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 249 25 JUNE 2014 PAGES 31228 TO 31437



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	1	
Page 31228	-	Page 31230
1 [PROCEEDINGS ON 25 JUNE 2014]	1	the GW4 series as well as the GW8 series that deal with the
2 [09:12] CHAIRPERSON: The Commission resumes. Ms	2	expert process, the engagement with the SAPS, those haven't
3 le Roux.	3	been exhibited and I'm not sure if you'd like to continue
4 MS LE ROUX: Thank you, Chair. I'm not	4 5	the JJJ178 point –
5 sure if you'd like to start with swearing in Mr White or if	5	CHAIRPERSON: I think it will be sensible
6 we should just do all the housekeeping on exhibit numbers	6	to do that.
7 and then commence.	7	MS LE ROUX: 8, 9, 10.
8 CHAIRPERSON: It's probably sensible to	8	CHAIRPERSON: As far as I can remember in
9 do the housekeeping first.	9	the statement I read, are they not referred to in that way?
10 MS LE ROUX: Chair –	10	MS LE ROUX: Yes, they're referred to as
11 CHAIRPERSON: If you want me to do it the	11	GW6A or so, but Chair –
12 other way around I will.	12	CHAIRPERSON: Ja, so it will be sensible
13 MS LE ROUX: Chair, I'm in your hands.	13	to do that.
14 We provided you with the index of documents to be used.	14	MS LE ROUX: Right, so then what we would
15 The new exhibits that have been provided to you include an	15	need to do, because the 6-series takes up JJJ178.1 to point
16 index to the final statement, supplementary statement, and	16	6, JJJ178.7 would then be GW3, Mr White's CV. JJJ178.8
17 then an errata clarification document. So –	17	would then be the GW4 series. JJJ178.9 would be GW8A.
18 CHAIRPERSON: Well, the index wouldn't be	18	178.10 would be GW8B. 178.11 would be GW9, and 178.12
19 an exhibit, would it?	19	would be GW10.
20 MS LE ROUX: Chair, I don't know – we	20	CHAIRPERSON: Those documents have
21 will be referring to it. I'm not sure if you want it to be	21	already been so marked?
22 an exhibit or –	22	MS LE ROUX: Yes.
23 CHAIRPERSON: Alright, well let's make it	23	CHAIRPERSON: Yes, thank you. Is that
24 an exhibit. So he will be quadruple B, will he?	24 25	the housekeeping over now?
25 MS LE ROUX: Yes, Chair. I understood	25	MS LE ROUX: That is the housekeeping,
Page 31229		Page 31231
1 there was some talk of going AB, but if you want to do	1	Chair.
2 quadruple B –	2	CHAIRPERSON: You call the witness? Mr
3 CHAIRPERSON: I think if we introduce a	3	White, would you please stand? Are you prepared to take
4 new system then we'll only cause –	4	the oath or do you wish to affirm?
5 MS LE ROUX: Quadruple B –	5	MR WHITE: I'm prepared to take the oath.
6 CHAIRPERSON: BBBB1 is – how do I	6	CHAIRPERSON: Will you swear the evidence
7 describe it? Index –	7	you will give before this Commission will be the truth, the
8 MS LE ROUX: Will be the index to the	8	whole truth, and nothing but the truth? Will you please
9 final statement of Gary White. Then Chair, BBBB2 will be	9	raise your right hand and say, "I swear, so help me God."
10 the index to the supplementary statement. BBBB3 will be	10	GARY WHITE: I swear, so help me God.
11 the errata and clarifications document to the final	11	CHAIRPERSON: You may be seated, thank
12 statement of Gary White. BBBB4 will then be the	12	you. Yes, Ms le Roux.
13 supplementary statement of Gary White, and BBBB5 will be	13	EXAMINATION BY MS LE ROUX: Thank you,
14 the statement of Constable Molatowagae.	14	Chair. Mr White, if we could start –
-	15	CHAIRPERSON: I'm sorry, I'm reminded
15 CHAIRPERSON: How do you spell that?	15	
15CHAIRPERSON:How do you spell that?16MS LE ROUX:M-O-L-A-T-O-W-A-G-A-E.	16	that I must ask you your full names.
 CHAIRPERSON: How do you spell that? MS LE ROUX: M-O-L-A-T-O-W-A-G-A-E. CHAIRPERSON: So M-O? 		that I must ask you your full names. MR WHITE: Chair, my full name is Gary
 CHAIRPERSON: How do you spell that? MS LE ROUX: M-O-L-A-T-O-W-A-G-A-E. CHAIRPERSON: So M-O? MS LE ROUX: L-A-T-O – 	16	MR WHITE: Chair, my full name is Gary White. There are no middle names.
15CHAIRPERSON:How do you spell that?16MS LE ROUX:M-O-L-A-T-O-W-A-G-A-E.17CHAIRPERSON:So M-O?18MS LE ROUX:L-A-T-O –19CHAIRPERSON:L-A-T-O-W-G-A-E.	16 17	MR WHITE: Chair, my full name is Gary White. There are no middle names. CHAIRPERSON: No middle name?
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 15 CHAIRPERSON: How do you spell that? 16 MS LE ROUX: M-O-L-A-T-O-W-A-G-A-E. 17 CHAIRPERSON: So M-O? 18 MS LE ROUX: L-A-T-O – 19 CHAIRPERSON: L-A-T-O-W-G-A-E. 20 MS LE ROUX: G-A-E, correct. Then, 21 Chair, the final statement of Mr White has a number of 	16 17 18 19	MR WHITE: Chair, my full name is Gary White. There are no middle names. CHAIRPERSON: No middle name?
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	Page 31232		Page 31234
1	JJJ178.7, GW3, your CV attached to your final statement?	1	them in relation to a range of projects that they
2	MR WHITE: I have it, Chair.	2	undertake. I'm also deployable civilian expert for the
3	MS LE ROUX: Could you briefly summarise	3	British government stabilisation unit and again I provide
4	for the Commission the positions that you held in the	4	policing assistance to a range of products, and then within
5	police service of Northern Ireland?	5	the Unique group itself we have been successful in winning
6	MR WHITE: Mr Chairman, I was a police	6	a number of contracts relating to policing, including I
7	officer in Northern Ireland for just over 30 years, joining	7	designed and wrote a command course for the Malawi Police
8	in 1982 and retiring in April of 2012. Like everyone,	8	in dealing with election security and issue around public
9	police officer in the United Kingdom, all police officers	9	order and command.
10	join at the lowest rank, at the rank of constable. So I	10	MS LE ROUX: Mr White, in your CV I don't
11	served in every rank through that period from constable	11	think we have managed to cover it. I just wanted to ask
12	right up through to, in the last year of my service I was	12	you to highlight your UN, your current advisory roles
13	temporarily promoted to the rank of assistant chief	13	relating to the UN.
14	constable, and during the course of those 30 years I've	14	MR WHITE: In February of this year,
15	been involved in a variety of different roles, ordinary	15	Chair, I was invited to a meeting of experts in Geneva
16	uniform being patrol roles. I've been a police trainer. I	16	looking at the UN basic principles and use of firearms.
17	have been a police prosecutor in court, a number of	17	That's an ongoing process that I hope to be involved in.
18	specialist functions, including policy departments.	18	MS LE ROUX: And then Chair, Mr White's
19	The vast majority of my career has been spent in	19	academic qualifications and other training courses that
20	operational roles and a vast majority of that period was	20	he's done are set out in the CV.
21	spent in and around the North and West Belfast area,	21	CHAIRPERSON: There is one other point I
22	considered to be one of the most difficult policing	22	thought might be relevant. In his reply to certain
23	environments, certainly in Northern Ireland. I served in	23	questions posed to him by the SAPS he spoke about his role
24	North and West Belfast in most ranks, including I spent a	24	in compiling some of the most recent policy documents in
25	considerable period there as the district commander with	25	Northern Ireland, the revision of the one he mentioned in
1	Page 31233	1	Page 31235
1	overall responsibility for the area, and then I also spent	1	his initial, or in his final statement, about which he was
2	overall responsibility for the area, and then I also spent quite a large part of my time in the role that I performed	2	his initial, or in his final statement, about which he was asked, and he said something about that. So perhaps that
2 3	overall responsibility for the area, and then I also spent quite a large part of my time in the role that I performed in the last three years of my service, which was the chief	2 3	his initial, or in his final statement, about which he was asked, and he said something about that. So perhaps that could be important –
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		1	
	Page 31236		Page 31238
1	that hard drive, I made a judgment on the value of the	1	everybody you should deal with that now.
2	information within. I then put that into my provisional	2	MR WHITE: Chairman, again I'll be guided
3	statement and made certain, drew certain conclusions from	3	by yourself. Would you prefer me to read it word for word
4	that.	4	in the first instance, provide you an explanation, or would
5	I stress again I said in my provisional statement	5	you just like me to give you a sort of an overall
6	that it was in fact a provisional statement and that to a	6	commentary in relation to that paragraph?
7	large degree the views that I'm expressing were	7	CHAIRPERSON: Overall commentary will be
8	provisional. I was somewhat weary of providing that	8	enough.
9	statement because I was very conscious that I hadn't seen	9	MR WHITE: Okay, dealing with paragraph 6
10	all the evidence, but I was responding to a timeframe that	10	then the issue was in relation to this terminology, if you
11	I think was helpful to the Commission.	11	like, and paragraph 6 deals with I think this, the
12	MS LE ROUX: And Mr White, do you rely on	12	terminology where I talked about the configuration of the
13	that statement before the Commission?	13	wire after the movement of Nyala 6 and specifically states
14	MR WHITE: In effect that statement has	14	that the razor would, if anything, canalise protesters
15	been superseded, Mr Chairman, by my final statement.	15	towards the informal settlement. The reason I use the word
16	MS LE ROUX: Mr White, with respect to	16	canalise was because I was directly quoting the word that
17	your –	17	Lieutenant-Colonel Scott had used. I would have to say I
18	CHAIRPERSON: So I understand the – sorry	18	wasn't familiar with the word and I'm, you know, trying to
19	to interrupt. I understand that everything that's still of	19	be very sensitive to the fact that I'm in another part of
20	importance in that preliminary statement is incorporated in	20	the world. So I wasn't sure if that was a word that was in
21	the final statement, so we can read it there as it were.	21	common usage in South Africa and that –
22	Is that correct?	22	CHAIRPERSON: It isn't common usage as
23	MR WHITE: Yes, Mr Chairman, I think that	23	far as I was aware either, but it's dangerous sometimes to
24	my final statement effectively builds on my provisional	24	adopt words other people use if you're not quite sure how
25	statement because there's additional evidence obviously	25	they intend them to be understood, but in any event, you
	Page 31237		Page 31239
1	that I've been made aware of. I'm confident that I don't	1	Page 31239 can just clarify the point and we can proceed.
1 2		1 2	
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1	Page 31240 inside of the wire, breach the wire where the police had	1	Page 31242 MS LE ROUX: And then finally, Mr White,
	set up their neutral zone for the protection of their	2	the clarification set out at paragraph 8.
2	officers and the media, but the police had no objection and	2	MR WHITE: Yes, again Mr Chair, I'm
	no difficulty to you walking around the outside of that	4	grateful for you asking me to clarify this, and this is
4 5	wire, which seemed to be pointing towards the informal	4 5	very much just an issue of misinterpretation from the point
6	settlement.	6	of view that I'm absolutely totally convinced that this
7	CHAIRPERSON: Do I understand the point	7	operation was set up in terms of the dispersal with the
	· · · · · · · · · · · · · · · · · · ·		Public Order Police going forward. It says that in all the
8 9	you're making to be this, that you weren't suggesting that that was the police's intention that the people should go	8 9	planning documents and I make numerous references to that
9 10		9 10	in my statement.
11	there. What you were suggesting and saying was that the objective effect of the change might have conveyed such a	11	However, in the plan that Lieutenant-Colonel
12	message to the strikers even though that wasn't the	12	
13	intention of the police to convey that message? Is that an	13	Scott provides he then says that they will be backed up by a TRT line and then followed by a second line, which is the
14	accurate summary of what you say?	14	NIU/STF. My point in relation to this paragraph was that
15	MR WHITE: Chairman, you've summed it up	14	if the police were engaged consistent with Lieutenant-
16	far better than I could, exactly.	16	Colonel Scott's plan that the POP police, the Public Order
17	MS LE ROUX: Then Mr White, the point	17	Police might retreat to their Nyalas, I then said and then
18	that you clarify in paragraph 6, if you could summarise	18	they would be confronted by not one but two lines of police
19	that for the Chair?	19	with the TRT being the front line. In other words once the
20	MR WHITE: Yes Chair, in my statement I	20	POP had moved away then the TRT would be in the front line
21	had made the point that given the position of a number of	21	followed by the – that's the point that I was making.
22	the bodies it would seem to me that there was no reasonable	22	MS LE ROUX: Thank you, Mr White. If we
23	explanation as to how those people would have been - other	23	can then just clarify for the record the status of the
24	than the fact that they were shot at that particular point	24	different annexures to your statement. Am I correct that
25	and clearly were towards the back of the crowd, I'm	25	GW3, your CV, and GW10, your responses to the evidence
	Dama 210/1		
	Page 31241		Page 31243
1	conscious of the comments that you in particular Chair have	1	leaders' interrogatories, were documents that you produced?
2	conscious of the comments that you in particular Chair have made with regards to the fact that people may have been	2	leaders' interrogatories, were documents that you produced? [09:31] MR WHITE: That's correct, Mr Chairman.
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1	Page 31244 MS LE ROUX: Mr White, if we then turn to	1	Page 31246 yours?
2	your supplementary statement which has been marked as BBBB4	2	MR WHITE: Absolutely, Chair. I've been
3	 Chair, the purpose of the statement is set out, page 1 	3	provided with factual evidence by my legal team from which
	paragraph 1.1.1 where Mr White sets out the four reasons	4	I have drawn my own conclusions.
