:4,11explore 22437:8failacy 224embraced 22541:622549:9225277:15,20explore 22431:23far 22429:222518:1 22571:1722546:8 22529:722573:19 22574:12expression 22458:12far 22429:222518:1 22571:1722550:24 2259:722574:12expression 22488:1222569:222518:1 22571:1722550:24 2259:722574:12expression 22488:12farfetched22518:1 22571:17 <td< td=""><td></td></td<>	
22521:7 22533:19 22535:9 22536:3 equally 22487:1622561:20 22562:5 22481:17 22491:16 22548:6 22559:22failure 223 fair 22411 22548:6 2259:2222561:15 22567:6 element 22572:12 elicit 22523:8 elicit 22523:8 elicit 22522:1 emaina 22571:14,14 eliminated 22571:14,14 escape 22467:25 especially 22512:19,21 essentially 22414:16 22566:22567:10 2256:23 essentially 22414:16 22569:3 22560:7 essentially 22414:16 22569:17 22570:18 22560:7 essentially 22414:16 22560:7 22560:7 22560:7 exactly 22300:10,13 exactly 22300:10,13 22576:16explained 22390:20 22445:12 22573:12 22578:20 22573:12 22578:20 22573:12 22578:20 22573:12 22578:24 22557:4,6 22558:6 22588:6 224481:10 22573:12 22575:9 22523:19 22523:10 22502:8 22560:7 exact 22500:23 exactly 22300:10,13 22576:16224451:2 22576:16 explaning 22451:3 22576:16 explaning 22451:3 22576:1622576:16 fairness 22 fairly 224 2256:22 exactly 22300:10,13 22576:1622561:23 22562:23 22562:24 embraced 22541:6 22540:9establish 22493:18 22502:20 22498:11 2252:2022406:11 22407:10 22492:12 22504:4,11 22502:423:12 explored 22425:19 explored 22425:19 explored 22425:19 faills 22432 explored 22431:23 far 22422: 22496:9 22512:17,22 22496:9 22543:25 22549:10 22553:16,20 22571:20 22531:10 2250:24 22550:7 22531:10 2250:17 expressions 22458:12 farfetched 22514:6 22556:8 establishing 22519:20 explored 22458:30 explored 22458:12 expressions 22458:12 farfetched 22514:6 22556:8 establishing 22519:20 explored 224251:10 expressions 22458:12 expressions 22458:12 farfetched 22514:6 22556:8failitie 2 22531:10 expressing 22415:12 expressi	2489:21
22521:7 22533:19 22535:9 22536:3 equally 22487:1622561:20 22562:5 22481:17 22491:16 22548:6 22559:22failure 223 fair 22411 22548:6 2259:2222561:15 22567:6 element 22572:12 elicit 22523:8 elicit 22523:8 elicit 22522:1 emaina 22571:14,14 eliminated 22571:14,14 escape 22467:25 especially 22512:19,21 essentially 22414:16 22566:22567:10 2256:23 essentially 22414:16 22569:3 22560:7 essentially 22414:16 22569:17 22570:18 22560:7 essentially 22414:16 22560:7 22560:7 22560:7 exactly 22300:10,13 exactly 22300:10,13 22576:16explained 22390:20 22445:12 22573:12 22578:20 22573:12 22578:20 22573:12 22578:20 22573:12 22578:24 22557:4,6 22558:6 22588:6 224481:10 22573:12 22575:9 22523:19 22523:10 22502:8 22560:7 exact 22500:23 exactly 22300:10,13 22576:16224451:2 22576:16 explaning 22451:3 22576:16 explaning 22451:3 22576:1622576:16 fairness 22 fairly 224 2256:22 exactly 22300:10,13 22576:1622561:23 22562:23 22562:24 embraced 22541:6 22540:9establish 22493:18 22502:20 22498:11 2252:2022406:11 22407:10 22492:12 22504:4,11 22502:423:12 explored 22425:19 explored 22425:19 explored 22425:19 faills 22432 explored 22431:23 far 22422: 22496:9 22512:17,22 22496:9 22543:25 22549:10 22553:16,20 22571:20 22531:10 2250:24 22550:7 22531:10 2250:17 expressions 22458:12 farfetched 22514:6 22556:8 establishing 22519:20 explored 22458:30 explored 22458:12 expressions 22458:12 farfetched 22514:6 22556:8 establishing 22519:20 explored 224251:10 expressions 22458:12 expressions 22458:12 farfetched 22514:6 22556:8failitie 2 22531:10 expressing 22415:12 expressi	19:7 22541:2
22535:9 22536:3 22561:15 22567:6equally 22487:16 22496:1 22519:2322567:5 22571:4 22572:4 22575:4,2022548:6 2259:22 explained 22390:20fair 22411 22424:19element 22572:12 elicit 22523:8 elicit 22523:8 elicit 22523:8 elicit 22523:8 eliminated 22571:14,14 email 2256:23 22565:6 22567:10 22565:6 22567:10escalat 22405:25 especially 22512:19,21 essentially 22412:16 essentially 2244:16 22569:3 22569:3escalat 22406:25 essentially 22414:16 22569:17 22570:18 22569:17 22570:18 22569:17 22570:18 22569:17 22570:18 22569:17 22570:18 22569:17 22570:18 22569:22 22406:11 22407:10 22406:11 22407:10 22406:11 22407:10 22406:11 22407:10 explain 22445:19 explains 22451:24 22569:22 22498:11 22522:20 22416:19 22423:12 22498:11 22522:20 22416:19 22423:12 22406:12 22504:4,11 22571:17,22 22446:8 22522:6,15 2253:19 22547:2 2253:19 22547:2 2253:19 22548:10 2250:24 2259:27 2253:19 22547:2 2253:19 22547:2 2253:19 22547:2 2253:19 22547:2 2250:17 22548:25 22569:17 2253:19 22547:2 2253:19 22547:2 2253:19 22547:2 2253:19 22547:2 2250:17 22548:12 2250:17 22548:12 2250:24 2250:24 2259:77 22518:1 22571:17 22548:4 2250:24 2259:77 22518:1 22571:17 22548:4 2250:24 2259:77 22518:1 22571:17 22548:4 2250:17 22543:25 22549:10 22553:16,20 22572:1 22574:12 expressions 22458:12 expressions 22458:12 expressions 22458:12 fairliar 2 expressions 22458:12 fairliar 2 22561:2 22406:17 expressions 22458:12 fairliar 2 22561:2 22406:17 expressions 22458:12 fairliar 2 2246:72 22518:10 expressions 22458:12 fairliar 2 expressions 22458:12 fairliar 2 2246:72 2246:72 2256:22 fairliar 2 22470:9 2252:11 expressions 22458:	
22561:15 22567:622496:1 22519:2322574:4 22575:4,20explained 22390:2022424:10element 22572:12equals 22544:12,16,2322575:25 22578:2022415:12 22497:1522434:9elicit 22523:8era 22512:122578:2422523:19 22548:1022445:12elicit 22522:21escalate 22405:25evidenced 22575:422557:4,6 22558:622481:14eliminated 22571:14,14escape 22467:25evidenced 22575:422573:12 22575:922523:1922565:6 22567:10essentially 22512:19,21exact 22500:23explaining 22451:322563:222569:322502:8 22560:7essentially 22414:1622540:23 22549:23explaining 22451:322563:222561:23 22562:23establish 22493:1822407:23 22414:7,20explanations 22495:8fall 22521:22562:2422549:922446:19 22423:12explore 22437:8fallacy 224emotional 22487:13,17established 22441:322573:16,20 22572:1express 22431:23far 22422:22518:1 22571:1722540:23 22549:1022533:16,20 22572:1express 22431:23far 22422:22518:1 22571:1722540:25 22549:1022533:16,20 22572:1expressing 22415:122256:1222518:1 22571:1722550:24 22559:722574:12expressing 22415:122256:1222514:6 22556:8establishing 22519:2022470:9 22522:1122493:11fashion 2222514:6 22556:8establishing 22519:2022470:9 22522:1122493:11fashion 2222514:6 22556:8establishing 22519:2022470:9 22522:1122493:11 <td< td=""><td></td></td<>	
element 22572:12equals 22544:12,16,2322575:25 22578:2022415:12 22497:1522434:9elicit 22523:8era 22512:122578:2422523:19 22548:1022445:12elicited 22522:21escalate 22405:25evidenced 22575:422557:4,6 22558:622481:14eliminated 22571:14,14escape 22467:25evident 22480:1622573:12 22575:922523:1922565:6 2256:10essentially 22512:19,21exact 22500:23explaining 22451:322563:222569:322502:8 22560:7essentially 22414:1622540:23 22549:23explains 22455:19fairley 22422561:23 22562:2322569:17 22570:1822406:11 22407:10explanations 22495:8fall 22521:22561:23 22562:2422498:11 22522:2022416:19 22423:12explore 22437:8fallacy 22422562:2422499:122549:222416:19 2243:12explored 22425:19falls 2243:2embraced 22541:622549:922446:8 22522:6,1522571:5,20express 22431:23far 22422:22515:14 22516:922543:25 22549:1022573:19 22547:222501:172246:1222518:1 22571:1722560:24 2259:722574:12expressing 22415:1222561:2222518:1 22571:1722560:17examination 22456:3,5expressing 22415:1222561:2222514:6 22556:8establishing 22519:2022470:9 2252:1122493:11fashion 2222514:6 22556:8establishing 22519:2022470:9 2252:1122493:11fashion 2222514:6 22556:8establishing 22519:2022470:9 2252:1122493:11fa	
elicit 22523:8era 22512:122578:2422523:19 22548:1022445:12elicited 2252:21escalate 22405:25evidenced 22575:422557:4,6 22558:622481:14eliminated 22571:14,14escape 22467:25evidenced 22575:422557:312 22575:922523:19email 22562:23especially 22512:19,21exact 22500:23explaining 22451:322563:222565:6 22567:10essentially 22414:1622540:23 22549:23explaining 22451:322563:222569:322502:8 22560:7exact 22300:10,1322576:16fairness 2222561:23 22562:23establish 22493:1822406:11 22407:10explanations 22495:8fall 22521:22562:2422498:11 22522:2022416:19 22423:12explore 22437:8fallacy 224embraced 22541:622549:922429:21 22504:4,11exposed 22514:5familiar 2222496:9 22512:17,2222446:8 22522:6,1522533:19 22547:222501:1722464:722515:14 22516:922543:25 22549:1022553:16,20 22572:1expressed 22484:1822529:2222518:1 22571:1722550:24 22559:722574:12expressing 22415:1222561:2222514:6 22556:8establishing 22519:2022470:9 22522:1122493:11fashion 22emotions 22556:8estimation 22488:3examine 22518:10expressily 22429:13fatalities 2	
elicited 2252:21escalate 22405:25evidenced 22575:422557:4,6 2258:622481:14eliminated 22571:14,14escape 22467:25evident 22480:1622573:12 22575:922523:10email 22562:23especially 22512:19,21exact 22500:23explaining 22451:322563:222565:6 22567:10essentially 22414:1622540:23 22549:23explains 22455:19fairly 224322569:322502:8 22560:7exactly 22390:10,1322576:16fairness 22emails 22451:2422569:17 22570:1822406:11 22407:10explanations 22495:8fallacy 22422562:2422498:11 2252:2022416:19 22423:12explore 22437:8fallacy 224embraced 22541:622549:922429:21 22504:4,11exposed 22514:5familiar 2222496:9 22512:17,2222446:8 22522:6,1522533:19 22547:222501:1722464:722515:14 22516:922543:25 22549:1022553:16,20 22572:1expressed 22484:1822529:2222518:1 22571:1722550:24 22559:722574:12expressing 22415:1222561:20emotionally 22488:422560:17examination 22456:3,5expressing 22415:1222561:2022514:6 22556:8establishing 22519:2022470:9 22522:1122493:11fashion 22emotions 22556:8estimation 22488:3examine 22518:10expressing 22429:13fatalities 2	
eliminated 22571:14,14escape 22467:25evident 22480:1622573:12 22575:922523:10email 22562:23especially 22512:19,21exact 22500:23explaining 22451:322563:222569:322502:8 22560:7exactly 22390:10,1322576:16fairness 22emails 22451:2422569:17 22570:1822406:11 22407:1022576:16failacy 22422562:23establish 22493:1822407:23 22414:7,20explanations 22495:8fallacy 22422562:2422498:11 22522:2022416:19 22423:12explore 22437:8fallacy 224embraced 22541:622549:922429:21 22504:4,11exposed 22514:5familiar 2222496:9 22512:17,2222446:8 22522:6,1522533:19 22547:222501:1722464:722515:14 22516:922543:25 22549:1022553:16,20 22572:1expressed 22484:1822529:2222518:1 22571:1722550:24 22559:722574:12expressing 22415:1222561:22emotionally 22488:422560:17examination 22456:3,5expressing 22415:1222561:2222514:6 22556:8establishing 22519:2022470:9 22522:1122493:11fashion 22emotions 22556:8estimation 22488:3examine 22518:10expressly 22429:13fatalities 2	
email 22562:23 22565:6 22567:10 22569:3especially 22512:19,21 essentially 22414:16 22502:8 22560:7 22502:8 22560:7 22561:23 22562:24exact 22500:23 22502:8 22560:7 exactly 22390:10,13 22406:11 22407:10 22406:11 22407:10 22406:11 22407:10explaining 22451:3 explains 22455:19 22576:1622563:22 fairly 2243 fail 225212 fail 225212embraced 22541:6 22549:92 22496:9 22512:17,22 22496:9 22512:17,22 22496:9 22512:17,22 22515:14 22516:9 22550:24 2259:7establish 22491:3 22576:18 22577:15,20explanations 22495:8 explore 22437:8 explore 22437:8fail 225212 fails 22432 fails 22432emotional 22487:13,17 22550:24 2252:6,15 22515:14 22516:9 22515:14 22516:9 22550:24 2259:7established 22441:3 22577:15,20express 22431:23 expressed 22484:18 expressing 22415:12 22501:17far 224222 22501:17 22560:17 expressed 22484:18 22529:22 22574:12emotionally 22488:4 22560:17 emotions 22556:8establishing 22519:20 estimation 22488:3examine 22518:10 expressly 22429:13fatilties 2	4 22518:19
email 22562:23 22565:6 22567:10 22569:3especially 22512:19,21 essentially 22414:16 22502:8 22560:7 22502:8 22560:7 22569:17 22570:18exact 22500:23 22502:17 22570:18 22406:11 22407:10 22406:11 22407:10explaining 22451:3 explains 22455:1922563:22 fairly 2243 fail 22521222561:23 22562:23 22562:24establish 22493:18 22498:11 22522:2022406:11 22407:10 22416:19 22423:12 22429:21 22504:4,11 22571:5,20explore 22437:8 explore 22437:8fall 225212 fails 22432 fails 22432emotional 22487:13,17 22496:9 22512:17,22 22543:25 22549:10established 22441:3 22533:19 22547:222501:17 22533:19 22547:2 22533:19 22547:2express 22431:23 22501:17far 22422: 22501:1722518:1 22571:17 22550:24 22559:7 22518:1 22571:1722560:17 22560:17examination 22456:3,5 22470:9 22522:11 22493:11expressing 22415:12 22493:1122561:22 fails 2249:12emotions 22556:8 emotions 22556:8estimation 22488:3examine 22518:10expressly 22429:13fatalities 2	0 22527:7
22565:6 22567:10essentially 22414:1622540:23 22549:23explains 22455:19fairly 224322569:322502:8 22560:7exactly 22390:10,1322576:16fairness 22emails 22451:2422569:17 22570:1822406:11 22407:10explanations 22495:8fall 2252122561:23 22562:23establish 22493:1822407:23 22414:7,20explore 22437:8fallacy 22422562:2422498:11 22522:2022416:19 22423:12explore 22425:19falls 22435emotional 22487:13,17established 22441:322527:15,20express 22431:23far 22422:22496:9 22512:17,2222446:8 22522:6,1522533:19 22547:222501:1722464:722515:14 22516:922543:25 22549:1022553:16,20 22572:1expressed 22484:1822529:2222518:1 22571:1722550:24 22559:722574:12expressing 22415:1222561:20emotionally 22488:422560:17examination 22456:3,5expressing 22458:12farfetched22514:6 22556:8establishing 22519:2022470:9 22522:11expressing 22458:12farfetchedemotions 22556:8estimation 22488:3examine 22518:10fashion 22	1 22564:5,10
22569:322502:8 22560:7exactly 22390:10,1322576:16fairness 22emails 22451:2422569:17 22570:1822406:11 22407:10explanations 22495:8fall 2252122561:23 22562:23establish 22493:1822407:23 22414:7,20explore 22437:8fallacy 22422562:2422498:11 22522:2022416:19 22423:12explored 22425:19falls 22435emotional 22487:13,17established 22441:322527:15,20express 22431:23far 22422:22496:9 22512:17,2222446:8 22522:6,1522533:19 22547:222501:1722464:722515:14 22516:922543:25 22549:1022553:16,20 22572:1expressed 22484:1822529:2222518:1 22571:1722550:24 22559:722574:12expressing 22415:1222561:22emotionally 22488:422560:17examination 22456:3,5expressing 22458:12farfetched22514:6 22556:8establishing 22519:2022470:9 22522:11expressly 22429:13fatlities 2	
emails 22451:2422569:17 22570:1822406:11 22407:10explanations 22495:8fall 2251:22561:23 22562:23establish 22493:1822407:23 22414:7,20explore 22437:8fallacy 22422562:2422498:11 22522:2022416:19 22423:12explore 22437:8fallacy 224embraced 22541:622549:922429:21 22504:4,11exposed 22514:5fallis 22423:222496:9 22512:17,2222446:8 22522:6,1522527:15,20express 22431:23far 22422:222515:14 22516:922543:25 22549:1022553:16,20 22572:122501:1722464:722518:1 22571:1722550:24 22559:722574:12expressing 22415:1222561:22emotionally 22488:422560:17examination 22456:3,5expressing 22458:12farfetched22514:6 22556:8establishing 22519:2022470:9 22522:1122493:11fashion 22emotions 22556:8estimation 22488:3examine 22518:10expressly 22429:13fatalities 2	
22561:23 22562:23 22562:24establish 22493:18 22498:11 22522:2022407:23 22414:7,20 22416:19 22423:12 22416:19 22423:12 2249:21 22504:4,11 exposed 22514:5explore 22437:8 explore 22425:19fallacy 224 falls 22433 falls 22433 falls 22433emotional 22487:13,17 22496:9 22512:17,22established 22441:3 22446:8 22522:6,1522527:15,20 22533:19 22547:2exposed 22514:5 express 22431:23far 22422: far 22422: 22501:1722496:9 22512:17,22 22543:25 22549:1022533:19 22547:2 22553:16,20 22572:122501:17 expressed 22484:1822529:20 22501:1722518:1 22571:17 22550:24 2259:722574:12 22574:12expressing 22415:12 22574:1222561:20 farfetched 22493:11emotionally 22488:4 22560:17establishing 22519:20 22470:9 22522:11 22470:9 22522:11expressions 22458:12 22493:11fashion 22 fashion 22emotions 22556:8estimation 22488:3examine 22518:10expressly 22429:13fatalities 2	
22562:2422498:11 2252:2022416:19 22423:12explored 22425:19falls 22435embraced 22541:622549:922429:21 22504:4,11exposed 22514:5familiar 22emotional 22487:13,17established 22441:322527:15,20express 22431:23far 22422:22496:9 22512:17,2222446:8 22522:6,1522533:19 22547:222501:1722464:722515:14 22516:922543:25 22549:1022553:16,20 22572:1expressed 22484:1822529:2022518:1 22571:1722550:24 2259:722574:12expressing 22415:1222561:20emotionally 22488:422560:17examination 22456:3,5expressions 22458:12farfetched22514:6 22556:8establishing 22519:2022470:9 22522:1122493:11fashion 22emotions 22556:8estimation 22488:3examine 22518:10expressly 22429:13fatalities 2	
embraced 22541:622549:922429:21 22504:4,11exposed 22514:5familiar 22emotional 22487:13,17established 22441:322527:15,20express 22431:23far 22422:22496:9 22512:17,2222446:8 22522:6,1522533:19 22547:222501:1722464:722515:14 22516:922543:25 22549:1022553:16,20 22572:1expressed 22484:1822529:2022518:1 22571:1722550:24 2259:722574:12expressing 22415:1222561:20emotionally 22488:422560:17examination 22456:3,5expressions 22458:12farfetched22514:6 22556:8establishing 22519:2022470:9 22522:1122493:11fashion 22emotions 22556:8estimation 22488:3examine 22518:10expressly 22429:13fatalities 2	
emotional 22487:13,17established 22441:322527:15,20express 22431:23far 22422:22496:9 22512:17,2222446:8 22522:6,1522533:19 22547:222501:1722464:722515:14 22516:922543:25 22549:1022553:16,20 22572:1expressed 22484:1822529:2022518:1 22571:1722550:24 2259:722574:12expressing 22415:1222561:20emotionally 22488:422560:17examination 22456:3,5expressions 22458:12farfetched22514:6 22556:8establishing 22519:2022470:9 22522:1122493:11fashion 22emotions 22556:8estimation 22488:3examine 22518:10expressly 22429:13fatalities 2	<i>5</i> :16
22496:9 22512:17,2222446:8 22522:6,1522533:19 22547:222501:1722464:722515:14 22516:922543:25 22549:1022553:16,20 22572:1expressed 22484:1822529:2022518:1 22571:1722550:24 2259:722574:12expressing 22415:1222561:20emotionally 22488:422560:17examination 22456:3,522470:9 22522:11expressions 22458:12farfetched22514:6 22556:8establishing 22519:2022470:9 22522:11expressly 22429:13fatilities 2	2512:8
22496:9 22512:17,2222446:8 22522:6,1522533:19 22547:222501:1722464:722515:14 22516:922543:25 22549:1022553:16,20 22572:1expressed 22484:1822529:2022518:1 22571:1722550:24 2259:722574:12expressing 22415:1222561:20emotionally 22488:422560:17examination 22456:3,522470:9 22522:11expressions 22458:12farfetched22514:6 22556:8establishing 22519:2022470:9 22522:11expressly 22429:13fatilities 2	1 22431:24
22515:14 22516:922543:25 22549:1022553:16,20 22572:1expressed 22484:1822529:2022518:1 22571:1722550:24 22559:722574:12expressing 22415:1222561:20emotionally 22488:422560:17examination 22456:3,5expressions 22458:12farfetched22514:6 22556:8establishing 22519:2022470:9 22522:1122493:11fashion 22emotions 22556:8estimation 22488:3examine 22518:10expressly 22429:13fatalities 2	
22518:1 22571:1722550:24 22559:722574:12expressing 22415:1222561:20emotionally 22488:422560:17examination 22456:3,5expressions 22458:12farfetched22514:6 22556:8establishing 22519:2022470:9 22522:1122493:11fashion 22emotions 22556:8estimation 22488:3examine 22518:10expressly 22429:13fatalities 2	
emotionally 22488:4 22514:6 22556:822560:17 establishing 22519:20examination 22456:3,5 22470:9 22522:11expressions 22458:12 22493:11farfetched fashion 22 fatalities 2emotions 22556:8estimation 22488:3examine 22518:10expressly 22429:13fatalities 2	
22514:6 22556:8         establishing 22519:20         22470:9 22522:11         22493:11         fashion 22           emotions 22556:8         estimation 22488:3         examine 22518:10         expressly 22429:13         fatalities 2	
emotions 22556:8 estimation 22488:3 examine 22518:10 expressly 22429:13 fatalities 2	
	2572:14
22557:7 22525:11 <b>example</b> 22389:2,11,21 <b>extensively</b> 22389:15 <b>fatality</b> 22	481:13
employee 22391:13 evading 22393:22 22389:23 22392:15 extent 22535:10 fatally 225	
22394:15 22394:4 22392:16 22437:15 external 22428:13 fate 22573	
employees 22388:21,24 evasion 22393:25 22440:16,18,18,23 extra 22552:22 22565:3 fault 2245	
22391:21,24         evening 22413:16         22456:13 22457:5         extract 22439:20         favour 224	
22473:14,15,22,23 22480:25 22482:24 22462:6 22465:18 <b>extraordinary</b> 22571:7	
22474:3,6,7,13,19 22531:8 22579:15 22470:21 22501:1 22443:11 <b>favourabl</b>	<b>y</b> 22434:12
22528:7 event 22450:12 22510:14 eye 22472:5 fears 2244	
employer 22391:12,24 22451:8,13 22453:5 examples 22391:9 eyes 22489:7 feasible 22	
	<b>RY</b> 22388:1
encircle 22529:22 22489:12 22498:14 exceeded 22414:4 F feed 22460	
	:17 22505:25
	,5 22565:22
<b>encourage</b> 22389:9 <b>events</b> 22450:22 <b>executing</b> 22548:1,4 22545:12 <b>feeling</b> 224	
	415:15
endeavour 22404:4 22513:23 22534:12 22464:21 facilities 22497:2 fell 22496:	415:15 1 22516:1
	1 22516:1
	1 22516:1 11
	1 22516:1 11 12 22412:22
enetjie 22494:10 22565:5 22569:3 exhibit 22451:19 22408:3 22409:20 22557:7	1 22516:1 11 :12 22412:22 2 22513:25
engage 22541:1 22571:13 22455:20 22456:4,6,7 22412:2 22421:7 fewer 225'	1 22516:1 11 12 22412:22 2 22513:25
engaged 22501:9 eventualis 22501:11 22461:8,16 22479:19 22422:9 22426:13 FFF32 224	1 22516:1 11 12 22412:22 2 22513:25 72:14,15
ARCHIVE FOR JUSTICE	1 22516:1 11 12 22412:22 2 22513:25 72:14,15

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## Marikana Commission of Inquiry

### Arbitration

				Page
	force 22440:21	gathered 22432:17	government 22436:4	happy 22519:24
22480:1	22531:25 22532:3,4	generally 22440:22	22569:16	22524:23 22525:3,13
FFF33 22479:23	22545:17	22494:4	grabbing 22491:11	22534:9
<b>FFF4</b> 22482:14,23	foresaw 22501:8	generals 22441:14	Graham 22473:10,13	hard 22444:17
<b>FFF5</b> 22482:14,15	22524:12 22534:11	22577:10	22474:12,23 22475:2	22458:17
22483:4,5	22534:19 22535:13	genuinely 22436:16	22475:5	hasn't 22556:12
field 22426:5 22505:7	22535:21 22536:2	getting 22418:13	granted 22425:1	haven't 22398:5
<b>fifth</b> 22427:5 22469:17	22570:20	22517:10 22531:8	graphic 22488:7	22484:8 22526:23
22469:20	foresee 22501:2	22540:1 22558:15	grateful 22479:6	22527:5 22563:3
figure 22416:22	foreseeable 22571:16	gild 22564:8	great 22549:19 22554:2	22579:15
<b>file</b> 22436:4	foreseen 22571:5	give 22389:14 22399:10	greater 22496:16	hazards 22514:6
final 22410:7 22460:9	foresees 22510:16	22399:24 22425:20	grossly 22560:19,19	headed 22455:25
22554:15	foresight 22543:18	22429:14,18,23	ground 22495:3	health 22512:22,23
finalisation 22405:7	22570:21	22434:2,7,21 22435:7	group 22475:18	22515:25 22520:13
finally 22545:7	forget 22405:3	22435:12 22445:21	22491:20,25	hear 22402:4,5
<b>find</b> 22388:3 22401:17	22451:12,16	22459:5 22462:19	22557:25	22410:10,24 22430:2
22403:1 22422:25	22536:14 22572:20	22468:7 22478:22	guess 22421:8	22430:9 22457:25
22425:10 22429:15	forgive 22470:9	22506:21 22508:2	guidance 22390:5,22	22465:24 22486:25
22429:21 22432:21	forgot 22559:19	22509:5 22514:14	22481:12	22487:7 22489:20
	forgotten 22451:17,18	22521:4 22533:24	guide 22390:12	22498:18 22504:20
22456:5 22460:19	22451:21 22487:10	22548:14 22550:1	guided 22390:2,6,16	22505:17 22507:7
22463:22 22468:3	22559:22 22564:25	given 22420:4	guides 22512:12	22522:13,20
22471:1 22484:23	form 22444:17	22460:20,23	guilty 22502:1	22524:10 22541:9,10
22510:7 22522:1	22530:20,24 22540:1	22469:16 22488:22	22503:15,25	22546:19 22557:23
finding 22492:10	formal 22395:5	22491:19 22515:18	22505:13 22572:2	22570:15,25 22571:9
0	forms 22413:17	22545:14 22548:20	gun 22531:25	22571:20 22573:7,19
22502:10 22522:22	22467:2	22557:7 22570:7	guns 22510:18	22574:1
	forth 22530:17	22573:22,23	guys 22401:19,23	heard 22425:17
	forthcoming 22550:3	22574:16	22474:24	22443:10 22446:2
	fortunately 22406:2	giving 22389:11		22447:9 22497:10
finished 22453:19	22577:1	22391:9 22392:15	H	22500:1,9,9 22506:14
	forum 22443:12	22440:4 22533:22	hadn't 22430:5	22513:18 22522:10
22510:24	22557:21 22559:14	go 22388:3 22389:13	half 22420:20	22523:20 22534:2
firearms 22490:3,5,7,8	22568:12	22390:9 22401:17	hand 22455:24 22480:1	hearer 22466:17
	forward 22464:12	22411:20 22417:5	handed 22485:12	hearing 22407:18
	found 22409:9 22490:2	22421:3 22431:3,4	handing 22558:16	22408:6 22410:13
22508:16	22509:24	22432:20 22438:4	handle 22405:13	22506:7
	four 22454:21	22439:2,19 22440:10	happen 22407:11	hearings 22501:21
22433:14 22444:10	22456:14 22458:15	22440:22 22444:17	22441:4 22459:6	22521:15
22447:22 22451:1	22461:3 22469:16	22445:19 22461:8	22517:25 22520:25	heavyweight 22416:24
	fourth 22397:15	22463:20 22466:13	22521:3 22528:8	held 22518:24
	free 22521:25 22526:8	22467:12,21 22470:3	22532:17 22534:18	help 22422:5 22435:11
	Freudian 22469:1	22470:7 22474:10.21	22535:6,13,17	22436:11 22447:2
	Friday 22388:15	22476:5 22486:7	22536:21 22543:17	22485:13 22490:20
22570:11 22578:20	22546:22,23	22501:1 22510:7,15	22566:5 22568:19,20	22514:16 22515:25
	friends 22488:14	22517:8 22526:21	happened 22396:13	22516:25 22520:20
firstly 22418:14	22489:6 22492:3	22527:4,22 22531:3,8	22422:16 22457:21	22520:20 22523:5
2	front 22432:21 22489:7	22537:9 22541:12,15	22478:2 22480:10	22524:11 22542:23
22481:9 22500:7	22489:12 22541:12	22546:22,23	22483:22 22491:4	22545:3 22564:24
22513:8	22573:1	22555:12,14 22557:7	22405:16 22500:3	helps 22396:8
	fruitless 22389:25	22557:9 22561:3	22507:19 22508:3	Hemraj 22433:18
	full 22506:21 22574:4	22562:6,13,14,20	22515:22 22535:10	22434:25 22457:17
	fully 22425:24	22566:7 22568:24,25	22537:2 22542:19	22459:8,11 22461:18
focus 22397:9	22427:12 22439:7	22569:14 22570:17	22559:13,15 22560:8	22461:21 22476:22
focussed 22459:10	22526:9 22553:7	22575:17 22577:2	22561:8 22564:11	22504:24 22509:4
follow 22447:23	22554:3 22574:25	22578:19	22565:13,16 22566:4	22514:21,24 22515:2
	<b>funeral</b> 22486:1,20	goes 22431:10 22440:4	22505.15,10 22500.4	22519:13,25
	further 22417:17	22449:5 22513:11,12	happening 22401:8	22536:22 22540:10
following 22410:16,23	22431:10,20 22449:5	goings 22451:6	22406:13 22414:10	22550.22 22540.10
	22461:14 22502:21	good 22388:9,10	22400.13 22414.10	here's 22491:20
775077777576.12	22526:18 22527:1	22449:2 22453:6	22413.0 22410.7 22430:9 22451:12	22505:12
22502:22 22526:13 22540:8 22572:19			22430.9 22431.12 22535:19 22536:6	herring 22467:24
22540:8 22572:19		77493.1877400.8		
22540:8 22572:19 follows 22433:20	22540:1 22565:18,21	22493:18 22499:8 22501:14 22504:7		
22540:8 22572:19 follows 22433:20 22447:8 22526:16	2254 <b>0:1</b> 22565:1 <b>8,21</b> 2257 <b>9</b> :5	22501:14 22504:7	22558:10 22568:19	hey 22560:6
22540:8 22572:19 follows 22433:20 22447:8 22526:16 22572:12	22540:1 22565:18,21	22501:14 22504:7 22542:21,21	22558:10 22568:19 happens 22412:3,10	<b>hey</b> 22560:6 <b>he'd</b> 22568:1
22540:8 22572:19 follows 22433:20 22447:8 22526:16	2254 <b>0:1</b> 22565:1 <b>8,21</b> 2257 <b>9</b> :5	22501:14 22504:7	22558:10 22568:19	hey 22560:6

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## Marikana Commission of Inquiry

7111100100192014				
				Page
22416:20 22432:11	22548:13	informs 22504:25	22516:11	22452:19 22459:5
22458:3	imposed 22472:10	infrequently 22499:8	intervened 22544:11	22462:8,10,10,21
he'll 22479:15	impression 22411:23	initiated 22558:4	intervention 22503:18	22463:9 22466:11
HHH 22390:10	22418:16	<b>initiative</b> 22498:1,12,12	22541:4 22557:13	22468:15,18
hiding 22560:9	improper 22428:13	22519:18	interventions 22500:10	22469:19 22481:9,10
high 22396:6 22400:9	22560:19	<b>injured</b> 22514:10	22500:12 22503:18	22481:13,14
22416:17,22 22511:4	improved 22455:21	22516:1,2,12	22503:20 22504:1	22487:12,13
22556:8	22577:15	22535:11 22536:3	intimate 22497:17	22513:12,12 22516:8
highest 22572:16	inaccurate 22511:10	22552:11	intimidation 22574:19	22524:22 22527:16
highhanded 22513:2	inactions 22570:2	injuries 22451:8	intonations 22466:11	22539:6 22548:1
		22549:21 22550:7	introductory 22396:15	
highly 22442:3	inappropriate		e e	22559:10 22565:20
high-placed 22400:10	22426:10 22501:24	22573:6	22507:11	22577:4,5,7 22578:11
hint 22491:13	inaudible 22390:13	<b>injury</b> 22516:8,9	investigate 22434:8	issued 22436:5
hoc 22557:21	22393:5 22407:14	22517:25	investigation 22500:8	22462:13
Hofmeyr 22459:21	22458:19 22468:23	insert 22506:11	investigations	issues 22388:20
hold 22568:4	22483:19 22502:23	insertion 22457:13	22490:24 22507:18	22390:23 22391:11
holders 22419:2	22509:21 22520:6	insertions 22456:12,18	22508:2,9	22391:12,14 22392:5
hom 22494:9.9	22522:18 22578:10	<b>inside</b> 22519:4	investigators 22498:5	22408:14 22412:1
hook 22510:6	22578:22	insisting 22457:21	<b>invitation</b> 22389:14	22445:9 22450:12
		22569:15	22437:6	
hope 22424:6 22452:16	incarcerated 22500:13			22453:3 22469:15,17
22457:8 22522:7	incident 22431:13	insofar 22479:10	invite 22541:17	22470:13 22481:14
hopefully 22388:14	22537:16 22538:3,10	22570:20	invited 22446:20	22493:15 22509:14
22454:12 22564:25	<b>include</b> 22437:17	inspections 22518:11	22547:22	22515:18,25
horrific 22489:6	included 22444:16	instructed 22459:21	involve 22402:13	22560:10
horror 22468:4	22457:22,23 22460:8	22570:4	22405:5 22530:1,7,25	<b>I'd</b> 22429:13 22503:14
horse 22475:10	22574:8	instruction 22548:14	22531:17 22561:8	22558:10
22476:8	includes 22500:10	22573:5,23 22574:15	involved 22405:23	<b>I'll</b> 22399:18 22403:10
horseback 22476:24	including 22449:12	22574:16	22422:15 22431:14	22411:20 22421:3
	)			
22577:8	22459:1 22490:24	instructions 22520:22	22431:18 22482:6,7	22427:17 22428:14
horses 22474:11	22491:5 22499:21	22521:5 22555:25	22483:8 22498:3	22428:17 22429:23
22481:24,25	22557:14	22573:24	22503:19 22504:20	22440:1 22458:14
hospital 22516:13,16	incorporated 22485:15	instrument 22539:8	22505:20 22507:23	22466:16 22493:22
22516:20,24 22517:4	22550:18	intend 22458:21	22523:24 22524:1	22495:11 22497:13
hour 22443:13,13	indicate 22434:15	<b>intended</b> 22441:20	22527:17 22528:11	22502:7 22503:14,15
housekeeping 22455:18	22550:3 22552:20	22456:10	22550:10,14	22506:15,21
houses 22436:6	22561:23 22567:10	intending 22423:16	22555:22 22566:16	22520:22 22525:18
		0		
HR 22481:14	indicated 22388:20	22465:15	22571:18	22526:21 22532:9,11
human 22496:13	22397:20 22405:12	intention 22389:8	involvement 22406:4	22534:1 22549:8
22579:10,12	22423:4 22453:17	22397:16 22401:25	22445:4	22560:25 22562:11
	22463:12 22468:19	22402:14 22404:4	involves 22544:19	22564:3 22569:25
I	22563:1	22486:16	<b>IPID</b> 22549:7,18	22570:2,10
idea 22404:4 22407:13	indicates 22435:15	intentions 22389:4	22550:5,9,11,18	I've 22389:9 22390:19
22484:6,8 22497:25	22465:7 22549:20	interaction 22544:19	22552:3,4,11,22,22	22398:14 22404:8
22528:10 22565:25	indicating 22423:17	22561:9,11 22565:16	22553:23	22415:11 22418:24
identified 22419:7	22552:10 22562:6	22565:18	ipsissima 22527:2,5	
				22419:8,11,16
ill 22521:2	indication 22473:5	interdict 22432:24	irregular 22442:3	22420:5,14,16
imaginative 22526:8	22564:4	22462:9	22560:20	22421:9,12 22423:4
imagine 22425:19,24	indicted 22417:2	interest 22434:1	irrelevant 22503:2	22425:17 22426:14
immediately 22402:24	indirectly 22547:14	22435:19,19,22,23,23	22506:12 22507:2	22430:3 22453:3
22410:22	individual 22400:11	22437:4 22471:5	irrespective 22525:3	22454:19 22461:14
Impala 22401:1	22416:17	22472:19 22572:18	irritating 22539:12	22469:16 22484:6,8
22409:10 22422:16	<b>inference</b> 22564:5,10	interested 22544:16	irritation 22536:9,18	22491:19 22502:3
22541:17,18	<b>influence</b> 22419:4	interests 22472:21	isn't 22426:3 22432:2	22504:6 22508:6
,				22504.0 22508.0
22544:13	influential 22419:5	Internal 22512:5	22457:19 22493:20	
impediment 22536:18	inform 22577:9	International 22482:25	22493:21 22510:10	22556:14 22560:2
implementation	information 22399:24	22483:1	22512:15 22518:24	22564:25 22570:8
22530:20	22400:1 22433:24	interpretation	22520:16 22530:1	22574:22,23
	22434:3 22435:8,13	22457:10 22458:16	issue 22388:18	22575:17
	· · · · · · · · · · · · · · · · · · ·	22461:4	22389:13 22394:15	
implementing 22548:3 important 22400:1	22442:4 22447:21	22401.4		J
important 22400:1	22442:4 22447:21		22395:18 22404.16	J
important 22400:1 22403:3 22407:23	22442:4 22447:21 22452:15 22472:17	interpreted 22404:23	22395:18 22404:16 22406:7.8 22422:24	
important 22400:1 22403:3 22407:23 22408:2,14,14,18	22442:4 22447:21 22452:15 22472:17 22553:2	<b>interpreted</b> 22404:23 22405:1 22415:9	22406:7,8 22422:24	<b>ja</b> 22389:24 22392:16
important 22400:1 22403:3 22407:23 22408:2,14,14,18 22423:22 22432:10	22442:4 22447:21 22452:15 22472:17 22553:2 informed 22545:14,23	<b>interpreted</b> 22404:23 22405:1 22415:9 22416:1 22479:2	22406:7,8 22422:24 22423:19,22 22424:6	<b>ja</b> 22389:24 22392:16 22417:20 22427:13
important 22400:1 22403:3 22407:23 22408:2,14,14,18 22423:22 22432:10 22439:21 22450:13	22442:4 22447:21 22452:15 22472:17 22553:2 informed 22545:14,23 22549:14 22550:6	interpreted 22404:23 22405:1 22415:9 22416:1 22479:2 Interpreter 22576:5	22406:7,8 22422:24 22423:19,22 22424:6 22425:23 22427:6	<b>ja</b> 22389:24 22392:16 22417:20 22427:13 22432:7 22436:22
important 22400:1 22403:3 22407:23 22408:2,14,14,18 22423:22 22432:10 22439:21 22450:13 22451:13 22452:10	22442:4 22447:21 22452:15 22472:17 22553:2 informed 22545:14,23 22549:14 22550:6 22560:10 22579:17	interpreted 22404:23 22405:1 22415:9 22416:1 22479:2 Interpreter 22576:5 interpretive 22458:5	22406:7,8 22422:24 22423:19,22 22424:6 22425:23 22427:6 22432:23 22439:21	<b>ja</b> 22389:24 22392:16 22417:20 22427:13 22432:7 22436:22 22437:1 22439:19
important 22400:1 22403:3 22407:23 22408:2,14,14,18 22423:22 22432:10 22439:21 22450:13	22442:4 22447:21 22452:15 22472:17 22553:2 informed 22545:14,23 22549:14 22550:6 22560:10 22579:17 informing 22552:22	interpreted 22404:23 22405:1 22415:9 22416:1 22479:2 Interpreter 22576:5	22406:7,8 22422:24 22423:19,22 22424:6 22425:23 22427:6 22432:23 22439:21 22440:8,11,19	<b>ja</b> 22389:24 22392:16 22417:20 22427:13 22432:7 22436:22
important 22400:1 22403:3 22407:23 22408:2,14,14,18 22423:22 22432:10 22439:21 22450:13 22451:13 22452:10	22442:4 22447:21 22452:15 22472:17 22553:2 informed 22545:14,23 22549:14 22550:6 22560:10 22579:17	interpreted 22404:23 22405:1 22415:9 22416:1 22479:2 Interpreter 22576:5 interpretive 22458:5	22406:7,8 22422:24 22423:19,22 22424:6 22425:23 22427:6 22432:23 22439:21	<b>ja</b> 22389:24 22392:16 22417:20 22427:13 22432:7 22436:22 22437:1 22439:19

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**RealTime Transcriptions** 

				Page 9
22463:6 22465:21	22489:6 22493:1,23	22537:14,19 22538:8	22422:8 22432:4,9,18	22524:12,22 22528:3
	22494:3 22496:8	22562:1	22432:23 22433:17	22531:14 22532:21
	22500:6 22501:4,10	laws 22536:9,18	22432:23 22433:17	22541:1,13 22575:3,6
	22507:16,20,24	22537:1 22538:12	22433.22 22439.23	22575:23 22578:25
	22508:9 22510:20,24	22539:11,12,13	22467:16 22468:6	Lonmin's 22481:22
	22511:2 22536:3	lawyers 22452:23	22471:3,4,8 22472:25	Lonmin's 22444:12
	22538:3 22556:10	Le 22579:9	22473:5,6 22525:23	look 22400:16
	ling 22403:14	lead 22501:9 22502:4	22530:16 22537:12	22417:18 22418:7
·	22404:17 22405:7	22544:7,7,8 22545:19	22569:6	22419:4 22434:23
	22493:5,12	22555:25	lines 22399:17	22436:11 22459:6
	llings 22451:8	leaders 22431:21	22471:12 22526:13	22478:12 22501:21
J	22493:12	22432:15,18 22433:4	link 22405:7 22439:3	22538:25 22540:16
jick 22403:4 kin	nd 22393:16	22444:2,12,13	22441:2	22541:13 22568:4
<b>jiff</b> 22403:5 2	22430:21 22431:18	22468:21,24,24	linked 22399:1	22577:1,4,5,6,8
<b>Jill</b> 22403:7,8,9	22434:7 22454:17	22469:2 22549:14	22421:18 22489:17	looked 22459:13
22405:19 2	22464:22 22467:1,8	leadership 22560:13	linking 22403:16	22521:23 22565:6
<b>JJJ192</b> 22390:10 2	22516:22 22517:9	leading 22437:25	22404:16	looking 22422:6,22
22399:12 22434:15	22520:20 22523:25	22463:19	links 22439:22	22429:14 22463:7
	22568:6	leave 22421:3 22430:4	list 22427:16 22477:5	22535:15
	ndly 22393:17	22430:8 22435:3	22500:15 22503:23	looks 22409:15 22482:9
	22477:10	22442:11,11 22459:4	22570:7,9 22578:19	22553:11
	ew 22416:16	22466:16 22502:7	listed 22481:6	loosely 22488:12
	22420:13 22524:21	22513:10 22531:6	22577:19	lost 22462:6 22488:14
	22525:2,12 22530:10	leaving 22402:19	listen 22402:25	22494:12
	22532:14 22535:4	led 22502:4 22542:8	22459:22 22464:13	lot 22407:15 22425:13
•	22541:2,5 22544:10	22558:4	listened 22460:6	22429:7
	22545:22 22553:10	left 22451:4 22456:21	22461:22	Louw 22459:20
				loved 22489:12
	22559:16 22560:16	22480:1 22510:5	<b>listening</b> 22461:7	
	22572:20,22,24	legal 22502:2 22504:5,9	22498:5,16 22543:2	22494:13
	ocked 22532:1	22511:10,12	listens 22466:6	luminaries 22447:19
	owing 22519:7	22521:10,12 22522:6	literally 22397:25	lunch 22459:7
ů.	22554:7 22556:7,8,9	22522:14,19 22572:9	22560:6	22511:17
	22573:5	length 22496:16	little 22388:15	
	owledge 22477:1	Lepaaku 22486:21	22428:10 22482:17	M
• 0	22507:16 22559:21	letter 22474:22	22496:16 22499:7	Madam 22404:7
0	22571:25	<b>let's</b> 22394:1 22405:3,4	live 22539:6 22540:15	Mahlangu 22404:25
	own 22447:14	22405:8 22412:20	LLL1 22438:6 22528:1	22575:13 22576:10
<b>jump</b> 22412:8 2	22516:9 22553:18	22417:5,18,24	locked 22489:8	22576:15,23
	22561:14 22572:24	22418:12 22462:5	logical 22552:23	maimed 22496:8
jurisdiction 22496:11 kn	ows 22463:1 22485:3	22482:19 22485:22	22567:5	main 22388:18 22397:9
<b>Justice</b> 22511:4 <b>ko</b>	ppie 22490:3,7	22487:16 22491:17	long 22413:14,24	22404:4 22428:19
	22530:8 22572:21	22492:24 22497:20	22414:1 22428:11	22456:9 22517:3
о т.	22573:2,16	22499:16,18	22432:5 22469:13	22567:18
0	vapela 22575:12	22504:14,20	22552:8 22554:17,18	maintain 22430:10
ů –	22576:13,17	22505:17,19 22507:7	longer 22440:3	22528:23
	waZulu 22511:4	22509:13 22516:10	Lonmin 22389:5	Major 22568:17
juxtaposing 22497:13	,	22519:1 22520:16	22392:3 22400:5	making 22389:1
22556:25	L	22524:5 22529:14	22414:10 22415:6	22392:2,16 22403:12
	2451:20 22470:10	22557:9,24 22568:24	22417:10 22418:17	22408:19 22409:1,3
	22482:6 22490:8	22578:14 22578:14		
	22482:6 22490:8 22492:22		22421:16 22425:12 22425:12 22426:1,2	22413:11 22423:18
		let's 22440:17 22445:19	-	22429:4 22439:14
	bour 22391:12,18	22449:19,23 22471:1	22426:19,20	22440:16 22446:5
<b>-</b>	22394:15 22563:10	22541:16,17 22545:8	22431:15 22433:5,7	22447:24 22463:6
	22569:4	level 22547:15	22433:11 22434:11	22480:5,13 22494:2
e e e e e e e e e e e e e e e e e e e	ck 22439:4	levels 22466:23	22435:20,22 22436:2	22497:13 22503:17
	nguage 22441:22	Lieutenant 22574:18	22436:11,15	22510:2 22518:20
	22464:2,7 22576:16	life 22494:9,9	22437:25 22438:20	22540:17 22543:24
	rge 22572:21	light 22437:6 22447:23	22442:4,9 22444:18	22556:22 22559:6,10
	<b>ugh</b> 22495:18	22472:6 22533:11	22445:11 22449:3	22577:3,20 22578:18
	ughed 22494:7,18	22557:20	22453:7 22455:24	Malema 22400:23
22403:3 22404:10 2	22495:17	likelihood 22550:24	22459:22,24	22401:1,5,8,9
22407:10 22408:15 lau	ighing 22491:24	22552:5	22468:21,24 22470:2	22406:14,25 22407:1
	22492:1,16 22494:24	lily 22564:8	22470:12 22473:17	22408:5,25 22419:24
	22495:2	limelight 22403:11	22473:19,22 22474:2	22422:15 22441:18
			-	
	w 22505:7 22510:11	limited 22415:17	22474:3,19 22475:3	22541:4,16 22544:11
22432:14 22450:23 law	w 22505:7 22510:11 22521:14 22528:23	limited 22415:17 line 22399:15,16,18	22474:3,19 22475:3 22476:1,4,23,23	22541:4,16 22544:11 Malema's 22401:11

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RealTime Transcriptions

## Marikana Commission of Inquiry

### Arbitration

				Page 1
managed 22401:4,5	22403:20 22425:15	22450:1 22451:18	22466:3,8 22467:20	22532:12 22540:5,19
22560:2	22426:9 22464:3	22558:15 22564:24	22468:3,14 22496:19	22545:23 22561:4
management 22394:21	22474:3 22526:10	22572:5	22496:21	moved 22524:18
22395:2,13 22426:19	means 22401:6	mentioning 22389:23	Mmmms 22457:18	moving 22442:14
22426:20,25	22415:15,20	22408:3	mobile 22552:1	22453:12,20
22443:12 22472:15	22419:12 22426:14	mercifully 22561:8	<b>mode</b> 22477:15	Mozambique 22482:24
22472:19 22557:21	22493:5 22496:21	merely 22426:6	modesty 22499:7	<b>Mpembe</b> 22513:5,17,21
22559:14 22568:12	22527:12 22544:20	22468:5	Mokwena 22388:16	22513:22 22548:20
22573:14	22546:14 22572:9	message 22389:17	22390:11,21	22548:21,23
manner 22389:17	22576:17,25	22432:13 22437:7	22394:10 22398:4	22568:17 22574:4,15
22513:2	meant 22419:9	22477:10 22551:2	22399:4 22400:6,13	<b>MPOFO</b> 22449:1
Marikana 22450:23	22422:17 22437:21	22552:1 22567:6	22400:24 22401:1,10	<b>Mpofu's</b> 22397:24
22480:20 22547:1	22438:21 22446:11	22568:6	22401:12 22402:24	22517:2
22568:20	22458:6 22463:22	messages 22551:7	22409:2 22414:8	Mthethwa 22399:6
mark 22545:9 marks 22461:2	22464:15,19 22476:2 22527:9,14,15	metaphorical 22403:15 metaphorically	22420:6 22422:7 22425:8,10 22428:18	22400:7 22562:11 22564:15.21
marks 22401:2 massacre 22493:3,5	22528:4,6,21	22397:25 22401:25	22429:8 22430:19	22569:19
massacred 22493.3,5 massacred 22492:8,11	22533:23 22537:22	Microphone 22393:5	22429.8 22430.19	Mthetwa 22424:19
22492:14,15	22535.25 22537.22	22458:19 22468:23	22431:11,20 22432:4 22432:25 22433:7	murder 22490:17
match 22456:6	22546:4 22567:4	22438:19 22408:23	22432:23 22435:7	22497:8,19,25
material 22430.0	medical 22516:16,19	22483.19 22502.25 22509:21 22520:6	22434.13 22433.4	22497.8,19,23
22434:19 22439:10	22516:24 22517:4,22	22509.21 22520.0	22440:1,7 22443:4,22	22501:6,7,25 22502:2
22456:18 22468:22	22510.24 22517.4,22	middle 22462:7	22454:20 22455:24	22503:25 22505:13
22430:18 22408:22	meeting 22388:15,19	22506:11	22458:3 22462:8,11	22505:14 22523:14
Mathunjwa 22572:19	22389:5,25 22390:15	milder 22565:13	22467:14 22468:13	22523:17,19 22524:2
22572:20 22573:1	22394:20 22395:5,9	million 22505:6	22525:10 22529:16	22570:6,14 22577:21
Mathunjwa's 22572:25	22395:18 22397:4,16	mind 22423:9 22424:11	22531:4 22539:22	22577:22 22578:5
matter 22390:5	22425:8 22428:18	22442:20 22447:3,18	22561:15 22565:12	murderers 22492:20
22395:1,15 22397:8	22451:3,4 22454:20	22450:17 22452:4,24	22575:4,20 22576:1	murders 22480:11
22397:11,21 22398:2	22459:23 22469:17	22453:8,16 22472:9	22577:8	22500:22
22398:8,10 22403:12	22469:21 22481:7	22484:11 22504:25	Mokwena's 22428:19	mustn't 22393:16
22405:13 22406:2	22483:1 22548:11,21	22519:12 22523:12	22455:1	
22408:11,12	22548:23 22549:1	22523:13 22524:6	Mokwena's 22481:7	N
22410:16 22412:14	22557:20,25 22558:3	22529:25 22530:6	moment 22445:25	name 22399:6 22400:8
22412:21 22413:21	22558:18,24 22560:8	22531:1 22536:23	22461:11 22493:12	22446:8,14 22570:8
22417:9 22423:23	22560:9 22562:3,4,4	22542:17	22506:7 22517:14	names 22446:4,6
22425:4 22427:10	22565:4	mindful 22472:3	22518:13 22521:12	narrow 22424:7
22461:6 22465:10	<b>member</b> 22545:17	minds 22555:11	22554:12	NAT 22547:10
22466:14 22471:22	22550:18 22552:3,4	mine 22401:10	Monday 22413:16,20	Natal 22511:4
22476:17 22482:18	members 22442:22	Mineral 22561:24	22480:21	National 22395:20
22484:4 22493:10	22475:13 22487:19	22562:9 22564:21	months 22460:18	22396:4,13 22400:3
22501:14,16 22504:8	22487:23 22491:22	22567:12	mood 22514:1	22400:15 22401:6,7
22504:10 22509:11	22491:23 22492:4,15	Minerals 22565:19	moral 22474:23	22406:11 22407:2
22511:11 22521:13	22492:16 22494:6	mines 22401:12	morale 22486:11,16	22409:3,12,13
22522:19 22526:1	22495:15,22	22409:22 22469:20	22488:11	22412:8,18,20
22531:15 22539:23	22517:10,11 22531:8	mining 22401:10	morning 22388:9,10,10	22417:8,8 22418:6,11
22551:22 22560:18	22555:23	22407:2 22409:16	22454:10 22477:20	22418:15 22419:7
22561:11,22 22562:1	memory 22429:13	22436:6	22483:6 22544:10	22420:5,23 22421:5
22562:7 22577:22	22452:2,24	minutes 22414:4	22560:11 22562:25	22421:14,22 22422:2
matters 22424:8 22455:18	mental 22498:10 mention 22394:10	22543:21 22549:7	22579:21 motion 22534:12 21	22422:3,19,20
22455:18 Ma'am 22440:17	22442:23 22443:6	22552:9 22578:2 miracle 22550:16	<b>motion</b> 22534:12,21 22541:21 22543:7	22423:3,5 22424:10
22475:23 22517:17	22442:23 22443:6 22444:25 22449:3,13	MIRRIAM 22388:6	motivated 22561:5	22424:22 22442:23 22442:25 22443:6,12
mean 22396:2,2	22444:23 22449:5,13 22452:9 22461:9	22456:25 22511:22	motivated 22501:5 motive 22513:13	22442:25 22443:6,12 22445:2 22446:12,23
22404:23 22407:7	22452.9 22401.9	22430.23 22311.22 22555:7	mountain 22432:17	22445:22 22440:12,25
22404.23 22407.7	mentioned 22389:10	mission 22572:25	mouth 22533:6	22440.24 22447.3,8
22463:1,4 22464:11	22391:6 22394:11	22573:3,13,17	move 22398:25	22447:11,14,19
22464:15 22465:24	22396:6,18,19	mistakes 22471:20	22403:1,2 22404:11	22443:1,10 22482:0
22470:11 22474:15	22398:4 22399:6	Mmmm 22456:14	22403.1,2 22404.11	22483:23 22484:8,18
22476:9 22488:16	22400:8,19 22414:12	22458:4,7,15	22437:21 22440:12	22484:21 22486:3
22509:19 22520:7	22418:24 22420:25	22459:15,15 22461:1	22440:20 22442:17	22499:19 22512:11
22524:7 22537:23	22443:14,20 22444:6	22461:3 22462:10,22	22469:8,14 22475:11	22515:7,16 22557:21
22538:18 22539:3	22444:22 22445:4,5	22462:25 22463:4,4,5	22480:18 22481:4	22558:23 22559:14
22548:3 22560:1	22446:4,6,14	22463:12,20	22522:23 22525:18	22561:16 22565:22
22566:5	22447:12 22448:6,7,9	22464:11,19	22526:5 22527:8,16	22566:5,17,24
the most P . I have a MP ha		-		
meaning 22399:5	22448:11,13,25	22465:19,20,22,23,24	22528:14 22531:6,15	22567:1,7 22569:11

Tel: 011 021 6457 Fax: 011 440 9119

				Page 1
nationalisation 22409:21	non-apartheid 22510:6 normally 22391:23,24	<b>office</b> 22519:15 22521:18,19	<b>opposite</b> 22487:25 22540:23	paragraph 22431:2 22438:5,7 22472:25
	•			
Nationalised 22401:12	22520:7	<b>Officer</b> 22486:20	optimist 22425:2	22472:25 22478:16
22401:13	NOSAZISO 22388:6	officers 22476:23	option 22544:22	22480:2 22526:20,25
nature 22550:8	22456:25 22511:22	22497:2 22500:13	22545:21 22572:13	22527:22,25,25
near 22418:3 22552:9	22555:7	official 22451:2	options 22545:19	22530:16
necessarily 22391:13	note 22517:12	22457:9	22555:13	paraphrase 22416:23
22396:11 22410:21	notice 22485:8	officials 22569:16	order 22436:14	22417:22 22418:10
22476:15 22524:7	notion 22546:4	<b>oh</b> 22399:8 22441:16	22442:10 22511:14	22526:8 22527:8
22570:13	November 22451:24	22446:13,15 22462:6	22528:24 22532:2	22544:5
necessary 22434:9	22460:1	22479:15 22513:14	22562:1 22568:1	paraphrasing 22417:18
22461:14,25	<b>No-one</b> 22568:4	22533:12 22548:15	ordered 22430:4	22430:20
22496:12 22516:23	no-work-no 22391:6	22549:19 22563:5	22538:14	parenthesis 22458:6
				-
22528:24 22529:24	no-work-no-pay	old 22471:11 22509:5	ordinary 22396:22	parenthetical 22457:13
22570:2	22391:11 22392:9,13	22525:22	22404:3	park 22531:7
necessitate 22477:13	22392:17,25	omissions 22570:3	organisation 22407:19	part 22400:1,21
22555:2	22394:10,19 22577:6	22572:23	22408:6,12 22515:4	22402:12 22405:3,4,5
necessitated 22554:25	NUM 22436:5,9,14,20	omitted 22573:11	original 22470:7,23,24	22405:6,6 22406:24
necessity 22410:16	number 22399:15	once 22395:25	22471:3,15,21,23	22407:12 22414:25
need 22393:2 22401:14	22405:23 22425:7,7,9	22401:11 22406:22	22472:14 22473:4,7	22422:22 22426:4
22401:16,17,19,23	22427:16 22454:11	22409:14 22411:4	22476:6 22526:13	22440:14 22447:16
22402:22,23 22403:2	22456:16 22464:11	22421:2 22428:12	originally 22449:24	22448:8 22451:2
22403:4,25 22404:7	22479:20 22516:15	22439:3 22449:2	ought 22572:24	22479:12 22481:17
22405:18 22410:2,15	22547:16 22557:5	22451:20 22467:23	outcome 22525:2,4	22483:10 22486:10
,	22559:20 22570:9			
22410:18 22416:25		22475:12 22483:22	outlining 22425:7	22487:6 22512:20
22445:25 22462:20	22572:14,17,21	22506:13 22512:6	outside 22424:2	22529:2 22548:8
22463:9 22467:12	numbering 22462:7	22515:12 22526:2	22487:6 22517:22	22549:11 22557:8
22473:13 22474:14	numbers 22488:8	22527:22 22534:2	22518:2 22519:9	22563:14,25 22564:4
22516:21 22517:8,9	22518:20	22538:5 22569:8	22549:14 22568:16	22575:21
22517:10,15	numerous 22460:20	22573:11	22568:18	participate 22426:2
22524:19 22569:16		ones 22462:20 22463:9	overall 22442:22	particular 22391:11
needed 22402:2	0	22489:12 22492:1,2	overcome 22551:16	22398:25 22419:8
22439:14 22517:15	oath 22388:5 22428:2	22494:12,13 22495:1	owner 22481:25	22423:8,17 22438:3
needs 22459:10	22456:23 22511:21	22514:9,10 22516:12	o'clock 22579:21	22479:1,2 22501:20
22520:20 22525:24	22555:6	22554:12 22570:3,3	0 CIOCK 22379.21	22503:22 22519:3
			P	
22537:6 22569:7	<b>object</b> 22426:6	one's 22484:7		22521:4 22523:18
neglected 22571:6	objection 22391:2	ongoing 22500:8	page 22390:9 22399:10	22552:1
negotiate 22541:15	22457:10 22502:22	22572:25	22399:12,14,16	particularly 22509:9
negotiating 22541:14	22502:25 22533:14	open 22423:9 22490:6	22417:25 22418:4,5	22571:17 22575:3
negotiations 22524:25	objections 22493:13	opening 22451:3,20	22430:14,15,15,16,17	parties 22457:12,15,21
22525:2	22502:15	22482:6 22575:23	22432:3,20 22433:17	22459:12 22460:20
neither 22480:6	objectives 22389:16,19	operation 22405:8	22438:13 22439:19	22461:6,10
neutral 22405:8	22428:18	22410:8 22414:6	22445:21 22456:13	partly 22405:2 22437:5
22565:17	obligation 22521:11,12	22428:13 22470:15	22457:5,6 22458:3	parts 22456:11
never 22446:2 22447:9	obtaining 22549:15	22475:1 22491:5	22459:20 22462:6	party 22458:1
	obvious 22518:25			
22453:16 22468:16		22497:1 22529:2,7	22470:21,22 22471:7	passage 22417:19
22498:3 22510:4	22546:18	22547:16 22548:4,15	22471:9,13,15	22418:3 22428:15
22519:11	obviously 22396:7,15	22549:2 22566:8	22472:2 22473:2,6,7	22429:6,8 22430:14
nevertheless 22495:20	22413:10 22417:1	22571:25 22572:16	22474:21 22476:6	22431:25 22432:1,19
22534:19 22556:10	22422:4 22423:14	22575:5	22525:23 22526:12	22432:22 22433:3
22573:4	22425:19 22447:6	operational 22425:25	22526:19,24 22531:3	22440:22 22445:17
new 22455:20 22459:19	22457:6 22458:20	22442:21	22537:9 22562:20	22446:21,23 22447:9
22462:6 22471:2,8,18	22461:13 22465:15	opinion 22490:18	22563:9 22568:25	22471:2 22479:18
22471:21 22472:5	22526:4 22542:14	22501:17 22502:25	22569:14	22526:12 22536:11
22520:9 22537:13,18	22559:21 22561:14	opportunism 22439:5	painstaking 22578:7	22526:12 22556:11
22537:18 22538:2,8	occasion 22486:1	opportunistically	pamphlet 22440:11	passages 22421:12
22538:19,19,21	22488:14 22491:22	22491:11 22499:3	pamphlets 22388:22,22	22429:7 22479:2
22539:1,3,11,12	22506:11	<b>opportunities</b> 22460:20	22437:16 22441:2	22575:19
night 22400:2,16	occasions 22404:8	22460:23	22469:8 22524:12	passing 22431:8
22413:25 22477:4	22405:22 22450:16	opportunity 22440:4,5	22527:16 22528:13	22447:2
22559:14 22562:15	22450:21	22441:6,7 22457:1	22528:22 22530:18	patently 22474:8
22562.10 22565.5	occur 22488:12,19	22506:6,22 22533:23	22531:14 22532:23	patterns 22466:21
22562:19 22565:5		22533:25 22573:11	22533:8 22534:3,9,10	pay 22391:7,24
De 11 Deserve	occurred 22572:15			
nine 22432:14	occurred 22572:15			1 0
<b>nine</b> 22 <b>43</b> 2:14 <b>non</b> 22510:3	occurrence 22411:24	oppose 22500:14	22540:18 22541:20	peace 22572:25
nine 22432:14				<b>1</b>