5	why he prepared the supplementary statement. Mr White, do	5	MS LE ROUX: Mr White, if we could then
6	you have any changes to your supplementary statement that	6	move into your experience as a public order officer and
7	you'd like to make?	7	commander. Chair, for the record this is set out in part 1
8	MR WHITE: No, Mr Chairman.	8	of Mr White's final statement. Mr White, if we could
9	MS LE ROUX: With respect to the	9	briefly identify some of the characteristics of your public
10	supplementary statement, could you briefly explain for the	10	order policing experience, what experience have you had of
11	Chair how you considered the evidence that forms the basis	11	policing large crowds numbering in the 100s or 1 000s?
12	of the supplementary statement, what you considered, what	12	MR WHITE: Chair, unfortunately despite a
13	you didn't?	13	relatively successful peace and political process in my
14	MR WHITE: Again Chair, I was basically	14	country, we still experience large scale public order, so
15	asked to consider new evidence which was sent to me in an	15	although during the early part of my career whilst the
16	electronic file and my legal team helpfully ordered that	16	political conflict was ongoing in Northern Ireland we also
17	into various folders but in the first instance I was	17	experienced large scale public order, to a large extent the
18	basically invited to review all of that evidence. However,	18	hidden story of Northern Ireland –
19	they had indicated to me that this was not all of the	19	CHAIRPERSON: Sorry, when you say public
20	additional evidence which had been submitted to the	20	order I take it you mean public disorder?
21	Commission since the submission of my informal statement	21	MR WHITE: Sorry, apologies Chair, it is
	but it was an attempt to direct me towards the more salient	22	I suppose a police term, public disorder is absolutely what
23	points so that I could update my evidence to the Commission	23	I'm talking about.
24	because it had been some considerable time obviously since	24	CHAIRPERSON: Just to make an attempt to
25	I submitted my final statement.	25	make sure I was following, I should imagine.
	Page 31245		Page 31247
1	MS LE ROUX: So Mr White, you have not	1	MR WHITE: Apologies. Yes, absolutely,
2	looked at all evidence that came in since October 2013 in	2	public disorder. So one of the hidden stories I suppose
3	compiling your supplementary statement?	3	from the international news in relation to Northern Ireland
4	MR WHITE: That would be correct, Mr	4	is the continuance of on-street disorder which often will
5	Chairman.	5	be very large scale, numbering quite frequently crowds in
6	MS LE ROUX: And Chair, the index to the	6	their 100s and often crowds in their 1 000s and also, as I
	supplementary statement that we've now marked as BBBB2 sets	7	say, very serious in terms of the level of violence that
	out essentially the key scenes in Mr White's final	8	the two communities will direct towards each other and also
	statement that he updates.	9	direct towards the police.
10	CHAIRPERSON: Please repeat the last	10	MS LE ROUX: Mr White, could you give
	sentence, I didn't hear you?	11	some detail with respect to the types of weapons that the
12	MS LE ROUX: Chair, I was just –	12	crowds you policed would carry and use?
12 13	MS LE ROUX: Chair, I was just – CHAIRPERSON: Adv Hemraj was putting the	12 13	crowds you policed would carry and use? MR WHITE: Basically running from the
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		1	
1	Page 31248 device which might be a commercially bought firework which	1	Page 31250 will be at Ardougne in North Belfast and I could almost
2	has then been wrapped with nails or other types of shrapnel	2	tell you exactly what time it's going to be. So I am
3	to a more sophisticated blast bomb which might be a piece	3	conscious of the fact –
4	of copper tubing with some type of black explosive powder	4	CHAIRPERSON: To commemorate a battle at
4 5	inside, again packed with shrapnel. The shrapnel might be	5	the end of the 17th century?
6	nuts and bolts, it might be metal shavings, it might on	6	MR WHITE: 1690.
7	occasions be small pennies which obviously create damage	7	CHAIRPERSON: Yes.
8	which they explode, moving through again into, on	8	MR WHITE: I congratulate you on your
9	occasions, military grade hand grenades and then also	8 9	knowledge of history, Mr Chairman. So I'm very conscious
9 10	firearms, hand held firearms, AK47s. And also then at the	9 10	of the fact that I've be asked a question around
11	very upper scale I have dealt with public order situations,	11	spontaneous incidents but I'm setting the scene in the
12	public disorder situations, apologies Mr Chairman, whereby	12	context that a lot of our public disorder incidents can be
13	we certainly have had intelligence to say that munitions	13	anticipated and will be in relation to those types of
14	such as RPG7s have been present in the area. Now that's	14	incidents which have actually been notified and the police
14	not likely to be used by police on a shield line or on	14	can prepare for. However, additionally we will also have
16 17	dealing with public disorder but quite often the nature of these operations and the scale of these operations means	16 17	numerous examples of spontaneous public disorder that we need to respond to. Sometimes those might be relatively
17	that we bring a lot of police officers to a particular	17	minor skirmishes which might be able to be resolved by a
19	area. We're fortunate in Northern Ireland that we still	19	small number of police resources being sent to the scene.
20	have, our traditional vehicle that we use would be an	20	Quite often they tend to happen as a result of, and
20	armoured Land rover so therefore the AK, the RPG7 would	20	particularly in north and west Belfast, where – forgive my
22	clearly have been intended to target those. I stress that,	22	use of terminology but the sectarian geography. Belfast is
23	you know, I'm actually talking about a relatively recent	22	still a very segregated city, we still have a lot of what
23	incident in the last number of years which was policed by,	23	we call peace lines, perhaps a bit of an oxymoron but these
25	on the basis of intelligence as opposed to, the RPG7 wasn't	25	are large walls that are built between the two communities
20		20	
	Page 31249		Page 31251
1	Page 31249 actually used.	1	Page 31251 to keep the two communities, Catholic and Protestant,
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	an area about 40 miles from Belfast called Drumcree. It's	1	country – I've had people, you know, who might be standing
	a small rural town, it became very famous around the scene	2	one or two people behind the person I'm trying to negotiate
	of a particularly contested period as I've been referring	3	with not only telling me he knows where I live but telling
	to and this is where a parade marches from a rural town	4	me where I live and telling me where my children go to
	called Portadown up to this very small rural hamlet called	5	school and obviously there's a very serious implied threat
	Drumcree to attend a church service and then it's supposed	6	within that. So in terms of threats, yes, absolutely –
	to come back around almost the securest route. The inward	7	often and regularly. In terms of threats in relation to
	route, the return route basically takes it through a	8	actually, you know, attempts to kill or injure police
9	Catholic nationalist area and in and around the early 1990s	9	officers, I've alluded to some of this earlier on but
10	it became very controversial, the parade was banned	10	numerous occasions where we've actually faced gunfire in
11	initially by the police because the police had the	11	addition to all of the other issues I'm talking about like
12	authority to do that in those days. The situation has	12	Molotov cocktails, heavy masonry – and actually it's
13	changed considerably since then, there's now a body called	13	interesting that a debate that goes on within the police
14	the Parades Commission who make these decisions but that	14	service or the police service that I worked in around how
15	particular parade over a number of six, seven, eight years,	15	the police respond to some of these threats, there's
16	became very much, was probably the most controversial one	16	sometimes a frustration by more junior officers who
17	that we were dealing with, which required police resources	17	therefore in public disorder situations are further forward
18	to attend that incident from all across the country over a	18	and obviously on the front line, that they sometimes say
19	number of years and quite often that policing operation	19	that some of the more senior officers, particularly people
20	would last a number of weeks. Very rural setting, very	20	who would be in control rooms and not necessarily ever on
21	open farmland type area where crowds were being contained	21	the ground, obviously when we talk about gunfire that
22	by the use of razor wire and that type of thing – similar,	22	indicates a very, very serious threat that needs to be
23	to some extent, to a limited extent I accept, to some of	23	responded to in a certain way. Blast bombs, similarly, but
24	the images I saw in relation to the evidence that is	24	you know Molotov cocktails – however, you know what's
	currently before the Commission in relation to how razor	25	interesting is that the police officers who are in the
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1	wire has been used to barrier crowds, if you like.	1	front line, you know, will actually talk about the level of
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	Page 31256		Page 31258
1	that takes part in the parade is called the Orange Order.	1	commandeering has facilities such as CCTV etcetera,
2	I'll not bore you with the details of the Orange Order but	2	etcetera, etcetera. The policy that we have says both of
3	how they dress you know, and this is very traditional,	3	those roles the person needs to be located where they
4	ceremonial type dress, is you know they'll have bowler	4	physically can exercise that function of command so it's
5	hats, it almost looks like a banker going to the city in	5	not specific in relation to whether he should be at the
6	London, you know, with a bowler hat and a suit and then	6	scene or whether he should not.
7	they wear this, what they call sash but the people at the	7	The bronze commander then operational will be a
8	front of the parade will carry ceremonial swords but it is	8	person on the ground in charge of resources. I have
9	a sword and we've had instances whereby there's been	9	numerous experience in operating all three of those roles.
10	disorder on parades where these ceremonial swords have been	10	We talk about these roles or these positions as being role
11	used to attack police officers on numerous occasions, but	11	related, not rank related. So if I can explain. In a
12	also then much more crude devices – baseball bats with	12	large scale anticipated public disorder situation such as
13	nails hammered through them, pieces of metal that have been	13	for example the 12th of July, with all that's going to
14	sharpened and then thrown at police officers. Sharp-edged	14	happen in Belfast the gold commander will be the assistant
15	weapons in terms of, I'm not sure, I've seen a lot of	15	chief constable and the silver commander will probably be
16	security since I've come here to South Africa around	16	at the level of chief superintendant. However, if you had
17	people's homes but we have security fences where you'll	17	a relatively small football match that's going on somewhere
18	have a wall and then you'll have a device at the top which	18	on a different day the gold commander might be the chief
19	is sort of spikes which tumble, so even if someone was to	19	inspector with the silver commander being an inspector and
20	climb up the wall and try and grab these spikes to try and	20	so forth and so on. It's role related, not rank related
21	get over, you know, it's a series of individual pieces of	21	consistent with the nature of the operation. So therefore
22	device which has got lots of spikes on it, so when you pull	22	I have been gold in relation to lots of quite serious
23	it, it tumbles and spins so therefore you can't climb up on	23	public disorder incidents. I have been silver in relation
24	it. On a number of occasions where those have been removed	24	a lot of very serious public disorder incidents. And also
25	from security fences and have actually been thrown from	25	I have been bronze.
	Page 31257		Page 31259
1	Page 31257 rooftops down at police lines, so again large pieces of	1	Page 31259 When I was the chief superintendant, the district
1 2		1 2	5
	rooftops down at police lines, so again large pieces of		When I was the chief superintendant, the district
2	rooftops down at police lines, so again large pieces of metal this size protruding in a number of, at a number of	2	When I was the chief superintendant, the district commander for North and West Belfast typically my role
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1		1	
1	Page 31260	1	Page 31262
1	that we had a serious public disorder, anticipate a public disorder situation. I got a phone call from the silver	1	objectives. That's our planning process, so as I say I was
2 3	commander of that operation the next day asking me to meet	2 3	the district commander in North and West Belfast for the best part of five years. So across all those five the
4	him for a cup of coffee when he had said to me the Chief	4	majority of the times, for the serious incidents that we're
4 5	had been with him on that night and the Chief had	4 5	
	-		focusing on at this moment in time I would have been
6	specifically requested that for the following event which	6	silver. So therefore I would have been responsible for
7	was coming up the following week, that he wanted me on the	7	constructing the tactical plan. I didn't do that alone,
8	ground. So as assistant chief constable I also performed a	8	that was a planning process involving a team and depending
9	role of bronze commander on the ground which was unusual in	9	on the nature of the operation. It might have involved one
10	that as an ATC as bronze commander, the silver commander	10	planning meeting, it might have involved numerous planning
11	for the operation who was a chief superintendant ranked and	11	meetings with various amendments being made to the plan
12	then the gold commander would have also been at ATC. But I	12	consistent with the type of operation that we were dealing
13	stress it's role related, not rank related, so therefore I	13	with and the type of threat that we were dealing with. But
14	was working under the authority of the silver commander.	14	again just to reiterate gold, silver and bronze involvement
15	CHAIRPERSON: Sorry before we move on	15	in planning at all of those levels but particularly at the
16	unless you're going to deal with this later in your	16	level of silver which is around providing a tactical plan
17	evidence, in which case you don't have to answer it now,	17	for numerous operations.
18	but you've read enough of the material relating to what at	18	MS LE ROUX: Mr White, to complete the
19	Marikana to understand who was performing what function.	19	process as we understand it, what role have you played in
20	Now we had General Mpembe as the overall commander and we	20	briefing police members who will deployed on an operation?
21	had Brigadier Calitz as the operational commander. So	21	MR WHITE: Every single operation that we
22	would Brigadier Calitz have been the equivalent of bronze,	22	plan for then requires to be briefed. I think I alluded to
23	is that right?	23	this in my statement but unfortunately I can never recall –
24	MR WHITE: I think if you would ask me to	24	in my statement I make a quote, my apologies, I can never
25	draw a comparison with, Mr Chairman, I think, you know, Mr	25	remember the source of this but it goes something along the
	5		
1	Page 31261 Calitz is probably operating in the bronze role and Mr	1	Page 31263
1	Calitz is probably operating in the bronze role and Mr	1	lines of "If the people at the front end don't know the
2	Calitz is probably operating in the bronze role and Mr Mpembe in the silver role and then I would say General	2	lines of "If the people at the front end don't know the strategy then there is no strategy." So therefore, you
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1	Page 31264	1	Page 31266
1	apologies the numbers aren't right, 22, 23 constables, 4 or 5 sergeants and one inspector. That's what we call a	1 2	lot of experience in dealing with spontaneous public disorder type situations, there you don't have the luxury
2			
3 4	tactical support group. The TSG, those are the people that routinely are involved in the sheet lines that I referred	3 4	of having a pre-brief two days before. You don't even have the luxury of having a brief potentially even before you go
4 5	to earlier on.	5	to the scene. But, you know, at some point if I am the
6	So at the pre-brief the inspector of those units	6	commander I need to think about what it is that I'm trying
7	that are going to be on duty on the Saturday would all	7	to achieve, how I'm trying to achieve it. The things that
8	attend the pre-brief. The force lawyer would attend that	8	I don't want to happen, the types of sort of tactics that I
9	meeting, communications department would attend that and	9	don't want the police to use and that I do want to use.
10	then we'll also have an operational briefing on the morning	10	And then have some means to communicate that to people
11	of the event just before we go to do whatever it is we're	11	whether we get onto the scene and say for example, because
12	going to do. But basically, you know, no ground operation	12	typically spontaneous public disorder will be as a result
13	takes place without a proper briefing. If the operation is	13	of the two communities clashing as I described earlier on.