Tel: 011 021 6457 Fax: 011 440 9119

RealTime Transcriptions

				Page
22446:16	22522:9	policing 22391:13	22438:21 22459:3	22521:21
penultimate 22427:18	physically 22516:2	22395:1,15 22397:9	22460:1 22482:10,23	probably 22403:10
22427:22 22453:18	22521:2	22397:11 22476:9,9	22485:11 22487:3	22522:15
22453:19,23	pick 22412:7	22476:14	22524:16 22525:10	problem 22390:18
perceived 22397:2	<b>piece</b> 22442:3	policy 22526:2	22525:12 22526:4	22404:22 22419:3,20
22516:21	pieces 22531:13	political 22395:18	22528:4,13 22531:13	22421:4 22442:10
perception 22394:20	<b>Pillay</b> 22434:14,20	22396:6,10 22397:17	22532:11,18	22444:9 22464:1
22395:12 22436:2,18	22456:17 22457:11	22398:3 22399:1	22540:18 22542:15	22520:13,13
22472:16,20	22457:14,20 22459:8	22401:14,16,22	prescribe 22388:22	22526:24 22527:6,13
perfectly 22436:21	22459:11 22460:5,17	22402:1,16 22403:5,9	prescripts 22389:22	22568:20
performed 22464:22	22460:24 22472:4,11	22403:16 22404:9,12	22514:3 22515:9,17	problems 22438:2
period 22451:12	22479:22,24	22404:16 22405:8,19	22515:24 22537:8	22458:23 22464:9
permissible 22479:6	<b>pipeline</b> 22460:18	22407:18 22408:6,11	22538:23 22571:24	22520:3
permission 22455:8	place 22397:22	22410:1,14,20	presence 22418:3	problem's 22541:15
permitted 22462:3	22413:18,20	22412:1 22416:22,24	22529:11 22548:5	<b>Procedurally</b> 22566:19
perpetrated 22500:16	22459:24 22564:5	22421:7,11,14,18	present 22434:19	22569:12
22500:22 22501:25	22565:6	22439:4 22442:20	22483:16,23	procedure 22477:15
22502:19 22503:14	placed 22408:13	22443:5 22451:25	22484:16 22486:20	proceed 22391:4
perpetrating 22502:2 person 22397:9	22416:17,22	22557:13 22560:12	22501:14 22517:14 22548:8	22394:8 22429:18
22406:3 22408:3,22	<b>places</b> 22461:22 <b>plain</b> 22459:15 22528:6	22560:18 22561:5 22565:23 22571:23		22430:17 22432:2 22436:21 22464:10
22408:5 22408:5,22 22409:9,15,20	plainly 22418:15	22572:1 22577:9	presented 22451:24 22573:12	22430:21 22404:10 22472:1 22503:10
22409.9,15,20	22569:5	politically 22400:9,10	presently 22506:12	22510:22 22529:24
22443:20 22449:12	plan 22470:14	22416:17	President 22482:12,23	22550:22 22529:24
22445.20 22449.12 22466:12 22501:25	22481:11,17,22,22	politician 22406:12	22482:25 22561:12	proceeding 22479:6
22515:11 22517:21	22529:21 22530:1,10	position 22436:1	22561:13,23 22562:8	PROCEEDINGS
22517:21,22 22520:9	22530:12	positive 22514:18	22563:13,24	22388:1
22524:7 22549:1,2	plans 22390:11,12,16	22515:21	22565:20	process 22460:18,21
22552:20 22553:2	22390:17 22463:18	possessing 22490:5	press 22436:4	22528:10 22535:12
personal 22514:22	22481:21 22482:1	possession 22489:3	pressure 22395:19,23	produced 22500:15
22515:3 22570:19	22529:12 22577:5	22490:3 22491:8	22396:1,2,10,12,21	22503:23
personality 22396:7	play 22407:22	possibilities 22532:14	22396:21 22397:3,17	profit 22468:7
personally 22421:20	22408:13	22541:12 22544:6	22409:8 22412:1	prohibited 22571:24
22524:1	played 22462:1	22545:4,9	22415:14,16,20,24	promise 22428:6
persons 22490:5	player 22421:24	possibility 22444:6	22416:3,13 22421:11	22429:5 22477:3
22501:1 22516:3	please 22392:20	22534:11,11 22536:6	22421:14,18 22423:1	22567:4
22517:15 22570:5	22394:8 22395:7	22540:22 22541:19	22452:1 22560:12	promised 22566:2
22573:24	22398:14 22404:6	22541:19 22543:18	22565:23 22577:9	22567:11 22572:19
persuading 22567:24	22407:9 22430:7	22543:19 22544:1,18	pressured 22416:10	prompted 22398:3
pertaining 22390:23	22491:1 22536:15,24	22544:18	pressuring 22415:10	proof 22503:24
pertains 22390:22	22544:20 22546:12	possible 22398:8	pressurised 22396:3,5	proofread 22455:25
<b>pertinent</b> 22468:17	pointed 22559:20	22462:15 22464:24	22397:10 22408:23	22456:18
phase 22527:9	22563:25 22566:4,13	22487:9,11 22543:7	22412:15	proper 22437:2
Phiyega 22445:8	22566:16 22567:4,11	22553:5 22555:21	pressurising 22400:9	22442:5 22488:25
phone 22411:25	22567:14,25 22568:5	22556:11	22408:4	properly 22444:13
22412:8,18,22	22575:6	possibly 22419:14	presumably 22411:15	prophetically 22422:25
22415:15,19	pointers 22578:19	22469:20 22496:3	22478:23 22516:19	22553:13
22429:25 22430:3	points 22399:19	22501:21 22565:19	22523:5 22564:5,16	proposal 22565:4
22552:1	22443:14 22454:11	postulated 22468:20	<b>Pretorius</b> 22484:12	proposals 22558:8,11
phoned 22396:19	22454:14,16,23	potential 22409:19	22549:6,7,17	22558:14
22412:20 22413:1,7	22456:9,11 22461:25	22573:17	22552:10,20	propose 22456:3
22413:16 22414:12	22468:14 22486:2	practical 22434:25	prevent 22407:4	22511:13
22415:5,13 22416:15	22494:17 22499:12	practically 22520:15	22511:3,5 22514:15	proposing 22454:2
22441:17 22443:2	22513:7 22521:9	precise 22526:10	22536:9,19 22537:1	proposition 22434:4
00450 0 14	22559:6,6 22560:3	predict 22554:17	22546:15 22571:13	22495:19 22500:23
22450:8,14	22562:8 22577:12,13	predictable 22519:21	prevented 22573:4	22500:25 22501:6
phones 22388:3			previous 22402:15	22511:10 22533:20
<b>phones</b> 22388:3 22415:15 22430:5,7	22577:13,14,18	22571:19 22572:14	-	
<b>phones</b> 22388:3 22415:15 22430:5,7 22450:10	22577:13,14,18 policeman 22392:3	preface 22470:8	22417:25	22534:22 22541:8,23
<b>phones</b> 22388:3 22415:15 22430:5,7 22450:10 <b>photographs</b> 22490:7	22577:13,14,18 <b>policeman</b> 22392:3 22545:14,16	<b>preface</b> 22470:8 <b>prefaced</b> 22515:7	22417:25 previously 22406:4	22534:22 22541:8,23 22543:24 22555:12
phones 22388:3 22415:15 22430:5,7 22450:10 photographs 22490:7 phrase 22425:17	22577:13,14,18 policeman 22392:3 22545:14,16 policemen 22478:8	<b>preface</b> 22470:8 <b>prefaced</b> 22515:7 22559:9	22417:25 previously 22406:4 22410:18 22430:4	22534:22 22541:8,23 22543:24 22555:12 22557:22 22561:6
phones 22388:3 22415:15 22430:5,7 22450:10 photographs 22490:7 phrase 22425:17 22426:8	22577:13,14,18 policeman 22392:3 22545:14,16 policemen 22478:8 22480:11,20	<pre>preface 22470:8 prefaced 22515:7 22559:9 Premier 22401:2</pre>	22417:25 previously 22406:4 22410:18 22430:4 22557:11 22561:25	22534:22 22541:8,23 22543:24 22555:12 22557:22 22561:6 22571:8,9,19,20
phones 22388:3 22415:15 22430:5,7 22450:10 photographs 22490:7 phrase 22425:17 22426:8 phrased 22431:16	22577:13,14,18 <b>policeman</b> 22392:3 22545:14,16 <b>policemen</b> 22478:8 22480:11,20 22503:22 22557:5,6	preface 22470:8 prefaced 22515:7 22559:9 Premier 22401:2 premise 22575:21	22417:25 previously 22406:4 22410:18 22430:4 22557:11 22561:25 prima 22503:24	22534:22 22541:8,23 22543:24 22555:12 22557:22 22561:6 22571:8,9,19,20 22577:21
phones 22388:3 22415:15 22430:5,7 22450:10 photographs 22490:7 phrase 22425:17 22426:8 phrased 22431:16 physical 22512:17,19	22577:13,14,18 <b>policeman</b> 22392:3 22545:14,16 <b>policemen</b> 22478:8 22480:11,20 22503:22 22557:5,6 22571:18	preface 22470:8 prefaced 22515:7 22559:9 Premier 22401:2 premise 22575:21 premised 22575:22	22417:25 previously 22406:4 22410:18 22430:4 22557:11 22561:25 prima 22503:24 primary 22523:20	22534:22 22541:8,23 22543:24 22555:12 22557:22 22561:6 22571:8,9,19,20 22577:21 <b>propositions</b> 22577:25
phones 22388:3 22415:15 22430:5,7 22450:10 photographs 22490:7 phrase 22425:17 22426:8 phrased 22431:16 physical 22512:17,19 22512:21 22515:14	22577:13,14,18 <b>policeman</b> 22392:3 22545:14,16 <b>policemen</b> 22478:8 22480:11,20 22503:22 22557:5,6 22571:18 <b>policewoman</b> 22392:4	preface 22470:8 prefaced 22515:7 22559:9 Premier 22401:2 premise 22575:21 premised 22575:22 preparation 22483:8	22417:25 previously 22406:4 22410:18 22430:4 22557:11 22561:25 prima 22503:24 primary 22523:20 prioritise 22495:1	22534:22 22541:8,23 22543:24 22555:12 22557:22 22561:6 22571:8,9,19,20 22577:21 propositions 22577:25 prosecuted 22503:1
phones 22388:3 22415:15 22430:5,7 22450:10 photographs 22490:7 phrase 22425:17 22426:8 phrased 22431:16 physical 22512:17,19	22577:13,14,18 <b>policeman</b> 22392:3 22545:14,16 <b>policemen</b> 22478:8 22480:11,20 22503:22 22557:5,6 22571:18	preface 22470:8 prefaced 22515:7 22559:9 Premier 22401:2 premise 22575:21 premised 22575:22	22417:25 previously 22406:4 22410:18 22430:4 22557:11 22561:25 prima 22503:24 primary 22523:20	22534:22 22541:8,23 22543:24 22555:12 22557:22 22561:6 22571:8,9,19,20 22577:21 <b>propositions</b> 22577:25

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**RealTime Transcriptions** 

				Page
Prosecutions 22499:19	22461:1 22468:12	22579:16,16	22507:13 22520:11	reject 22545:21
prosecutor 22497:24	22479:3 22506:8,11	ready 22418:13	22523:2 22525:22,22	22546:2,9
22505:12	22533:14 22552:19	22467:17 22526:3	22539:21,23	rejected 22541:5
prosecutors 22497:18	22554:9,11 22560:4,5	real 22540:17	22551:12 22557:17	22546:1,1,15
protect 22393:2	22560:25 22579:7,10	realisation 22488:22	recorded 22443:22	22573:16
22403:4 22405:18	quick 22478:12	realised 22495:25	22456:14 22469:3	rejecting 22546:10,17
22527:12	quickly 22398:2	realistic 22554:10	22545:7	related 22399:24
protest 22438:1	22417:24 22477:3	realistically 22553:22	recording 22430:20	22411:20 22455:20
protesters 22438:23	22545:23 22578:14	really 22417:8	22431:16,19	relates 22432:24
22469:9 22487:17	quiet 22559:18	22425:23 22436:16	22432:11 22434:5,7	22436:1 22457:25
22488:3,13 22494:5	quite 22388:13 22396:9	22439:7 22446:11	22461:7,8 22464:13	22517:3,3 22542:16
protestors 22438:19	22421:5 22425:18	22457:7 22459:15	records 22549:11	relation 22433:11
22524:13 22528:2,6	22429:12 22436:14	22463:19 22468:15	22553:18	22434:4 22490:4
22537:6 22539:10	22464:3 22481:5	22470:10 22498:9	red 22467:24	22491:5 22492:20
22540:19 22541:1	22503:4 22531:18	22499:7 22524:8	reduced 22539:7	22495:8 22543:5,6
proved 22431:14	22556:2 22560:2	22539:19 22564:8	22540:14	22554:20 22559:13
<b>_</b>		22539.19 22504.8		
provide 22551:7	22572:21		refer 22395:23	22562:8 22568:20
provided 22436:5	quotation 22402:19	Realtime 22459:25	22424:21 22428:15	22577:25
22516:23	22461:2	reason 22407:10	22445:18 22471:22	relatively 22509:4
provider 22551:3	<b>quote</b> 22416:4	22416:3 22419:15	22476:15 22477:11	relayed 22553:3
providers 22551:7,12	22456:13	22420:18,19	22477:18 22478:1	released 22503:19
Provincial 22388:5	quoting 22440:21	22423:17 22445:7	22518:2 22529:23	relevance 22513:7,8
22390:7 22411:25	1 0	22447:24 22486:10	22530:14 22558:24	relevant 22444:14
22428:2 22456:23		22491:18 22495:16	reference 22408:5	22450:19
	raise 22388:18,19			
22459:23 22496:11		22499:8 22521:22	22429:14 22431:11	reliant 22463:19
22496:22 22511:21	22521:3 22562:2,5	22529:11 22537:5	22431:17 22445:22	relied 22501:13
22543:11 22555:6	raised 22395:18,24	22544:15 22545:23	22480:9 22490:21	22504:5
22557:2 22568:3	22453:3 22469:17,19	22548:25 22560:9	22513:9	rely 22523:2 22578:8
22579:11	22469:21 22481:7,15	22564:12 22565:3,22	references 22456:5	22579:13
psychological 22495:22	22494:22 22506:13	22571:18 22572:2	referred 22434:5	relying 22434:17
22516:22 22517:7	22553:10	reasonable 22490:11	22480:6 22481:20	22463:23
22520:3 22521:17,21	Ramaphosa 22396:5,6	reasons 22397:18	22502:3 22503:12	remaining 22461:1
psychologist 22518:22	22396:19 22397:10		22502:5 22503:12	remarks 22506:17
		22410:21,22,22		
<b>public</b> 22490:14	22400:14 22407:17	22497:15 22569:25	22561:12,22 22562:7	22507:12
22491:8 22497:18	22408:24 22412:15	22570:9 22573:22	referring 22397:21	remembered 22444:7
publicised 22452:1	22413:4 22414:13,21	22574:25	22406:3,9 22418:25	22444:24 22448:12
<b>pure</b> 22514:4	22414:22,23,25	recall 22423:2,13	22421:9 22438:1,8	22448:24 22449:18
purpose 22442:8	22415:5,10,23	22471:14 22552:18	22439:24 22456:19	Remembering 22395:4
22451:3 22533:18	22416:10,14,16	recalled 22423:14,19	22471:15 22472:21	remind 22398:16
purposes 22472:13	22418:9 22420:13	recap 22388:16	22472:23 22473:6,17	22527:21 22543:3
22474:4 22535:25	22421:23 22423:21	receive 22434:12	22473:21 22474:5,6	22527.21 225 15.5
22540:3	22424:5,19 22441:18	22441:6,7 22495:23	22474:18 22475:6,21	removed 22494:7
puts 22426:9 22480:11	22443:2 22444:3	22496:14 22516:21	22475:25 22514:8	removing 22495:4
22485:25 22565:21	22445:12 22446:3	22568:6	22536:12 22537:11	repeat 22407:25
putting 22396:9	22447:10,13 22449:4	received 22483:14	22539:4,5 22556:3,4	22491:1 22536:15
22410:13,23,25	22449:14 22450:2	22565:14 22566:22	22565:13	22541:18 22545:10
22415:20 22435:17	22451:16 22478:19	22579:12	refers 22430:13	22546:12 22565:16
22447:20 22448:19	22479:10 22480:6	receiving 22516:16	22470:1 22476:12	22566:9
22452:5 22511:9	22561:24 22562:9,25	22517:4	22550:6	repeated 22542:23
22515:2,6,10 22516:7	22564:17,19 22566:2	recipient 22551:3,4	reformulate 22418:11	repeating 22536:24
22517:25 22561:7	22567:11 22569:7,15	recklessly 22572:8	22503:8 22526:11	22577:14,15
22565:2,8 22566:13	Ramaphosa's 22445:3	recklessness 22501:11	reformulated 22502:12	repetition 22535:10
22573:8	22477:23 22479:19	22572:12	refresh 22429:13	22554:12
puzzled 22456:5	22480:9	recollection 22436:3	regard 22398:17	replacing 22456:4
рур 22494:9,9	reacting 22495:18	recommend 22525:12	22422:5 22568:2	reply 22523:9
	read 22399:4,18	22578:4	regarded 22416:24	report 22482:8
Q	22404:8 22407:12	recommendation	22491:18 22537:17	22548:20 22558:9
qualified 22543:16	22404.8 22407.12	22521:16 22522:1,3	22491.18 22537.17	22574:6
quarters 22467:11	22469:6 22473:12	22571:3,12 22572:8	regarding 22418:17	reported 22486:23
	22477:4,6,11,17,23	recommendations	22421:23 22425:11	reports 22483:14
questioned 22445:8	22483:2 22562:15,19	22570:4	22427:5 22449:14	report-back 22572:18
questioned 22445:8 questioning 22437:2	22403.2 22302.13,17		22470:2 22478:7	represent 22436:23
	22574:17 22579:14	recommended 22570:6	22470.2 22470.7	
questioning 22437:2		recommended 22570:6 record 22411:9,13,14	22557:12 22558:12	22437:5 22494:5
<b>questioning</b> 22437:2 22516:8 22550:23 22552:6	22574:17 22579:14 reader 22447:19	record 22411:9,13,14	22557:12 22558:12	22437:5 22494:5
questioning         22437:2           22516:8         22550:23           22552:6         guestions           22393:18         22393:18	22574:17 22579:14 reader 22447:19 reading 22485:11,17	<b>record</b> 22411:9,13,14 22416:24 22428:9,10	22557:12 22558:12 22570:1	22437:5 22494:5 22513:3 22514:9
<b>questioning</b> 22437:2 22516:8 22550:23 22552:6	22574:17 22579:14 reader 22447:19	record 22411:9,13,14	22557:12 22558:12	22437:5 22494:5