14	one that we anticipate would be likely to have serious	14	So on the way to the scene the instructions to the police
15	public disorder, particularly where we anticipate the	15	officers will be unit A and unit B will basically dismount
16	likelihood of higher levels of force by the police, it's	16	from their vehicles and face off people on the Catholic
17	good practise and it would often happen that those	17	side of the equation if you like. And units D and E will
18	briefings would be video-recorded so that we have a record	18	do likewise on the Protestant side until we get the
19	of what the officers were being told. Not just in relation	19	situation stabilised and we think then what we're going to
20	to their actual deployments but sometimes the officers will	20	do. And by process of ongoing communication briefing the
21	complain about this because they get a bit fed up with it,	21	officers as to exactly what it is that you want them to do
22	but we go over all of the issues in relation to human	22	so that they can do what you want.
23	rights, use of force, all of that, you know, because it's	23	COMMISSIONER HEMRAJ: Mr White, is your
24	really important.	24	bronze commander and the head of your POPs team, are they
25	Also if the operation is as I've described it	25	part of the planning?
1	Page 31265	1	Page 31267
1	would be good practise and fairly regular that we would	1	MR WHITE: Absolutely. Planning
2	would be good practise and fairly regular that we would invite a human rights advisor to the policing board. The	2	MR WHITE: Absolutely. Planning particularly for the large operations will involve a number
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		I	
1	Page 31268	1	Page 31270
1	It is the role of the commander to decide what tactics that	1	and we look at what the best option is and that's recorded
2	we're going to use. But effectively that person provides a	2 3	and the rationale for that. We also record the rationale
3 4	menu and we talk through the advantages and the disadvantages. I'm more than happy to give you an example	3 4	as to why we have excluded it. So in the example that I've just given you the record would show that the tactical
4 5	of how sometimes I think the tactic advisors get it wrong.	4 5	advisor suggested water canon for very good reasons and the
6	If you want me to by way of explanation. CHAIRPERSON: If it's a short explanation	6 7	we would record the reasons as to why that wasn't going to be the case. Tactical advisors would also be used in live
7	· ·		
8 9	you can give it but if it's a long one I don't want to hear it.	8 9	time operations. As the bronze commander on the ground I
9 10		9 10	might have a tactical adviser with me simply because, you know, you can't be everything. You know Jack of all
10	MR WHITE: A double planning situation in relation to a rural incident. It was a small rural plan,	11	trades, so when I'm dealing with even an operation that's
12	they were dealing with a controversial parade which is	12	planned, things don't always go according to plan. In a
13	likely to include a sit down protest. So people opposing	13	dynamic situation you know you have to be able to respond
14	the parade were going to sit down in the middle of the	14	to that, so again the tact advisor might say to me, Sir,
14	road. I asked a question of the person, I wasn't actually	15	this group have now moved across here. Perhaps if you
16	involved in the planning at this stage, I was asked by	16	thought about putting two units there and if we brought the
17	assistant chief constable to almost perform a mentoring	17	water canon here. I might say that's a very good idea,
18	role. So this was a check up. As a result of the outcome	18	that's great, that's exactly what we're going to do. And
19	of this I ended up involved in the planning process. So I	19	virtually I might say no I don't want the water canon
20	asked him what he was going to do about this sit down	20	brought forward because of such and such. So we would have
21	protest and he said we'll send people forward and we'll try	21	a variety of people including the force lawyer, including
22	and negotiate with the people and whether or not we can get	22	medium communications department, all involved in the
23	them to move. Okay that's great, that's fine. What if	23	planning process from the point of view that everyone has
24	that doesn't work?	24	something to contribute, to think about. You know, the
25	I've received advice from the tactical advisors	25	various aspects of the plan.
	Page 31269		Page 31271
1	that said in terms of a continuum of force the next lethal	1	MS LE ROUX: Mr White, have you had
2	that said in terms of a continuum of force the next lethal level of force would be to bring the water canon in fusel	2	MS LE ROUX: Mr White, have you had experience of multi-day events. A protest that continues
2 3	that said in terms of a continuum of force the next lethal level of force would be to bring the water canon in fusel mode. The water canons that we have are very sophisticated	2 3	MS LE ROUX: Mr White, have you had experience of multi-day events. A protest that continues over more than 24 hours?
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	Page 31272		Page 31274
1	MS LE ROUX: Mr White, in your evidence	1	with dealing with violence as a result of football which
2	this morning you've described with respect to planning and	2	would be widely known also within the UK.
3	briefing the paper trail and recording the decision making.	3	CHAIRPERSON: The supporters of various
4	Could you give a sense to the Commission of your	4	football clubs might after a particularly acrimonious
5	Participation in these accountability frameworks	5	football match and perhaps a fair amount of liquor had been
6	that you have in Northern Ireland?	6	consumed, there might be trouble, I can understand that.
7	MR WHITE: Chair, not just me but I've	7	The reason that I'm asking this question is, as you will
8	heard lots of people quote all the time that the police in	8	understand from what you've read this order that arose in
9	Northern Ireland are probably the most overseen and	9	the case we're dealing with arose in an industrial context
10	accountable police services in the world and maybe we're	10	in connection with what we call an unprotected strike, and
11	not, if they are not, are no longer, apologies. Maybe	11	although to some extent it appears, although this may be a
12	they're not but I'm sure they're amongst the most overseen	12	matter of controversy, there was a certain amount of
13	and accountable police services in the world.	13	antagonism directed towards the police because of the role
14	[10:11] So when we talk about the planning process we are	14	they were playing, but they were effectively interposing
15	conscious of the fact that all of the decisions that we	15	themselves, not between two sectarian factions or even to
16	make might at some stage be challenged and quite rightly so	16	football club supporting factions, but between the strikers
17	at the end of the day with the Police Service, you know	17	and the employer. Now have you had any experience of
18	with the emphasise being on service, providing a service to	18	giving that kind of disorder in your alignment?
19	the public, but there are ranges of accountability	19	MR WHITE: I mean, I have certainly
20	mechanisms that the Police Service is not allowed to	20	policed industrial disputes but I would state very quickly
21	respond to, the policing board have already mentioned it	21	for the record you know, they have never sort of escalated
22	and the police ombudsman's office which I think would be a	22	into anything other than maybe skirmish in relation to
23	sister organisation to IPID here in South Africa, the Human	23	violence where people are picketing outside, you know the
24	Rights Commission, Her Majesty's Constabulary, etcetera,	24	premises of a factory or something and there may be very
25	etcetera, etcetera. And even on occasions I have been	25	low levels skirmishes. So I make that point very clearly,
	Dogo 21272		Dago 21275
1	Page 31273 interviewed, sometimes at length by the Health and Safety	1	Page 31275 but I would say that often we are dealing with a situation
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Marikana Commission of Inquiry

Pretoria

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1	Page 31276	1	Page 31278
1	the union communities, nothing to do with the Maximus	1	commonality. The second issue I suppose is that if you
2	community. There is no current strike as such, it is just	2	look at my provisional statement and my final statement,
3	between the police and the union as community. They are	3	you know the documents where I say, this is what I think
4	annoyed, upset and responding back again to the, if you	4	and I draw conclusions, the areas that I've handed the draw
5	like and the police [indistinct].	5	things, I'm talking about things like Intelligence
6	CHAIRPERSON: Thank you. Sorry, Ms Le	6	briefing, command and control, the planning process itself
7	Roux, but I wanted to get clarity on that before you moved	7	and issues of accountability.
8	on to your next point.	8	So you know it is not situationally specific as
9	MS LE ROUX: Of course and, Chair, the	9	such, you know I'm wondering does it matter whether or not
10	screen behind you is flickering and it is rather	10	you're dealing with a wide open space in sort of rural
11	distracting. We're told that they need to turn it off, but	11	South Africa, or you're dealing with the build-up of an
12	can only do that in the break, so I'm not sure if we could	12	environmental in the middle of Belfast or wherever it is in
13	take our first break so that we can –	13	relation to the issues that I talk about and I draw some
14	CHAIRPERSON: So why don't take the break	14	conclusions from. Well, that will be for you to judge, Mr
15	now then? I was proposing to take the first break at half	15	Chairman, in relation to the value of my evidence as to
16	past ten, but if it would –	16	whether or not it has got any value, but I do think for the
17	MS LE ROUX: Well, Mr White, is the	17	reasons I've said that it does.
18	screen –	18	MS LE ROUX: Mr White, if we could then
19	CHAIRPERSON: - to solve this problem –	19	deal with the question of the policy framework and you
20	MS LE ROUX: - distracting you or can we	20	mentioned you reviewed the documents. Chair, for the
21	carry on for another 15 minutes?	21	record this is page 11, part 2 of Mr White's statement. Mr
22	MR WHITE: It is not distracting me at	22	White, could you summarise both the exercises that you
23	all, Chair.	23	conducted, what you reviewed and then what conclusions you
24 25	MS LE ROUX: Okay. CHAIRPERSON: Well, if it is not	24 25	reached overall? This is page 11, part 2 of your final statement.
20		25	כומוכוווכווו.
	Page 31277		Page 31279
1	Page 31277 distracting you either, Ms Le Roux, I suppose we can carry	1	Page 31279 MR WHITE: Yes, Chair, as I said the
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2 3	distracting you either, Ms Le Roux, I suppose we can carry on? MS LE ROUX: Then we'll carry on. Mr	2 3	MR WHITE: Yes, Chair, as I said the initial part of this process was that my legal team supplied me with a hard drive which came through the post
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1	Page 31280 CHAIRPERSON: I don't know if the	1	Page 31282 proposing to ask you those questions, I just wanted to know
2	photographer heard me, did you hear me? Please stop taking	2	if you've read it. In view of what you've told me I'll be
3	photographs, it is very distracting and disturbing, it	3	grateful if you would study that overnight and if you're
4	upsets our concentration, you can do so during the	4	able to give us some assistance on the point that I've
5	adjournment. Yes, please carry on, Mr White.	5	referred to tomorrow, you will then be able to do so.
6	MR WHITE: So basically the documents	6	MR WHITE: I'll be very happy to try.
7	that I've referred to are in paragraph 2.2.2, I list them	7	CHAIRPERSON: It refers to, particularly
8	and made some comments in relation to them. Do you want me	8	to the command to shoot in particular circumstances where
9	to give -	9	you have a crowd of people you are approaching, there are
10	MS LE ROUX: Yes, Mr White, your overall	10	some of them obviously more dangerous than others and how
11	conclusion as to the policies and standing order frameworks	11	that kind of situation is dealt with and there are a number
12	that governs policing and Public Order Policing in	12	of issues that I'll be grateful if you could deal with them
13	particular in South Africa?	13	in the course of your evidence. So it depends to some
14	MR WHITE: I have a number of brief	14	extent on the interrelation between standing order 251,
15	points on that, first of all I've already commented in	15	part 3 and standing order 262. It also deals with the
16	relation to the commonality and secondly, the fact that, I	16	situation we have here where the evidence is that as a
17	think I've commented in my statement that I don't think it	17	number of people approach the police line, no order is
18	is the policy framework of itself contributed to the tragic	18	given to shoot but the individual policemen are given what
19	outcome of the events and that I think the policy framework	19	is called, I'm not sure it is correctly but it is called a
20	differs slightly from the policy framework in the UK and	20	discretion to fire, which in some cases then is followed by
20	you know it might be potentially enhanced in certain areas	20	an order to cease fire, how that works. I can understand
22	around the decision making models and frameworks and a	22	one person or two people being approached by an assailant,
23	number of sort of technical aspects, but overall you know	23	having to defend themselves but where you have 50 or 60
23	it seems to be a robust policy framework which, as I say,	23	people who are being approached, all of them potentially
25	when I read through it you know I was struck by the	24	targets for violence, how that situation is appropriately
20		20	algets for violence, now that station is appropriately
	Page 31281		Page 31283
1	Page 31281 commonality with the policy framework that I will used to	1	dealt with but anyway, I'm not expecting you to deal with
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1	Page 31284 MR WHITE: Firstly, Chair, my apology in	1	Page 31286
1	MR WHITE: Firstly, Chair, my apology in relation to my reference for keeping the peace as opposed	1 2	MR WHITE: Sorry, and the last point – CHAIRPERSON: Then I will ask you
2	to APP in my statement. How this situation came about was	2	something about it –
4	that when I first started to engage with the evidence I had	4	MR WHITE: - is basically that the email
5	an informal conversation with a previous colleague just	5	from the police college which informed my response to this
6	around Police Public Order generally, this is my fault and	6	question basically, you know clarifies the position that
7	not his, but certainly during that conversation I've not	7	there is nothing that I've said in relation to keeping the
8	been aware of a change in process. Keeping the peace is a	8	peace which APP has not changed in terms of, you know it
9	document, particularly the 2010 version that I had an	9	had a dramatically overall, this policy because it wasn't
10	involvement in and the development in writing off a	10	fit for purpose, so whatever, I'm absolutely confident of
11	document that I'm very familiar with and therefore I	11	that fact, and also you know if it is required and if it is
12	engaged on the process of providing my provisional	12	helpful to you, Mr Chairman, I have made a query with the
13	statement, subscribing my final statement on the basis of	13	college police and I'm sure they could write to you
14	using that as the police framework. It was only, I was	14	personally and to give you assurance of that.
15	made aware by the SAPS legal team relatively recently	15	CHAIRPERSON: Well, I suppose the
16	around this issue of APP, and then, I must say I was	16	practical way to deal with it, if APP is available on the
17	horrified and I went back to check it.	17	web we could download it and if necessary extract it to be
18	I actually took the liberty of speaking to the	18	made exhibits, if some of the parties wish to do that or we
19	police college themselves and having an email back from	19	ourselves and studying it if we think it is necessary. The
20	them clarifying the position which actually, the email	20	"keeping the peace" document, is that also available on the
21	informs the response in red. So in brief points basically	21	web?
22	it is to say this, that it wasn't as a result of the 2011	22	MR WHITE: It is my understanding it is
23	riots and keeping the peace was decommissioned in order to	23	still available.
24	move to APP. APP is effectively a sort of a bureaucracy	24	CHAIRPERSON: So one could compare the
25	process. If you look at the document, keeping the peace	25	documents to see if there are or if it is suggested that
	Dago 21295		Dago 21207
1	Page 31285 and I actually have it here, at the back there is a list of	1	Page 31287 there are material changes, but if the doctrine in "keeping
1	Page 31285 and I actually have it here, at the back there is a list of references and you will see the list of references. It is	1 2	Page 31287 there are material changes, but if the doctrine in "keeping the peace" is still the current doctrine in APP, well, then
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	Page 31288		Page 31290
1	CHAIRPERSON: I think that would actually	1	come through as yet and we would rather prefer to have the
2	be helpful. There are some people who can read these	2	entire document than just a part of it for our purposes and
3	things on their computer screen and other people with a	3	for the purposes of Mr White to comment.