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**RealTime Transcriptions** 

represented 22:00:25 represente 2248:11 represente 2248:11 23:93:12         sat 2242:15 sat 2246:12         sat 2246:12         sat 2242:12         sat 2246:12					
represents 22458:1         re-cauvrased 22423:15         save 224419:22550:2         22458:2,02111:5         save 224419:22550:2         save 224419:22570:2         save 224419:22478:4         22458:2,013         save 224419:122478:4         22458:2,013         save 224419:122478:4         22458:2,013         save 224419:122478:4         22458:2,013         save 224419:122478:4         22458:2,122477:4         save 324419:122478:4         22458:2,122478:4         22458:2,122478:4         22458:2,122478:4         22458:2,122478:4         22458:2,122478:4         22458:2,122478:4         22458:2,122478:4         22458:2,122478:4         22458:2,122478:4         22458:2,122479:4         22458:2,122479:4         22458:2,122479:4         22458:2,12248:4         22458:2,12248:4         22458:2,12248:4         2246:1,123246:1,12         2246:1,123246:1,12         3246:1,123246:1,12         3246:1,123246:1,12         3246:1,12324:2,124         3360					Page 14
represents 22458:1         re-curvased 22423:15         save 2244:19 22550:2         22458:2,02411:15         22458:2,013         save 2244:19 22550:2         save 2244:19 22550:2         save 2244:12 22478:4         22458:2,013         save 2244:12 22478:4         22458:2,013         save 2244:12 22478:4         22458:2,013         save 2244:12 22478:4         22458:2,013         save 2244:12 22478:4         22458:2,122477:4         save 2244:12 22478:4         22458:2,122477:4         save 2244:12 22478:4         22458:2,122477:4         save 2244:12 22478:4         22458:2,122478:4         22458:2,122478:4         22458:2,122478:4         22458:2,122478:4         22458:2,122478:4         22458:2,122478:4         22458:2,122478:4         22458:2,122478:4         22458:2,122478:4         22458:2,122478:4         22458:2,122478:4         22458:2,122479:4         3ave 2244:1,2240:1,22259:2,12233:2,2259:1         3ave 2244:1,2424:2,22         3ave 2244:1,2424:2,22         3ave 2244:1,24:2,22         3ave 2246:1,11	represented 22503.25	22461.12	sat 22/52.15	Somonya 22302.23	she'd 22/3/:25
request 22433:11.19         reploughed 22426:5         sav 2241:14 22458.2         2246:18 22457:2         Sav 2241:422458.3         22459:7           requested 2243:5         right 2230:9         2243:21         22457:17         2243:52         2246:17         2243:52         2246:17         2243:52         2246:17         2243:52         2250:18         2244:52         2250:18         2244:51         2246:18         2255:19         2255:14         2255:14         2255:14         2255:14         2255:14         2255:14         2255:14         2255:14         2255:14         2246:12         2255:14         2246:18         226:12         2256:12         2256:14         2256:12         2256:12         2256:12         2256:12         2256:12         2256:12         2256:12					
2243:1         rheinorieal 22419:12         saw 22412:14 22478:4         22468:2,01.3         22489:7.1           22558:1         22416:12 22478:4         22460:12,1622474.4         8252416:12 2247.3           22558:1         22417:12 22488:1         22479:7.1         22458:25 22450:1.1         22479:9.1           requests 2253:14         224218:12 22486:1         22461:21 2247.4         22458:25 22520:1.2         22458:25 22520:1.2         22458:25 22520:2253:0.3         shed 22447:9           residue 2260:10         22477:18 22481:4.2         22446:18 22460:1         22525:02 2253:0.1         shocked 22463:0           residue 2261:11         2248:12 2252:10         2253:12 2257:02 2257:0         shocked 2246:11         shocked 2246:11           residue 2248:11:3         2248:12 2259:01         2255:02 2253:01         scocked 2243:14:2         shocking 2246:11           2256:12 2250:12         2255:14 8,11,14         2256:01 225:14:2         scocke 2243:14:2         shocking 2246:11           2264:12 2248:12 2248:10:2         2255:14:2         scocke 2243:14:2         scocke 2246:12         scocke 2246:12         scocke 2246:12:2         scocke 2246:12					,
requested 2243.5         right 22369.2400.22         22477.21 22478.1         224607.216 22477.4         22449.22 22485.10         22435.25 22456.17         22435.25 22456.15         22445.12 22476.1         22435.25 22450.12         22509.22525.16         22490.32 22493.2         22458.12         2250.2523.13         2250.16         22490.32 22493.2         2250.2253.13         2550.16         22490.32 22457.3         300.02         300.02         300.02         300.02         3250.12         22457.3         2250.12         2257.6         2257.6         300.02         2253.3         3255.1         2250.12         2257.6         300.02         2255.13         2255.12         2255.13         2255.14         2245.13         2255.14         2255.12         2255.14         22555.14 <t< td=""><td>-</td><td></td><td></td><td></td><td></td></t<>	-				
12556:1         22417:21         22448:22 22485:10         22477:91 22492:17         22438:22 22482:10           requests 2257:14         22442:18 2240:04         22548:25         2250:18.21,24         22458:25         2250:218.21,24         22458:24 22498:9           resible 2240:10         2247:19         22447:18         22447:18         22458:25         2255:20         2255:10         shocked 22463:20           resible 2250:10         2247:19         2247:11         2246:11         2246:11         2246:12         shocked 22463:20           resolve 2203:11         2255:10         2255:10         2255:10         shocked 22463:10         shocked 2246:11           resolve 2238:11:2         2255:12         2255:12         2255:12         senior 22499:16         shocked 2246:11           resolve 2238:12         2255:12         2255:12         2255:14         2255:12         senior 22499:16         shocking 2246:11           resolve 2238:12         2255:12         2255:12         2255:12         2240:13         2255:12         2240:13         2255:12         2240:13         2255:12         2240:13         2240:12         2255:12         2240:10         2255:12         2255:12         2240:10         2240:12         2255:12         2240:10         2240:12         2240:11					
requess 22573;14         22429;24 22499;2         22485;11 22496;1         2250;18,21,24         22499;32 2253;25           resembles 22404;8         22449;24 18 22404;8         22548;25         22539;22 2233;13         22549;15         22429;24 22489;24         2255;22 2239;25         shock 22463;2           resolve 22403;10         22479;18 22481;45         22454;13 22467;10         2257;26 2257;6;5         shock 22463;2           resolve 22404;113         22446;13 22459;12         2257;26 2257;6;5         shock 22463;2           resolve 2244;113         22454;13 (2499;17         22550;42 (2253);1         stoot 2255;19           resolve 2246;12 (2567;12         22551;42 (2249;17         22550;42 (2255);1         stoot 2255;19           respect 2329;25         rigt(br 2259;1);1         22550;42 (225);1         22550;42 (224);1         22550;12 (225);1           respect 239;26;17         22550;1         22550;1         22550;1         2259;11         2259;12 (235);1         2259;12 (235);1           respond 2248;19         rober 2250;17         2245;25 (225);7         secret 229;11         2249;12 (225);1         2259;12 (235);1         2259;12 (235);1         2259;12 (235);1         2259;12 (235);1         2259;12 (235);1         2259;12 (235);1         2259;12 (235);1         2259;12 (235);1         2259;12 (235);1         2259;12 (235);1         225	-	0			
require 2259:18         22442:18 22406:4         22548:25         22503:02 2255:16.18         22449:3 22476:13           resinte 22601:10         224773:12 22476:13         22416:18 22458:29         22557:20 22576:5,8         shock 22463:20           resinte 22601:10         22479:18 22481:4,5         22460:16 22492:17         22577:2         22576:2         Stock 22463:20           resolve 22481:13         22483:10         22460:16 22492:17         22570:2         22570:2         22570:2         22570:2         22570:2         22570:2         22570:2         22570:2         22570:2         22570:2         22570:2         22570:2         22570:2         22570:2         22570:2         22570:2         22570:2         22570:1         22570:2         22570:11         22570:12         22570:11         22570:12         22450:10         22450:10         22450:10         22450:10         22450:10         22450:10         22450:10         22450:10         22450:10	22568:1	22416:21 22427:21	22484:22 22485:10	22477:9 22492:17	22435:25 22456:13
resenbles 22464.8 224073:10 8C 22392.22 22393.26 2255.20 2253.310 shock 22463.2 resolve 22403.10 22479:18 22481:45 22458:18 22460:12 22572.6 22576.5.8 shock 22463.2 resolve 22403.10 22479:18 22481:45 22458:13 22460:12 22572.6 22576.5.8 resolve 22481:13 22462.14 22483:19 22494:11 22402.02383.11 22402.14 22559.1 shock 22463.2 resolve 22481:14 15 22483:19 22494:11 22450:12 22577.1 22551:44 22559.1 shock 22463.2 resolve 22457.13 22457.12 22571.22551.48.11.18 22560:12 22575.10 22557.19 22551.25056.8 resources 22547.13 22567.12 2559.10.13 22559.1 22576.5.8 senselze 22415.18.24 22389.1 22567.12 22587.12 22567.12 22587.12 22567.12 22587.12 22567.12 22567.12 22587.12 22567.12 22577.24 22447.13 22567.12 22567.13 22567.12 22567.13 22567.12 22577.24 22467.12 22577.24 22577.24 22467.12 22577.24 22577.24 22577.24 22577.24 22577.24 22577.	requests 22573:14	22429:24 22439:2	22485:11 22496:7	22502:18,21,24	22458:24 22498:9
resenbles 22464.8 224073:10 8C 22392.22 22393.26 2255.20 2253.310 shock 22463.2 resolve 22403.10 22479:18 22481:45 22458:18 22460:12 22572.6 22576.5.8 shock 22463.2 resolve 22403.10 22479:18 22481:45 22458:13 22460:12 22572.6 22576.5.8 resolve 22481:13 22462.14 22483:19 22494:11 22402.02383.11 22402.14 22559.1 shock 22463.2 resolve 22481:14 15 22483:19 22494:11 22450:12 22577.1 22551:44 22559.1 shock 22463.2 resolve 22457.13 22457.12 22571.22551.48.11.18 22560:12 22575.10 22557.19 22551.25056.8 resources 22547.13 22567.12 2559.10.13 22559.1 22576.5.8 senselze 22415.18.24 22389.1 22567.12 22587.12 22567.12 22587.12 22567.12 22587.12 22567.12 22567.12 22587.12 22567.12 22577.24 22447.13 22567.12 22567.13 22567.12 22567.13 22567.12 22577.24 22467.12 22577.24 22577.24 22467.12 22577.24 22577.24 22577.24 22577.24 22577.24 22577.	require 22539:18	22442:18 22460:4	22548:25	22503:9 22525:16,18	22499:3 22553:25
resiste 2290:13         22473:12 22476:13         22416:18 22486:29         22357:2675:8,s         shocke 22463:20           22467:6 22541:5         22448:20 22483:11         22460:16 22492:17         2257:26 2257:6,s         shocke 22463:20           22564:12 2541:3         22483:11         22560:21         2257:26 2257:12         sthocke 22463:20           22564:21 2256:11         2251:32.52 2250:30         22550:41         22503:21 2253:11         22537:42 2253:12           22564:21 2256:11         22554:23 22557:7         2251:14,8:11.18         22503:21 2251:18.2         22538:12 2257:18           2246:41 2240:66         2551:22 2463:20         22551:18         22538:12 2251:17         22589:19         22538:12 2251:12         22589:13 2256:17           2246:42 2240:06         2551:22         sere 2249:14         22538:12 2258:17         22589:12 2251:12         22589:12 2259:11         22589:12 2259:12	-	22469:24 22473:10	<b>SC</b> 22392:23 22393:2.6		
resolve 22403:10         22479:18 2248:14         22458:13 22400:12         2257:12 2257:23 2257:63.8         molcel 22403:23           resolved 22481:13         22448:14         22459:13 2250:18.21.24         Semerya's 12416:21         backing 22463:1           resolved 22481:14         22561:24 22567:12         2258:13.2552:19         Semerya's 12416:21         backing 22463:1           resolved 22481:13         2255:19         2255:19         2255:19         2255:19         2255:19           2256:12         2258:12         2256:12         2258:14         2258:12         2258:14         2258:12         2258:14         2258:12         2258:14         2258:12         2258:14         2258:12         2258:12         2258:12         2258:12         2258:12         2238:12         2238:12         2238:12         2238:12         2238:12         2238:12         2238:12         2238:12         2238:12         2238:12         2238:12         2238:12         2238:12         2238:10         2238:12					
22467:6 22541:5         22482:0 22483:11         22400:16 22492:17         2257:2         2253:03           22542:12 22541:3         22503:20 2255:13         2255:20 2253:13         senior 22499:16         shocking 22465:11           22564:12 22561:13         2255:25 2255:70         2255:18         2255:18         2255:18         2255:18         2255:14         2255:18         2255:18         2255:18         2255:18         2255:18         2255:18         2255:18         2255:18         2255:18         2255:18         2255:18         2255:18         2255:18         2255:18         2255:19         2255:19         2256:19         2256:19         2256:19         2256:19         2256:19         2256:10         2256:10         2256:10         2256:10         2256:10         2256:10         2256:10         2256:10         2256:10         2256:10         2256:10         2256:10         2256:11         2256:12         2251:11         2256:11         <					
resolved 22481:13         22485:10 22494:14         22502:18,21,24         Seenoys' 82246:21         shocking 22463:11           22544:13,14,15         22503:22 2502:02         scino 22499:16         scino 22499:16         scino 22499:16         2253:22 2502:253:21           2256:12         2254:22 2577:7         2255:14,21 2260:12         2253:24 2257:7         2255:14,21 2260:12         2253:24 2259:12         2253:24 2259:12         2253:24 2259:12         2253:24 2259:12         2253:24 2259:12         2253:12         2254:13         22449:10         2248:10         2248:10         2248:10         2250:15.2         2250:15.2         2250:15.2         2250:15.2         2250:15.2         2251:12         2251:12         2251:12         2251:12         2251:12         2251:12         2251:12         2251:12         2251:12         2251:12         2250:11.2         2251:12         2250:11.2         2251:12         2250:12         2250:11         2250:11.2         2251:12         2250:11.2         2250:12         2250:12		,			
22544:13,14,15         22503:02 02505:13         22552:02 02533:13         senior 22499:16         store 2255:19           22564:12 0256:14         2256:12 02553:1         22553:12 02553:1         2253:14,11,18         2256:12 02553:1         2253:14,2258:10           22564:12 0256:14         2256:12 0255:14         2256:12 0255:14         2256:12 0255:12         2253:14,2259:12         2253:14,2259:12         2253:14,2259:12         2253:14,2259:12         2253:14,2259:12         2253:14,2259:12         2259:12 02:12         2259:12         2259:12 02:12         2259:12 02:12         2259:12 02:12         2259:12 02:12         2259:12 02:12         2259:12 02:12 02:12         2259:12 02:12 02:12,12         2259:12 02:12 02:12 02:12,12         2259:12 02:11 02:14:12 00:12 02:11 02:14:12 00:12 00:11 02:13 02:11 02:14:12 00:12 00:11 02:13 02:11 02:14:12 00:12 00:11 02:13 02:11 02:14:11 02:14:12 00:12 00:11 02:13 02:11 02:14:11 02:14:12 00:12 00:11 02:13 02:11 02:14:11 02:14:12 02:11 02:14:12 02:11 02:14:12 02:11 02:14:12 02:11 02:14:12 02:11 02:14:12 02:11 02:14:12 02:11 02:14:12 02:11 02:14:11 02:14:12 02:11 02:14:12 02:11 02:14:12 02:11 02:14:12 02:11 02:14:12 02:11 02:14:12 02:11 02:14:12 02:11 02:14:12 02:11 02:14:12 02:11 02:14:12 02:11 02:14:12 02:11 02:14:12 02:11 02:14:12 02:14:					
resources 22547:13         2253:22.52 22530:8         22550:41.11/4         22503:21 2253:12         2253:24.21.24           22561:42 2256:12         2253:22.557:7         22551:42.158.24         2253:24.2257:1         22559:12.2576:5.8         ence 22416:18.24         2258:12.2576:5.8         ence 22416:12         2238:14.2258:12         2238:14.2258:12         2238:14.2258:12         2238:14.2258:12         2238:14.2258:12         2238:14.2258:12         2238:14.2258:12         2238:14.2258:12         2238:14.2258:12         2238:14.2258:12         2238:14.2258:12         2238:14.2258:12         2238:14.2258:12         2238:14.2258:12         2238:12.2258:12         2238:12.2258:12         2238:12.2258:12         2238:12 <td></td> <td></td> <td></td> <td>-</td> <td>0</td>				-	0
2256:124         2256:12         2256:12         2256:12         2257:12         2258:14         2256:12         2258:14         2258:12         2258:14         2258:14         2258:14         2258:14         2258:14         2258:14         2258:14         2258:14         2258:14         2258:14         2258:14         2258:14         2258:14         2258:14         2258:14         2258:14         2258:14         2258:14         2259:14         2259:12         2258:14         2259:14         2259:12         2259:13         2259:12         2259:13         2259:12         2259:12         2259:13         2259:12         2259:13         2259:12         2259:13         2259:12         2259:13         2259:12         2259:12         2259:12         2259:12         2259:12         2259:12         2259:12         2259:12         2259:12         2259:12         <					
22564:21         22567:12         Rights 2279:10.13         22559:122765.8         sense 22415:18,24         22538:14 22539:17           2246:18         2240:6         22532:20.21         scale 22500:22         scale 2240:12         22539:12 2256:1         22539:12 2256:12         22531:12	resources 22547:13	22513:25,25 22530:8	22550:4,11,14	22503:21 22553:1	22535:2,4,21,24
respect 22392:25         ringtone 22430:3.6         SCA 22505:3 22509:8         22428:10 22430:6.6         risbite 22430:10         scale 22540:22         scale 22540:21         scale 22560:21	22561:24 22562:10	22554:25 22557:7	22551:4,8,11,18	22560:12	22537:14 22538:9,13
respect 22392:25         ringtome 22430:.66         SCA 22505:3 22509:8         22428:10 22430:.61         22531:17         225391:12         22530:12 2250:12         22530:12 22530:12         22530:12 22530:12         22530:12 22530:12         22530:12 22530:12         22530:12 22530:12         22530:12 22530:12         22530:12 22530:12         22530:12 22530:12         22530:12 22530:12         22530:12 22530:12         22530:12 22530:12         22439:21 22533:13         22530:12 22530:12         22439:21 22533:13         22530:12 22530:12         22530:12 22530:12         22530:12 22530:12         22530:12 22530:12         22530:12 22530:13         22530:12 22530:12         22530:12 22530:13         22530:12 22530:12         22530:12 22530:13         22540:20         8entree 2240:13 2256:13         22530:12 2250:15         22530:12 2250:15         22530:12 2250:15         22530:12         22511:12         22511:12         22511:12	22564:21 22567:12	<b>Rights</b> 22579:10,13	22559:1 22576:5,8	sense 22415:18,24	
2248:10 22430:6.6         risk 2246:20 22524:17         22500:19 22511:6         senseles 2247:16         shooting 22406.7           2246:18 22490:6         22532:20.21         scale 22540:22         screen 22399:11         senseles 2247:16         22510:16 22536:2           22493:11 22490:2         22500:12         22530:12         22536:19.20 22537         22530:12         22536:19.20 2257:1           respond 2248:22         pobber 22501:7         22438:17         22438:16         22488:24.25         22439:20 22451:6           2240:10         22511:1         22501:15.24         22455:25 22456:18         sentime 2240:7         22439:20 22451:6         sentime 2240:7         22439:2249:249:249:249:249:249:249:249:249:2	respect 22392:25				
22464:8 22490:6         22532:02.1         scale 2250:22         sersible 22392.1         2251(1) 6 22536:2           2250:12 2256:17         2250:12 2250:17         2255:12         screen 2239:11         sentible 2239:21         22536:19.20 22537           22520:12 2256:17         2250:12 2250:15         22438:17 22480:1         22488:24.25         short 22437:18 22573:13         22532:22537:12 22563:47         sentible 2239:21         22439:20 22437:16         22439:20 22437:16         22439:20 22437:16         22439:20 22437:16         22439:20 22437:16         22439:20 22437:16         22508:12 2250:15         22508:12 2250:15         22508:12 2250:12         22508:12 2250:12         22508:12 2250:12         22508:12 2250:13         22541:21         22508:12 2250:13         22541:17         22508:12 2250:13         screend 2244:17         separated 22472:16         shouldn't 22507:2         shouldn't 22507:2         shouldn't 22507:2         shouldn't 22507:2         stort 22450:13         2251:13         2254:12         2246:20 2247:31         2246:20 2247:31         2246:20 2247:31         2246:20 2247:31         2246:20 2247:31         2246:22 2251:25         shouldn't 22507:2         2250:13         scriend 2244:10         22446:12 2247:12         show 2244:22 2250:13         scriend 2240:11         2246:22 2261:2         stort 2249:12         2246:22 2261:2         stort 2249:12         2246:12 2260:14         2256:1	-	0			
22493:11 2249:24         22540:12 22563:17         22550:12 22563:17         22540:12 22437:8 22432:12         22540:12 22437:8 22432:12           respond 2248:22         robber 2250:17         22432:12 22438:16         22488:24.25         short 22437:8 22482:24           2240:10         22510:12         2250:12         22438:17 22480:1         22549:18 22573:13         22439:20 2245:16           2240:10         22510:15.24         22551:22         22551:24         22457:25 22456:18         second 22444:19         22471:13 22474:4         short 22162:17           response 22448:10         22510:15.24         22551:12         22551:12         22501:12.45         second 2244:19         separate 2246:7         22508:12 2250:13           22491:9 22496:24         role 22400:19.9         22519:12         22519:12         22519:12         22519:12         22519:12         22519:12         22519:12         22519:2         secondy 22500:9         separatel 22472:10         short 220:12         2246:22 22479:12         2246:22 22519:2         22519:2         2246:22 22430:11         2246:22 22431:11         2246:22 22471:12         2246:22 2251:2         2246:22 2251:2         22559:16         secrity 22436:13,17         section 2244:16         22419:2         2241:12 42475           2246:12 2247:12         22559:16         secrity 22436:13,17         section					
22520:12         22556:17         22555:22         screen 22390:11         sent 224378 2248:24         22540:20           responde 2248:22         robber 22501:7         22432:21 2248:16         22549:18         22537:13         22439:20 22451:6           responde 2243:31:81         responde 2243:21 22438:16         22549:18         22573:13         22439:20 22451:6           response 22448:10         22510:15,24         2250:22 523:19         sentence 22404:13         2255:2           response 22448:10         22510:15,23         2250:22 523:19         sentiments 22467:1         2250:1:8 22508:           responsibility 2249:62         rocks 22547:21         22541:2,15,18         22551:24 22570:2         shots 2250:1:9           22512:18:23         rocks 2250:11,5,20         22571:2         series 2260:23,224         show 22473:12           22571:2         rooks 22460:11,5,20         22571:2         series 2260:23,224         show 22473:12           22571:2         rooks 22450:11,5,20         22571:2         series 2256:23,224         show 22473:12           22451:20         2259:15         section 2244:16         22477:12         section 2244:16         2246:12,2277:2         spat7:2           22467:22         2255:12         section 2244:16         22477:12         spat7:2         spat7:2		,			
respond 22448:22         robber 22501:7         22432:12 2248:16         22488:16         22488:25         short 22435:16           22420:10         22502:1,2 2251:15         22337:12 2248:17         22563:4,7         settence 22404:13         22552:2           22498:10 22517:11         robbers 22501:4         second 22444:19         22477:13 2248:67         32508:12         22508:12 2260:3           22498:10 22517:11         robbers 22501:12,4.4         22455:25 22456:18         settiments 22484:16         separate 22465:7         22508:12 22500:13           22491:9 22496:24         rocks 22547:21         secondly 22500:9         separatel 22472:16         shot 22501:3         settiments 2248:17         secondly 22500:9         separatel 22472:16         shot 22501:3         2251:41.2         shot 22501:3         2251:41.2         secondly 2250:9         secondly 2250:9         secondly 2247:4 2240         2247:4 2240           22450:2 22430:21         22450:2 2253:10         22559:16 0.2557:1         sectonly 2240:11,42.00         2247:4 2244:12 2247:2237:2         2246:22 2253:2         2249:12 244:12 4247:         2241:31         22559:12 0.2252:2         2254:12 2256:2         2241:12 4247:         2241:32 2256:12         2256:13         2241:12 4247:         2254:12 2256:2         2241:12 4247:         2241:12 4247:12         2243:22525:2         2256:13         2241:12 124247:1					
responde 22300:20         22501:12         22438:17 22480:1         22549:18 22573:13         22439:20 22451:6           responds 22433:18,19         robbers 22001:4         22537:12 22563:4,7         sentimee 22404:13         2255:2           responds 22433:18,19         robbers 22001:1,2,4,5         22502:2 2253:9         sentimeet 22448:10         22501:8           22498:10         22517:11         robbery 22501:1,2,4,5         22502:2 2253:9         separate 22456:7         22501:2 2250:2           22491:12 2250:2         22544:17         separate 22456:7         sbots 22501:3         sbots 22501:3           22515:14,15         robery 22509:9         22531:2         serious 22401:14,16         22446:20 2473:14         22446:20 2473:14         22446:20 2473:14         22446:20 2473:14         22446:20 2473:14         22446:20 2473:14         22446:20 2473:14         22446:20 2473:14         22446:20 2473:14         22446:12 2440:14         22446:12 2440:14         22446:12 2440:14         22446:12 2440:14         22446:12 2241:38         2240:37:22         2243:18 22443:14         2243:18 2243:16         2243:18 2243:16         2243:18 2243:16         2243:18 2243:16         2243:18 2243:16         2243:18 2243:16         2243:18 2243:16         2243:18 2243:16         2243:18 2243:16         2243:18 2243:17         2241:38 2243:16         2241:38 2243:16         2243:18 2243:16					
22420:10         22511:2         22537:12 22563:47         sectnet 22404:13         22552:8           response 22448:10         22510:15,24         22457:25 22456:18         sectnitenets 22448:18         short 22402:12           22498:10 22517:11         robbers 22501:12,45         22502:12,22531:9         separate 22456:7         separate 22457:20         separate 22457:20         separate 22457:20         setious 2240:11,15,20         22513:9 22548:10         secious 2240:11,14,16         22410:1,14,20         22471:12,14 22473           22436:13 22490:22         22451:20 22559:15         security 22390:23         secious 2240:11,14,20         22471:12,14 22473         22463:18 22476:14         22410:1,14,20         22471:12,14 22473           22436:13 22490:23         22551:10         security 22390:23         secious 2241:14,16         22413:11         site 2230:12,52 2252:32;         secious 22412:14         secious 22413:11         show 2245:25 225:12           22467:22         2255:19 22571:5,7         Secious 22421:4         Secious 2244:16         Secious 2244:16         Secious 2244:16         Secious 2244:12         Secious 2244:12,14         Secious 2244:12,14         S	-				
22420:10         22511:2         22537:12 22563:47         sectnet 22404:13         22552:8           response 22448:10         22510:15,24         22471:13 22474:4         short 22402:14         short 22402:12           22498:10 22517:11         robbers 22501:12,44         22457:25 22456:18         secund 2244:19         22551:24 22570:2         short 22406:7         short 22406:7         stort 22406:7 <td>responded 22390:20</td> <td></td> <td>22438:17 22480:1</td> <td>22549:18 22573:13</td> <td>22439:20 22451:6</td>	responded 22390:20		22438:17 22480:1	22549:18 22573:13	22439:20 22451:6
response 22448:10         22510:15.24         22455:25 22456:18         sentimes 22484:18         shot 22501:8 22508:5           responsibility 22491:6         22510:15.23 22511:3         22502:22531:9         22551:24 22570:2         shouldn't 22507:3           22491:9 22496:24         rocks 22547:21         22541:15.18         separated 22472:16         shouldn't 22507:9           22512:18.23         rocks 22547:21         22541:15.20         secondly 22500:9         separated 22477:16         shouldn't 22507:9           22512:18.23         rocks 22450:11,15.20         22571:2         secretal 2240:11.4,16         22446:20 22473:17           22497:224986.69,13         22450:24 22451:7.0         secretiv 22436:13,17         22417:12 22498:7.22207:4         22498:7.2259:15           22497:72 224986.69,13         22551:16 22571:5         security 22907:3         22511:25         22531:25 22532:3           22557:52         224287: 22457:8         22476:16,23 22517:14         set outy 2231:25 2253:3         22531:25 2253:3           22557:52         22467:22         2255:19 22574:3         22560:19         services 22517:14         side 22390:15 22471           rest 2240:12 22451:7         22453:12         22450:12 2234:12         2240:12 2242:12         2243:12         2243:12         2243:12         2244:622         2249:12         2243:12	22420:10	22511:2	22537:12 22563:4,7	sentence 22404:13	22552:8
response 22448:10         22510:15.24         22455:25 22456:18         sentimes 22484:18         shot 22501:8 22508:5           responsibility 22491:6         22510:15.23 22511:3         22502:22531:9         22551:24 22570:2         shot 22501:3           22491:9 22496:24         rocks 22547:21         22541:15.18         separated 22472:16         shouldn't 22507:9           22512:18.23         rocks 22547:21         22541:15.20         secondly 22500:9         separated 22475:24         shouldn't 22507:9           22512:18.23         rocks 22450:11.15.20         22571:2         secrits 22401:14.16         22446:20 22473:14         22447:12.14 2247           22497:22498:6.9.13         22450:24 22451:7.0         secrity 22436:13.17         224981:70         22591:25 2253:23           22523:25 22524:9         round 22388:12         22466:12 02477:14         22477:12 4247         22407:2           22467:22         rest 2240:12 02421:4         22477:12 22487:2257:2         22562:3         22498:12 2247:12         shown 22446:22           rest 2240:12 02421:1         rut 2255:19 22574:3         22669:19         service 22517:16         set 2240:12 02421:4         shown 22446:22           rest 22437:5 22533:1         22556:10 02571:5,7         22491:20 2241:72         22530:12 2253:6,12         2240:12 2243:12         2240:12 2243:11         22530:22 2256:	responds 22433:18.19	robbers 22501:4	second 22444:19	22471:13 22474:4	<b>shortcut</b> 22462:4
22498:10         22510:12,4,5         22500:2         22531:9         separate 22456:7         22508:12         22508:12         22508:12         22508:12         22508:12         22508:12         22508:12         22508:12         22508:12         22508:12         22508:12         22508:12         22508:12         22508:12         2251:24         2251:24         2251:24         22509:13         separated 22472:16         shouldn't 22507:9         separated 22472:16         shouldn't 22507:9         separated 22470:14,16         22446:20         22474:12         22446:20         22474:12         22446:20         22474:12         22474:12         22474:12         22474:12         22474:12         224748:12         22476:12         22476:12         22476:12         2255:25         22498:7         22507:4         2257:25         22476:16,20         2257:25         22476:12         22476:14         2257:25         22476:12         22476:14         2257:25         22476:12         22476:14         2257:25         22477:32         2255:12         2251:32         2256:13         3255:25         3261:13         3255:25         325:25         325:25         325:25         325:25         325:25         325:25         325:25         325:25         325:25         325:25         325:25:25         325:25         325:25					
responsibility 22491:6         22510:15.23:22511:3         22541:2,15.18         22512:12:42:2570:2         shots 22501:3           22491:9:22496:24         rocks 22547:21         22544:17         separated 22472:16         shoutha't 22507:9           22512:18,23         rocks 22450:11,15.20         22571:2         serieus 2260:32,324         show 22477.4:22440           22532:20:22570:19         Roots 22450:11,15.20         22571:2         serieus 22401:14,16         22446:20:22473:13           22430:13:22490:25         22451:20:22591:5         secrety 22436:13,17         22417:12         22531:25:2252:22           22523:25:22524:9         round 22388:12         22463:18:22476:14,22477         22413:11         shown 22446:22           22467:22         22555:19         22427:3:22562:3         22417:12         22506:13         service 22517:14         side 22390:15 22471           22540:20:2254:12         22555:19         2257:2         see 22401:20:2241:721         225230:22 22476:240:250:14         side 22390:15 22471           22540:20:2257:2         2255:19         2257:12         see 22401:20:2241:721         sei 2250:12         side 22390:15 22471           2246:12         22476:16:23:250:12         22419:10:2244:12         22476:62:2250:14         side 22390:15 22471           22540:20:2254:12         2256:12         2240	-				
22491:9         22496:24         roke 22547:21         22544:17         separatel 22472:16         shouldn't 22507:9           22512:18,23         row 22408:13 22546:24         secondy 22500:9         serias 2256:23,24         shou 2427:4 2240           22532:20 22570:19         Roots 22450:11,15,20         22571:2         serias 2256:23,24         shou 22477:4 2240           responsible 22430:21         22450:12,22559:15         section 22444:16         22410:1,420         22447:1,42247           22432:22522:49         round 22388:12         22477:3         section 22444:16         22577:22         2256:13           22490:12 2240:13         22457:12         section 22444:16         22477:14         22577:2         2256:13           22404:13 224351         22477:3 22546:25         22512:5 2256:3         22410:1,420         sbown 22446:22           22404:13 22437:1 2255:12         route 2255:22         see 22401:20 22417:21         service 22517:14         side 22390:15 22471           result 22477:5 2253:1         route 2255:12         section 2244:11         22523:25 2250:19         2250:10 22517:16         22496:6 2250:14           22544:16,16 22556:19         ruber 22539:7,7         22439:16,12         22534:12         stout 22437:12         sidetraced 22425:6           22545:16,17         ruber 2239:17,71         2				-	
22512:18.23         role 22408:13 22546:24         secondly 22500:9         separately 22575:24         2251:3           22512:15:14.15         rom 22509:9.9         22513:9 22548:10         series 22562:23,24         show 22427:42240           22532:20 22570:19         22450:24 22451:7.7         secretly 22436:13,17         22410:11,4,20         22447:12,14 22473           22490:25         22451:20 22559:15         secretly 22390:23         22517:19 22548:18         22471:12,12 22473           22575:25         22428:7 22457:8         22463:18 22476:1.4         22577:22         22562:13           22477:22         22555:19 22574:3         22560:19         service 22517:14         side 22490:15 2473:3           22447:22         22555:19 22574:3         22560:19         service 22517:16         side 22400:12 2447:3           22540:20 22541:10, 7         7000 22541:5,7         22401:20 22411:21         shown 2246:22         shown 2246:22           22540:20 22541:10, 7         route 22559:7,7         22433:15,18         22557:21         setrice 2217:16         setrice 22517:16         setrice 22517:16         setrice 2246:12         sidetracked 22425:6           22540:12 22545:12         route 22559:7,7         22433:15,18         22540:12 22561:2         siding 22395:2,14         22540:12 22545:12         sidetracked 22425:6         signifeant 2247					
22515:14,15         room 22509:9.9         22513:9 22548:10         series 22562:23,24         show 22427:4 22401:12           22523:20 22570:19         Roots 22450:11,15,20         22451:20 22559:15         secreity 22436:13,17         22410:11,420         22447:12,14 22473:12           22436:13 22490:25         22451:20 22559:15         secreity 22300:23         22517:19 22548:18         22447:12,14 22473           22525:25         pround 22388:12         22477:3 22546:25         22477:3 22546:25         22477:3 2256:18 22476:1,4         22577:22         service 22517:14         22550:13           22477:22         22555:12         22477:3 22546:25         22470:12 22523:9         service 22517:14         shown 22406:2         22473:6 22493:15           rest 2253:21         route 22555:22         see 22401:20 22417:21         22523:9 22551:3,6,12         22473:6 22493:15         side 22300:15 22471           rest 2243:11         22556:10 22571:5,7         2243:15         22473:12 2243:10         22540:22 2257:25         side 22430:12 2243:12         22540:12 2243:15         22540:12 2243:12         22441:14         2243:12 2241:21         22496:6 2209:14           22540:12 2255:19         rube 2259:7,7         2243:15         2243:12         22543:12         22543:12         22541:12         22441:12         22443:12         22543:12         22543:12					