4	slightly different background have some difficulty, and I'm	4	MS LE ROUX: Chair, I'm sure – we'll ask
5	one of those.	5	the SAPS legal team. I'm sure we'll be able to get the
6 7	MS LE ROUX: Yes. CHAIRPERSON: So I'd prefer a hardcopy,	6 7	complete document. CHAIRPERSON: Yes, the parts that I read,
, 8	if -	8	which I was interested to hear discussed in the context of
9	MS LE ROUX: Yes.	9	comparison with 262, are contained in ZZZ8, which is an
10	CHAIRPERSON: - I'm not being unduly	10	exhibit before us. But we don't know what preceded it and
11	demanding.	11	we don't know what the current status is of that Standing
12	MS LE ROUX: Mr White, with respect to	12	Order. I assume it's still standing, as it were, but
13	the comparisons between "Keeping the peace" and APP, you've	13	that's a matter the police will be able to help us on. But
14	done that exercise, have you not? Where you compare the	14	I'm more interested in the principles contained in both
15	content of "Keeping the peace" to APP.	15	documents and how they interrelate to each other. Anyway,
16	MR WHITE: That's correct, since this	16	we'll take the 15-minute adjournment starting now.
17	matter was brought to my attention obviously I wanted to	17	[COMMISSION ADJOURNS COMMISSION RESUMES]
18	ensure that I at least satisfied myself before I tried to	18	[10:57] CHAIRPERSON: The Commission resumes.
19	satisfy yourself. So yes, I have actually created a	19	Has the problem been sorted out?
20	document myself where I've gone through the bits of	20	MS LE ROUX: They seem to still be in
21	"Keeping the peace" that I make reference to within this	21	progress, Chair, but I'm told that they – so at the moment
22	statement and then as far as possible I've done a read	22	the screen is just not operating, which is better than -
23	across to APP, you know and I'm satisfied but I appreciate	23	CHAIRPERSON: Alright. I must remind
24	that's for other people to judge that, you know, the	24	you, Mr White, you're still under oath. Yes, Ms Le Roux?
25	central tendency of my evidence based on "Keeping the	25	GARY WHITE: (s.u.o.)
	Page 31289		Page 31291
1	Page 31289 peace" and that these concepts are reflected if not word	1	Page 31291 EXAMINATION BY MS LE ROUX (CONTD.):
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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	peace" and that these concepts are reflected if not word for word, which they are on occasions, then very close to it because as I say part of the process of APP was to try and sort of reduce bureaucracy and therefore there might be a short and sharper version of how certainly principles are laid out. MS LE ROUX: And Chair, for your assistance the majority of Mr White's reliance on "Keeping the peace" is in part 2 of his final statement. CHAIRPERSON: I understand. Would this be an appropriate for us to take the short adjournment? MS LE ROUX: Yes, Chair. CHAIRPERSON: We'll adjourn for 15 minutes. Before – the exhibit to which I referred is in the triple Z-series in relation to Standing Order 151. MS PILLAY: Chair, it's ZZZ8. CHAIRPERSON: Sorry, 251. It's ZZZ8. It's Standing Order (General) 251 part 3. That's the – MS LE ROUX: Thank you, Chair. CHAIRPERSON: That's the document to which I referred. COMMISSIONER HEMRAJ: Can I just say something, that the extract that was given to us didn't, it	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	EXAMINATION BY MS LE ROUX (CONTD.): Thank you, Chair. Mr White, one final question on the "Keeping the Peace" document. Could you describe your role and participation in the preparation of that document? MR WHITE: Chair, at that time the ACPO, the Association of Police Officers in England and Wales, and basically how it works is that various senior police officers across the UK have a portfolio for a specialist area as well as their day job, if you like, and Sue Sim who was the Chief Constable of Northumbria at the time was the ACPO lead for public order. So "Keeping the Peace" was required to be updated. I think the previous version was around 2001/2002. Significantly, it was being updated because of the events of April 2009. There was a G20 event in London in April 2009 and quite a famous incident where a gentleman by the name of Ian Tomlinson was pushed down by police officers and subsequently died. As a result of that, there was an investigation carried out in relation to the events on the day by Her Majesty's Inspector of Constabulary and then a follow-up investigation or report in relation to a more wider, thematic review of public order policing in the UK. As a result of that there were recommendations, including that "Keeping the Peace" should

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1	Page 31292	1	Page 31294
1	the policing board in Northern Ireland had appointed two	1	express conclusions on. Chair, for the record, these
2	human rights barristers to oversee issues there. One I	2	commence at page 50 of Mr White's final statement part 5.
3	explained was Keir Starmer who went on to be DPP, the other	3	Mr White, I'd like us to canvass, in summary, your overall
4	one was Jane Gordon. So basically she was involved in	4	conclusions about the 13th, sir, if you could take us
5	writing a lot of reports in relation to Northern Ireland.	5	through different scenes that you cover and the conclusions
6	She then moved to HMIC. You can actually trace where she	6	you draw in relation to the 13th.
7	has used some case studies in relation to her time in	7	MR WHITE: Chair, if it's helpful, before
8	Northern Ireland to inform those HMIC reports and therefore	8	I specifically refer to the 13th, to a large extent both in
9	she was also then involved in the process, I suppose as a	9	relation to the 13th and the 16th which I'm sure Ms Le Roux
10	legal adviser in relation to the update of "Keeping the	10	will be asking me about shortly, I would say I largely talk
11	Peace". The approach that Sue Sim took was basically, she	11	about a number of key things which are around intelligence
12	appointed an officer I think of the rank of chief inspector	12	available and how it was used and the planning process and
13	Paul Orchard, if my memory serves me correctly and he co-	13	the briefing of officers and the command and control of the
14	ordinated the process and a number of people helped him to	14	actual incidents and then issues in relation to
15	do that. I was one of them. I led the Northern Ireland	15	accountability. When we come to talk around the 16th, you
16	sort of input to that which was quite significant because	16	know, there are issues that I raise specifically in
17	of the reasons I've said vis-a-vis Jane Gordon.	17	relation to tactics, not so much on the 13th but those are
18	Interestingly, if you look at "Keeping the Peace" 2010, I	18	the key things.
19	refer to a lengthy list of references at the back of it and	19	With that in mind then, looking at the incident
20	it is quite lengthy. I was just casting my eye over this	20	in relation to the 13th, I suppose it's fair to say nothing
21	last night. So it's lots of other ACPO documents. There's	21	hangs in a vacuum and therefore although we're
22	only one document where there's a specific reference to any	22	concentrating on the 13th, you look at it in the context of
23	particular police service and it's about an aide memoire	23	obviously what's been happening in Marikana over the
24	produced by PSNI. The PSNI therefore, you know, out input	24	previous number of days. So the first thing that struck me
25	to that was quite significant. I led that input. I then	25	was that when I was looking for plans in relation to
	Page 31293		Page 31295
1	also acted on ongoing liaison with Paul Orchard and others	1	informing the South African Police's operation around this,
2	in relation to the fact that we were carrying out a sort of	2	within the hard drive – and forgive me, I don't have the
3	editorial type function in relation to "Keeping the Peace"	3	reference immediately to hand, I don't know if you need it
4	documents. So I have a substantial involvement in the	4	at this stage but there is a plan for the South African
5	development of it.	5	Police Service in relation to, I think it's Friday the 10th,
6	CHAIRPERSON: Thank you, yes.	6	if my memory serves me correctly.
7	MS LE ROUX: Thank you, Mr White. If we	7	However, the plan for Saturday and the Sunday is
8	can now turn to your evidence on Marikana and if I can	8	basically the same plan. I mean it's basically – it was
9	start by asking you the scope of your evidence,	9	listed under different exhibits, if you like, but it was
10	particularly what events you were concentrating on and in	10	simply a photocopy of the same plan. Therefore that seemed
11	terms, with respect to which you've expressed your opinion.	11	to me that, both in relation to planning and intelligence,
12	MR WHITE: Indeed, Chair. While I've	12	there was no ongoing update and it struck me as odd, given
13	given evidence previously about receiving this hard drive	13	the very serious incidents that were happening across that
114	and therefore looking at the policy framework in relation	14	weekend. I know that the South African Police – certainly
14	and therefore looking at the policy framework in relation		
14 15	to those documents, but in terms of actual evidence of	15	my evidence is not that they didn't respond to this in any
		15 16	my evidence is not that they didn't respond to this in any way because I know from other evidence that there was an
15	to those documents, but in terms of actual evidence of		
15 16	to those documents, but in terms of actual evidence of events, you know, my focus was directed purely and simply	16	way because I know from other evidence that there was an
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15 16 17 18	to those documents, but in terms of actual evidence of events, you know, my focus was directed purely and simply to the events of in and around the 9th of August through to the events on the 16th. That didn't look wider than that in	16 17 18	way because I know from other evidence that there was an increase in resources and whatever, but certainly, one, in relation to planning and, two, in relation to the
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 15 16 17 18 19 20 21 22 23 24 	to those documents, but in terms of actual evidence of events, you know, my focus was directed purely and simply to the events of in and around the 9th of August through to the events on the 16th. That didn't look wider than that in terms of, you know, the role of the South African Police Service outside of Marikana or extend it either sort of before or after that date. MS LE ROUX: Mr White, if we then turn to the events of the 13th of August 2012, which is the first,	 16 17 18 19 20 21 22 23 	way because I know from other evidence that there was an increase in resources and whatever, but certainly, one, in relation to planning and, two, in relation to the intelligence there doesn't seem to be an ongoing interplay with intelligence and updating the risk assessment for example with regard to potentially attacks on police officers and how you might mitigate that. Also I was struck by, and this is an issue which

1	Page 31296	1	Page 31298
1	document which is TT5 of the exhibits which, as I	1	to one of the issues that was actionable intelligence, it
2	understand, is a composite of all of the intelligence which	2	didn't seem to have been properly actioned – not my interpretation of I think the interpretation of Brigadier
3	was available for the entire operation. I checked with my legal team on a number of occasions to make sure that I was	3	
4	5	4	Engelbrecht.
5	reading this and I was interpreting back to the issue -	5	The last thing I say in relation to intelligence
6	that when I was reading this as a composite of all of the	6	then is that at exhibit LLL11, which is, I think, the
7	intelligence, that's exactly what it meant because there	7	document which is the sort of internal review carried out
8	are 10 entries on that document. I think the first three	8	by SAPS after all of these events, they highlight this
9	of them refer to February and the fourth one refers to May.	9	issue around the fact that intelligence was lacking and I
10	One of the entries refers to the fact that a JOC has been	10	know that a number of other police officers have given oral
11	set up and a number of these things are referred to, the	11	evidence to that effect as well. So in relation to
12	views of senior police officers. There are two, possibly	12	intelligence I don't think that, one, there was very much
13	three entries in that document which covers the whole	13	available or certainly being brought to the attention of
14	period including and up to the tragic events of the 16th	14	the people who needed to know and, secondly, it wasn't
15	that would be what I would consider to be actionable	15	being actioned properly. Would you like me to move on or
16	intelligence. So it seemed to me that there are clear	16	do – MS LE POUV: Mr White with respect to
17	issues in relation to intelligence. Even if you look at that document, there is one of the bits of information that	17	MS LE ROUX: Mr White, with respect to
18		18	the operation on the 13th that Major-General Mpembe led, do you have any comment with relation to intelligence and how
19	I would consider to be actual intelligence and there's	19	
20 21	evidence then that I think Brigadier Engelbrecht – and I	20 21	it related to that operation specifically? MR WHITE: Well, specifically I think
22	have to apologise at this stage, my legal team, I've been having some difficulty with pronunciation of names.	22	that the issue is that General Mpembe is asked to go and
22	CHAIRPERSON: You got that one right.	22	
23 24	MR WHITE: Thank you, thank you. There	23 24	engage with this crowd who are at the railway line, who are armed and the information is, as I understand it, that's
24 25	was a statement from Brigadier Engelbrecht where he talks	24 25	coming from what's viewed on the CCTV and General Mbombo
20	was a statement non brigadier Engelbreent where he taiks	23	
	Page 31297		Page 31299
1	Page 31297 about receiving this intelligence from a handler and he	1	Page 31299 issues this instruction. So I would have expected
1 2	-	1 2	-
	about receiving this intelligence from a handler and he		issues this instruction. So I would have expected
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		1	
	Page 31300	1	Page 31302
1	team, you know, it's quite – I think I've been asked the	1	seems to be a logical conclusion. Therefore I'm looking at
2	question to accept that this was a spontaneous incident	2	this on the basis that if you're going to send a large
3	that the SAPS were responding to. In my provisional	3	group of heavily armed cops to deal with a large group of
4	statement I was actually pointing out that this was a	4	heavily armed people in order to disarm them, I think that
5	spontaneous incident that I think they were responding to	5	requires a degree of planning, how you're going to do that
6	spontaneously. I made some comments to the fact that	6	and you know, what you expect everyone to do.
7	General Mpembe's statement, the first statement of General	7	If, on the other hand, you going and saying look,
8	Mpembe that I read could have been read, in fact how I read	8	in the context of this situation the lesser of two evils if
9	it was sort of suggesting that a plan had been in place and	9	we could just escort them back to the koppie, as
10	a command structure had been in place. The command	10	subsequently happens. So you're not going to disarm them,
11	structure that we ultimately see heading then after the 13th	11	you're simply going to escort – well, then I think the
12	towards the 16th, but it certainly in his original statement	12	level of planning needs to be less. And again I'm talking
13	suggests that that took place before the operation that	13	about a dynamic plan and which General Mpembe may even just
14	takes place on the 13th. So it was I that was identifying	14	hold in his head while he's getting there but it's him
15	that it was spontaneous in the first instance and it	15	understanding what it is that he wants to do, what he wants
16	absolutely was spontaneous.	16	to achieve and very, very importantly then, communicates
17	So the issue then becomes around planning and I	17	that to the people who are with him. So actually if you
18	know that some of the criticisms have been raised in	18	look at my statement I talk about plan or brief. So you
19	relation to what I've said, that you know, the police	19	know the criticism that seems to be sort of raised that I'm
20	service have got this situation to deal with where you've	20	suggesting that they waited a few hours until they got a
21	got a group of in around 2 to 300, whatever the number is,	21	plan, I don't say that.
22	it doesn't really matter if it's 2 to 300, it's a very	22	So we have, and this is where General Mpembe goes
23	large group of people armed with traditional weapons and	23	and again I think both in my provisional statement and also
24 25	therefore the need to go and do something about it, absolutely. Absolutely totally agree and the criticism I	24 25	in my final statement, in fact at 5.2.11 the paragraph starts off, "In simple terms, I do not criticise the
25	absolutely. Absolutely totally agree and the childshift	23	
	Page 31301		Page 31303
1	Page 31301 think that's been thrown back at me is that, you know, did	1	Page 31303 decision to attend to the group on the railway line, nor
1 2		1 2	8
	think that's been thrown back at me is that, you know, did		decision to attend to the group on the railway line, nor
2	think that's been thrown back at me is that, you know, did Mr White expect us to sit for a number of hours until we'd	2	decision to attend to the group on the railway line, nor the decision to seek to persuade the group to voluntarily
2 3	think that's been thrown back at me is that, you know, did Mr White expect us to sit for a number of hours until we'd worked through a planning process and we ruled up a plan	2 3	decision to attend to the group on the railway line, nor the decision to seek to persuade the group to voluntarily disarm, nor would I criticise an intention to disarm the
2 3 4	think that's been thrown back at me is that, you know, did Mr White expect us to sit for a number of hours until we'd worked through a planning process and we ruled up a plan and perhaps had it photocopied and bound and whatever.	2 3 4	decision to attend to the group on the railway line, nor the decision to seek to persuade the group to voluntarily disarm, nor would I criticise an intention to disarm the group." So the very fact that General Mpembe goes, and I
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1	Page 31304 disarming, consistent with General Mbombo's direction to	1	Page 31306 He's very clear, the fact that he didn't give an
2	him, to – as I said a few minutes ago – maybe he decides	2	order to fire teargas. As far as he was concerned the
3	the lesser of the two evils here is actually just let's	3	escorting had to continue. That had been communicated to
4	escort them back to the koppie. Again that's what I would	4	Merafe and the second commander. He was the only person in
5	consider to be dynamic planning and I think that's entirely	5	terms of the Standing Order who was authorised to give any
6	appropriate in the circumstances.	6	other instruction to use force, even in the form of
7	[11:17] The issue is then from the evidence he says we're	7	teargas. He never gave such order. It wasn't necessary,
8	now going to escort them to the koppie. At no stage do I	8	he said. If he had given it he would have given it by
9	see any evidence of, you know, any briefing to his	9	radio and of course then everybody else, others would have
10	officers. Now again I'm not talking about the type of	10	reacted as well. That didn't happen. The only person who
11	sophisticated briefing I referred to earlier on, I'm	11	fired the teargas was someone on the extreme left who was
12	talking about that the senior officer tells the police	12	obviously the wrong person to give an order to if people
13	officers who're going to carry out this function what he	13	were deviating to the right, and as far as he, Mpembe, was
14	wants them to do, because there's lots of evidence from	14	concerned, no such order was given to Kuhn.
15	police officers who give conflicting reports of what they	15	You make the point that if Kuhn acted without a
16	understood they were being asked to do. So my point of	16	proper order there should have been disciplinary steps.
17	criticism –	17	That was only very belatedly done after the point was
18	CHAIRPERSON: [Microphone off, inaudible]	18	raised when he gave evidence, but I think that's a summary
19	my understanding is that, I don't know if you've read	19	of his evidence.
20	Colonel Merafe's evidence. Colonel Merafe says, as I	20	There are of course, as you know, conflicting
21	understand his evidence, that he didn't agree with the	21	versions that he did give the order and that as I said he
22	decision which the General had made to escort them. He	22	vigorously denies and that's an issue that we have to
23	thought they should have been disarmed, but he accepted	23	resolve. But on Mpembe's version he made a decision which
24	that was the General's decision and so be it, and I also	24	he said was in accordance with the doctrine of situational
25	understood him to say that that was communicated to the	25	appropriateness - I'd like to get your views on that in a
	Page 31305		Page 31307
1	commanders, section commanders, to pass it on.	1	moment – communicated that to Merafe and that was then
2	The problem of course is we know what happened	2	communicated to the section commanders.
3	thereafter; the teargas was fired and the stun grenade, and	3	As far as he was concerned nobody who was there
4	of course there is as you know a conflict of fact and you	4	
	and the second		as part of the group of members of the police service could
5	very properly refrained from seeking to resolve the	5	have been under any misapprehension as to what had to be
6	conflict of fact. It's something we can't do, we have to	5 6	have been under any misapprehension as to what had to be done and on his version there was what amounted to
6 7	conflict of fact. It's something we can't do, we have to resolve it. But on General Mpembe's evidence he decided	5 6 7	have been under any misapprehension as to what had to be done and on his version there was what amounted to insubordination, that either acting on his own or acting on
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1	Page 31308 not for me to deal with and I don't.	1	Page 31310 members of the police who were there decided after the
2	The reason that I offer my opinion with regards	2	event to cover up for what had happened and they made
3	to I don't think that this was properly thawed out, or –	3	entries in their pocketbooks, which conflict with each
4	and I do stress that I use the word "or" on a number of	4	other, as to the nature of the order, as to what was done
5	occasions in relation to how I deal with this issue - time	5	and so on. But the objective fact is that only one teargas
6	or briefing. So let's, you know, as I've said I never	6	canister was fired, which one would have expected more if
7	expected General Mpembe to have a written plan for this	7	the general order of the kind he's alleged to have made had
8	dynamic situation that I identified in the first instance	8	been given, and again the next concrete fact, objective
9	as a spontaneous response to a spontaneous incident.	9	fact, is that Baloyi then fired a stun grenade.
10	So the focus is very much on dynamic planning	10	If Mpembe is telling the truth, obviously that's
11	that General Mpembe thinks, and as you have articulated,	11	something we have to keep an open mind on till the end. If
12	Chair – and I'm more than happy to talk about the	12	Mpembe is telling the truth then those entries you're
13	situational appropriateness – I don't have any issues	13	referring to are false, were made as part of a conspiracy
14	around what he did. First of all try and instruct them to	14	to put the blame on Mpembe and to exonerate the people
15	disarm; if they'd all laid down their arms and walked away,	15	responsible for the spark, and also to avoid investigations
16	wouldn't that have been a fantastic outcome? Ja,	16	into insubordination, disciplinary steps and all that kind
17	absolutely, but they didn't. So then he changed his plan.	17	of thing.
18	I have no issue with that whatsoever.	18	Now whether that's so or not obviously we can't
19	I say "or brief." Now I'm very aware of Mr	19	find at this stage, but the response to what you've put is
20	Merafe says that initially when he was with General Mpembe	20	that one possible interpretation is those allegations were
21	at the scene he'd said "Look, I'm the POPS commander, I'll	21	false, as I say part of a conspiracy after the event to
22	take over." So there was a dispute between the two of	22	blame Mpembe. And of course you've read the evidence later
23	them. However, that was resolved. General Mpembe said	23	what happened at Roots. That was an ongoing debate, but at
24	"I'm in charge" and in fairness, Mr Merafe says after that	24	this point on the assumption, which may turn out to be an
25	there was no confusion. Again I absolutely accept that.	25	erroneous one, but on the assumption that Mpembe is telling
1	Page 31309	1	Page 31311
1	However, the one thing that I would offer up is	1	the truth on what happened, then your criticism is
2	However, the one thing that I would offer up is that – and if you, I may not refer to these by exhibit	2	the truth on what happened, then your criticism is important.
2 3	However, the one thing that I would offer up is that – and if you, I may not refer to these by exhibit numbers, Chair, because I do have a difficulty with	2 3	the truth on what happened, then your criticism is important. So as I've said according, it was a dynamic
2 3 4	However, the one thing that I would offer up is that – and if you, I may not refer to these by exhibit numbers, Chair, because I do have a difficulty with pronunciation, but HHH30 police officer says, "Mpembe told	2 3 4	the truth on what happened, then your criticism is important. So as I've said according, it was a dynamic situation. You don't quarrel with his attempt to persuade
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1	Page 31312 located at various parts around the miners, because he	1	Page 31314 General Mpembe, indeed.
2	initially thought that potentially they were going to	2	The circumstances, the facts that I've engaged
2	disarm them.	2	with obviously have been slightly different. So I have
4	Again I would go back to the point that I made	4	read statements that have been given to me by the South
4 5	earlier on; if his initial intention had been to disarm	4 5	African Police department, Officer XYZ, and these officers
6	them, you know I would have thought that there should have	6	say something very different to that. As you say, it is
7	been some degree of briefing in relation to how that was	7	your job, Chair, to work out, you know, what the truth of
8	going to be done, thinking about well, what if they don't,	, 8	all of this is.
9	you know, are we going to forcibly disarm. So in attending	9	But in offering an opinion the one thing that I
10	the scene, if it was his prior intention that the was going	10	would say sort of beyond what I've already said is that I
11	to disarm, how was he going to do that and was that	11	think that there is a statement, and I don't have the
12	properly communicated so that the officers could be in a	12	reference here now, but again at the next break I'll
13	tactical configuration which give the police the best	13	certainly look for it, is that there is a statement from
14	advantage to be able to carry that plan out, if that's the	14	one officer, I think he's relatively senior, you know, in
14	case.	15	all of this, and he makes some point around – if my memory
16	However, set that aside. We now have the	16	serves me correct, and I'll ask for your indulgence by just
17	situation where he negotiates with them and it's obvious to	17	checking this in the next break – talks about when the
18	him that in order to avoid a confrontation, which seems to	18	teargas is fired that he then said something along the
19	be what he's saying, is that he's not going to disarm, he's	19	lines of that 'I then realised that General Mpembe didn't
20	basically going to escort, and accepting, you know, all	20	want us to let people into the informal settlement.' That
21	that you say, if he then decides this is what I'm going to	20	would suggest to me that up to that point he didn't know,
22	do, this is how we're going to do it, he communicates that	22	that would suggest to me that up to that point he dant throw,
23	to effectively his number 2, Merafe, and Merafe then, his	23	certainly he, you know, hadn't been properly briefed and
24	responsibility to make sure that everyone else in a	24	assuming that he's not part of the conspiracy of course,
25	cascading fashion is advised by Merafe, those that he	25	but I only say it because I think if memory serves me
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	Page 31313		Page 31315
1	tells, the sergeants or the sub-unit commanders or	1	correctly that he's a reasonably senior officer as opposed
2	whatever, the important thing is it's the people at the	2	to perhaps these officers who might be constables or
3	front end don't know what the strategy is, there is no	3	whatever it is. So I'm more than happy to check that
4	strategy. So therefore there needs to be the assurance	4	reference.
5	that that gets all the way down to every single officer.	5	COMMISSIONER HEMRAJ: Mr White, do I
6	Every single officer understands, because this is a	6	understand that you've not been afforded an opportunity to
7	dangerous operation. I mean these are people who allegedly	7	read the transcript of the evidence of Colonel Merafe where
8	may have killed security guards and other miners during the	8	he talks about the briefing that was conducted on the 13th
9	course of the weekend and they're all heavily armed. So	9	as regards the escorting?
10	therefore does everybody absolutely understand.	10	MR WHITE: I've seen some of the
11	I would have to say I'm aware of some of the	11	transcript of Mr Merafe. I don't know that I'd
12	issues in relation to, as you refer to Chair, you know,	12	specifically seen that bit, but I'll be more than happy to
13 14	allegations that were made around this issue of General	13 14	go back and look at it, and certainly I've been directed to
14	Mpembe and you made reference to it in relation to Roots.	14 15	and I've looked at the piece of oral evidence where Mr
15 16	I'm not aware, I'll have to say I haven't been made aware of the issue around that there has been potentially a	15 16	Merafe talks about this dispute with regards to who's in charge and be makes it crystal clear, as the Chairman has
16 17	conspiracy around, with regards to lots of officers to	10	charge and he makes it crystal clear, as the Chairman has already articulated, he then says after dealing with that
17	construct their notebooks so that it looks as if it's	18	issue there was no confusion. I absolutely –
10	Mpembe's fault, but that's just not information that I'd	18	COMMISSIONER HEMRAJ: It just seems to me
20	previously been privy to.	20	if you had access to it you might have amended your
20	But, so I would say to you that if Mpembe issued	20	criticism about the lack of briefing of the decision to
21	that instruction through Merafe and received from Merafe an	21	escort.
22	assurance that it had been properly communicated and	22	MR WHITE: Potentially on the part of
23	whatever, then under those circumstances, you know, it	23 24	General Mpembe –
4	would be very, very difficult to point a finger of blame at	24 25	COMMISSIONER HEMRAJ: Yes.
20		20	
	RCHIVE FOR JUSTICE		

	Page 31316	_	Page 31318
1	MR WHITE: - as I've already explained to	1	have changed, I need to do something different, so that
2	the Chairman. However, I would be saying whilst it's not	2	those officers are not still trying to, you know, carry out
3	for me to decide on issues of fact, but the contrary to	3	instruction 1 when he now wants them to do instruction 2,
4	that was the numerous statements that I have read from	4	how does that get communicated. Now ordinarily in my
5	officers who were actually therefore at the front end who	5	experience it would be that maybe not even briefing Merafe
6	were engaged in this, who say something very different, and	6	who goes on and tells everyone; it would be simply an
7	because I have not at this stage been made privy to this	7	instruction on the radio from General Merafe, or telling
8	issue of this conspiracy of cover-up by them, so therefore	8	someone else to put the instructions on the radio that
9	I've read those statements from police officers in the	9	we're now going to have to escort these people, this is
10	spirit of they are police officers who are telling the	10	what we want to do.
11	truth.	11	COMMISSIONER HEMRAJ: And as regards the,
12	COMMISSIONER HEMRAJ: Well perhaps at	12	it does appear as though General Mpembe took the decision
13	some stage if you might be afforded an opportunity to look	13	to negotiate with the strikers, although he had some 70
14	at that evidence, it might inform your view about this.	14	armed policemen with him, and he did not choose to go the
15	There might be the other situation as well of the clarity	15	option of forcibly disarming. Now in those circumstances
16	of the briefing, which is a completely different issue as	16	would you still criticise him for not having had a plan?
17	to whether a briefing took place or not at all.	17	MR WHITE: I don't know exactly what's in
18	MR WHITE: And again I would respond by	18	General Mpembe's head, but my view would be if he's
19	saying that a number of people don't make any mention of	19	following the direction given by General Mbombo, which is
20	briefing. Sometimes police officers write bad statements	20	basically to go and deal with this group.