22523:20 22570:19         Roots 22450:21,1,5,20         22571:2         serious 22401:14,16         22446:20 22473:13           22436:12 22450:24 22451:7,7         22451:02 22559:15         secretity 22436:13,17         22410:1,14,20         22471:12,14 22475           22490:25 22524:9         22451:22 22559:16,20         secretity 2230:23         22571:22         22571:22         22552:22         22552:22         22477:22 22573:2         22552:22         22577:22         22562:13         secretity 2230:23         22571:24         22562:13         shown 22446:22         2257:22         22562:13         shown 2246:22         2252:25         service 22517:14         shown 2246:22         2246:12         22431:11         shown 2246:22         shown 2246:22         2249:6:22941:14         22551:15         2250:15         2250:15         service 22517:16         22496:6:2290:15         22470:22471:12         22532:25         2250:16         22471:22446:22         22496:6:22493:11         22496:6:22493:16         22496:6:222257:21         22496:6:22209:14         22534:12         22496:6:22209:14         22534:12         22496:6:22209:14         22534:12         22496:6:222257:22         22534:12         22496:6:22         22534:12         22496:6:22         22534:12         22496:6:22         22534:12         2254:12         2254:12         2254:12         2254:12         2254:		role 22408:13 22546:24			22514:3
responsible 22430:21         22450:12         22450:12         22451:120         22250:15         secrety         22436:13         22443:13         22443:12         22471:12,14         22473:2250:23           22452:25         22523:25         225249:7         22453:120         22553:125         22473:120         22532:25         22523:25         22523:25         22523:25         22523:25         22478:17.9         22548:18         22557:22         22562:13         22562:13         22562:13         22562:13         22525:25         22473:62.22571:57         22413:11         shown 22446:22         side 22390:15         22473:62.22471:15         22560:19         service 22517:14         side 22390:15         22471:15         22560:12         22551:15         22556:10         22557:21         22556:10         22571:57         22419:10         22429:1         22433:10,19         sesion 22443:11         22530:2252:252:25:25:25:25:25:25:25:25:25:25:	22515:14,15	room 22509:9,9	22513:9 22548:10	series 22562:23,24	<b>show</b> 22427:4 22440:8
22436:13 22490:25         22451:20 22559:15         section 22444:16         22413:8 22443:5         22498:7 22507:4           22497:7 22498:6,9,13         22559:16,20         security 22390:23         22577:22         22532:22523:3;           22525:25         22428:7 22457:8         22476:16,23 22512:5         seriously 22412:14,21         shown 22446:22           22467:22         22555:19 22574:3         22569:19         service 22517:14         side 22390:15 22473:           rest 2240:12 22543:10         route 22555:22         see 22401:20 22417:21         225239:22551:3,6,12         22476:6 22493:15           rest 2253:21         route 22557:99         22433:15,18         service 22517:16         22496:6 22509:14           22540:20 22541:6,7         22540:12,14         22433:15,18         22557:21         22540:22 22572:2           22548:16,16 22556:9         22540:12,14         22441:16 22445:7         22539:7,21         22540:22 22572:2           22545:8         rube 22439:11         22446:12 22441:17         22543:12         siding 22395:2,14           22451:17         rube 22430:10         22454:12 2247:2,233:4:12 2254:12         siding 22395:1,4           22555:16,17         rump 22443:11         22480:12 2246:17         22567:23         similartites 22482:20           225511:19         rump 2443:11	22523:20 22570:19	Roots 22450:11,15,20	22571:2	serious 22401:14,16	22446:20 22473:13
22436:13 22490:25         22451:20 22559:15         section 22444:16         22413:8 22443:5         22498:7 22507:4           22497:7 22498:6,9,13         22559:16,20         security 22390:23         22577:22         22532:22523:3;           22525:25         22428:7 22457:8         22476:16,23 22512:5         seriously 22412:14,21         shown 22446:22           22467:22         22555:19 22574:3         22569:19         service 22517:14         side 22390:15 22473:           rest 2240:12 22543:10         route 22555:22         see 22401:20 22417:21         225239:22551:3,6,12         22476:6 22493:15           rest 2253:21         route 22557:99         22433:15,18         service 22517:16         22496:6 22509:14           22540:20 22541:6,7         22540:12,14         22433:15,18         22557:21         22540:22 22572:2           22548:16,16 22556:9         22540:12,14         22441:16 22445:7         22539:7,21         22540:22 22572:2           22545:8         rube 22439:11         22446:12 22441:17         22543:12         siding 22395:2,14           22451:17         rube 22430:10         22454:12 2247:2,233:4:12 2254:12         siding 22395:1,4           22555:16,17         rump 22443:11         22480:12 2246:17         22567:23         similartites 22482:20           225511:19         rump 2443:11	responsible 22430:21	22450:24 22451:7.7	secretly 22436:13.17		22474:12.14 22475:8
$\begin{array}{ c c c c c c c c c c c c c c c c c c c$					
22523:25         round         22388:12         22463:18         22476:16,23         2257:22         22562:13           rest         22404:13         22437:13         22476:16,23         22417:11         shown         2240:22412:14,21         shown         2240:22412:14,21         shown         2240:22412:14,21         shown         2240:15         22473:622493:15         22473:2522525:252523:64.4         22540:122141:12         22460:12235:12         22540:1222541:21         316erce24245:62         22543:12         22540:1222545:12         22540:1222545:12         22540:12         22540:12         22543:12         22540:12         22546:12         22546:12         22546:17         22550:12         22545:12					
22575:25         22428:7 22457:8         22476:16,23 22512:5         seriously 22412:14,21         shown 22446:22           rest 22407:22         22555:19 22574:3         22569:19         service 22517:14         side 22390:15 22471:           rests 2523:21         route 22555:22         22569:19         service 22517:14         22540:20 22541:6,7         Roux 22579:9         22419:20 2241:4         Services 22517:16         22496:6 22509:14           22540:20 22541:6,7         Roux 22579:9         22432:10,19         session 22443:11         2253:25 22536:4,         22540:22 22572:22         22540:12,14         22434:18 22438:17         set 22526:12 22534:12         sidetracked 22425:6           22540:12 22556:9         22540:12,14         22441:16 22445:7         22534:21 22541:21         sidetracked 22425:6         siding 22395:2,14           22540:12 22545:8         rule 22430:10         22460:11 22471:1         22449:12         22563:2         similar 22472:6           22451:6,17         rump 2243:11         rump 22443:11         22456:20         similar 2246:20         similar 22518:2           22555:5         s         silence 2246:7         22564:17 22567:13         similarites 22482:20           22511:19,20 22555:4         saga 22407:24         22496:13 22504:15         Share 22494:23         similarites 22482:20           ret					
rest 22404:13 22435:1         22477:3 22546:25         22512:5 22562:3         22413:11         shy 22525:25           22467:22         22555:19 22574:3         22569:19         service 22517:14         side 22390:15 22471           rests 2253:21         route 22555:22         22419:20 22417:21         22523:9 22551:3,6,12         22473:6 22493:15           22540:20 22541:6,7         Roux 22579:9         22429:1 22432:10,19         service 22517:16         session 22443:11         22530:25 22536:4,           22544:1 22545:60         22540:12,14         2243:15,18         22570:22 22573:5         rube 22391:1,7,11         22441:16 22445:7         22534:21 22541:21         siding 22395:2,14           resulted 22459:17         22392:17 22439:18         22447:1 22449:23         settled 22461:7         significant 22472:6           22540:12         22430:10         22460:11 22471:1         Shabangu 22563:2         similartites 22482:20           22551:16,17         running 22426:20         22480:1 22490:15         Share 2244:23         similarites 22482:20           22555:5         S         22531:14 22514:18         22567:23         similarites 22482:20           22555:1         S         22563:14 22562:22         share 2244:23         similarites 22482:20           22555:5         S         225313:14 22511:19         2244					
22467:22       22555:19 22574:3       22569:19       service 22517:14       side 22390:15 22471:         result 22437:5 2253:1       route 22555:22       see 22401:20 22417:21       22523:9 22551:3,6,12       22473:6 22493:15         22540:12 02541:6,7       Roux 22579:9       22433:15,18       session 22443:11       22532:5 2253:43       22540:22 2257:22         22544:1 22545:10,22       ruber 22539:7,7       22433:15,18       set 22526:12 22534:12       side 2240:22 2257:23         22557:0:2 22570:2 22573:5       rule 22391:1,7,11       22443:18 22438:17       set 22526:12 22534:12       sidig 22395:2,14         resulted 22459:17       22392:17 22439:18       22447:1 2249:23       settled 2246:17       22536:1         22545:8       22511:14       22460:11 22471:1       Shabangu 22563:2       similar 22472:6         22456:17       rump 22443:11       22460:11 22471:1       Shabangu 22563:2       similar 22518:2         22555:5       S       S       Softer 2246:17       2256:19       similar 22518:2         retrace 22451:7       SADEC 22483:1       2250:10 2252:10       22445:1 22512:0       Share 2249:23       similarty 22397:7         22456:20       2249:14       2256:12       2253:14 2250:12       shareholder 2249:23       similary 22397:7         22455:15       S2					
rests 22523:21         route 22555:22         see 22401:20 22417:21         22523:9 22551:3,6,12         22473:6 22493:15           result 22437:5 22533:1         22556:10 22571:5,7         22419:20 22421:4         Services 22517:16         22496:6 22509:14           22540:20 22541:6,7         Row 22579:9         22429:1 22432:10,19         session 22443:11         22532:22 22536:4,           22544:1 22556:9         22540:12,14         22433:15,18         22556:12 22534:12         sidetracked 22425:6           22570:22 22573:5         rule 22391:1,7,11         22441:16 22445:7         22534:21 22541:21         siding 22395:2,14           22545:8         22511:14         22454:22 22457:2,3         settled 22461:7         22536:1         22518:2           22545:8         rule 2230:10         22460:1 22471:1         22486:17 22490:1         22567:23         similar 22518:2           22551:6,17         running 22426:20         22486:17 22490:1         22567:23         similar 22518:2           22551:19,20 22555:4         SADEC 22483:1         22513:14 22514:18         share 2249:12         similar 22397:7           retrieved 22552:1         Safety 22562:3         2250:10 2250:10         22446:17 22567:13         similar 22518:2           retrieved 22552:1         22569:19         22543:14 2250:22         shareholder 22419:8 <td< td=""><td></td><td></td><td></td><td></td><td>e e</td></td<>					e e
result 22437:5 22533:1         22556:10 22571:5,7         22419:20 22421:4         Services 22517:16         22496:6 22509:14           22540:20 22541:6,7         Roux 22579:9         22429:1 22432:10,19         session 22443:11         22532:25 22536:4,           22544:1 22545:10,22         rubber 22539:7,7         22433:15,18         set 22526:12 22534:12         sidtracked 2245:6           22545:2         p22540:12,14         22434:18 22438:17         set 22526:12 22534:12         sidtracked 22425:6           22545:8         p2511:14         22447:1 22449:23         p2543:7 22578:5         significant 22472:6           22545:8         p2511:14         p2443:11         p2443:12         settde 22461:7         p2563:2           22551:6,17         running 22426:20         p2486:17 22490:1         p2567:23         similar 22518:2           22551:6,17         running 22426:20         p2486:17 22490:1         p2567:23         similar 22518:2           22551:19,20 2255:4         Safety 22562:3         p2513:14 22511:18         share 22494:23         similar1y 22397:7           22456:10         Safety 22562:3         p2563:14 12522:12         p2446:13 2250:10         p2442:19,20         simple 22389:18           retrieved 22552:1         p2569:19         p2543:14 2256:22         p2441:12 22400:5         p249:19         p2443	22467:22	22555:19 22574:3	22569:19	service 22517:14	side 22390:15 22471:8
22540:20 22541:6,7 22544:1 22545:10,22         Roux 22579:9 ruber 22539:7,7         22429:1 22432:10,19 22433:15,18         session 22443:11         22532:25 22536:4, 22540:22 22572:23           22548:16,16 22556:9 22570:22 22573:5         rule 22391:1,7,11         22434:18 22438:17         set 22526:12 22534:12         siding 22395:2,14           resulted 22459:17         22392:17 22439:18         22441:16 22445:7         22534:21 22547:25         siging 22395:2,14           22545:8         22511:14         22454:12 22457:2,3         settled 22461:7         22536:1           22427:25 22428:1         runp 22443:11         22486:17 22490:1         22564:17 22567:13         similar 22518:2           22511:19,20 22555:4         running 22426:20         22486:17 22490:1         22564:17 22567:13         similarities 22482:20           22486:17 22490:1         22496:13 22504:15         Shame 22491:21         similarities 22482:20         similarities 22482:20           22555:5         S         2250:10 22521:20         22442:19,20         similarities 22482:20           retrace 22451:7         SADEC 22483:1         2250:10 22521:20         22442:19,20         simple 22389:18           retrive d 22552:1         22569:19         22563:14,15         22400:17,18         22499:19 2240:19           retrace 22451:7         SADEC 22438:12         seen 22458:25 <t< td=""><td>rests 22523:21</td><td>route 22555:22</td><td>see 22401:20 22417:21</td><td>22523:9 22551:3,6,12</td><td>22473:6 22493:15</td></t<>	rests 22523:21	route 22555:22	see 22401:20 22417:21	22523:9 22551:3,6,12	22473:6 22493:15
22540:20 22541:6,7 22544:1 22545:10,22         Roux 22579:9 ruber 22539:7,7         22429:1 22432:10,19 22433:15,18         session 22443:11         22532:25 22536:4, 22540:22 22572:23           22548:16,16 22556:9 22570:22 22573:5         rule 22391:1,7,11         22434:18 22438:17         set 22526:12 22534:12         siding 22395:2,14           resulted 22459:17         22392:17 22439:18         22441:16 22445:7         22534:21 22547:25         siging 22395:2,14           22545:8         22511:14         22454:12 22457:2,3         settled 22461:7         22536:1           22427:25 22428:1         runp 22443:11         22486:17 22490:1         22564:17 22567:13         similar 22518:2           22511:19,20 22555:4         running 22426:20         22486:17 22490:1         22564:17 22567:13         similarities 22482:20           22486:17 22490:1         22496:13 22504:15         Shame 22491:21         similarities 22482:20         similarities 22482:20           22555:5         S         2250:10 22521:20         22442:19,20         similarities 22482:20           retrace 22451:7         SADEC 22483:1         2250:10 22521:20         22442:19,20         simple 22389:18           retrive d 22552:1         22569:19         22563:14,15         22400:17,18         22499:19 2240:19           retrace 22451:7         SADEC 22438:12         seen 22458:25 <t< td=""><td>result 22437:5 22533:1</td><td>22556:10 22571:5,7</td><td>22419:20 22421:4</td><td>Services 22517:16</td><td>22496:6 22509:14</td></t<>	result 22437:5 22533:1	22556:10 22571:5,7	22419:20 22421:4	Services 22517:16	22496:6 22509:14
22544:1 22545:10,22 22548:16,16 22556:9ruber 22539:7,7 22540:12,1422433:15,18 22434:18 22438:1722557:21 set 22526:12 22534:12 22534:21 22541:21 22534:21 22541:21 siding 22395:2,14resulted 22459:17 22545:822391:1,7,11 22392:17 22439:18 22511:1422447:1 22449:23 22447:1 22449:2322534:21 22541:21 22534:21 22541:21 22534:21 22541:21siding 22395:2,14 significant 22472:6 22536:1resulted 22459:17 22427:25 22428:1 22427:25 22428:1 22455:16,17 22551:5rule 22430:10 rump 22443:11 ruming 22426:2022460:11 22471:1 22486:17 22490:1 22486:17 22490:12 22486:17 2250:12 22513:14 22514:18 22513:14 22514:18 22555:5silence 22465:7 similar 22518:2 similar 22582:20retracing 22450:12 retracing 22450:12SADEC 22483:1 2256:23 2250:10 22521:20 22563:14 12520:12 22563:14 12520:12 22563:14 12552:20Share 2249:23 22442:17,23 22442:1221 22442:1221 22442:1222389:18 22563:14 22562:22 22543:14 22562:22 22442:19,20similar 22518:2 similar 22518:2 22441:17,23 22519:6retrieved 22552:1 22445:10 22446:7 22445:10 22446:7 22445:2022563:14,15 22563:14,15 22442:18 22440:5simple 22389:18 22449:19 22442:18 22442:18 22442:18 2243:22 22460:12 22468:5 22400:17,1822442:18 2243:22 22440:14 22447:18 2243:23revening 22446:7 22445:10 22446:7 22445:12 22446:7 22444:120 22445:12 22460:12 22468:5 22440:12 22468:5 22440:17,18 22442:18 2242:23 22440:14 22442:18 2242:23 22471:16 22442:18					
22548:16,16 22556:9 22570:22 22573:522540:12,14 rule 22391:1,7,11 22392:17 22439:18 22392:17 22439:18 22545:822434:18 22438:17 22447:1 22449:23 22454:2 22457:2,3set 22526:12 22534:12 22534:21 22541:21 22534:21 22541:21 22534:21 22541:21 22536:17sideracked 22425:6 siding 22395:2,14 siding 22395:2,14 22545:16 22457:2,3resumes 22388:5 22455:16,17 22455:16,17 22555:5rules 22430:10 running 22426:2022460:11 22471:1 22480:1 22485:8 22460:12 22485:8 22496:13 22504:15Shabangu 22563:2 Shame 22494:23 similar 22518:2sillence 22465:7 2256:13 2256:17 22567:13 22513:14 22514:18 share 22412:1sillence 22465:7 22567:13 22567:13retrace 22451:7 retracing 22450:12SADEC 22483:1 22569:1922518:10,14 22520:1 22520:10 2251:20 22563:14,15Shame 22494:23 share 22412:1similar 22518:2 22445:1 22517:24, 22445:1 22517:24, 22445:1 22517:24, 22445:1 2250:12retrace 22451:7 retracing 22456:20SAPE 22483:1 22569:1922563:14,15 22563:14,15Shame 22412:1 22442:19,20 simple 22389:18 shareholder 22419:8 22393:14 22404:14 22479:9retrace 22451:7 22445:10 22446:7 22445:10 22446:7 22447:10 22438:20,21 22400:2 22444:20Safety 2256:12 22460:2 22548:15Shareholder 22410:5 22400:17,18 22447:12 22463:8 22474:21 22460:12 22468:5 22400:17,18 22447:12 22463:8 22474:2022449:2 22453:67 22449:2 22453:67 22449:2 22453:67 22444:2022460:12 22468:5 22400:17,18 22460:12 22468:5 22400:17,18 22477:18 22510:3 22477:18 22510:3 22477:18 22510:3 22477:18 22510:3 22477:12 22578:12 22400:14,2422449:2 22453:67 22444:20 22			,		
22570:22 22573:5         rule 22391:1,7,11         22441:16 22445:7         22534:21 22541:21         siding 22395:2,14           resulted 22459:17         22392:17 22439:18         22447:1 22449:23         22543:7 22578:5         significant 22472:6           22545:8         22511:14         22447:1 22449:23         22460:11 22471:1         Shabangu 22563:2         silence 22465:7           22457:25 22428:1         rump 22443:11         22486:17 22490:1         22564:17 22567:13         similar 22518:22           22555:5         S         S         SADEC 22483:1         22511:14 22514:18         share 22494:23         similar 22518:22           22555:5         S         S         SADEC 22483:1         2250:10 2250:12         share 22442:12         22445:1 22517:24,           retrace 22451:7         SADEC 22483:1         2250:10 2250:12         share 22442:12         22445:1 22517:24,           retrace 22450:12         Safety 22562:3         2250:10 2250:12         22442:12,20         simple 22389:18           retrace 22456:20         SAFE 22425:12         saga 22407:24         22563:14,15         22447:12         22442:12,4           revealed 22444:2,10         22438:20,21 22440:6         22460:12 22468:5         22400:17,18         22479:9           revealed 22444:2,10         22438:20,21 22440:6         224					
resulted 22459:17 22545:822392:17 22439:18 22545:822447:1 2249:23 22545:822543:7 22578:5 settled 22461:7significant 22472:6 22536:1resumes 22388:5 22427:25 22428:1 22455:16,17 22551:19,20 2255:4 2255:5rules 22430:10 rump 22443:1122460:11 22471:1 22480:1 22485:8Shabangu 22563:2 22486:17 22490:1 22486:17 22490:1 22486:17 22490:1 22486:17 22490:1 22567:23silence 22465:7 similar 22518:2retrace 22451:7 retrace 22451:7SADEC 22483:1 Safety 22562:3 22569:192250:10 22521:20 22543:14 2250:10 22521:20 22563:14,15Share 22494:23 224421:17,23simple 22389:18 22393:14 2240:14 22449:2retrace 22444:2,10 22445:10 22446:7 22445:10 22446:7 22445:10 22446:7 22445:10 22446:7 22445:10 22446:7 22445:10 22446:7 22445:10 22466:22saga 22407:24 22563:14,15 22460:12 22468:5 22460:12 22468:5 22460:12 22468:5 22440:17,18 22417:10,11,15,16 22463:8 22474:21 22463:8 22474:21 22463:8 22474:21 22461:5 22470:12 22460:12 22468:5 22449:2 22453:6,7 22447:20,22 22473:20,22 22474:2 22460:12 22463:6 22449:2 22453:6,7 22447:20,22 22473:20,22 22474:2 22460:12 22463:6 22449:2 22453:6,7 22447:10 22463:7 22447:10 22473:20,22 22474:2 22460:12 22468:5 22460:12 22468:5 22400:17,18 22419:2,14 2240:8,9 22419:2,14 2240:8,9 22452:12 22463:8 22474:21 22463:8 22474:24 22572:9 22578:12 22460:14 22495:9 22419:2,14 2240:8,9 22452:12 22463:8,9 22475:17 22476:7					
22545:822511:1422454:22 22457:2,3settled 22461:722536:1resumes 22388:5rules 22430:1022460:11 22471:1Shabangu 22563:2silence 22465:722427:25 22428:1rump 22443:1122480:1 22485:822564:17 22567:13similar 22518:222551:1:19,20 22555:4ruming 22426:2022486:17 22490:122567:23similarities 22482:2022555:5SADEC 22483:122513:14 22514:18share 22412:122445:1 22517:24,retrace 22451:7SADEC 22483:12250:10 22521:2022442:19,20simple 22389:18retrieved 22552:1Safety 22562:32250:10 22521:2022442:19,20simple 22389:18return 22388:24saga 22407:2422563:14,1522421:2422479:922456:20SAPS 22425:12seeing 22429:4shareholders 22400:5simply 22423:17revealed 22444:2,1022438:20,21 2240:622460:12 22468:522400:17,1822479:922445:10 22446:722445:1 22517:24,22460:12 22468:522400:17,1822479:922456:20SAPS 22425:12seeing 22429:4shareholders 22400:5simply 22423:17revealed 22444:2,1022438:20,21 2240:622588:2522400:17,1822479:922445:10 22446:722473:20,22 22474:222460:14 22495:922417:10,11,15,1622463:8 22474:2122449:2 22453:6,722473:20,22 22474:222460:14 22495:922419:2,14 2240:8,922526:11 22539:1322449:2 22453:6,722473:20,22 22474:222460:14 22495:922421:15 22445:1222477:18 22510:322449:2 22453:6,					
resumes 22388:5 22427:25 22428:1 22455:16,17 22555:5rules 22430:10 rump 22443:11 running 22426:2022460:11 22471:1 22480:1 22485:8 22486:17 22490:1 22496:13 22504:15 22496:13 22504:15Shabangu 22563:2 22567:23silence 22465:7 similar 22518:2 similarities 22482:2022555:55522496:13 22504:15 22496:13 22504:1522446:17 22490:1 22445:1 22517:24, 22513:14 22514:1822567:23 Shame 22494:23 share 22412:1similarities 22482:20 similarities 22482:20retrace 22451:7 retracing 22450:12 retrieved 22552:1 22569:19SADEC 22483:1 22569:1922518:10,14 22520:1 22520:10 22521:2022441:17,23 22442:19,20simple 22389:18 22393:14 22404:14 22493:14 22404:14 22445:10 22442:19,20retrieved 22552:1 revealed 22444:2,1022569:19 22496:12 22407:24 22456:2022563:14,15 22460:12 2249:422420:14 2249:14 22466:522440:15 22440:15 22446:522441:17,23 22421:1522393:14 22404:14 2249:19,2022456:20 22445:10 22444:2,10 22445:10 22446:7 22445:10 22446:7 22445:10 22446:7 22445:10 22446:7 22445:12 22444:222470:12 22438:20,21 22440:6seeing 22429:4 22568:24 22459:1 22446:5 22447:10,11,15,16 22446:7 22447:12,23 22447:12,23 22447:12,2461:5 22470:12 22447:12,23 22447:12,2461:5 22470:12 22460:14 22495:9 22449:22458:24 22459:1 224418:2432:23 22447:12,2420:8,9 22526:11 22539:13 22515:13 2252:2 22460:14 22495:9 22440:14 22420:8,9 22515:13 2252:2 22420:14,24 22515:13 2252:2 22420:14,24Shabehoder 22419:2,14 22420:8,9 22420:14,24 22475:17 22476:7revenge 22513:13 revised 22442:2122475:13 22515:4,6 <br< td=""><td></td><td></td><td></td><td></td><td>8</td></br<>					8
22427:25 22428:1       rump 22443:11       22480:1 22485:8       22564:17 22567:13       similar 22518:2         22455:16,17       2245:16,17       22486:17 22490:1       22567:23       similarities 22482:20         22555:5       S       22496:13 22504:15       Shame 22494:23       similarly 22397:7         retrace 22451:7       SADEC 22483:1       22552:1       22562:3       2250:10 22521:20       22441:17,23       22519:6         retrieved 22552:1       22569:19       22563:14,15       22421:24       22479:9       simple 22389:18         retvealed 22444:2,10       22438:20,21 22440:6       22460:12 22468:5       22400:17,18       224242:19:20       simply 22423:17         22445:10 22446:7       22459:1 22400:22       22488:15       22400:17,18       22424:18 22432:22         22447:22,25 22448:1       22460:22       22488:15       22400:17,18       22424:18 22432:23         22449:2 22453:6,7       22445:12 22470:12       seeing 22458:24 22459:1       22417:10,11,15,16       22463:8 22474:21         22449:2 22453:6,7       22473:20,22 22474:2       22400:14 22495:9       22419:2,14 22400:8,9       22526:11 22539:13         22449:2 22453:6,7       22475:13 22515:4,6       22558:25 22574:22       22400:14,24       22572:9 22578:12         revealing 22444:20       22515:					
22455:16,17       running 22426:20       22486:17 22490:1       22567:23       similarities 22482:20         22551:19,20 22555:4       S       22496:13 22504:15       Shame 22494:23       similarities 22482:20         retrace 22451:7       SADEC 22483:1       22513:14 22514:18       share 22412:1       22445:1 22517:24,         retracing 22450:12       Safety 22562:3       2250:10 22521:20       22442:19,20       simple 22389:18         return 22388:24       saga 22407:24       22563:14,15       22421:24       22479:9         22445:10 22446:7       22438:20,21 22440:6       22460:12 22468:5       22400:17,18       22442:18 22432:23         22447:22,25 22448:1       22461:5 22470:12       seeing 22429:4       shareholders 22400:5       simply 22423:17         22447:22,25 22448:1       22461:5 22470:12       seeing 22429:4       shareholders 22400:5       simply 22423:17         22447:22,25 22448:1       22461:5 22470:12       seeing 22458:24 22459:1       22417:10,11,15,16       22463:8 22474:21         22449:2 22453:6,7       22473:20,22 22474:2       22460:14 22495:9       22419:2,14 22420:8,9       22526:11 22539:13         22449:2 22453:6,7       22475:13 22515:4,6       22558:25 22574:22       22420:14,24       22572:9 22578:12         revealing 22444:20       22455:13 22522:2       seize 2	resumes 22388:5		22460:11 22471:1	Shabangu 22563:2	silence 22465:7
22455:16,17       running 22426:20       22486:17 22490:1       22567:23       similarities 22482:20         22551:19,20 22555:4       S       22496:13 22504:15       Shame 22494:23       similarities 22482:20         retrace 22451:7       SADEC 22483:1       22513:14 22514:18       share 22412:1       22445:1 22517:24,         retracing 22450:12       Safety 22562:3       2250:10 22521:20       22442:19,20       simple 22389:18         return 22388:24       saga 22407:24       22563:14,15       22421:24       22479:9         22445:10 22446:7       22438:20,21 22440:6       22460:12 22468:5       22400:17,18       22442:18 22432:23         22447:22,25 22448:1       22461:5 22470:12       seeing 22429:4       shareholders 22400:5       simply 22423:17         22447:22,25 22448:1       22461:5 22470:12       seeing 22460:12 22468:5       22400:17,18       22442:18 22432:23         22447:22,25 22448:1       22461:5 22470:12       seen 22458:24 22459:1       22418:8,9,17,22,23       22477:18 22510:3         22449:2 22453:6,7       22473:20,22 22474:2       22460:14 22495:9       22419:2,14 22420:8,9       22526:11 22539:13         22449:2 22453:13       22515:13 2252:2       seize 22440:5       22421:15 22445:12       22572:9 22578:12         revealing 22444:20       22475:13 22515:4,6       22558:	22427:25 22428:1	<b>rump</b> 22443:11	22480:1 22485:8	22564:17 22567:13	similar 22518:2
22511:19,20 2255:4       22496:13 22504:15       Shame 22494:23       similarly 22397:7         22555:5       S       22513:14 22514:18       share 22412:1       22445:1 22517:24,         retrace 22451:7       SADEC 22483:1       22518:10,14 2250:1       22441:17,23       22519:6         retracing 22450:12       Safety 22562:3       22520:10 22521:20       22442:19,20       simple 22389:18         return 22388:24       saga 22407:24       22563:14,15       22421:24       22479:9         22456:20       SAPS 22425:12       seeing 22429:4       shareholders 22400:5       simply 22423:17         revealed 22444:2,10       22438:20,21 22440:6       22460:12 22468:5       22400:17,18       22442:18 22432:23         22447:10 22446:7       22459:1 22460:22       22548:15       22417:10,11,15,16       22463:8 22474:21         22449:2 22453:6,7       22473:20,22 22474:2       22460:14 22495:9       22419:2,14 22400:8,9       22526:11 22539:13         revealing 22444:20       22475:13 22515:4,6       22558:25 22574:22       22420:14,24       22572:9 22578:12         revealing 22444:20       22515:13 22522:2       seize 22440:5       22421:15 22445:12       Sinclair 22474:10,23         revealed 22455:21       22524:8 22528:3,4,13       seizures 22519:2       Shed 22534:6,13       22475:17 22476:7 </td <td>22455:16,17</td> <td></td> <td></td> <td>22567:23</td> <td>similarities 22482:20</td>	22455:16,17			22567:23	similarities 22482:20
22555:5SS22513:14 22514:18share 22412:122445:1 22517:24,retrace 22451:7SADEC 22483:122518:10,14 2250:122441:17,2322519:6retracing 22450:12Safety 22562:322520:10 22521:2022442:19,20simple 22389:18return 22388:2422569:1922543:14 22562:22shareholder 22419:822393:14 22404:1422456:20SAPS 22425:12seeing 22429:4shareholder 22400:5simply 22423:17revealed 22444:2,1022438:20,21 22440:622460:12 22468:522400:17,1822424:18 22432:2322445:10 22446:722459:1 22460:2222548:1522417:10,11,15,1622463:8 22474:2122449:2 22453:6,722473:20,22 22474:222460:14 22495:922419:2,14 2240:8,922526:11 22539:13revealeg 22444:2022475:13 22515:4,622558:25 22574:2222420:14,2422572:9 22578:12revealeg 22513:1322515:13 22522:2seize 22440:522421:15 22445:12Sinclair 22474:10,23revealeg 22444:2022475:13 22515:4,622558:25 22574:2222420:14,2422572:9 22578:12revealeg 22513:1322515:13 22522:2seize 22440:522421:15 22445:12Sinclair 22474:10,23revealeg 22455:2122458:3,4,13seizures 22519:2Shed 22534:6,1322475:17 22476:7					
Indext Pretrace       SADEC       Substration       Substrates       Substration       Substrates		S			
retracing 22450:12 retrieved 22552:1 return 22388:24 22456:20Safety 22562:3 22569:1922520:10 22521:20 22543:14 22562:22 22543:14 22562:22 22563:14,1522442:19,20 shareholder 22419:8 22421:24simple 22389:18 22393:14 22404:14 22479:9revealed 22444:2,10SAPS 22425:12 22438:20,21 22440:6seeing 22429:4 22460:12 22468:5shareholders 22400:5 22445:10 22446:7 22447:22,25 22448:1 22447:22,25 22448:1 22447:22,25 22448:1 22447:22,25 22448:1 22447:22,25 22448:1 22447:22,25 22448:1 22447:22,25 22448:1 22461:5 22470:12seeing 22429:4 22460:12 22468:5 22460:12 22468:5 22460:12 22468:5shareholder 22419:8 22400:17,18 22400:17,18simple 22389:18 22421:2422449:2 22453:6,7 revealing 22444:20 revenge 22513:13 revised 22455:2122450:10 22515:4,6 22524:8 22528:3,4,13seizures 22519:2shareholder 22419:2,14 22421:15 22445:12 22421:15 22445:12revised 22455:2122524:8 22528:3,4,13seizures 22519:2shed 22534:6,1322475:17 22476:7					
retrieved 22552:122569:1922543:14 22562:22shareholder 22419:822393:14 22404:14return 22388:24saga 22407:2422563:14,1522421:2422479:922456:20SAPS 22425:12seeing 22429:4shareholders 22400:5simply 22423:17revealed 22444:2,1022438:20,21 22440:622460:12 22468:522400:17,1822424:18 22432:2322445:10 22446:722459:1 22460:2222548:1522417:10,11,15,1622463:8 22474:2122447:22,25 22448:122461:5 22470:12seen 22458:24 22459:122418:8,9,17,22,2322477:18 22510:322449:2 22453:6,722473:20,22 22474:222460:14 22495:922419:2,14 22420:8,922526:11 22539:13revealing 22444:2022475:13 22515:4,622558:25 22574:2222420:14,2422572:9 22578:12revenge 22513:1322515:13 22522:2seize 22440:522421:15 22445:12Sinclair 22474:10,23revised 22455:2122524:8 22528:3,4,13seizures 22519:2shed 22534:6,1322475:17 22476:7					
return 22388:24 22456:20saga 22407:24 SAPS 22425:1222563:14,15 seeing 22429:422421:24 shareholders 22400:5 22400:17,1822479:9 simply 22423:17 22424:18 22432:23revealed 22444:2,1022438:20,21 22440:6 22445:10 22446:722438:20,21 22440:6 22459:1 22460:2222460:12 22468:5 22548:1522400:17,18 22417:10,11,15,1622424:18 22432:23 22417:10,11,15,1622447:22,25 22448:1 22449:2 22453:6,722461:5 22470:12 22473:20,22 22474:2seen 22458:24 22459:1 22460:14 22495:922418:8,9,17,22,23 22419:2,14 22420:8,922477:18 22510:3 22526:11 22539:13revealing 22444:20 revenge 22513:1322515:13 2252:2 22524:8 22528:3,4,13seizures 22519:222421:15 22445:12 shed 22534:6,13Sinclair 22474:10,23 22475:17 22476:7		•			
22456:20SAPS 22425:12seeing 22429:4shareholders 22400:5simply 22423:17revealed 22444:2,1022438:20,21 22440:622460:12 22468:522400:17,1822424:18 22432:2322445:10 22446:722459:1 22460:2222548:1522417:10,11,15,1622463:8 22474:2122447:22,25 22448:122461:5 22470:12seen 22458:24 22459:122418:8,9,17,22,2322477:18 22510:322449:2 22453:6,722473:20,22 22474:222460:14 22495:922419:2,14 22420:8,922526:11 22539:13revealing 22444:2022475:13 22515:4,622558:25 22574:2222420:14,2422572:9 22578:12revenge 22513:1322515:13 22522:2seize 22440:522421:15 22445:12Sinclair 22474:10,23revised 22455:2122524:8 22528:3,4,13seizures 22519:2shed 22534:6,1322475:17 22476:7					
revealed 22444:2,1022438:20,21 22440:622460:12 22468:522400:17,1822424:18 22432:2322445:10 22446:722459:1 22460:2222548:1522417:10,11,15,1622463:8 22474:2122447:22,25 22448:122461:5 22470:12seen 22458:24 22459:122418:8,9,17,22,2322463:8 22474:2122449:2 22453:6,722473:20,22 22474:222460:14 22495:922419:2,14 22420:8,922526:11 22539:13revealing 22444:2022475:13 22515:4,622558:25 22574:2222420:14,2422572:9 22578:12revenge 22513:1322515:13 22522:2seize 22440:522421:15 22445:12Sinclair 22474:10,23revised 22455:2122524:8 22528:3,4,13seizures 22519:2shed 22534:6,1322475:17 22476:7			-		
22445:10 22446:7 22447:22,25 22448:122459:1 22460:22 22461:5 22470:1222548:15 seen 22458:24 22459:1 22460:14 22495:922417:10,11,15,16 22418:8,9,17,22,2322463:8 22474:21 22477:18 22510:322449:2 22453:6,7 revealing 22444:20 revenge 22513:1322453:20,22 22474:2 22475:13 22515:4,622460:14 22495:9 22558:25 22574:2222419:2,14 22420:8,9 22420:14,2422526:11 22539:13 22572:9 22578:12revenge 22513:13 revised 22455:2122515:13 2252:2 22524:8 22528:3,4,13seizures 22519:2shed 22534:6,13Sinclair 22474:10,23 22475:17 22476:7	22456:20	<b>SAPS</b> 22425:12	seeing 22429:4	shareholders 22400:5	simply 22423:17
22445:10 22446:7 22447:22,25 22448:122459:1 22460:22 22461:5 22470:1222548:15 seen 22458:24 22459:1 22460:14 22495:922417:10,11,15,16 22418:8,9,17,22,2322463:8 22474:21 22477:18 22510:322449:2 22453:6,7 revealing 22444:20 revenge 22513:1322453:20,22 22474:2 22475:13 22515:4,622460:14 22495:9 22558:25 22574:2222419:2,14 22420:8,9 22420:14,2422526:11 22539:13 22572:9 22578:12revenge 22513:13 revised 22455:2122515:13 2252:2 22524:8 22528:3,4,13seizures 22519:2shed 22534:6,13Sinclair 22474:10,23 22475:17 22476:7	revealed 22444:2,10	22438:20,21 22440:6	22460:12 22468:5	22400:17,18	22424:18 22432:23
22447:22,25 22448:1 2249:2 22453:6,7 revealing 22444:20 revenge 22513:1322461:5 22470:12 22473:20,22 22474:2 22475:13 22515:4,6 22558:25 22574:22 seize 2240:5 seizures 22519:222418:8,9,17,22,23 22419:2,14 22420:8,9 22419:2,14 22420:8,9 22420:14,24 22420:14,2422477:18 22510:3 22526:11 22539:13 22526:11 22539:13 22572:9 22578:12revenge 22513:13 revised 22455:2122515:13 2252:2 22524:8 22528:3,4,13seizures 22519:2shed 22534:6,13Sinclair 22474:10,23 22475:17 22476:7				22417:10.11.15.16	
22449:2 22453:6,7 revealing 22444:2022473:20,22 22474:2 22475:13 22515:4,622460:14 22495:9 22558:25 22574:2222419:2,14 22420:8,9 22420:14,2422526:11 22539:13 22572:9 22578:12revenge 22513:13 revised 22455:2122515:13 2252:2 22524:8 22528:3,4,13seize 22440:5 seizures 22519:222419:2,14 22420:8,9 22420:14,2422526:11 22539:13 22572:9 22578:12seize 2240:14 22421:15 22445:12Sinclair 22474:10,23 22475:17 22476:7	/ 31 1 196.				
revealing22444:2022475:1322515:4,622558:2522574:2222420:14,2422572:922578:12revenge22513:1322515:1322522:2seize22440:522421:1522445:12Sinclair22474:10,23revised22455:2122524:822528:3,4,13seizures22519:2shed22534:6,1322475:1722476:7	7.77 . 7. 19.59				
revenge 22513:1322515:13 22522:2seize 22440:522421:15 22445:12Sinclair 22474:10,23revised 22455:2122524:8 22528:3,4,13seizures 22519:2shed 22534:6,1322475:17 22476:7	La La Superior			· · · · · · · · · · · · · · · · · · ·	
revised 22455:21 22524:8 22528:3,4,13 seizures 22519:2 shed 22534:6,13 22475:17 22476:7					
The marker is been all the back of the					
22456:22.22457:2 22575:6.23.22578:95 self 22480:16 shedding 22530:25 22577:7	revised 22455:21	Park Walkers Mr. And	seizures 22519:2	-	22475:17 22476:7
= -3.5.12 = 22.5.13 = 22.5.0, 25.22.5.0, 25.22.5.0, 25.25 = 500.25 = 500.10 = 50000000 = 50000000 = 22.5.0, 25.25 = 22.5.0, 25.5.0, 25.5.0, 25.5.0, 25.5.0, 25.5.0, 25.5.0, 25.5.0, 25.5.0, 25.5.0, 25.5.0, 25.5.0, 25.5.0, 25.5.0, 25.5.0, 25.5.0, 25.5.0,	22456:22 22457:2	22575:6,23 22578:25	self 22480:16	shedding 22530:25	22577:7
ARCHIVE FOR JUSTICE					

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**RealTime Transcriptions** 

				Page 1
Sir 22397:6 22402:4	22529:15 22531:4	spontaneously 22448:8	22571:13	22481:14 22527:1
22408:1 22410:4,10	22533:12,17 22535:7	spreading 22469:20	stick 22462:4	22528:16 22537:20
22453:11 22469:4	22535:18,18 22544:3	springboard 22417:23	sticks 22539:18	Sunday 22413:16,21,22
22558:2,6 22560:15	22545:16,16	square 22457:7	stood 22514:17	22413:25 22478:2
22562:17 22570:16	22551:10 22554:16	22458:10	22515:20	22480:25
22573:9 22574:2	22554:19 22555:10	staff 22520:9	stop 22426:11	supplementary
22576:16	22556:12 22559:8	stage 22423:2 22424:12	22541:13	22452:5,9,12,18
sister 22434:25	22562:15 22563:3,5,9	22425:16 22426:7	story 22531:25	support 22451:25
sitting 22573:16	22563:16 22566:8,11	22436:6 22443:7	straight 22436:15	22474:23 22504:9
situation 22401:5	22566:11 22567:6	22445:9 22446:5	22557:25	22522:2 22578:20,23
22403:4 22405:18,24	22575:13 22576:5	22450:2 22453:5	strictly 22397:11	supporting 22436:18
22409:19 22436:12	22577:16	22454:3,7 22478:25	strike 22391:24,25	supports 22432:2
22436:17 22491:25	sort 22393:9,11	22494:16 22506:13	22431:21 22433:4	suppose 22400:10
22495:19 22517:1	22467:1	22506:21 22523:19	strikers 22528:12	22437:6 22450:22
22540:20,24,25	sound 22459:16	22527:9,16 22528:11	22530:17 22544:20	22457:9 22461:15
22541:3,5 22544:11	sounds 22559:5	22528:14 22529:2,3,5	strong 22400:25	22566:24
22544:14 22546:4,10	source 22409:7,8	22529:6,7,9,12,13,24	strongly 22505:25	supposed 22539:6
22546:14,16 22550:7	so-called 22577:4	22529:25,25 22530:6	22506:1,5	22553:6
22568:25 22569:8	spark 22532:22	22530:6,21 22531:15	struck 22461:13	supposition 22447:25
22508.25 22509.8	sparked 22574:9	22552:23 22553:3,18	subject 22413:18	supposition 22447.23 sure 22392:8 22395:22
six 22454:20	-		0	
	speak 22394:23	stand 22465:11	22492:9 22500:24	22398:1 22400:5
sleeping 22521:5	22412:9,9 22440:15	22507:12	22521:5 22551:21	22402:17 22404:19
slightly 22434:4,16	22466:6 22474:18	stands 22440:13	22553:23 22554:6,11	22407:11 22408:17
22503:6 22526:18	22486:18 22562:10	22458:15	submissions 22523:6	22413:11 22414:3
slip 22469:1	speakers 22461:23	starkest 22575:25	subpoena 22444:16	22417:17,18
small 22388:13	speaking 22397:11	start 22411:24	subpoenas 22551:16	22418:10 22421:25
22482:12	22399:6 22400:7	22487:16 22541:13	subsequent 22483:2	22422:5 22429:12
SMS 22549:15 22550:5	22467:20,23	started 22417:2	subsequently 22446:7	22431:22,24
22550:6,16 22553:10	22485:13 22529:16	22485:12 22519:20	substantial 22425:21	22432:11 22434:9
22553:15,18,23	22553:22	22562:24	22560:3	22461:23 22462:16
22554:6,7,11	speaks 22458:3	starting 22439:25	substitute 22493:1	22462:25 22463:1,13
SMSs 22551:7	22466:24 22467:7	starts 22430:15	succeed 22540:4	22463:21,22 22468:6
sneaked 22454:18	22475:6 22533:16	state 22487:14	22549:5 22558:15	22475:21 22482:16
Social 22517:16	<b>specific</b> 22424:20	22492:13 22542:17	succeeded 22549:15	22487:20,25 22488:1
solely 22444:11	22425:15 22481:20	22571:17	22567:24	22490:8,18 22500:20
solution 22405:25	22490:13 22514:3	stated 22389:9	suffered 22496:5	22503:4 22505:11
22406:4,10,12	22575:19	22492:18	suffering 22517:7,18	22508:1,8 22509:4
22407:7,14 22409:9	specifically 22452:7	statement 22409:25	22519:1,1	22516:12 22525:5,6
22545:22	22547:6	22410:2 22431:18	sufficient 22515:18	22536:22 22544:25
solutions 22555:21	speculation 22406:2	22436:1,5 22438:5	22565:11	22558:24 22579:8
22556:11	speech 22432:5	22449:4,15 22450:4	suggest 22423:1	surely 22449:7 22474:1
solve 22405:24	22466:20 22467:1	22451:20 22452:5,9	22427:9 22492:25	22475:12
solved 22398:8	22483:16 22484:2	22452:12,18,21	22498:15 22515:20	surfaced 22444:1
somebody 22406:9	22485:11,14,15,17,20	22456:10 22463:11	22521:15 22526:10	surgeon 22518:9,12,14
22432:10 22435:4	22486:14 22487:2,6,6	22464:7 22469:6	22540:5 22549:5	22520:2,3,5,7,14,15
22466:5 22485:12	<b>speeches</b> 22485:24	22475:5 22476:6	22579:15	22520:23 22521:1,2,4
22494:15 22518:23	22486:3	22477:6,11,17,21,23	suggested 22430:20	22521:8
22538:3 22547:15	speed 22398:25	22478:13 22480:8	22435:4 22471:20	surrender 22531:4,10
22548:14	speeded 22405:16,17	22482:7 22483:2	22519:14 22554:9	22531:22 22532:3,13
someone's 22430:1	22428:13	22490:9 22526:21,25	suggesting 22410:17	22533:6
soon 22398:2,8	spelling 22538:2	22527:22,23	22473:24 22499:4	survived 22496:7
22410:16	spend 22522:16	22528:21 22543:17	22518:21 22527:25	Susan 22563:2
sooner 22393:21	22579:15	22558:23,25	suggestion 22434:25	suspect 22467:6
sorry 22389:3 22390:3	spent 22424:6	statements 22404:15	22448:17 22480:19	suspend 22437:1
22399:7,8,9,12	spirits 22513:25	22479:1 22482:10	22517:6	sword 22393:9
22427:7 22434:14	spite 22519:15 22532:4	22483:9 22574:23	suggestions 22485:14	sword 22393.9 s.u.o 22388:6 22456:25
	spoil 22406:8	States 22551:19	22485:23 22486:2,6	22511:22 22555:7
22438.5 22440.9	spoke 22400:18	station 22520:11,16	22485.25 22480.2,0	
22438:5 22440:9 22441:21 25 25	SJUNC 22TUU.10		suggests 22397:24	Т
22441:21,25,25	-			· · · · · · · · · · · · · · · · · · ·
22441:21,25,25 22451:5 22468:25	22401:2 22418:15	22521:18 statute 22538:20		table 22/35.1 225/1.12
22441:21,25,25 22451:5 22468:25 22473:2 22476:14,23	22401:2 22418:15 22421:20 22442:25	statute 22538:20	22448:14 22513:22	
22441:21,25,25 22451:5 22468:25 22473:2 22476:14,23 22486:24,25 22487:7	22401:2 22418:15 22421:20 22442:25 22446:6,7,14	<b>statute</b> 22538:20 <b>step</b> 22480:5 22552:22	22448:14 22513:22 summarise 22545:2	tablet 22521:5
22441:21,25,25 22451:5 22468:25 22473:2 22476:14,23 22486:24,25 22487:7 22498:24 22499:1	22401:2 22418:15 22421:20 22442:25 22446:6,7,14 22475:21 22484:9	statute 22538:20 step 22480:5 22552:22 steps 22390:4,7	22448:14 22513:22 <b>summarise</b> 22545:2 22570:10 22578:14	tablet 22521:5 tactical 22527:9
22441:21,25,25 22451:5 22468:25 22473:2 22476:14,23 22486:24,25 22487:7 22498:24 22499:1 22500:18 22502:20	22401:2 22418:15 22421:20 22442:25 22446:6,7,14 22475:21 22484:9 22486:20 22488:17	statute 22538:20 step 22480:5 22552:22 steps 22390:4,7 22438:22 22451:8	22448:14 22513:22 <b>summarise</b> 22545:2 22570:10 22578:14 <b>summarised</b> 22578:12	tablet 22521:5 tactical 22527:9 tactics 22426:3
22441:21,25,25 22451:5 22468:25 22473:2 22476:14,23 22486:24,25 22487:7 22498:24 22499:1 22500:18 22502:20 22504:19 22505:5,16	22401:2 22418:15 22421:20 22442:25 22446:6,7,14 22475:21 22484:9 22486:20 22488:17 22488:18 22548:11	statute 22538:20 step 22480:5 22552:22 steps 22390:4,7 22438:22 22451:8 22489:10 22497:7,17	22448:14 22513:22 <b>summarise</b> 22545:2 22570:10 22578:14 <b>summarised</b> 22578:12 22578:16	<b>tactical</b> 22527:9 <b>tactics</b> 22426:3 <b>take</b> 22390:4 22401:14
22441:21,25,25 22451:5 22468:25 22473:2 22476:14,23 22486:24,25 22487:7 22498:24 22499:1 22500:18 22502:20 22504:19 22505:5,16 22505:24 22514:25	22401:2 22418:15 22421:20 22442:25 22446:6,7,14 22475:21 22484:9 22486:20 22488:17	statute 22538:20 step 22480:5 22552:22 steps 22390:4,7 22438:22 22451:8	22448:14 22513:22 <b>summarise</b> 22545:2 22570:10 22578:14 <b>summarised</b> 22578:12	tablet 22521:5 tactical 22527:9 tactics 22426:3