21	and that's not to say that therefore there was no briefing.	21	[11:37] She talks about, you know, you just can't have
22 23	That, I'm saying they don't make any mention of briefing, so the issue is was there a briefing, yes or no, difficult	22 23	these armed groups wandering about. She's basically
23 24	to decide, but then beyond that it's about the clarity of	23 24	saying, go and disarm them. So that's what he is on his way to do and with credit to General Mpembe, you know,
24 25	the briefing and this is my point. This is an escorting,	24 25	rather than some sort of massive tactical operation, he
25	the brenny and this is my point. This is an escoluting,	25	ration than some soft of massive factical operation, he
	Page 31317		Page 31319
1	Page 31317 it's potentially a dangerous operation. Police officers	1	Page 31319 gives them the opportunity, he negotiates with them and
1 2		1 2	
	it's potentially a dangerous operation. Police officers		gives them the opportunity, he negotiates with them and
2	it's potentially a dangerous operation. Police officers who are going to be engaged in that need to understand what	2	gives them the opportunity, he negotiates with them and gives them the opportunity to lay down their arms and I
2 3	it's potentially a dangerous operation. Police officers who are going to be engaged in that need to understand what the boss wants them to do in the way that it was, and it	2 3	gives them the opportunity, he negotiates with them and gives them the opportunity to lay down their arms and I congratulate him for that. I think, you know, in terms of
2 3 4	it's potentially a dangerous operation. Police officers who are going to be engaged in that need to understand what the boss wants them to do in the way that it was, and it may well be that Mpembe has communicated that through	2 3 4	gives them the opportunity, he negotiates with them and gives them the opportunity to lay down their arms and I congratulate him for that. I think, you know, in terms of a concept of minimum use of force that's exactly and
2 3 4 5	it's potentially a dangerous operation. Police officers who are going to be engaged in that need to understand what the boss wants them to do in the way that it was, and it may well be that Mpembe has communicated that through Merafe and depended on Merafe making sure that that was	2 3 4 5	gives them the opportunity, he negotiates with them and gives them the opportunity to lay down their arms and I congratulate him for that. I think, you know, in terms of a concept of minimum use of force that's exactly and entirely appropriate. But when he's travelling to the
2 3 4 5 6	it's potentially a dangerous operation. Police officers who are going to be engaged in that need to understand what the boss wants them to do in the way that it was, and it may well be that Mpembe has communicated that through Merafe and depended on Merafe making sure that that was cascaded down, and if Merafe has come back and told him	2 3 4 5 6	gives them the opportunity, he negotiates with them and gives them the opportunity to lay down their arms and I congratulate him for that. I think, you know, in terms of a concept of minimum use of force that's exactly and entirely appropriate. But when he's travelling to the scene with this in mind, because again he doesn't have
2 3 4 5 6 7	it's potentially a dangerous operation. Police officers who are going to be engaged in that need to understand what the boss wants them to do in the way that it was, and it may well be that Mpembe has communicated that through Merafe and depended on Merafe making sure that that was cascaded down, and if Merafe has come back and told him that that's fine, that everybody knows what they're doing,	2 3 4 5 6 7	gives them the opportunity, he negotiates with them and gives them the opportunity to lay down their arms and I congratulate him for that. I think, you know, in terms of a concept of minimum use of force that's exactly and entirely appropriate. But when he's travelling to the scene with this in mind, because again he doesn't have hours to do it, I think they go from the instruction to
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	it's potentially a dangerous operation. Police officers who are going to be engaged in that need to understand what the boss wants them to do in the way that it was, and it may well be that Mpembe has communicated that through Merafe and depended on Merafe making sure that that was cascaded down, and if Merafe has come back and told him that that's fine, that everybody knows what they're doing, then the fault is somewhere between Merafe and the front end as opposed to Mpembe, if that is the case. COMMISSIONER HEMRAJ: And you are aware of the situation, Mr White, in which the escorting had to take place? General Mpembe was counting down to them to lay down their weapons and the group just stood up and carried on, and he took the decision to escort them. So he can't really be criticised for taking the time to make any substantial plan as regards that. MR WHITE: And again, Chair, when I refer to a dynamic plan, if the circumstances changed instantaneously and then this is quite a big change in his decision from disarm, here stationary, to now escort and	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	gives them the opportunity, he negotiates with them and gives them the opportunity to lay down their arms and I congratulate him for that. I think, you know, in terms of a concept of minimum use of force that's exactly and entirely appropriate. But when he's travelling to the scene with this in mind, because again he doesn't have hours to do it, I think they go from the instruction to actually arriving at the scene in somewhere like an hour and a half, an hour and 40 minutes, something like that. So during that period I would have expected him to be giving some thought to what it is that he wants to do. I would have thought that he would probably have the time to sort of commit some of that to paper so that again it helps other people understand him but if he doesn't, again not overly critical of that. The point is that if he's going to, and it's always his intention to try and negotiate the lay down of the weapons, that's good. That's option A. One of the things I used to talk about all the time in terms of planning to my officers is, you know, when we deal with a situation, how you're actually going to plan for the
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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	it's potentially a dangerous operation. Police officers who are going to be engaged in that need to understand what the boss wants them to do in the way that it was, and it may well be that Mpembe has communicated that through Merafe and depended on Merafe making sure that that was cascaded down, and if Merafe has come back and told him that that's fine, that everybody knows what they're doing, then the fault is somewhere between Merafe and the front end as opposed to Mpembe, if that is the case. COMMISSIONER HEMRAJ: And you are aware of the situation, Mr White, in which the escorting had to take place? General Mpembe was counting down to them to lay down their weapons and the group just stood up and carried on, and he took the decision to escort them. So he can't really be criticised for taking the time to make any substantial plan as regards that. MR WHITE: And again, Chair, when I refer to a dynamic plan, if the circumstances changed instantaneously and then this is quite a big change in his decision from disarm, here stationary, to now escort and move, but he has to make that in a matter of seconds. Again I fully understand that. That then becomes, how does that now get communicated, because if the officers think	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	gives them the opportunity, he negotiates with them and gives them the opportunity to lay down their arms and I congratulate him for that. I think, you know, in terms of a concept of minimum use of force that's exactly and entirely appropriate. But when he's travelling to the scene with this in mind, because again he doesn't have hours to do it, I think they go from the instruction to actually arriving at the scene in somewhere like an hour and a half, an hour and 40 minutes, something like that. So during that period I would have expected him to be giving some thought to what it is that he wants to do. I would have thought that he would probably have the time to sort of commit some of that to paper so that again it helps other people understand him but if he doesn't, again not overly critical of that. The point is that if he's going to, and it's always his intention to try and negotiate the lay down of the weapons, that's good. That's option A. One of the things I used to talk about all the time in terms of planning to my officers is, you know, when we deal with a situation, how you're actually going to plan for the thing that you absolutely anticipate happening is the easy bit. It's what they pay you for, is thinking about what- if. So he doesn't have an awful lot of time but actually,
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	Page 31320		Page 31322
1	I'm still of the view that I'm going to have to carry out	1	arms off them, then the likelihood is maybe they might have
2	General Mbombo's instruction, which is basically to disarm,	2	been compliant in relation to that. So therefore the level
3	so how are we going to do that then? Where is it that I	3	of detail and how you need to communicate that with people,
4	want the officers to be? You know, what's the best way to	4	on a sliding scale probably reduces some, but still I would
5	do that? Does he take tactical advice from someone, as	5	have expected – I certainly would have wanted anybody
6	I've explained earlier on, in the hour and a half or hour	6	working for me to say okay, so at the outset I finally
7	and 40 minutes that he does so.	7	arrive here, tell the people that they can't stay in this
8	When he gets to the scene, because of the	8	position, we're not going to try and take their arms off
9	circumstances that he's faced with and often when you get	9	them, the traditional weapons, we're not going to interfere
10	to a scene and you're in that conversation, then you can	10	with that and we're now going to escort you back to the
11	feel the tension. You know that's very different from the	11	koppie. I anticipate they're going to comply with that.
12	comfort of, you know, a command room or whatever. So he	12	My challenge to people would be, well, what if, what if
13	then makes this dynamic decision that actually the	13	they don't, then what are you going to do? And again we're
14	negotiation hasn't worked, we're not going to go to a	14	not back to the photocopier and a bound plan and all the
15	forcible disarmament as I think that could be potentially	15	rest of it, but it's about clearly thinking about the what-
16	very dangerous – I'm assuming this is what he thought –	16	ifs. I think this is, from a police command point of view,
17	therefore, the lesser of two evils, we're now going to	17	this is what they pay you for.
18	escort. I still think in that period when he's responding	18	COMMISSIONER HEMRAJ: Thank you, Mr
19	to Mbombo's instruction he is going to the scene thinking,	19	White.
20	I need to disarm these people. I'm saying where is the	20	CHAIRPERSON: I can understand that point
21	evidence of planning with regards to what he was going to	21	but there's another point that follows from that. You
22	do vis-a-vis option A, favourite option, what he was going	22	criticise him for not planning properly for how he would go
23	to do if, and how they were going to do that so that	23	about disarming if that had to happen and it may well be
24	everyone knows. We're sending police officers to deal with	24	that you're right, that there was a failure to plan
25	a group of 2 or 300 people who armed with spears, pangas,	25	properly for that contingency, but of course if he then
	Page 31321		Page 31323
1	you know, a dangerous operation. This is my point.	1	decided not to try to disarm because he realised it
1 2	you know, a dangerous operation. This is my point. COMMISSIONER HEMRAJ: A plan if option B	1 2	decided not to try to disarm because he realised it couldn't happen without serious risk of bloodshed and it
	you know, a dangerous operation. This is my point. COMMISSIONER HEMRAJ: A plan if option B was to forcibly disarm? Option B. Option A was to		decided not to try to disarm because he realised it couldn't happen without serious risk of bloodshed and it goes to the next stage which is escorting them back to the
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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	you know, a dangerous operation. This is my point. COMMISSIONER HEMRAJ: A plan if option B was to forcibly disarm? Option B. Option A was to negotiate. Option B was to then forcibly disarm if negotiations did not work, then you would expect a plan to be in there, some sort of a plan? MR WHITE: Absolutely – COMMISSIONER HEMRAJ: Yes. MR WHITE: And the evidence that I've engaged with, you know, there was no evidence which was saying that there was a plan A to negotiate. You know, that happens when General Mpembe gets there. He may well have worked all of this out in mind, I suspect that he had. I'm saying, well, where is the evidence therefore of, well, what if. And I actually talk about it in my statement that if the plan was around disarming, you know, and certainly if you're going to forcibly disarm then you need to work up a scale with regard to how sophisticated and how much detail and how much you need to think about it in relation to the plan. If, from the outset, the plan was we're going to escort these people and we know that there had been a previous interaction with security guards where the crowd had been reasonably compliant, so if from the word go it	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	decided not to try to disarm because he realised it couldn't happen without serious risk of bloodshed and it goes to the next stage which is escorting them back to the koppie and then subject to what happened thereafter, which we can leave aside for the moment, surely there's a lack of a causal link between the initial failure, to which we will refer, assuming there was such a failure, assuming he should have planned and he didn't properly, to disarm and how he would disarm – if that plan was abandoned and no attempt was made to implement it and what went wrong thereafter took place in the escorting exercise through insubordination and so forth by people who knew very well what they were supposed to be doing, then there wouldn't be a causal connection between the failure, to which you have referred, to plan properly and what happened. That must be right, surely? MR WHITE: Chairperson, I absolutely agree with you, absolutely. Could I, just for a point of clarification perhaps, read something from my statement? This is paragraph 5.2 and point 11 sort of halfway down. "If," and I stress it, I wasn't there, I don't know, I can only sort of look at the evidence and try and give an opinion from that, "If the intention in those circumstances

	Page 31324		Page 31326
1	attempt to disarm without proper planning. However, if the	1	it?
2	intention was simply to escort them in order to protect	2	MR WHITE: Chair, let me say for the
3	others from the potential attacks, then detailed planning	3	record, I thought long and hard about whether or not I
4	may not have been necessary but a clear briefing of that	4	would want to be involved in this whole process from the
5	intention was" – so I would raise the point that given that	5	point of view that as a police officer for 30 years as I've
6	General Mpembe is going to carry out the order of General	6	described earlier on, in very, very difficult
7	Mbombo which says basically disarm, so for the reasons that	7	circumstances, you know, and I had lots of experience where
8	we've discussed I think he should have been planning for	8	people came after the fact and sort of, you know, reviewed
9	that and planning for the what-ifs. He then gets there and	9	and tried to second guess, you know, and having been a
10	he's then going to negotiate with them. That's still the	10	police officer for 30 years and I've had the privilege of
11	part that should have been sort of option A within the	11	going to many different countries and there's an element,
12	plan. At the point that he then changes his mind and says,	12	you know, of cops are cops are cops, there's a sort of
13	given all of the circumstances, situational	13	fraternity. So I thought long and hard about all of this,
14	appropriateness, I'm now changing my mind, we're moving	14	you know, in terms of engaging with the evidence which
15	very much to plan B completely, which is just simply to	15	potentially would show some criticisms and whether or not I
16	escort. And absolutely, you're right, there is no causal	16	was prepared to stand up and say that. So you know I
17	connection around the failure to plan for that. That's, I	17	didn't enter into this process wanting to criticise any
18	make my point, if the intention is just simply to escort,	18	individual officer or the SAPS as an organisation. As I've
19	well then still, you know, there's a requirement for a	19	engaged with the evidence I've made these criticisms of
20	proper briefing so that the people who are going to do the	20	General Mpembe who is the commander of this particular
21	escorting understand what General Mpembe wants - that, one,	21	operation for the reasons that I've said. For the record,
22	we're going to be able to escort, we are going to escort	22	if the circumstances are actually – and it's your job,
23	them and, two, if he had thought ahead and realised that	23	Chair, as you've rightly said, to discover the truth of all
24	there's a potential danger point in relation to the	24 25	of this – if the truth is that Mpembe was responding to a
25	informal settlement and I don't want them to go there,	25	direction by his boss to go and disarm this group and he'd
	Page 31325		Page 31327
1	communicating that as well. As I've engaged with the	1	thought through a plan as to how he was going to do this
2	evidence, as I said, not aware of this issue around	2	and his initial option was to negotiate, he gets to the
3	conspiracy that perhaps all of these police officers are, for reasons best known to themselves, telling lies, I've	3	scene, he negotiates and that doesn't work. He makes an instantaneous judgment that actually the safest thing for
4 5	read all of these statements from the officers who are in	4 5	everyone is basically that we're then going to escort this
6	the roles that I've described, who are saying, I wasn't	6	group back to the koppie where they had intended to go or
7	briefed, I didn't get a sort of briefing at the beginning	7	whatever it was. He communicates that intention to his
8	of this and actually this is what the instruction was. I	, 8	second-in-command and asks him to make sure that all of the
9	took that on face value.	9	officers are aware or he gives that instruction on the
10	CHAIRPERSON: Yes, but no, clearly what	10	radio but he satisfies himself that all of the officers are
11	you say must be right on the assumptions you make. If, on	11	perfectly aware of what he wants them to do in the way that
12	the other hand, the officers or the members of the, police	12	he wants them to do it. And actually in fairness to
13	members who were there knew very well what was supposed to	13	General Mpembe, he is foresighted enough to think about,
14	happen and they, Kuhn, either alone or on the instruction	14	there's a potential danger point at the informal
15	from somebody else, deliberately deviated from that and	15	settlement, I don't want people to go there and gives that
16	that caused the trouble, then you can't blame Mpembe for	16	instruction as well. And then as people start to progress
17	that and the criticism then doesn't apply. You have to be	17	and we know that for some considerable distance this is
18	able to find, even if there wasn't proper briefing, you've	18	exactly what happens, is that the police are moving along
19	got to be able to find there was a causal connection	19	on either side of them, they're being escorted and then
20	between that and if they knew very well their job was to	20	something happens because Kuhn or some other officer
21	escort and not to fire teargas and not to fire stun	21	disobeys that order, acts independently and as a result of
22	grenades and if the teargas and the stun grenades had	22	which this fracas arises where tragically two police
23	caused the trouble and they knew very well they didn't	23	officers were killed, another one seriously injured and
24	receive - this is obviously if there was no order given by	24	three miners are shot. I –
2	- /L mailing West West West		
25	Mpembe – then of course it's a different situation, isn't	25	CHAIRPERSON: Well, two were shot –