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**RealTime Transcriptions** 

## Marikana Commission of Inquiry

### Arbitration

2245:12         2245:12         2247:18         thmsking 2248:17         2254:14         2254:14         2246:12         2246:14         2246:12         2246:14         2256:12         2256:11         2246:14         2246:14         2256:11         2246:14         2246:14         2256:12         2256:11         2246:14         2246:12         2256:11         2256:12         2256:11         2256:12         2256:11         2256:12         2256:11         2256:12         2256:11         2256:12         2256:11         2266:12         2256:12         2256:12					Page 1
2241514 2242         1240220         224622266021         2249716 224989.01         000000000000000000000000000000000000	22410:2,15,19,20	22454:3 22455:12	22552:7 22555:3,10	22484:7 22485:15	timing 22571:25
22421:0         22402:0         22407:0         2253	22412:25 22413:11	22554:20,25 22555:2	22561:1 22562:12	22494:22,24 22495:4	tired 22577:2
2241:14         2242:22         2247:06.22         2257:12	22413:15,20	team 22390:12	22564:2 22566:21	22497:16 22498:9,10	today 22403:1 22531:9
22438:21         22244:20         22579:18,10,22         22578:10         2258:10         2244:20         2246:25         2245:21         2246:25         2256:25         2246:25         2256:25         2246:25         2246:25         2246:25         2246:25         2246:25         2246:25         2246:25         2246:25         2255:25         2246:25         2255:25         2246:25         2255:25         2246:25         2255:25         2246:25         2256:25	22415:14 22422:1	22462:20 22463:8	22576:12,13	22513:1 22521:11	22556:22 22571:12
22444:20         22454:3         22455:12         22455:12         22455:12         22455:12         22455:12         22455:12         22455:12         22455:12         22455:12         22455:12         22455:12         22455:12         22455:12         22455:12         22455:12         22455:12         22455:12         2245:12         2245:12         2245:12         2245:12         2245:12         2245:12         2245:12         2245:12         2245:12         2245:12         2244:14         2244:14         2244:14         2244:14         2244:14         2244:14         2244:14         2244:14         2244:14         2244:14         2244:12         2244:14         2244:12         2244:14         2244:12         2244:14         2244:12         2244:14         2244:12         2244:14         2244:12         2244:14         2244:14         2244:14         2244:14         2244:14         2244:14         2244:14         2244:14         2244:	22427:9,22,22	22470:16 22473:18	22578:17 22579:4,6	22528:8 22530:18	22573:25
22444:20         22454:3         22455:12         22455:12         22455:12         22455:12         22455:12         22455:12         22455:12         22455:12         22455:12         22455:12         22455:12         22455:12         22455:12         22455:12         22455:12         22455:12         22455:12         2245:12         2245:12         2245:12         2245:12         2245:12         2245:12         2245:12         2245:12         2245:12         2245:12         2244:14         2244:14         2244:14         2244:14         2244:14         2244:14         2244:14         2244:14         2244:14         2244:14         2244:12         2244:14         2244:12         2244:14         2244:12         2244:14         2244:12         2244:14         2244:12         2244:14         2244:12         2244:14         2244:14         2244:14         2244:14         2244:14         2244:14         2244:14         2244:14         2244:	22438:21,22 22443:5	teargas 22574:9	22579:18,19,22	22534:4 22537:15	Tokota 22430:13
22442:         22479:14 22499:1         Thanks 22463:24         22578:25         104 22401:19;22           22309:17 225351:1         22558:10         22558:10         22558:10         2258:22         22478:17 2258:17         2248:19         2244:18         2258:17         2244:18         2248:19         2258:11         2258:11         2258:11         2258:11         2258:11         2258:11         2258:11         2244:11         2258:11         2244:11         2258:11         2244:11         2258:11         2244:11         2258:11         2244:11         2258:12         2256:12         2246:11         2246:12         2246:12         2246:12         2246:12         2246:12         2246:12         2246:12         2246:12         2246:12         2246:12         2246:12         2246:12         2246:12         2246:12		telephone 22415:23	thanked 22483:25	22538:10 22540:25	22465:17,23 22466:5
22497:17 22499:9         22550:14 22555:1         22557:12 2555:1         2244:83 2240:15           22551:9 2253:41:6         12238:6-3 2240:02         2257:22         2257:62         2244:83 2240:11           22553:9 2254:16         12238:6-3 2240:02         2257:62         2246:18 2239:17         2244:13 2246:18           22553:12 2257:12         2244:12         2240:02         2246:18 2247:11         2244:13 12 2255:11           22557:12 2257:12         2244:12         2240:02 2247:02         2246:18 2239:17         2246:11 2255:11           22558:12 2257:12         2247:12 2258:12         2240:12 2256:11         2248:12 2256:11         2255:12 2256:17           2240:10 22407:12 2250:12         2240:12 2246:18         2243:82 2246:13         10roingly 2239:020         2246:11 2247:11         2255:12 2256:11           2250:12 12251:11         2248:12 2250:12         2249:07 2249:15         2249:07 2249:15         2249:07 2249:15         2249:07 2249:15           2240:10 2241:13 2251:63         2256:14         2249:15         2250:14         2257:12         2249:17         2257:63 2256:17         2249:17:229:08         2249:17:229:08         2249:17:229:08         2249:17:229:08         2249:17:229:08         2256:02 2257:17         2249:17:229:08         2249:17:229:08         2249:17:229:08         2249:17:229:08         2249:17:229:17	22455:12 22457:4		thanking 22483:17	22541:4 22544:21	Tokota's 22466:25
2250:14         2256:14         therapeutic 257:9         thinking 22420:11         224243:13           2251:51:9         22485:12         2253:4:6         2253:4:6         22420:12         22443:13           2253:52:9         2244:1:1         2245:1:1         2245:1:1         2245:1         225:1:1         224:1:	22462:5 22480:4	22479:14 22549:11	Thanks 22463:24	22555:20 22570:7,18	told 22401:19,22
2251:19         telephonically         (herapy 22495:23)         22485:19         2253:44, 22         22440:25         22461:25         22461:10         2257:11         22560:12         22461:10         22475:10         22461:10         22475:10         22475:10         22461:10         22475:10         22475:10         22475:10         22475:10         224775:10         22461:12         2244	22497:17 22499:9	22550:17 22553:17	theory 22422:16	22572:5,5	22414:8 22420:16
22584,5         225420,25         22576,25         22447,11,12           225359         22386,22287,55         22464,18         22396,17         22414,11,12         22497,12           22547,16         22396,23         2241,12         1000000000000000000000000000000000000	22503:14 22511:17	22565:14	therapeutic 22517:9	thinking 22420:11	22421:17 22443:13
2255:9:22540:18         tetro 2257:5         thereof 2257:5         thereof 2257:5         thereof 2257:5         tetro 2239:5:2           2254:21:2254:5:12         2240:21:2254:12         2240:21:2257:8:1255:1:1         2255:78:1256:17         2255:78:1256:17         2255:78:1256:17         2255:78:1256:17         2255:78:1256:12         2255:78:1256:12         2255:78:1256:12         2255:78:1256:12         2255:78:1256:12         2255:78:1256:12         2240:11         2246:72:239:15         1000000000000000000000000000000000000	22515:19 22524:16	telephonically	therapy 22495:23	22485:19 22533:4,5,7	22444:23 22446:24
22542:12         22545:5.2         22364:6         22364:7.6         2246:18         2244:18         2241:12	22528:4,5 22529:23	22420:25	22516:22	22576:25	22447:11,12
22547:16         22547:16         22547:16         22547:16         22567:12         22567:12         22567:12         22567:12         2241:22         2241:22         2241:22         2257:12         2241:22         2241:22         2241:22         2257:12         2241:22         2241:22         2257:12         2241:22         2241:22         2257:12         2241:22         2246:7         2240:11         2240:12         2257:23         2240:12         2246:7         2240:11         2240:12         2246:7         2240:11         2240:12         2246:7         2240:12         2246:7         2240:12         2240:12         2240:12         2246:7         2240:12         2240:12         2240:12         2240:12         2240:12         2240:12         2240:12         2240:12         2240:12         2240:12         2250:12         2250:12         2250:12         2250:12         2250:12         2250:12         2250:12         2250:12         2250:12         2240:12	22535:9 22540:18	tell 22389:6 22390:17	thereof 22527:5	third 22395:17	22451:14,15 22486:6
225578 22565:17         2244:24 22415:2         22404:9 22416:13         Thirdly 22571:11         2266:12         50           22573:11         2248:7 2240:10         22473:12         22428:8 2249:3         22559:23         50<	22542:12 22545:5,12	22396:23 22411:22	there's 22393:25	22464:18 22541:19	22497:25 22553:25
22568:12         22429:10         2248:7         2240:10         2248:7         2240:11         2248:7         2240:11         2248:7         2240:11         2246:7         2240:11         2246:7         2240:12         2246:7         2240:11         2240:12         2240:12         2240:12         2240:12         2240:12         2240:12         2240:12         2240:12         2240:12         2240:12         2240:12         2240:12         2250:12         2240:12         2250:12         2240:12         2250:12         2240:12         2250:12         2250:12         2250:12         2250:12         2250:12         2250:12         2250:12         2250:12         2250:12         2250:12         2250:12         2250:12         2250:12         2240:12         2250:12         2240:12         2250:12         224	22547:16 22555:2	22412:15 22414:21	22402:25 22403:3	22544:18	22554:1,2 22558:14
22573:11         22486:7         22432:1         22432:1         22432:1         22432:1         22432:1         22440:7           22401:10         22401:1         22507:19         22466:2         22498:5         22401:1         22440:7         2240:2         2240:1         2240:1         2240:1         2240:1         2240:1         2240:1         2240:1         2240:1         2240:1         2240:1         2240:1         2240:1         2240:1         2240:1         2240:1         2240:1         2240:1         2250:1         2240:1         2250:1         2250:1         2250:1         2250:1         2250:1         2250:1         2250:1         2250:1         2250:1         2250:1         2250:1         2240:1	22557:8 22565:17	22414:24 22415:2	22404:9 22416:13	Thirdly 22571:11	22561:25
taken 22390.7         22507:19 22508:2.10         2248:5 22465:25         thought 22391:15         2240:11 22407:1           22401:10 22407:1         22520:24 22520:2         22409:10 22413:8         2254:2: 22550:2         22409:10 22413:8         2254:2: 22550:2           22408:10 22413:8         2254:2: 22550:2         22409:12 2250:5: 9         2244:12 22475:6         tone 2246:4: 3           22519:2.17 22520:1.5         22560:21         2250:13 2250:10         2247:6: 22480:14         22456:23           22550:21 22550:1         22560:21         2250:13 2250:10         2247:6: 22480:14         2246:6: 22480:14           22555:21 22561:4         temperature 2249:25         2255:11 2256:11         22480:16 2246:7         22480:16 22476:23           22566:2266:17         termizology 22476:12         they'd 22483:17         22578:10         2248:12 2254:6           22480:10 22400:2         2248:12 2254:4         22397:11 22259:21         three 2258:12 2256:4         22397:11 2248:12 2254:4           2248:10 22400:12         2248:12 2244:14:12 2254:4         22397:11 2248:12 2254:4         22397:11 52407:3           2244:16 2248:17         2248:12 2248:14         22397:11 52407:3         2244:11:12 2254:12 2257:13           2244:12 2254:14:12 2254:14:12 2254:14:12 2254:14:12 2254:14:12 2254:12 22557:13         2244:11:12 22425:9         22397:11 52407:13	22568:12 22571:23	22422:10 22457:12	22423:8 22429:3	thoroughly 22390:20	tolerant 22486:8
22400:10 (22407:1         22502(2) (2250):2         22466:10 (2248):5         22419:131(6.17)         22441:4 (22426:8,0)           22408:10 (22413:8)         22542:2 (2250):2         22490:7 (22495:6)         22439:9 (2245:4)         (2250:1)         2250:12,12         2250:12,12         (2250:12)         (2250:12)         (2250:12)         (2250:12)         (2250:12)         (2250:12)         (2250:12)         (2250:12)         (2250:12)         (2250:12)         (2250:12)         (2250:12)         (2250:12)         (22475:23)         <	22573:11	22486:7 22496:18	22432:1 22456:2	22559:23	tomorrow 22403:1
22408:10 22413:8         2254:2: 2256:2         22409:8 22405:6         224208.2: 2246:4         22526:3: 422531:8           22519:2:17 22520:1:5         2250:3: 22409:8 2250:5:5         22439:9 2246:4:12 22475:6         22468:12 22475:6         22468:12 2248:11           22520:1:2:12:2:2:2:2:2:2:2:2:2:2:2:2:2:2:2:	taken 22390:7	22507:19 22508:2,10	22458:5 22465:25	thought 22391:15	22404:11 22440:7
22441:13         2259:12         <	22401:10 22407:1	22520:24 22521:13	22466:20 22485:5	22419:13,16,17	22441:4 22462:8,20
22519:2.17 2250:1.5         telling 22414:13         2250:1.2         2246:12         2247:6.2         2247:6.2         2246:1.2           22520:1.2         2250:1.2         2250:1.2         2247:6.2         22487:1.8         22487:1.8         22487:1.8         22487:1.8         22487:1.8         22487:1.8         22487:1.8         22487:1.8         22487:1.8         22487:1.8         22487:1.8         22487:1.8         22487:1.8         22487:1.8         22487:1.8         22487:1.8         22487:1.8         22487:1.8         22487:1.8         22487:1.6         12487:1.8         22487:1.6         12487:1.8         22487:1.6         12487:1.8         22487:1.6         12487:1.8         22487:1.6         12487:1.8         22487:1.6         12487:1.8         22487:1.6         12487:1.2         22487:1.2         12487:1.2         22487:1.2         22487:1.2         22487:1.2         22487:1.2         22487:1.2         22487:1.2         22487:1.2         22487:1.2         22487:1.2         22487:1.2         22487:1.2         22487:1.2         22487:1.2         22487:1.2         22487:1.2         22487:1.2         22487:1.2         22487:1.2         22487:1.1         22487:1.2         22487:1.1         22487:1.2         22487:1.1         22487:1.2         22487:1.1         22487:1.2         22487:1.2         22487:1.2 <t< td=""><td>22408:10 22413:8</td><td>22542:2 22550:2</td><td>22490:7 22495:6</td><td>22420:8,23 22426:4</td><td>22526:3,4 22531:8</td></t<>	22408:10 22413:8	22542:2 22550:2	22490:7 22495:6	22420:8,23 22426:4	22526:3,4 22531:8
22520:12,13,23,25         22415:5         2251:1         2250:13         2240:14         22465:25           22521:1,17         2253:12         2253:11         22487:18         22487:18         22487:18         22487:18         22487:18         22487:18         22487:18         22487:18         22487:18         22487:18         22487:18         22487:18         22487:14         22437:12         22437:12         22437:12         22437:12         22437:12         22437:12         22437:12         22437:12         22437:12         22437:12         22437:12         22437:12         22437:12         22437:12         22437:12         22437:12         22337:17         22537:12         22537:13         22447:12         22547:13         22497:14         22497:14         22497:14         22427:12         22397:11         100:12         22437:13         22447:12         22547:13         22447:12         22437:13         22447:12         22437:13         22447:12         22437:13         22447:12         22437:13         22447:12         22437:13         22447:12         22437:13         22447:12         22437:13         22447:12         22437:13         22447:12         22437:13         22447:12         22437:13         22447:12         22437:13         22447:13         224237:13         224441:11 <t< td=""><td>22441:13 22516:3</td><td>22554:3 22564:16</td><td>22499:8 22501:5</td><td>22439:9 22452:4,7,17</td><td>22579:8,17,21</td></t<>	22441:13 22516:3	22554:3 22564:16	22499:8 22501:5	22439:9 22452:4,7,17	22579:8,17,21
22521:1,17 22523:18         22560:21         22520:13 22210         224813:1 2253:21         22251:12,22,22         22494111 22498:11         22475:25 22475:23           22558:12 22561:4         temperature 22492:25         22551:12 22564:12         2250:14 2257:11         22475:25 22475:23           22569:10         temperature 22492:25         temperature 22492:25         22559:21         temperature 22492:25         22538:16           2269:91.0         terminology 22476:12         223317 2259:21         they't 22488:17         22394:14,19,22           2249:11         22391:17 22400:25         they't 22438:17         22558:11         22544:12 22545:4.12         22394:14,19,22           22443:16 22448:22         22433:12 22443:13         22437:32 22407:3         22447:32 22407:3         22447:32 22407:3         22447:32 22407:3         22447:32 22407:3         22447:32 22407:3         22447:32 224243:4         22457:18         22477:22 22478:11         22457:18         22457:18         22457:18         22457:13         22407:12 2245:14         22457:12 2246:14         22469:14         22469:14         22469:14         22469:14         22469:14         22469:14         22469:12 2255:12         22469:14         22469:14         22477:22 2428:11         22469:12 2254:15         22477:22 2428:17         24477:22 24247:12         224853:17         22469:12 2254:14 <t< td=""><td>22519:2,17 22520:1,5</td><td>telling 22414:13</td><td>22504:8 22505:5,9</td><td>22464:12 22475:6</td><td>tone 22464:3,9</td></t<>	22519:2,17 22520:1,5	telling 22414:13	22504:8 22505:5,9	22464:12 22475:6	tone 22464:3,9
22552:21 22552:10         tells 22413:1 22532:12         22251:12,22.22         22430:16 22475:13         22430:16 22475:13           22565:6 22566:17         term 22439:25         22555:11 22564:12         22532:16 22546:7         22480:1 2251:25           22569:9,10         term 22439:22         22532:17 22559:21         therate 22574:17         topic 22388:14           22499:11         22391:17 22400:25         they'l 2242:7         therate 22574:17         topic 22388:14           22407:16 22443:15         22433:12 22433:2         22430:16 22546:7         22397:17 22396:8           22407:16 22443:15         22432:12 2248:18         22518:10 02577:12         threate 22574:17         22397:17 3296:8           22443:16 22444:22         22434:10 22463:18         22518:10 02577:12         threate 22397:13         22407:12 22428:11         224242:11 2248:8           2255:12 2256:02         22490:10 22569:3         they're 22434:7         22567:18         22427:22 22428:11           22400:15 22403:14         testif 22509:23         testif 22597:13         thig 22397:17         tid 22559:12         22469:14 22469:14         22454:12 2248:13         22449:14 2249:14         224248:17         22438:17 22454:12           22437:12 2244:14         testif 22509:23         testif 22599:12 2309:12 2309:12 2309:12 2309:12 2309:12 2309:12 2309:12 2309:12 2309:12 2309:12 2309:12 2309:12 2309:12	22520:12,13,23,25	22415:5 22514:15	22508:18 22520:9,10	22476:2 22480:14	22465:25
2258:12         2255:11         2255:11         2255:11         2252:12         2247:63.14         2252:12         2248:12         2248:12         2248:12         2248:12         2239:11         2239:12         2239:17         2249:11         2239:17         2249:11         2239:17         2249:11         2249:11         2249:11         22443:16         2249:12         2243:12         2244:12         2243:12         2244:12         2243:12         2242:12         2242:12         2242:11         2242:12         2242:11         2242:12         2242:11         2242:12         2242:11         2242:12         2242:11         2242:12         2242:11         2242:12         224:11	22521:1,17 22523:18	22560:21	22520:13 22521:10	22487:18 22488:21	top 22418:3 22430:14
22565:6 2256:6:17         term 22439:4 2257:9         Theron 22511:4         22523:16 22546:7         22480:1 22512:25           22699:10         terms 22389:21         2253:17 2259:21         they'd 22483:17         2253:12 2254:21 22545:412 2239:17         22399:14,19,22           22407:6 22433:15         2243:22 22432:22         they'd 2248:31         22554:21 22545:412 22545:412         22397:11,15 22407:3           22407:6 22433:15         2243:22 22432:22         2243:10 22467:13         22407:6 22397:23         224217:3 22425:8           22407:6 22433:15         2243:12 2248:8:8         22557:13         22427:52 22425:8,10 2257:12         they're 22391:13         22398:14,19,22         22427:52 22427:8,2243:8           22500:21 22506:2         22490:20 22513:8         they're 22337:17         they're 22337:17         tie 22534:8         22427:22 22428:11           22400:15 22403:14         testifd 2250:23         22397:17         tie 22534:8         22455:11         22469:12 4255:15           22400:15 22403:14         testifd 22477:19         22400:10,22,23,25         22558:11,3         22469:12         22554:17           2246:21 2246:4         testify 2252:55         22406:13,14,15,25         2239:11         22469:12         22558:11         22469:12           2247:12,12 5247:13         testify 22525:55         22406:13,14,15,25 <td< td=""><td>22552:21 22558:10</td><td>tells 22413:1 22523:21</td><td>22521:12,22,22</td><td>22494:11 22498:11</td><td>22430:16 22475:23</td></td<>	22552:21 22558:10	tells 22413:1 22523:21	22521:12,22,22	22494:11 22498:11	22430:16 22475:23
22569:9,10         terminology 22476:12         they'd 22483:17         22578:10         topic 22388:14           22499:11         22391:17 22400:25         22391:17 22400:25         22391:17 22400:25         22395:17 22396:8           22493:16         22431:23 2243:25         22430:9 22468:3,4         22551:12 22545:4,12         22395:17 22396:8           22443:16         22432:25 22433:3         22430:9 22468:3,4         22551:3         22424:11,21 22425:9           22486:7 22506:2         22490:20 22513:8         they're 22331:15         thrusd 22397:12         22428:11 22425:14           225257:18         22529:2         22538:15         thing 22397:17         tie 22534:8         22427:12 22428:11           22400:15 22403:14         testified 22477:19         22400:12,0,22,2,325         22538:8,19,21         22469:12         22458:15           22435:21 23         testify 22521:13         22400:14,23,23         22538:13,17         22458:12         22558:12         22458:15           22435:21 23         testify 22521:13         22400:14,23,23         22538:10         22469:14         22469:14           22400:15 22403:14         testify 22521:13         22400:14,23,23         22538:11         22469:12         22469:12         22469:12         22469:12         22469:12         22469:12         22469:12	22558:12 22561:4	temperature 22492:25	22555:11 22564:12	22503:14 22527:1	22475:25 22476:3,4
takes 22415:19         terms 22389:21         2523:17 2259:21         threats 2257:17         2239:17 22396:8           22499:11         22391:17 22400:25         they'll 22424:7         threats 22574:17         22395:17 22396:8           22443:16 22484:22         22431:23 22432:25 22433:3         22443:0 22557:13         22543:21 22545:4:12         22395:17 22396:8           22443:16 22484:22         2243:10 22463:18         22518:10 22577:12         thrust 22397:23         22442:11,21 22425:9           22486:7 22500:21         22490:20 22513:8         they've 22434:7         2256:26         22490:20 22537:18         22477:22 22428:11           225256:22         terrible 22569:3         they've 22391:17         tie 22534:8         22477:22 22428:11           22400:15 22403:14         testify 22521:13         22402:14,23,23         22538:19,21         22454:13 22469:14           22437:24 22443:4         testify 22521:13         22400:14,23,23         22393:13         22455:12 22557:10           22447:12 22445:13         22469:14         22409:14         22409:14         22409:14         22409:12           22475:12 22474:1         22551:2,7         22407:14,13,22394:14         22395:17 22397:14         22409:12         22438:13,18           22475:12 22474:1         22475:12 22474:1         22438:12,244         22398:13,18	22565:6 22566:17		<b>Theron</b> 22511:4	22532:16 22546:7	22480:1 22512:25
22499:11         22391:17 22400:25         they'll 22424:7         three 22541:12 22544:6         22395:17 22396:8           talk 22389:10 22400:2         22431:23 22432:22         they're 22391:13         22554:21 22545:4,12         22397:17 22396:8           22407:6 22433:15         22432:22         22438:10 22463:18         22518:10 22577:12         thrust 22397:13         22447:14,21 22425:9           22486:7 22506:21         22482:1 22488:8         22577:13,14,14         22398:1,4 22495:14         22477:22 22428:11           22525:6 22557:18         22529:2         22533:15         Thursday 22556:24         2248:17 22453:14           22400:15 22400:15 22403:14         testiffed 22477:19         22401:20,22,3,25         22539:11 22540:9         22454:12 22554:12           22435:21,23         testiffig 22471:6         22400:14,23,23         22399:12 2239:11         22469:21 22554:15           22440:123 22446:9         testiffig 2241:6         22407:10,14         22399:12 2239:14         22455:12 22557:12           22475:14,17,18,19,24         22391:5 22394:13         22409:14,15,25         22399:12 2248:16         22454:20 22455:28           22475:14,22485:3         22395:17 22397:14         22409:14,15,25         22399:12 2248:16         22456:20 22455:28           22475:14,22485:3         22395:17 22397:14         22409:14,15,25         223				22578:10	
talk 22389:10 22400:2         22431:23 2243:22         they're 22391:13         22544:21 2254:4,12         22397:1,15 22407:3           22443:16 2248:22         2243:22 2243:23         2243:22 2248:10 22463:34         22555:13         22417:3 22423:8           22443:16 2248:22         2243:10 22463:18         22557:12         thrust 22397:23         22442:13           22486:7 22500:21         22482:1 22488:8         22577:13,14,14         22398:1,4 22495:14         2247:22 22428:11           22555:18         22247:22 2248:1         22555:18         2247:22 2248:1         22482:1 2248:1           122526:22557:18         22557:18         2247:12 2243:14         2247:12 2247:14         22453:17           22400:15 22403:14         22569:3         thing 22397:17         tie 22537:13,17         22454:13 22469:14           22440:12 32246:14         testifying 22421:6         22401:40,22,2,23         22538:8,19,21         22469:21 2255:15           22461:23 22469:9         testifying 22421:6         22400:14,15,25         22393:7,13 22394:6         topics 22387:14         22451:12 2247:10           22470:12,15 22475:13         tank 22389:9 22391:3         22409:14,15,25         22395:11 22397:4         22448:17 2243:14           22470:12,15 22475:13         tank 22389:22399:22         22416:10 22423:14         22395:17 22397:4         22490:14,					
22407.6 22433:15         22432:25 22433:3         22430:9 22468:3,4         22555:13         22447:3 22423:8           22443:16 22484:22         22434:10 22463:18         22517:12         147:3 22423:8         22427:5,8,9,14,15,19           2250:2         22490:20 22513:8         22537:13,14,14         22567:18         22427:22,22428:11           2250:2         2250:2         22397:17         they've 22434:7         22567:18         22428:17 22453:14           22400:15 22403:14         testife 22509:23         22399:25 22401:7,8,9         tie 22537:13,17         22453:13         22449:21 2245:14           22400:15 22403:14         testife 22571:13         22401:20,22,23,25         223937:13         22469:21 2255:15         22469:21 2255:15           22437:24 22443:4         testifying 22421:6         22400:14,23,23         223937:11 2250:9         22555:12 2255:10           22470:12,15 22474:1         22551:12         22401:1,15,25         2239:11 2230:14         2249:21         2249:21         2249:21         22397:14         22415:12         22397:10         22438:13,18         22479:12,230:14         22451:12         22451:12         22451:12         22397:10         2249:23         22397:12         22397:12         22397:12         22397:12         22397:11         22397:12         22397:11         22397:11					
$\begin{array}{c c c c c c c c c c c c c c c c c c c $					,
22486:7 22500:21         22482:1 22488:8         22577:13,14,14         22398:1,4 2249:14         22427:5,8,9,14,15,19           22501:24 22506:2         22490:02 02513:8         they've 22434:7         22557:18         22427:22 22428:11           22400:15 22403:14         terrible 22569:3         thing 22397:17         tie 22537:13,17         22458:12 22469:14           22400:15 22403:14         testified 22477:19         22401:20,22,23,23         22538:8,19,21         22469:12 2255:14           22437:24 22443:4         testify 22521:13         22402:14,23,23         22539:11 22540:9         22554:17,18           22447:12 22443:4         testifying 22421:6         22400:14,23,23         22399:12 2039:14         2255:12 2255:10           224461:23 22469:9         text 22549:15 2250:5         22406:13,14,15,25         22393:7,13 22394:6         topics 22388:13,18           22475:14,17,18,19,24         22391:5 22394:13,18         22409:14,15,25         22424:6 22426:4         22454:20 2245:8           224475:12 22949:17         22398:12 22397:14         22409:14,15,25         22424:6 22426:4         22454:20 2245:8           22475:15 22499:17         22398:13 22399:22         22411:13 2240:22         22423:13         totall 22409:02         22438:13           22475:15 22499:17         22398:12 22377:14         22406:13 2246:16         2248:16,25 2					
22501:24 22506:2         22490:20 22513:8         they've 22434:7         22567:18         22427:22 22428:11           22525:6 22557:18         2259:2         22533:15         Thursday 22556:24         22428:17 22438:14           talking 22396:22         terrible 22509:3         terrible 22509:3         22399:25 22401:7,8,9         tied 22537:13,17         22458:13 22446:12           22400:15 22403:14         testified 22477:19         22401:20,22,23,25         22539:11 22540:9         22458:13 22469:14           22435:21,23         testify 22521:13         22403:14 22404:5,17         22439:12 2239:1         22466:12 22557:15           224470:12,15 22474:1         22551:2,7         22407:10,14         22399:12 22403:14         22458:12 22557:16           22477:14,17,18,19,24         22391:5 22394:13,18         22409:14,15,25         22424:6 22426:4         22459:20 2245:2,8           22445:12 2245:6         224157 2249:17         22389:23 2239:22         22414:13 22430:22         22429:23 2243:13         total 22409:9 2251:22           22551:12 2251:6         224157 22424:1         22475:4 22482:5         22477:14         22460:13 22465:16         total 22490:9 2251:22           22551:12 2256:1         2246:12 2247:24         22477:13 22478:8 22481:9         22460:13 22465:16         total 22490:9 2251:22           2256:12 22577:7         22455:					
22525:6 22557:1822529:222533:15Thursday 22556:2422428:17 2245:14talking 22396:22terrible 22569:322399:17tie 22534:822433:17 22454:1222400:15 22403:14testif ed 22477:1922401:20,22,23,2522538:8,19,2122454:13 22469:1422437:24 22443:4testif ed 22477:1922401:20,22,23,2522539:11 22540:922554:1522437:24 22443:4testif y 22521:1322402:14,23,2322539:11 22540:922555:12 22557:1022461:23 22469:9testi 22549:15 22550:522406:13,14,15,2522393:7,13 22394:6topics 22388:13,1822470:12,15 22474:122551:2,722407:10,1422399:12 2403:1422395:11 22397:422475:14,17,18,19,2422391:5 22394:13,1822409:14,15,2522442:6 2426:422445:20 2425:822475:14,277.15 2249:1722398:23 22399:2222414:13 22430:2222429:23 22433:13topics 2245:23922477:15 2249:1722398:23 22399:2222414:13 22430:2222429:23 22433:13total 22490:9 2251:22422551:12 2251:622415:7 22424:2122476:4282:5,1322460:13 22465:16total 22490:9 2251:22422546:24 22559:1022438:14 22441:1,1122497:14 22504:1122478:8 22481:9total 22409:1222551:12 2251:162246:23 22466:1722534:18 22535:2022530:9 22531:9touched 22469:2522546:24 22559:1022438:14 22441:1,1122497:14 22504:1122478:8 22481:9touched 22469:2522546:24 22559:1022438:14 22441:1,1122497:14 2253:2022536:20 22541:5touched 22469:2522546:24 22559				-	
talking 22396:22terrible 22569:3thing 22397:17tie 22534:822453:17 22454:1222400:15 22403:14tested 22509:2322399:25 22401:7,8,9tied 22537:13,1722469:21 2254:1322420:23 22432:11testify 22521:1322401:20,22,23,2522538:8,19,2122469:21 22554:1522437:24 22443:4testifying 22421:622403:14 22404:5,17time 22392:21 22393:422555:12 22557:1022461:23 22460:9text 22549:15 22550:522406:13,14,15,2522399:12 22403:1422395:11 22540:922477:12,15 22474:122551:2,722407:10,1422399:12 22391:422397:422475:14,17,18,19,2422391:5 22394:13,1822409:14,15,2522424:6 22426:42245:10 2245:822475:14,17,18,19,2422395:17 22397:1422410:6 22413:822428:16,25 22429:122454:20 2245:2,822497:15 22499:1722398:23 2239:2222411:13 22430:2222429:13 2243:13total 22490:9 2251:2222515:12 22516.622415:7 22424:2122438:3 22442:2522437:11,12,13total 22409:251:2222546:24 22559:1022438:14 22441:1,1122477:13 22474:422450:3 22452:3,1722503:2 22576:322561:14 22577:722456:12 22476:2022538:222477:2445:1222438:255:1022466:2522561:14 22577:722456:12 22476:2022531:8222530:10 22531:9touched 22469:2522561:14 22577:722456:12 22476:2022531:8222530:12 22576:322530:2522474:23 22476:2022481:7 22460:622482:42:248:1722536:12 22576:122578:12 22576:122478:172246					
22400:15 22403:14 22420:23 22432:11tested 22509:23 testified 22477:1922399:25 22401:7,8,9 22401:20,22,23,25tied 22537:13,17 22538:8,19,2122454:13 22469:14 22469:21 22554:1522435:21,23 22435:21,23 22435:21,23 22435:21,23 22445:2244244:4testify 22521:13 testify 22521:13 22402:14,23,23 22407:12,15 22474:1 22461:23 22469:9 22477:12,15 22474:1 22477:12,15 22474:1 22477:12,15 22474:1 22477:14,17,18,19,24 22391:5 22394:13,18 22497:15 22499:17 22391:5 22394:13,18 22497:15 22499:17 22398:23 22399:22 22395:17 22397:14 22407:16,14 22407:16,244:5,25 22407:16,14 22407:15,21 22407:16,22426:4 224242:10 22423:19 224242:10 22423:19 22423:10 22425:8 22444:21 22485:3 22395:17 22397:14 22395:17 22397:14 22407:15 22499:17 22398:23 22399:22 22414:13 22430:22 22414:13 22430:22 22414:13 22430:22 22428:16,25 22429:1 22428:16,25 22429:1 22481:7 22513:9 total 22490:9 22512:22 total 22490:9 22576:3 total 22490:9 22576:3 total 22490:9 22576:3 total 22490:9 22576:3 total 22490:10 22438:14 22441:1,11 22497:14 22504:11 22477:24242:5 22476:42 22559:10 22477:28,16 22477:28,16 22477:28,16 22477:28,16 22477:28,16 22477:28,16 22477:28,16 22477:28,16 22477:28,16 22477:28,16 22557:25 2257:20 22536:20 22541:25 22536:20 22541:25 22478:7 22478:7 22477:28,16 22499:13 22503:11 22477:28,16 22477:28,16 22477:28,16 22577:15 22405:17 22475:20 22477:28,16 22477:28,16 22577:15 22405:17 22475:10 22460:17 22410:8 22577:15 22460:17 22410:8 22577:15 22460:17 2240:11 22477:28,16 22477:28,16 22577:15 22477:28,16 22577:15 22477:28,16 22477:28,16 22577:15 22477:10 2248:17 2248:19 22477:10 22548:5 22477:10 22548:5 22477:12					
22420:23 22432:11testified 22477:1922401:20,22,23,2522538:8,19,2122469:21 22554:1522435:21,23testify 22521:1322402:14,23,2322539:11 22540:922551:122255:1222461:23 22469:9text 22549:15 22550:522406:13,14,15,2522393:7,13 2239:622395:11 22397:42247:10 22475:13text 2259:15 22394:13,1822409:14,15,2522424:6 22426:422423:10 22425:82247:14,17,18,19,2422391:5 22394:13,1822409:14,15,2522424:6 22426:422438:13 22430:2222451:15 22474:122395:17 22397:1422410:6 22413:822429:23 22433:13total 22490:9 22512:2222515:12 22516:622415:7 22424:2122438:3 22442:2522437:11,12,13total 22490:9 22512:2222530:10 22538:222430:18 22435:222477:13 22474:422450:3 22452:3,1722503:2 22576:322546:24 22559:1022438:14 22441:1,1122497:14 22504:1122478:2481:9total 22409:2522541:24 22559:1022446:23 22466:1722534:18 22535:2022530:9 22531:9toxeh 22469:2522477:28,1622477:28,1622557:22 22577:2022553:23 2256:2422575:21 22576:122478:722472:81,12 22476:2022551:12 22570:2022553:23 2256:2422575:21 22576:122461:1522499:13 22503:1122396:23 22405:1622579:15transcribe 22461:222461:1522499:13 22503:1122396:23 22405:1622579:15transcribe 22461:222461:1522499:13 22503:1122396:23 22405:1622579:15transcribe 22461:4 <tr< tbody=""></tr<>					
22435:21,23testify 22521:1322402:14,23,2322539:11 22540:922554:17,1822437:24 22443:4testifying 22421:622403:14 22404:5,17time 22392:21 22393:422555:12 22557:1022461:23 22469:9text 22549:15 22550:522406:13,14,15,2522393:7,13 22394:6topics 22388:13,1822470:12,15 22474:122551:2,722407:10,1422399:12 22403:1422399:11 22397:422474:10 22475:13thank 22388:9 22391:322408:15,2122412:10 22423:1922423:10 22425:822475:14,17,18,19,2422395:17 22397:1422410:6 22413:822428:16,25 22429:122481:7 22513:922497:15 22499:1722398:23 22399:2222414:13 22430:2222429:23 22433:13total 22490:9 22512:2222515:12 22516:622415:7 22424:2122438:3 22442:522437:11,12,13total 22400:9 22512:2222530:10 22538:222403:18 22472:422470:13 22474:422450:3 22452:3,1722503:2 22576:322561:14 22577:722438:14 22441:1,1122497:14 22504:1122478:8 22481:9total 22469:2522474:23 22475:3,2422472:8,12 22476:2022535:2022530:9 22531:9total 22469:2522474:23 22475:3,242246:6:1722534:18 22535:2022576:23 22576:322575:21 22576:122434:7 2246:622446:23 22466:1722534:18 22535:2022530:9 22531:9toxic 22425:1822474:23 22475:3,242246:242248:17 2248:1522575:25 2257:202253:23 2256:2422578:12 22576:122461:152249:13 22406:172246:1622575:25 2257:202253:23 2256:2422578:12,246:12 </td <td></td> <td></td> <td></td> <td></td> <td></td>					
22437:24 22443:4testifying 22421:622403:14 22404:5,17time 22392:21 22393:422555:12 22557:1022461:23 22466:9text 22549:15 22550:522406:13,14,15,2522393:7,13 22394:6topics 22388:13,1822470:12,15 22474:122551:2,722407:10,1422399:12 2203:1422395:11 22397:422474:10 22475:13thank 22388:9 22391:322408:15,2122412:10 22423:1922423:10 22425:822484:21 22485:322395:17 22397:1422410:6 22413:822428:16,25 22429:122481:7 22513:922497:15 22499:1722398:23 22399:2222414:13 22430:2222429:23 22433:13total 22490:9 22512:2222515:12 22516:622415.7 22424:2122438:3 22442:2522437:11,12,13total 22490:9 22512:222254:8 22525:12246:12 22427:2422470:13 22474:422450:3 22452:3,1722503:2250:2576:32254:6:24 22559:1022438:14 22411:1,1122497:14 22504:1122478:8 22481:9touched 22469:2522561:14 22577:722455:11 2246:322508:3 22518:2522494:19 22522:1622559:522474:23 22475:3,2422477:28,1622557:22 22576:2022530:9 22531:9Town 22563:222478:722477:28,1622557:25 22572:2022536:20 22541:25toxic 22425:1822434:7 22460:622449:13 22406:1722396:23 22405:1622575:21 22576:122578:12,2422434:7 22460:622448:4222480:17 22481:522557:25 22572:2022553:23 2256:2422578:12,2422434:7 22460:622449:2122490:13 22503:1122396:23 22405:1622577:2122576:17224					
22461:23 22469:9text 22549:15 22550:522406:13,14,15,2522393:7,13 22394:6topics 22388:13,1822470:12,15 22474:122551:2,722407:10,1422399:1 22403:1422395:11 22397:422474:10 22475:13thank 22388:9 22391:322408:15,2122412:10 22423:192243:10 22425:822475:14,17,18,19,2422391:5 22394:13,1822409:14,15,2522424:6 22426:422424:0 2245:2.822484:21 22485:322395:17 22397:1422410:6 22413:822428:16,25 22429:12248:17 22513:922497:15 22499:1722398:23 22399:2222414:13 22430:2222429:3 22433:13total 22409:9 22512:2222515:12 22516:622415:7 22424:2122438:3 22442:2522437:11,12,13total 22409:9 22512:2222524:8 22525:122426:12 22427:2422470:13 22474:422450:3 22452:3,1722503:2 22576:322530:10 22538:222430:18 22435:222475:4 22482:5,1322460:13 22465:16touch 22554:6 22575:222546:24 22559:1022438:14 22411:1,1122497:14 22504:1122478:8 22481:922530:2 22576:322546:24 22577:72246:1722534:18 22535:2022530:9 22531:9Town 22563:222478:722477:28,1622557:25 2257:2522536:20 22541:252257:21 22576:122461:152249:13 22460:622482:4 22484:17things 22391:1622579:1522461:152249:13 2250:1222461:2transcribe 22461:222461:152249:21 22515:522415:13 2240:10transcribe 22461:222461:152249:21 22515:522415:13 22420:10transcribe 22457:102	-				
22470:12,15 22474:1 22474:10 22475:13 22475:14,17,18,19,24 22485:322551:2,7 thank 22388:9 22391:3 22499:15 22394:13,18 22409:14,15,2522409:122403:14 22412:10 22423:19 22424:6 22426:4 22426:6 22426:4 22428:16,25 22429:1 22481:6,25 22429:17 22398:23 22399:22 22398:23 22399:22 22414:13 22410:6 22413:8 22410:6 22413:8 22410:6 22413:8 22412:10 22423:12 22438:3 22442:25 22497:15 22499:17 225238:2 22524:8 22525:1 22426:12 22424:21 22438:3 22442:12 22438:3 22442:12 22438:3 22442:25 22475:4 22483:3 22442:25 22475:4 22482:5,13 22460:13 22465:16 22477:23 22475:3,24 22477:23 22475:3,24 22477:28,16 22477:28,16 22477:28,16 22477:28,16 22477:28,16 22477:28,16 22477:28,16 22477:22408:17 22482:17 22460:6 22482:4 22484:17 22482:17 22408:16 22557:25 2257:20 22553:23 2256:24 22561:12 22576:17 22568:12 22576:17 22568:12 22576:17 22482:4 22484:17 22499:13 22503:11 22499:13 22503:11 22396:23 22405:16 22577:25 22572:20 22553:23 2256:24 22576:17 22406:6 22579:15 take 22472:10 22548:5 22591:18 2255 22499:13 22508:12 22576:17 22461:15 22482:4 22484:17 22499:13 22503:11 22503:13 22503:11 22396:23 22405:16 22579:15 take 22477:10 22548:5 22579:16 take 22472:10 22548:5 22538:3 22537:1622490:13 2240:10 2249:12 22576:17 22406:13 22400:10 22406:13 22400:10 22400:12 22406:13 22407:12 transcriber 22461:2 transcriber 22461:4 transcriber 22461:4 transcriber 22467:19 22400:18 22475:20 22400:18 22475:20 22400:18 22475:20 22400:18 22475:20 22400:18 22475:20 22400:18 22475:20 22400:18 22475:20 22400:18					
22474:10 22475:13 22475:14,17,18,19,24 22391:5 22394:13,18 22497:15 22498:17 22395:17 22397:1422408:15,21 22409:14,15,25 22409:14,15,25 22424:6 22426:4 22428:16,25 22429:122423:10 22425:8 22454:20 22455:2,8 22424:6 22426:4 22428:16,25 22429:122497:15 22499:17 22398:23 22399:22 22515:12 22516:6 22515:12 22516:6 22415:7 22424:21 22438:3 2242:25 22524:8 22525:1 22524:8 22525:1 22524:8 22525:1 2254:6:24 22559:10 2254:6:24 22559:10 22561:14 22577:7 22438:14 2241:1,11 22473:1 2246:3 22561:14 22577:7 22455:11 22462:3 22474:23 22476:20 2254:8 12 2247:28,12 22476:20 2254:16,15 2254:24 22530:10 22538:2 22474:23 22475:3,24 22477:28,16 22477:28,16 22477:28,16 22477:28,16 22438:11 22434:5 22477:28,16 22438:11 22434:5 22477:28,16 22477:28,16 22477:28,16 22477:28,16 22477:28,16 22477:28,16 22477:28,16 22477:28,16 22577:25 22572:20 22530:22575:21 22576:1 2256:12 22572:21 2256:12 22572:21 2256:12 22572:10 22575:21 22576:1 22438:19 22568:12 22572:10 22575:21 22576:1 22438:19 22568:12 22572:10 22575:21 22576:1 22576:12 22576:17 22568:12 22572:21 22578:12,24 trade 22436:10 transcribe 22461:2 transcribe 22461:2 transcribe 22461:2 transcribe 22461:2 transcribe 22461:2 transcribe 22461:2 transcribe 22461:2 transcribe 22461:2 transcriber 22461:2 transcriber 22457:11 22405:17 2243:22405:17 22439:22441:4 22503:13 22508:2222413:10 2243:10 22425:8 22503:13 22508:22 transcriber 22457:19 22450:18 22475:10 22460:8 transcriber 22457:19					•
22475:14,17,18,19,2422391:5 22394:13,1822409:14,15,2522424:6 22426:42245:20 2245:2,822484:21 22485:322395:17 22397:1422410:6 22413:822428:16,25 22429:122481:7 22513:922497:15 22499:1722398:23 22399:2222414:13 22430:2222429:23 22433:13total 22490:9 22512:2222515:12 22516:622415:7 22424:2122438:3 22442:2522437:11,12,13total 22490:9 22512:2222530:10 22538:222430:18 22435:222470:13 22474:422450:3 22452:3,1722503:2 22576:32254:6:24 22559:1022438:14 22441:1,1122497:14 22504:1122478:8 22481:9total 22490:2522561:14 22577:722455:11 22462:322508:3 22518:2522494:19 22522:1622559:522474:23 22476:2022454:12 22477:2022534:18 22535:2022530:9 22531:9Town 22563:222478:722477:2,8,1622557:12 22576:122557:25 22572:2022553:23 22565:2422575:21 22576:122434:7 22460:622482:4 22481:7things 22391:1622568:12 22572:21trade 22436:1022434:7 22460:622482:4 22484:1722396:23 22405:1622574:22 22576:1722578:12,2422434:7 22460:622482:4 22484:1722405:17 22410:822579:15trade 22436:10tage 22449:2122513:15 22515:522415:13 22400:1622579:15trade 22461:2tage 22449:2122530:13 22503:1122396:23 22405:1622579:15transcriber 22461:2tage 2243:322530:13 22508:722430:13 22400:10transcriber 32457:1022460:822530:13 22500:722439:2 22441:					
22484:21 22485:3 22497:15 22499:1722395:17 22397:14 22398:23 22399:22 22398:23 22399:22 22417:15 22515:12 22516:6 22515:12 22516:6 22524:8 22525:1 22526:12 22426:12 22427:24 22430:18 22435:2 22430:18 22435:2 22430:18 22435:2 22430:18 22435:2 22561:14 22577:7 22455:11 22462:3 22561:14 22577:7 22455:11 22462:3 22464:23 22466:17 22561:14 22577:7 22455:11 22462:3 22477:28,16 22477:28,22476:20 22577:20 22577:20 22577:20 22577:20 22536:20 22541:25 22536:20 22541:25 22536:20 22541:25 22536:20 22541:25 22577:20<					
22497:15 22499:1722398:23 22399:2222414:13 22430:2222429:23 22433:13total 22490:9 22512:2222515:12 22516:622415:7 22424:2122438:3 22442:2522437:11,12,13total 22490:9 22512:2222524:8 22525:122426:12 22427:2422470:13 22474:422450:3 22452:3,1722503:2 22576:322530:10 22538:222430:18 22435:222475:4 22482:5,1322460:13 22465:16total 22490:9 22512:2222546:24 22559:1022438:14 22441:1,1122497:14 22504:1122478:8 22481:9total 22469:2522561:14 22577:722455:11 22462:322508:3 22518:2522494:19 2252:1622559:522474:23 22475:3,2422472:8,12 22476:2022541:6,15 22545:2422530:9 22531:9Town 22563:222478:722477:2,8,1622552:14,1622545:19 22550:222575:21 22576:122434:7 22460:622482:4 22481:7things 22391:1622568:12 22572:2022578:12,2422434:7 22460:622482:4 22484:17things 22391:1622574:22 22576:17trade 22436:1022461:1522499:13 22503:1122396:23 22405:1622579:15trade 22436:1012ask 22472:10 22548:522513:15 22515:522415:13 22420:10times 22407:12transcriber 22461:412ask 22472:10 22548:522530:13 22508:722422:14 22428:1922450:18 22475:2022460:812ask 22472:10 22548:522537:16225237:1622530:13 22508:722460:8			, ,		· · · · · · · · · · · · · · · · · · ·
22515:12 22516:622415:7 22424:2122438:3 22442:2522437:11,12,13totally 22402:1122524:8 2252:122426:12 22427:2422470:13 22474:422450:3 22452:3,1722503:2 22576:322530:10 22538:222430:18 22435:222475:4 22482:5,1322460:13 22465:16touch 22554:6 22575:222546:24 22559:1022438:14 22441:1,1122497:14 22504:1122478:8 22481:9touch 22469:2522561:14 22577:722455:11 22462:322508:3 22518:2522494:19 2252:1622559:522474:23 22475:3,2422472:8,12 22476:2022541:6,15 22545:2422530:9 22531:9Town 22563:222478:722477:2,8,1622552:14,1622552:257:252257:25 2257:2022553:23 22565:2422578:12,2422434:7 22460:622482:4 22484:17things 22391:1622568:12 2257:21trade 22436:10trask 22436:1022461:1522499:13 22503:1122396:23 22405:1622574:22 22576:17transcribe 22461:2transcribe 22461:222461:1522499:13 22503:1122396:23 22405:1622579:15transcribe 22461:4transcribe 22461:4task 22472:10 22548:522513:15 22515:522415:13 2240:10times 22407:12transcriber 22461:4task 22472:10 22548:522530:13 22504:722439:2 22441:422503:13 22508:22transcriber's 22457:19					
22524:8 22525:122426:12 22427:2422470:13 22474:422450:3 22452:3,1722503:2 22576:322530:10 22538:222430:18 22435:222475:4 22482:5,1322460:13 22465:16touch 22554:6 22575:222546:24 22559:1022438:14 22441:1,1122497:14 22504:1122478:8 22481:9touch 22554:6 22575:222561:14 22577:722455:11 22462:322508:3 22518:2522494:19 22522:162259:5talks 22432:5,1522464:23 22466:1722534:18 22535:2022530:9 22531:9Town 22563:222474:23 22475:3,2422477:2,8,1622552:14,1622536:20 22541:25toxic 22425:1822478:722477:2,8,1622557:25 22572:2022536:20 22541:2522578:12,2422434:7 22460:622482:4 22484:17things 22391:1622568:12 22572:21trade 22436:1022461:1522499:13 22503:1122396:23 22405:1622574:22 22576:17trascribe 22461:222461:1522511:18,2522415:13 2240:1022579:15transcribe 22461:4task 22472:10 22548:522513:15 22515:522415:13 2240:1022503:13 22508:22transcriber 22457:10Tatane's 22537:1622530:13 22540:722439:2 22441:422503:13 22508:22transcriber's 22457:19					
22530:10 22538:2 22546:24 22559:10 22561:14 22577:722430:18 22435:2 22438:14 22441:1,11 22497:14 22504:11 22455:11 22462:3 22508:3 22518:2522460:13 22465:16 22478:8 22481:9 22508:3 22518:25touch 22554:6 22575:2 22494:19 22522:16 22530:9 22531:9touch 22554:6 22575:2 22559:5talks 22432:5,15 22474:23 22475:3,24 22477:2,8,1622476:20 22477:2,8,1622534:18 22535:20 22552:14,1622536:20 22541:25 22536:20 22541:9Town 22563:2 22536:20 22541:25tape 22432:11 22434:5 22434:7 22460:622480:17 22481:5 22482:4 22484:1722557:25 22572:20 things 22391:1622558:12 22576:17 22568:12 22572:21trade 22436:10 trade 22436:10tape 22449:21 task 22472:10 22548:5 22538:322513:15 22515:5 22513:15 22515:522415:13 22400:10 22405:17 22410:8 22425:14 22428:19times 22407:12 22450:18 22475:20transcriber 22461:4 transcriber 22457:19Tatane's 22537:1622530:13 22540:7 22530:13 22540:722439:2 22441:422503:13 22508:22transcriber's 22457:19					U U
22546:24 22559:10 22561:14 22577:7 22455:11 22462:3 22472:25,15 22464:23 22466:17 22472:8,12 22476:20 22474:23 22475:3,24 22477:2,8,16 22552:14,16 22552:14,16 22552:14,16 22552:14,16 22552:257:20 22536:20 22541:25 22536:20 22541:25 22557:25 22572:20 22553:23 22565:24 22578:12,24 22578:12,24 22578:12,24 22578:12,24 22578:12,24 22405:17 22410:8 22405:17 22410:8 22449:21 22578:12 22572:10 22578:12 22572:10 22578:12 22576:17 22440:12 22405:17 22410:8 22579:15 tane 22538:3 22522:4,5,14 22530:13 22503:11 22439:2 22439:2 22441:420478:8 22481:9 22450:18 22475:20 22578:12 22572:10 22578:12 22572:10 22503:13 22508:22touched 22469:25 22559:5 Town 22563:2 22559:52240:12 tane 22538:3 Tatane's 22537:162243:1 22441:422478:19 22439:2 22441:422478:19 22503:13 22508:2222503:13 22508:22				,	
22561:14 22577:7 talks 22432:5,15 22464:23 22466:17 22472:8,12 22476:20 22477:2,8,1622508:3 22518:25 22534:18 22535:20 22530:9 22531:9 22536:20 22541:25 22536:20 22541:25 22545:19 22550:2 22545:19 22550:2 22545:19 22550:2 22575:21 22576:122559:5 Town 22563:2 toxic 22425:18 22575:21 22576:1 22575:21 22576:1 22575:21 22576:1 22575:21 22576:1tape 22432:11 22434:5 22434:7 22460:6 22482:4 22484:17 22499:13 22503:11 22499:13 22503:11 22499:13 22503:11 22405:17 22410:8 22405:17 22410:8 22449:21 task 22472:10 22548:5 22513:15 22515:5 22513:15 22515:5 22415:13 2240:10 22420:10 224215:13 2240:10 tane 22538:3 22522:4,5,14 22530:13 22508:12 22530:13 22508:1222598:22 22530:13 22507:10 22439:2 22441:422508:12 2257:16 22575:21 22576:17 22578:12,24 22578:12,24 transcriber 22461:2 transcriber 22461:4 transcriber 22461:4 transcriber 22457:10					
talks 22432:5,1522464:23 22466:1722534:18 22535:2022530:9 22531:9Town 22563:222474:23 22475:3,2422472:8,12 22476:2022541:6,15 22545:2422536:20 22541:25toxic 22425:1822478:722477:2,8,1622552:14,1622545:19 2250:222575:21 22576:1tape 22432:11 22434:522480:17 22481:522557:25 22572:2022553:23 22565:2422578:12,2422434:7 22460:622482:4 22484:17things 22391:1622568:12 22572:21trade 22436:1022461:1522499:13 22503:1122396:23 22405:1622574:22 22576:17trade 22436:10taped 22449:2122511:18,2522405:17 22410:822579:15transcribe 22461:2task 22472:10 22548:522513:15 22515:522415:13 2240:10times 22407:12transcriber 22461:4Tatane's 22537:1622530:13 22500:722439:2 22441:422503:13 22508:22transcriber's 22457:19					
22474:23 22475:3,24 22478:722472:8,12 22476:20 22477:2,8,1622541:6,15 22545:24 22552:14,1622536:20 22541:25 22545:19 2250:2toxic 22425:18 2257:21 22576:1tape 22432:11 22434:5 22434:7 22460:622480:17 22481:5 22492:13 22503:1122557:25 22572:20 22557:25 22572:2022553:23 22565:24 22568:12 22572:21toxic 22425:18 22568:12 22572:21tape 22432:11 22434:5 22492:1222482:4 22484:17 22499:13 22503:11things 22391:16 22396:23 22405:1622568:12 22572:21 22574:22 22576:17trade 22436:10 transcribe 22461:2 transcribe 22461:2taped 22449:21 task 22472:10 22548:522513:15 22515:5 22513:15 22515:522415:13 22400:10 22422:14 22428:19times 22407:12 22450:18 22475:20 22450:13 22508:22transcriber 32457:10 22460:8Tatane's 22537:1622530:13 22540:722439:2 22441:422503:13 22508:22transcriber's 22457:19					
22478:722477:2,8,1622552:14,1622545:19 22550:222575:21 22576:1tape 22432:11 22434:522480:17 22481:522557:25 22572:2022553:23 22565:2422578:12,2422434:7 22460:622482:4 22484:17things 22391:1622568:12 22572:21trade 22436:1022461:1522499:13 22503:1122396:23 22405:1622574:22 22576:17trade 22436:10taped 22449:2122511:18,2522405:17 22410:822579:15transcribe 22461:2task 22472:10 22548:522513:15 22515:522415:13 22420:10times 22407:12transcriber 22461:4Tatane 22538:322522:4,5,1422422:14 22428:1922450:18 22475:2022460:8Tatane's 22537:1622530:13 22540:722439:2 22441:422503:13 22508:22transcriber's 22457:19					
tape 22432:11 22434:5 22434:7 22460:622480:17 22481:5 22482:4 22484:17 22499:13 22503:11 22573:15 22513:15 22513:15 22515:522577:25 22572:20 22578:12 22572:21 22396:23 22405:16 22405:17 22410:8 22579:1522553:23 22565:24 22568:12 22572:21 22568:12 22572:21 22574:22 22576:17 transcribe 22461:2 transcribe 22461:2 transcriber 22461:4 transcriber 22461:4 transcriber 22461:4 transcriber 22461:4 transcriber 22461:4 transcriber 22461:4 transcriber 22461:4 transcriber 22457:11 22490:13 22503:13 22502:4,5,1422577:25 22572:20 22396:23 22405:16 22415:13 22402:10 22422:14 22428:19 22450:18 22475:20 22503:13 22508:2222578:12,24 transcriber 22461:2 transcriber 22461:4 transcriber 22461:4 transcriber 22457:10					
22434:7 22460:622482:4 22484:17things 22391:1622568:12 22572:21trade 22436:1022461:1522499:13 22503:1122396:23 22405:1622574:22 22576:17transcribe 22461:2taped 22449:2122511:18,2522405:17 22410:822579:15transcribe 22461:4task 22472:10 22548:522513:15 22515:522415:13 22420:10times 22407:12transcriber 22461:4Tatane's 22537:1622530:13 22540:722439:2 22441:422503:13 22508:22transcriber's 22457:19					
22461:1522499:13 22503:1122396:23 22405:1622574:22 22576:17transcribe 22461:2taped 22449:2122511:18,2522405:17 22410:822579:15transcribe 22461:4task 22472:10 22548:522513:15 22515:522415:13 22420:10times 22407:12transcriber 22461:4Tatane 22538:322522:4,5,1422422:14 22428:1922450:18 22475:2022460:8Tatane's 22537:1622530:13 22540:722439:2 22441:422503:13 22508:22transcriber's 22457:19	-				,
taped 22449:2122511:18,2522405:17 22410:822579:15transcriber 22461:4task 22472:10 22548:522513:15 22515:522415:13 22420:10times 22407:12transcribers 22457:11Tatane 22538:322522:4,5,1422422:14 22428:1922450:18 22475:2022460:8Tatane's 22537:1622530:13 22540:722439:2 22441:422503:13 22508:22transcriber's 22457:19			8		
task 22472:10 22548:522513:15 22515:522415:13 2240:10times 22407:12transcribers 22457:11Tatane 22538:322522:4,5,1422422:14 22428:1922450:18 22475:2022460:8Tatane's 22537:1622530:13 22540:722439:2 22441:422503:13 22508:22transcriber's 22457:19	/ 31 1 1 22				
Tatane 22538:322522:4,5,1422422:14 22428:1922450:18 22475:2022460:8Tatane's 22537:1622530:13 22540:722439:2 22441:422503:13 22508:22transcriber's 22457:19					
Tatane's 22537:16         22530:13 22540:7         22439:2 22441:4         22503:13 22508:22         transcriber's 22457:19	In II Derree				
					transcriber's 22457:19
	Tatane's 22538:10	22546:21 22549:24	22448:1 22455:20	22529:22 22539:17	22458:16
		22550:20,25,25	22464:11 22479:1,12	22559:3	transcribing 22461:24
ARCHIVE FOR JUSTICE	ARCHIVE FO	R JUSTICE			

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**RealTime Transcriptions** 

## Marikana Commission of Inquiry

### Arbitration

				Page 1
transcript 22413:18	turn 22430:7 22472:6	22569:17 22570:23	22470:1 22476:14,22	22522:6 22525:8
22417:15 22437:2,3	turned 22430:5	22571:7,19 22573:6	22476:25 22497:22	22533:21 22534:17
22443:25 22445:10	22533:11 22554:10	22573:18 22579:7,9	22499:17,21	22544:2,14 22546:25
22445:17 22448:19	Twala's 22529:17	22579:11	22503:22 22523:22	22548:17 22552:15
22455:22 22456:19	two 22393:8 22399:17	understanding 22405:5	22542:2,3,4,7,10	22552:16,18
22456:22 22457:2,22	22399:19 22404:8,14	22468:5 22551:9,11	various 22517:5	22555:12,14
22458:11 22459:25	22448:6 22450:16,20	understands 22466:24	vehicle 22573:2	22557:18 22560:7,23
22461:12 22467:23	22454:18,22 22459:9	understood 22396:4	vehicles 22531:7	22561:20 22564:8
22557:4	22459:12,14,17,18	22418:19 22419:9	vein 22557:19	22565:9 22569:25
transcription 22437:24	22461:22 22468:19	22410:19 22419:9	verba 22527:2,5	22503:9 22509:25
22460:2,19	22401.22 22408.19	22420.4 22420.13	Vermaak 22574:19	wanted 22388:18,20,23
Transcriptions	22490:11,13 22501:1	22543:10,10 22545:1	version 22434:15,16	22394:14 22395:11
22460:1	22505:4,5 22510:15	22545.10,10 22545.1	22455:20,22 22456:1	22394.14 22393.11 22397:15 22400:10
	22503.4,5 22510.15		22456:19 22457:14	22407:4 22416:3,5,8
transcripts 22525:23 22534:7		undertaking 22566:12		
	22521:9 22527:2,5	22566:14,15	22460:9 22464:19	22416:9,13 22417:15
transmit 22566:23	22540:24 22541:4	undertook 22562:2,5	22491:20 22508:11	22419:1 22421:15
transmitted 22567:5	22544:8 22545:9	22562:10	22508:14 22519:22	22425:9 22431:15,20
22569:11,24	22547:17 22552:19	underwent 22496:15	22525:23 22526:13	22431:21 22434:11
transport 22518:16	22560:4,5,6,24,25	undoubtedly 22496:15	22562:14	22436:7,9,15,20
transporting 22518:22	22562:8 22563:9	unfair 22526:18	victim 22511:2	22437:12 22473:25
<b>trauma</b> 22487:22	22573:13,25	unfolded 22569:3	victims 22500:16	22481:5,9,11 22486:7
22516:9 22517:7	22575:23	unfortunately 22400:9	22501:3 22510:23,23	22514:16 22515:19
22521:22	tying 22539:13	22525:17	<b>video</b> 22485:10	22532:24 22534:18
traumas 22519:14	<b>type</b> 22406:23	ungovernable	<b>view</b> 22401:11	22543:10,16,17
traumatic 22487:15	22468:21	22431:15	22415:18,18	22546:2 22555:19
22488:7 22489:11	types 22468:19	<b>union</b> 22436:10	22481:13 22536:8,17	22557:10
22496:5,9,14		United 22551:19	22536:25	wants 22392:12
traumatised 22488:15	U	units 22476:8	viewed 22412:21	22426:11 22429:8
22488:23 22491:21	Ubuntu 22512:9,13	unnecessary 22430:11	views 22511:11	22461:18 22565:7
22491:21,23 22492:3	22514:4,14 22515:8	<b>unquote</b> 22416:4	violence 22490:15	Warrant 22486:20
22495:15,18 22497:4	22515:16	unravelled 22552:18	22491:8 22525:13	wasn't 22433:3
22499:25 22513:23	ultimate 22453:13	unrest 22469:19	22574:9	22435:8,21 22498:16
22519:8,22,24	ultimately 22490:25	unsafe 22398:12	violent 22436:12,17	22503:4 22532:2
22521:16	22491:6 22497:7	22464:10	visible 22476:9,9	22550:17 22553:18
treated 22513:3	22498:6 22523:25	<b>untrue</b> 22474:9,21	visited 22521:6,7	22554:1
22517:21	ultimatum 22440:8,19	22475:9	visiting 22521:0,7	wasn't 22445:13
treatment 22516:16		<b>unusual</b> 22450:7,13	voluntary 22558:16	22451:1
	22462:9,21 22463:10		<b>voluntary</b> 22538:16	
22517:5	uncorrected 22507:12	22451:13	W	waste 22393:13
tried 22463:25	underline 22401:15	unwanted 22409:20		22428:16
trigger-happy	22440:2 22572:1	upheld 22508:20	wage 22561:25	wasting 22392:21
22555:24	understand 22389:4	22509:8,19 22511:5	wages 22524:22	22393:3,7 22394:6
troops 22483:24	22390:18 22399:2	urgency 22405:12	wait 22541:16	22465:16
22485:25 22488:12	22401:24 22403:23	<b>usage</b> 22467:2	waiting 22550:4	water 22573:15
trouble 22407:15	22406:21 22417:23	<b>use</b> 22397:16 22403:13	wall 22532:1	way 22392:14 22396:22
22415:19 22499:11	22419:12 22423:22	22404:22 22405:8,11	want 22388:12,16	22396:23 22401:3,17
22542:9	22441:7,9 22443:3	22405:17 22426:6,11	22389:12 22399:2	22413:3 22415:12,22
troubled 22487:18	22446:15 22447:2,7	22426:14 22438:16	22402:10 22404:11	22421:2 22427:4
true 22392:1 22396:18	22447:15 22448:13	22465:15 22470:4	22406:12,12,15,24	22437:23 22438:3
22411:20 22432:25	22455:5,10 22456:9	22479:13 22492:6,19	22411:10,13	22441:12 22443:15
22436:1 22460:2	22456:20 22458:24	22493:12,22	22420:20 22423:5	22449:13 22456:1
22468:8,10 22484:15	22464:3,19 22466:7	22499:18 22503:14	22427:13 22428:7,9	22464:12 22470:19
22495:20 22533:20	22470:5,6 22471:22	22503:15 22529:21	22430:9 22432:10	22472:5 22478:3
trust 22525:15	22478:17 22479:4,5	22532:9,11 22538:6	22433:21,22,23,24	22479:6 22482:5,9
truth 22424:5 22560:22	22480:24 22490:15	22539:6,7 22540:12	22435:7 22436:16	22484:21,22
try 22394:20 22404:7	22498:8 22500:19	22540:14,15	22437:3,4 22439:2	22495:18 22499:4
22462:4 22545:15	22502:13,16 22503:3	uses 22426:8	22440:10,15	22500:21 22502:14
trying 22400:2	22502:13,10 22503:3	usual 22396:22	22446:18 22451:6,6	22508:21 22502:11
22405:21,24	22510:9 22514:13	22411:24	22458:7,12 22462:8	22515:20 22517:18
22403.21,24 22459:16 22460:19	22515:9 22516:5,6	usually 22412:3	22462:19 22463:17	22513.20 22517.18
22462:12 22463:14	22517:17 22518:18	usually 22+12.3	22465:17 22466:13	22523:25 22524:15
22462:12 22463:14 22463:22 22499:14		V		
111 1 112 11 11 11 11 11	22524:5,9 22533:18	· · · · · · · · · · · · · · · · · · ·	22468:15,18	22526:4 22530:15
22504:14 22534:8	22536:23 22541:8	validity 22567:15	22472:17 22475:11	22532:14 22535:9
22538:24 22543:20	22542:16 22543:11	<b>value</b> 22512:13	22476:8 22477:11	22563:25 22565:9
22578:11	22546:3 22547:12	values 22512:12	22479:17 22487:15	22566:2,4,13 22567:5
Tuesday 22413:19,21	22549:13 22551:6,17	<b>Van</b> 22390:3 22391:1,3	22506:6,17 22507:4	22567:11,14,25
	22552 2 : 25 :			
22455:23 22529:16	22552:24 22557:22	22425:13 22426:6	22513:7 22515:20	22568:5 22570:22

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## Marikana Commission of Inquiry

#### Arbitration

				Page
wayward 22528:8	wholeheartedly	worked 22512:4,6	22411:9 22420:3	22493:24 22494:20
22530:18 22534:4,5	22405:15	22532:1	22430:17 22439:9,17	22503:24 22561:18
weakly 22565:9	wholly 22437:5	workers 22391:7	22454:22 22464:9	22573:23
weapons 22489:3,18	who's 22549:1	22440:20	22482:5 22497:15	<b>16:02</b> 22578:22
22490:4 22491:9,13	widely 22452:1	working 22414:11,14	22506:18 22507:2	<b>17</b> 22388:1 22433:18
,	wish 22398:7 22424:13	22465:16 22532:2		
22494:8 22495:4			22522:24 22523:1	22439:25 22471:4,4
22531:6,6 22558:16	22480:2 22506:12	22548:24 22549:4	22534:2 22558:24	<b>17th</b> 22482:9 22483:6
Wednesday 22559:14	22521:14 22532:17	worse 22408:20	22559:5 22577:11,19	<b>18</b> 22439:25 22440:1
22565:5,7 22568:11	22532:19	22542:22	22579:14	22474:22
week 22544:19	wished 22398:11	worth 22408:3		18th 22483:21 22484:2
22560:17,20	witnessed 22487:18	wouldn't 22415:14	Z	<b>19</b> 22439:25
wellbeing 22487:17	22489:12 22492:3	22420:14 22433:13	ZUKISWA 22388:6	<b>192</b> 22459:13,13,13
22495:22 22512:17	witnesses 22423:13	22502:1 22514:11,16	22456:25 22511:22	22460:20
22515:14 22521:20	22425:20,24 22575:2	22515:19	22555:7	<b>1980</b> 22512:1
22513:14 22521:20	22575:18	wouldn't 22444:6	<b>Zyl</b> 22497:22 22499:17	1700 22512.1
				2
went 22417:17	witness's 22392:12	22448:6,12	22499:21 22503:22	
22431:20,24 22443:4	22457:6 22511:11	would've 22426:4	22523:22	<b>2</b> 22432:3 22456:13
22450:18 22489:4,25	witness's 22480:3	22439:9		22457:5 22563:12
22526:18 22544:10	<b>won't</b> 22390:4	wrenching 22496:9	0	2:58PM 22568:11
22544:12,19,22	22426:11 22428:11	writing 22450:4	<b>09:10</b> 22388:2	<b>20</b> 22432:4 22460:1
22554:2	22429:17 22430:5	written 22402:6	<b>09:29</b> 22400:20	22525:23 22526:13
weren't 22490:12	22432:3 22468:12,14	22411:2	<b>09:49</b> 22413:5	<b>20th</b> 22484:9,13
			07.47 22413.3	· · · · · · · · · · · · · · · · · · ·
22517:4,4	22496:4 22517:8	wrong 22435:25	1	<b>2012</b> 22452:8,16,23
weren't 22537:18	22575:17 22578:18	22483:18,25	<b>I</b>	22453:9 22455:23
22538:21 22542:4,4	word 22394:10,11	22486:18 22507:5	<b>1</b> 22458:3 22575:5	22459:24
we'll 22390:16	22396:1,3,21,21	22543:23	<b>1AM</b> 22562:24	<b>2013</b> 22452:13,16
22393:20 22394:3	22397:20,25		<b>10</b> 22418:5 22471:8	<b>2014</b> 22388:1 22452:8
22396:25 22397:2	22401:18 22403:3,13	X	22500:12 22503:21	<b>205</b> 22444:16
22400:20,21	22403:13 22404:9,22	Xhosa 22462:25	<b>10:09</b> 22425:13	<b>22</b> 22399:18 22438:13
22424:23 22425:4	22404:24 22405:8	22464:2,7 22466:6,24	<b>10:09</b> 22428:1	22459:20
22427:21,22 22435:9	22404.24 22405.0			<b>23</b> 22432:9
-		22466:25,25 22467:2	<b>10:49</b> 22440:14	
22437:20 22439:1	22426:7,11,14,24	22467:7,8,15,20,24	<b>100%</b> 22528:15	<b>25</b> 22531:5
22459:5 22462:4	22432:23 22437:6	22468:11	<b>10584</b> 22445:24	<b>250</b> 22490:11 22518:22
22463:25 22467:16	22439:4 22444:9		<b>10586</b> 22445:19,23,25	<b>28</b> 22472:25 22473:8
22484:13 22492:19	22461:3 22470:4	Y	<b>11</b> 22537:12	<b>289(c)</b> 22568:25
22493:9,20 22518:14	22484:13 22488:12	year 22420:20	<b>11:08</b> 22452:11	289(e) 22562:20
22527:8,12 22555:2	22492:5,6,20 22493:1	22452:15 22460:19	<b>11:40</b> 22455:17	
22572:5 22579:20	22493:12,23	years 22509:5	<b>110</b> 22475:2,6	3
we're 22411:10	22499:18 22529:21	year's 22309.5		<b>3</b> 22390:10 22457:6
			<b>110%</b> 22528:17	
22424:4 22434:2	22532:9,11 22538:6	yesterday 22471:14	<b>12</b> 22439:19 22446:1	22462:6 22490:3,7
22460:12 22462:9	22548:1 22555:1	<b>you'd</b> 22407:25	<b>12th</b> 22481:2 22561:10	22527:9,16 22528:11
22467:16 22492:20	22576:23	22487:10 22521:3	<b>12:00</b> 22469:24	22528:14 22529:2,3,
22526:3,4 22529:19	wording 22549:23	22532:12	<b>12:19</b> 22481:21	22529:9,12,13,24,25
22530:15 22550:4	words 22390:10	you'll 22388:16	<b>12:39</b> 22495:6	22530:6,21 22531:10
22551:22 22566:3	22397:16 22399:4	22527:16 22550:14	<b>13</b> 22471:12 22472:25	<b>3PM</b> 22562:23,25
we've 22389:14	22400:11 22401:15	you're 22388:5	22472:25 22473:2,3	<b>30</b> 22432:19
22416:23 22422:2	22403:10,21,23,24	22390:17 22392:21	22476:6	<b>30</b> 22432.17 <b>32</b> 22479:21,24,25
22434:16 22454:21	22404:15 22405:6,11	22394:4,6,7 22403:14	<b>13th</b> 22478:2 22480:12	<b>34</b> 22450:23 22493:8
22455:2 22456:2	22405:12,18 22406:3	22416:21 22417:23	22480:21 22487:16	22500:15 22503:23
22460:20 22462:6	22408:21 22409:1	22418:13 22419:22	22488:8 22513:13,23	22507:15,25 22508:4
22464:11 22506:14	22419:21 22420:15	22428:2 22435:17	22535:10 22573:24	22508:12 22541:8
22561:2	22425:14 22431:4	22438:1 22456:23	22574:5	<b>39</b> 22573:24
we're 22538:19	22437:20 22440:13	22460:22 22463:23	<b>13:57</b> 22511:20	
	22457:4,6 22458:15	22468:6 22491:10,13	<b>14</b> 22433:23 22459:24	4
			22474:21	<b>4</b> 22425:7,9 22430:15
22539:6		22/10/10220215		- LL+LJ.1,7 LL+JU.1J
22539:6 <b>we've</b> 22443:10	22461:12 22465:19	22494:20 22502:5		
22539:6 we've 22443:10 22445:24 22471:23	22461:12 22465:19 22470:13 22475:23	22504:12 22505:22	14th 22455:23 22556:5	22430:16 22431:2
22539:6 we've 22443:10 22445:24 22471:23 22481:6 22542:11	22461:12 22465:19 22470:13 22475:23 22493:22 22518:19	22504:12 22505:22 22506:20 22509:16	<b>14th</b> 22455:23 22556:5 22561:4	22430:16 22431:2 22549:7 22552:9
22539:6 we've 22443:10 22445:24 22471:23 22481:6 22542:11 22545:6	22461:12 22465:19 22470:13 22475:23 22493:22 22518:19 22526:20 22531:12	22504:12 22505:22 22506:20 22509:16 22510:11 22511:9,21	<b>14th</b> 22455:23 22556:5 22561:4 <b>14:17</b> 22524:14	22430:16 22431:2 22549:7 22552:9 22570:9
22539:6 we've 22443:10 22445:24 22471:23 22481:6 22542:11 22545:6	22461:12 22465:19 22470:13 22475:23 22493:22 22518:19 22526:20 22531:12 22533:7 22539:12	22504:12 22505:22 22506:20 22509:16	<b>14th</b> 22455:23 22556:5 22561:4	22430:16 22431:2 22549:7 22552:9
22539:6 we've 22443:10 22445:24 22471:23 22481:6 22542:11 22545:6 whatsoever 22489:11	22461:12 22465:19 22470:13 22475:23 22493:22 22518:19 22526:20 22531:12	22504:12 22505:22 22506:20 22509:16 22510:11 22511:9,21	<b>14th</b> 22455:23 22556:5 22561:4 <b>14:17</b> 22524:14	22430:16 22431:2 22549:7 22552:9 22570:9
22539:6 we've 22443:10 22445:24 22471:23 22481:6 22542:11 22545:6 whatsoever 22489:11 what's 22399:14	22461:12 22465:19 22470:13 22475:23 22493:22 22518:19 22526:20 22531:12 22533:7 22539:12 22540:23 22575:6,7	22504:12 22505:22 22506:20 22509:16 22510:11 22511:9,21 22514:15 22518:19 22521:25 22533:5,7	<b>14th</b> 22455:23 22556:5 22561:4 <b>14:17</b> 22524:14 <b>14:36</b> 22536:17 <b>14:56</b> 22548:10	22430:16 22431:2 22549:7 22552:9 22570:9
22539:6 we've 22443:10 22445:24 22471:23 22481:6 22542:11 22545:6 whatsoever 22489:11 what's 22399:14 22430:2,9 22455:5	22461:12 22465:19 22470:13 22475:23 22493:22 22518:19 22526:20 22531:12 22533:7 22539:12 22540:23 22575:6,7 work 22388:24	22504:12 22505:22 22506:20 22509:16 22510:11 22511:9,21 22514:15 22518:19 22521:25 22533:5,7 22548:15 22555:6	<b>14th</b> 22455:23 22556:5 22561:4 <b>14:17</b> 22524:14 <b>14:36</b> 22536:17 <b>14:56</b> 22548:10 <b>15th</b> 22561:5,9,18	22430:16 22431:2 22549:7 22552:9 22570:9 <b>480</b> 22531:8 <b>5</b>
22539:6 we've 22443:10 22445:24 22471:23 22481:6 22542:11 22545:6 whatsoever 22489:11 what's 22399:14 22430:2,9 22455:5 22466:24 22467:7	22461:12 22465:19 22470:13 22475:23 22493:22 22518:19 22526:20 22531:12 22533:7 22539:12 22540:23 22575:6,7 work 22388:24 22398:11 22426:16	22504:12 22505:22 22506:20 22509:16 22510:11 22511:9,21 22514:15 22518:19 22521:25 22533:5,7 22548:15 22555:6 22565:12 22570:25	<b>14th</b> 22455:23 22556:5 22561:4 <b>14:17</b> 22524:14 <b>14:36</b> 22536:17 <b>14:56</b> 22548:10 <b>15th</b> 22561:5,9,18 22565:14,15	22430:16 22431:2 22549:7 22552:9 22570:9 <b>480</b> 22531:8 <b>5</b> <b>5</b> 22425:7 22427:16
22539:6 we've 22443:10 22445:24 22471:23 22481:6 22542:11 22545:6 whatsoever 22489:11 what's 22399:14 22430:2,9 22455:5 22466:24 22467:7 22496:21 22505:22	22461:12 22465:19 22470:13 22475:23 22493:22 22518:19 22526:20 22531:12 22533:7 22539:12 22540:23 22575:6,7 work 22388:24 22398:11 22426:16 22440:9 22444:1,11	22504:12 22505:22 22506:20 22509:16 22510:11 22511:9,21 22514:15 22518:19 22521:25 22533:5,7 22548:15 22555:6 22565:12 22570:25 22573:7,8	<b>14th</b> 22455:23 22556:5 22561:4 <b>14:17</b> 22524:14 <b>14:36</b> 22536:17 <b>14:56</b> 22548:10 <b>15th</b> 22561:5,9,18 22565:14,15 <b>15:23</b> 22555:5	22430:16 22431:2 22549:7 22552:9 22570:9 480 22531:8 5
22539:6 we've 22443:10 22445:24 22471:23 22481:6 22542:11 22545:6 whatsoever 22489:11 what's 22399:14 22430:2,9 22455:5 22466:24 22467:7 22496:21 22505:22 22513:6,8 22528:18	22461:12 22465:19 22470:13 22475:23 22493:22 22518:19 22526:20 22531:12 22533:7 22539:12 22540:23 22575:6,7 work 22388:24 22398:11 22426:16 22440:9 22444:1,11 22445:10 22449:2	22504:12 22505:22 22506:20 22509:16 22510:11 22511:9,21 22514:15 22518:19 22521:25 22533:5,7 22548:15 22555:6 22565:12 22570:25 22573:7,8 <b>you've</b> 22388:19	14th 22455:23 22556:5         22561:4         14:17 22524:14         14:36 22536:17         14:56 22548:10         15th 22561:5,9,18         22565:14,15         15:23 22555:5         15:43 22567:3	22430:16 22431:2 22549:7 22552:9 22570:9 480 22531:8 5 5 22425:7 22427:16 22430:14,17 22531:3
22539:6 we've 22443:10 22445:24 22471:23 22481:6 22542:11 22545:6 whatsoever 22489:11 what's 22399:14 22430:2,9 22455:5 22466:24 22467:7 22496:21 22505:22	22461:12 22465:19 22470:13 22475:23 22493:22 22518:19 22526:20 22531:12 22533:7 22539:12 22540:23 22575:6,7 work 22388:24 22398:11 22426:16 22440:9 22444:1,11	22504:12 22505:22 22506:20 22509:16 22510:11 22511:9,21 22514:15 22518:19 22521:25 22533:5,7 22548:15 22555:6 22565:12 22570:25 22573:7,8	<b>14th</b> 22455:23 22556:5 22561:4 <b>14:17</b> 22524:14 <b>14:36</b> 22536:17 <b>14:56</b> 22548:10 <b>15th</b> 22561:5,9,18 22565:14,15 <b>15:23</b> 22555:5	22430:16 22431:2 22549:7 22552:9 22570:9 <b>480</b> 22531:8 <b>5</b> <b>5</b> 22425:7 22427:16

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**RealTime Transcriptions** 

**62.5** 22438:5,11,12 22526:21 22527:22 22528:1,12 22530:16

7 7 22525:23 22526:12,19 22526:20,24

9 **9** 22399:12,16 22422:8 22433:17 22470:21 22471:15 22579:21

65 22438:9,10

99 22445:20,20

Commission of Inquiry	Arbitration
	Page 19