			2
1	Page 31328 MR WHITE: My apologies.	1	Page 31330 CHAIRPERSON: Sorry?
2	CHAIRPERSON: - and there's a problem	2	MS LE ROUX: QQQ9.
3	about the third one, how that happened, but we won't $-$ it	3	CHAIRPERSON: QQQ9?
4	doesn't affect the thrust of the point you're making.	4	MS LE ROUX: It says, "Consolidated
5	MR TIP SC: Sorry, Chairperson, the	5	statement."
6	latest post-mortem evidence is that three – that it's not a	6	CHAIRPERSON: Alright, thank you.
7	stab wound, it's a bullet wound.	7	MS LE ROUX: Mr White, the specific
8	MR WHITE: My apologies anyway, Chair –	8	reference, if you would like to just give that to the
9	CHAIRPERSON: I'm sorry, I was trying to	9	chair, that you were relying on?
10	correct you but I've been corrected, apparently. So	9 10	MR WHITE: Yes, Chair, it is QQQ9 and the
11	anyway, the point I was making doesn't affect the thrust of	11	paragraph is 6.3. I do not know if it is helpful to you,
12	your point anyway.	12	that you want me to read out the particular –
13	MR WHITE: And the thrust of my point is	12	CHAIRPERSON: The particular sentence or
13	51	14	two if you want to read is relevant you may as well read it
	simply this, you know, this is a tragic event for all concerned, including the South African Police department	14	
15	-	15	now. MR WHITE: No, I won't read the whole
16	themselves who have lost two colleagues and one, as I	_	
17 18	understand, quite seriously injured. The point is, and I said you know, in preface to this particular part of my	17 18	paragraph, Chair. So basically he says, "I heard Warrant- Officer Kuhn asking the general whether we should shoot
18	evidence, for the record, could I ascribe any blame to	10	teargas and he repeated, yes, shoot. I did not hear any
20	-	20	command to throw stun grenades. I immediately thought his
	Major-General Mpembe in those circumstances? No, I couldn't. No, I couldn't because it would seem to me that	20	idea was to prevent the strikers from penetrating the
21 22		21	informal settlement." So my interpretation of that was
22	he's done what he is expected to do, if those are the circumstances.	22	therefore that Captain Thupe and makes the assessment
23 24	COMMISSIONER HEMRAJ: Mr White, may I	23 24	around the informal settlement, clearly the assumption is
24 25	just enquire how many statements you were referred to on	24 25	that he wasn't previously aware of that and the only reason
20	Just enquire now many statements you were referred to on	20	
	Page 31329		Page 31331
1	which you based the opinion that there was no briefing as	1	that I make reference to that particular piece is the fact
2	regards the escorting?	2	that, again I've been on side to the issues that you talked
3	MR WHITE: Chair, at least nine and then	3	about earlier, Chair, about the fact that it is relevant
4	I've said, if you will indulge me I'll just see if I can	4	senior officer.
5	check this other reference –	5	CHAIRPERSON: Yes, no, I understand that.
6	COMMISSIONER HEMRAJ: And that doesn't	6	Of course if we approach the matter on the basis that
7	include Colonel Merafi?	7	General Mpembe is telling the truth, he says he didn't give
8	MR WHITE: No.	8	instruction to shoot, then this paragraph is false.
9	COMMISSIONER HEMRAJ: Thank you.	9	Equally of course if we believe Captain Thupe then what
10	CHAIRPERSON: There's a footnote in your	10	General Mpembe says is false but that's why it depends on
11	report where you quote these things, but anyway – I read it	11	which factual finding you make, in which of the witnesses
12	last night but I'll find it again later. I think this is a	12	you believe, but we were discussing the matter on the
13	suitable stage for us to take the tea adjournment, 15	13	assumption which, as I pointed out may not be correct but
14	minutes.	14	on the assumption that General Mpembe is telling the truth,
15	[COMMISSION ADJOURNS COMMISSION RESUMES]	15	if General Mpembe is telling the truth, he didn't give the
16	[12:13] CHAIRPERSON: The Commission resumes. Mr	16	instruction, then Captain Thupe's evidence that he gave the
17	White, you're still under oath, Ms Le Roux?	17	instruction and the things that follow from that aren't
18	MS LE ROUX: Thank you, Chair. Chair, in	18	true.
19	the adjournment Mr White indicated two issues that he	19	MR WHITE: Absolutely, Chair, and that's
20	wanted to clarify for the Commission, I would just like to	20	why I said for the record if General Mpembe's evidence is
21	deal with that before we continue. Mr White, firstly it	21	true, and that's an issue for you to work out, then for the
22	was to provide the Commission with the reference, you in	22	reasons that I've said and I set it out very clearly, step
23	your evidence described a senior officer's evidence around,	23	by step, then would my criticism of General Mpembe around
24	on the 13th. Chair, we've managed to identify that as	24 25	the 13th stand, if under all of those circumstances.
25			
25	Captain Thupe, page QQQ9.	25	CHAIRPERSON: No, I understand that and

	Page 31332		Page 31334
1	that's the first –	1	COMMISSIONER HEMRAJ: These nine
2	MS LE ROUX: Yes, and then –	2	statements, that there was no briefing.
3	CHAIRPERSON: - correction or	3	MR WHITE: Yes, and that's what I was
4	amplification he wishes to make.	4	referring to just there in the end.
5	MS LE ROUX: Yes, and then secondly –	5	COMMISSIONER HEMRAJ: I understand.
6	CHAIRPERSON: And what's the other one?	6	MR WHITE: But I made that assessment on
7	MS LE ROUX: And then secondly, Chair, Mr	7	the basis that I haven't read all of the statements and
8	White raised with me in the adjournment, he seems to have	8	these are the ones I took notes of because I thought, well,
9	misunderstood a question from Commissioner Hemraj and would	9	that's note worthy, that's odd, that these are saying that.
10	like to correct, have the opportunity to correct that.	10	COMMISSIONER HEMRAJ: And there might be
11	CHAIRPERSON: Of course he can do so.	11	other statements that do say they were briefings?
12	MR WHITE: Just before the break,	12	MR WHITE: I will be confident and I
13	Commissioner, you asked me a question around how many	13	stand to be corrected in this and I'll be confident if
14	statements I had referred to and I think I gave you the	14	probably not, because my engagement with this process as I
15	answer, nine, because you could see me actually counting	15	explained earlier on, I was a bit reluctant to get involved
16	these up. I assumed that you were asking me when I was	16	in the process in the first instance. It is not to find
17	quoting that evidence how many statements was I referring	17	fault with the South African Police, absolutely not, so
18	to in these notes here and the answer to that is, nine. I	18	therefore if there was a statement I think that was sent
19	was blissfully unaware that I misinterpreted your question	19	specifically, I was briefed, here is the circumstances of
20	or at least my legal team think that I have misinterpreted	20	my briefing, etcetera, etcetera, etcetera, then I'm sure
21	your question, which if I'm correct in saying, it was	21	that I would have taken a note of that as contrary
22	actually in comment to this overall judgment how many	22	evidence. It may well be that the other ones are
23	statements had you referred to. If that's the question the	23	relatively neutral with regards to this and I also made the
24	answer is not nine, the answer is, I don't exactly know the	24	point in relation to my evidence earlier on that I make
25	exact figure apart, I am confident that I have read all of	25	reference to the fact that in a lot of these statements
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	Page 31333		Page 31335
1	Page 31333 the statements that the police provided for the events on	1	Page 31335 they talk about no mention of any briefing.
1 2	5	1 2	s
	the statements that the police provided for the events on		they talk about no mention of any briefing.
2	the statements that the police provided for the events on the 13th. I don't know the exact figure but I've read a lot	2	they talk about no mention of any briefing. Now that's not to say that they said, I wasn't
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2 3 4	the statements that the police provided for the events on the 13th. I don't know the exact figure but I've read a lot of statements. COMMISSIONER HEMRAJ: Except Colonel	2 3 4	they talk about no mention of any briefing. Now that's not to say that they said, I wasn't briefed. I'm taking a note that in the statements that they gave they don't say anything about a briefing. Maybe
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1	Page 31336	1	Page 31338
1	in an incident where five people died, including two police officers, so that is a sort of a general comment in	1	command and control, accountability and on this particular issue some, specific issues in relation to tactics.
2 3	relation to the quality of the statements in terms of the	2 3	MS LE ROUX: Now, Mr White, you're
4	detail that they provide with regards to what happened.	4	obviously aware that the SAPS' case before the Commission
4 5	The second issue that struck me in relation to	4 5	is that all deaths on the 16th were caused by individual
	the 13th is that I didn't see an evidence and again I stand		members making their own judgment to fire shots in self or
6	to be corrected, around any sort of debrief put out into	6	
7	5	7	private defence. So what is the relevance for the Commission of assessing Intelligence, planning, briefing,
8	them and I know that a number of police officers went to	8	
9	see, what I would refer to as Occupation Health and	9 10	tactical issues such as in your statement, you referred to
10 11	Welfare, I can't remember the specific titles used, but you know it is around helping police afficers to deal with cart	10	the rationale for moving in or the deployment of the TRT
12	know it is around helping police officers to deal with sort of the psychological aspects of being involved in a very	11 12	and command and control, why should the Commission be concerned about those questions when the SAPS' case is a
12	traumatic incident.	12	self defence, a private defence case?
13	So I make the point that I know that and that	13	
15	happened, but in terms of an operational briefing in order to try and sort of identify lessons and what had gone	15	answer to that is that if police officers are in a position
16		16 17	where they act in private defence and again, well, if they
17	wrong, again I stress with all due respect to the families of the miners who were killed, but even from the point of	17 18	were justified in doing so it is certainly not a matter for me, that's a matter for the Commission, but the fact means
18 19	· · ·	18	that police officers find themselves in a position where
	view of two police officers being killed and one who has		
20 21	been seriously injured, you know to do debrief with regards	20 21	they had to exercise their judgment, I don't think that you can icelate that question and just simply then say use or
22	to what has happened here, to learn lessons, given this as an ongoing situation to make sure that these things don't	21	can isolate that question and just simply then say, yes or no, was it justified? I think from the point of view of
22	happen again, I was surprised that I didn't see any	22	the organisation you then have to say, why were those
23 24	evidence of that.	23 24	officers there? You know it was the Police Service,
24	MS LE ROUX: Mr White, unless the	24 25	because those officers to be in that particular place at
20		20	
	Page 31337		Page 31339
1	Page 31337 Commission have any further questions on the 13th I intend	1	Page 31339 that particular time, individual officers have to be able
1 2		1 2	•
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		1	
1	Page 31340 responsible for their deaths were acting in self or private	1	Page 31342 statement, I'm prepared to give oral evidence to that
2	defence, is that a summary of one of the main points you	2	affect. I think it was a hugely questionable decision.
3	make?	3	The consequences of taking another decision, would that
4	MR WHITE: Well, I think the simple	4	have meant that no one would have died that day? Well, I
4 5	answer to that is, Chair, and I'm not trying to avoid it,	5	simply don't know why, I will maybe understand then, well,
	is that I don't know. What I'm saying is and I'm more than		if they didn't take that decision and they did that instead
6 7	happy to go through it as we work through the process to	6 7	or this instead, well, then potentially what might have
8	give you detailed sort of consideration on this, is that I		
9	do question highly the decision to go and I don't use this	8 9	happened, I just simply, I don't know. MS LE ROUX: Mr White, taking you back to
9 10	terminology, again it is terminology that I've adopted in		
10	relation to the context, to go tactical, at in and around	10 11	the question I asked you which is, why do we look at planning, briefing, command and control, Intelligence,
12	-	12	etcetera, why do you do that in your statement? Is there a
12	3:30pm on Thursday afternoon, I do question why that was the case in quiet, very, very strongly.	13	legal basis in your experience or in Northern Island as to
14	After that decision was made we know that a lot		why you don't just question why the particular individual
14	of people were killed. Is there an absolute causal	14 15	officer fired the rounds that they did, but you look at why
16	connection between the two? I can only offer you the		they were in that position?
17	benefit of my experience and hopefully that is of some	16 17	MR WHITE: There is a legal basis, Chair,
18	value and you're trying to work out whether or not there is	18	and it comes from the RW McCain which went to the European
19	an absolute causal connection between the two.	19	court of human rights which was the case where the British
20	Had they waited to the next day in order to carry	20	Army, SAS shot three people in Gibraltar and the
20	out some other types of tactical plan early the next	20	implications of that, therefore Legal Aid are that what's
22	morning with all those 44, - sorry, excuse me, 34 people	22	my understanding of the case is that the individual
23	who died, I don't know. Maybe there might have been	23	soldiers who shot, the Human Rights Court found in their
24	another set of circumstances that sort of presented whereby	24	favour that they couldn't be criticised as such for what
25	maybe more people would have died, maybe less people would	25	they did, but the criticisms were aimed at the people who
	Page 31341		Page 31343
1	have died, I simply don't know, but I do think that what we	1	had been involved in planning. In other words why were
2	have to deal with are the circumstances as they evolved and	2	they put in the position that they were put? So that's a
3	changed and then questioned decisions that are being made		
		3	legal basis, however there is a procedural basis as well
4	at that time, given all of the information that's available	3 4	and certainly in the context that I worked in and the
5	and this is why I start off with the whole point around		and certainly in the context that I worked in and the Police Service in Northern Island have their own Code of
5 6	and this is why I start off with the whole point around Intelligence and trying to understand, like I say, why	4	and certainly in the context that I worked in and the Police Service in Northern Island have their own Code of Ethics and 4.2 of the Code of Ethics says that when
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Pretoria

	Page 31344		Page 31346
1	can do I would appreciate it.	1	I'd prefer to read this just so that there's an accurate
2	MS LE ROUX: Yes, Chair, we'll do that.	2	representation of what I'm saying. So the answer at 3.3.2
3	MR WHITE: Chair, just to finish that	3	is that "This appears to be the crux of the issue between
4	point, the case itself and then subsequently the policy	4	SAPS and myself. I'm aware that there's conflicting
5	that has been adopted, you know makes it very clear that if	5	evidence as to whether the strikers were in fact attacking
6	you're in a command position you're involved in planning	6	the police at scene 1. I'm not qualified to resolve that
7	and operation, then you equally have the responsibility	7	conflict and I accept that there is evidence on both sides,
8	that that officer has with regards to the use of force.	8	but on the assumption that the strikers were attacking at
9	All of our policies and I think we'll come back to this at	9	scene 1 as contended for by the SAPS, it is my opinion
10	a later stage, vis-a-vis the homework that you sent me	10	that –
11	around, looking at this particular policy document, but	11	a), It is clear that the movement of the strikers
12	just to briefly say, in the UK all of the policy documents	12	towards the kraal was prompted by the commence of stage 3
13	on use of firearms and use of force, were written in the	13	of the SAPS operation;
14	context of the police officer makes an individual choice,	14	b), There was no adequate rationale to launch
15	but it is within a framework of authority levels. So you	15	stage 3 at 15:30 on the 16th of August;
16	know, authority at certain senior officer level for	16	c), The planning of stage 3 of the operation was
17	firearms to be deployed to a certain situation and then	17	poor and included the deployment of SAPS members which
18	that officer has to be accountable for why he gives that	18	increased the risk and likelihood of the need to use lethal
19	authority under the circumstances in which he did it. So	19	force;
20	individual police officer has to account for his/her	20	d), The briefing of the stage 3 operation appears
21	actions, that's the person pulling the trigger, but it is	21	to have been poor so that a number of key players,
22	also, there is a supervisor at the scene. It is also all	22	including those who were rolling out the barbed wire and
23	the way up to, I have explained earlier on, the gold	23	those who were operating the water cannon were uncertain of
24	commander, the silver commander, the bronze commander and	24	their role;
25	everyone else that has a direct line of responsibility for	25	e), The decision to send a line of in and around
	Page 31345		Page 31347
1	Page 31345 that.	1	Page 31347 60 TRT members forward to confront the strikers, each with
1 2		1 2	5
	that. MS LE ROUX: Mr White, if I could ask you to turn to page 26 of your supplementary statement and in		60 TRT members forward to confront the strikers, each with the discretion to fire in self-defence, increased the risk of an excessive response to any lethal threat; and also
2	that. MS LE ROUX: Mr White, if I could ask you to turn to page 26 of your supplementary statement and in particular Section 3.3. This is where the SAPS set out	2	60 TRT members forward to confront the strikers, each with the discretion to fire in self-defence, increased the risk of an excessive response to any lethal threat; and also f), The response to the lethal threat appears to
2 3	that. MS LE ROUX: Mr White, if I could ask you to turn to page 26 of your supplementary statement and in particular Section 3.3. This is where the SAPS set out fairly crisply that the opinion of Mr White that the	2 3	60 TRT members forward to confront the strikers, each with the discretion to fire in self-defence, increased the risk of an excessive response to any lethal threat; and also f), The response to the lethal threat appears to have been disproportionate."
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Marikana Commission of Inquiry

	Page 31348		Page 31350
1	would point to TT4, which are the minutes of the JOC	1	report.
2	meeting at 6AM, and the issues here are that first of all	2	MR WHITE: That's correct.
3	the information that's recorded as being the intelligence	3	CHAIRPERSON: Beginning at page 59.
4	for that meeting is exactly the same, and I'm pretty	4	MR WHITE: That's correct, Chair.
5	confident word for word that as recorded as the	5	MS LE ROUX: Mr White, other than the
6	intelligence input at the following JOC meeting which took	6	inaccuracy of the intelligence that was available, could
7	place at 13:30 on the 16th.	7	you summarise your comment, your criticism on how the
8	The reason that I raise this is because within	8	intelligence was then – what role it then played in the
9	the intelligence it talks about 3 000 people on the koppie	9	operation?
10	at 6AM. Now I am aware that there had been some suggestion	10	CHAIRPERSON: Before we get there can I
11	that this might have been a typographical error and in fact	11	ask you a question that's been worrying me about this point
12	that there were only, it should have said 300, but there	12	from the time I first read your report, and that is I think
13	are two other pieces of evidence which point to the fact	13	the police case is – and I'm not sure whether they
14	that at in and around 8:50AM, I think one from the	14	articulate it as fully as I'm articulating it now, but I
15	occurrence book and two from Lieutenant-Colonel Scott, at	15	think the police case is that there were great difficulties
16	around 8:50AM there was in and around a hundred people on	16	in getting intelligence. There was a climate of
17	the koppie at that time. I haven't seen any evidence	17	intimidation and so forth and they had handlers who then
18	through reading all of these statements that at any stage	18	had informers and they were getting some information from
19	the natural pattern is that lots of people gather up on the	19	them, but implicit I think in what they say is it was very
20	koppie and lots of people leave, so I think, you know the	20	difficult to get information.
21	logical conclusion is that if there are in and around a	21	Now I could understand that in a longstanding
22	hundred people at around 8:59AM on the koppie, then it's	22	situation such as you have in Northern Ireland you probably
23	extremely unlikely there would have been 300 sort of	23	have informers embedded in the various factions who
24	earlier on at 6AM. So I don't know if it's a typographical	24	presumably are a regular supply, or regularly supply
25	issue, but you know, even at that is to say it appears to	25	information and one's read reports about grasses and super
	Page 31349		Page 31351
1	be exactly the same intelligence which is then on offer to	1	grasses and so on, we don't have to go in now, but where
2	the JOC for the 13:30 meeting.	2	you have industrial unrest arising with relatively
3	CHAIRPERSON: I'm sorry to interrupt you.	3	unprecedented levels of – or so it is alleged, I must
4	You're now actually testifying in relation to what appears	4	hasten to say – relatively unprecedented levels of violence, murder and mayhem and intimidation and so forth,
5	at pages 59 to 61 of your final report. MR WHITE: Yes, Chair, sorry. Apologies.	5 6	I'm not sure that it's so easy for the police to have
6	That's correct. That's –	7	informers in place. They then presumably have to approach
8	MS LE ROUX: Yes, Chair.	8	people who are there already to get information from them,
9	MR WHITE: - the issue that deals with	9	which is also not so easy. So I'm not sure, I just want to
10	that -	10	give you chance to deal with this. I'm not sure that
11	CHAIRPERSON: Yes, I know. I just	11	you've dealt in your reports with the reasons for saying
12	mention that for the – it may help us later when we read	12	that one can blame the police for inadequate intelligence.
13	the transcript of your evidence to realise that you're	13	That there was inadequate intelligence is one thing, but
14	referring to points that are made more fully on those pages	14	whether it's something that you can lay at the police's
15	of your final report.	15	door in these circumstances is another. Now there may be
16	MR WHITE: Sorry, apology. I know we	16	an answer to that, but it wasn't immediately apparent to me
17	should have tried to be more helpful earlier on because I	17	and I thought I should put it to you so you can assist me.
18	think that you had originally talked to Ms le Roux around	18	One other fact – I'm reminded to remind you that
19	paragraph 10 of my statement, but I think that was just in	19	the evidence is that the 10th person who died before the
20	relation to the overall conclusions.	20	16th was Mr Twala, who was an official of NUM. I can't
21	MS LE ROUX: Correct.	21	remember what exactly his role was, whether he was a shop
22	MR WHITE: So my apologies for not	22	steward or a shaft steward or something of that kind, and
23	directing you back to it. Yes, I -	23	the evidence seems to indicate, certainly what Mr X says
24	CHAIRPERSON: You're dealing with	24	about him, which of course may not be true, at least
	inadequate intelligence at paragraph 6.2 of your final	25	because he hasn't been cross-examined yet, but according to
A	RCHIVE FOR JUSTICE	L	

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1	Page 31352 his statement Twala was found in possession of a cell phone	1	Page 31354 particular police officer within the Intelligence branch
2	with a lot of airtime on it and the suggestion was that he	2	and he talks about in that some of the other mechanisms
3	was, or the implicit suggestion is that he was giving	3	that he used, including I think they take still photographs
4	information to NUM. That may well have been the reason or	4	of people on the koppie and they take them back to the,
5	more presumably was the reason why he was killed. Whether	5	they interrogate the lumens, they chart out a case and
6	that evidence is true or not is another matter, but	6	whatever. I would ask the question so what, as a result of
7	certainly he was killed in circumstances which indicate	7	that, you know, what happened, you know, were you able to
8	there must have been a reason for it and if he was a	8	identify people and was that then fed back in? Because it
9	striker and he was a NUM member, one can draw one's own	9	
9 10	inference.	9 10	doesn't say anything in terms of TTT5. He also talks about
11	So anyway, I just mention that. You have a	11	interviewing people, including security guards and witnesses and whatever, some of whom he says only engaged
12	climate of intimidation, a climate of violence, a climate	12	with him on the basis that their names were kept anonymous,
13	of what I called several times murder and mayhem. It is	13	and I can absolutely understand that. But again I ask the
14	not a longstanding sectarian dispute that's endured for	14	question, but so what was the outcome of those
15	centuries where the Royal Ulster Constabulary and their	15	conversations and what did you do with it, because if I go
16	successors in title have been able to establish information	16	back to TTT5 with regards to this is a composite of all the
17	channels, if I can use that word, such as you have in	17	intelligence.
18	Northern Ireland. So I could imagine the police saying by	18	So I've no issue with the fact that they may have
19	all means tell us we must have adequate information, but	19	had difficulties. I still come back to the point that of
20	will you be kind enough to tell us how we can do it, regard	20	that whole week, given the nature of this operation, given
21	being had to the sort of problems that we encountered.	21	that 10 people have died, given the fact that the police
22	Anyway, that's the point that I'd like you to deal with.	22	are taking the decision to engage with a crowd of around
23	MR WHITE: Chair, I have read statements	23	3 000 people, including a group of 300 who seem to be, are
24	from police officers in the intelligence branch where they	24	armed and have certain intent, it strikes me as extremely
25	talk about difficulties in getting intelligence. I	25	odd that there are 2/3 pieces of actionable intelligence.
	Page 31353		Page 31355
1	wouldn't dispute that at all. I'm sure that it is	1	Not only that; Lieutenant-Colonel Scott in terms
2	wouldn't dispute that at all. I'm sure that it is difficult and maybe the circumstances are very different	2	Not only that; Lieutenant-Colonel Scott in terms of some of his statements where he talks through the
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2 3 4	wouldn't dispute that at all. I'm sure that it is difficult and maybe the circumstances are very different for exactly the reasons that you articulate vis-à-vis the position in Northern Ireland and longstanding and covert	2 3 4	Not only that; Lieutenant-Colonel Scott in terms of some of his statements where he talks through the planning process, asks for information. He actually issues what I would recognise as what's called an intelligence
2 3	wouldn't dispute that at all. I'm sure that it is difficult and maybe the circumstances are very different for exactly the reasons that you articulate vis-à-vis the position in Northern Ireland and longstanding and covert human intelligence sources being sort of there. I know	2 3	Not only that; Lieutenant-Colonel Scott in terms of some of his statements where he talks through the planning process, asks for information. He actually issues what I would recognise as what's called an intelligence requirement. He basically says, and again I don't have the
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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	wouldn't dispute that at all. I'm sure that it is difficult and maybe the circumstances are very different for exactly the reasons that you articulate vis-à-vis the position in Northern Ireland and longstanding and covert human intelligence sources being sort of there. I know that some of the evidence with the SAPS is that there was an attempt to have an informer effectively placed. Whether or not that was subsequently the person that you refer to, I'm sure it will never be confirmed and that's not the business of anybody in a public realm and these don't confirm, don't talk about that rightly. So the issue is that in a general sense I'm looking at the circumstances from the 9th to the 16th of August. TT5, or TTT5 – correct me, but the composite of the intelligence, I gave evidence earlier on, has two, possibly three entries which I would consider to be actual, actionable intelligence. So I make the point that an ongoing operation which is taking place over the course of a week, that there are these, only these two pieces of actionable intelligence struck me as extremely surprising. I don't for one second suggest that, you know, there weren't difficulties in gathering intelligence, but it strikes me as extremely surprising that it's not more than	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	Not only that; Lieutenant-Colonel Scott in terms of some of his statements where he talks through the planning process, asks for information. He actually issues what I would recognise as what's called an intelligence requirement. He basically says, and again I don't have the reference ready to hand but it's in the statement, Chair, and where he talks about, you know, he asked for information in relation to what the general picture is in terms of the informal settlement I think it is, and he wants to know that. He's looking for tension indicators. I suspect that that's about police officers who might occasionally patrol that area and might know some people. That's about going, actively going out and talking to people and trying to get a sense of, you know, how the community in the informal settlement are seeing all of this. All of this information, some of it might be relevant, some of it might be of very little value, but some of it might actually might be of value. The important point is that Scott recognises that and asks for that and, but yet gives oral evidence to say that, you know, no information was communicated back to him. <u>CHAIRPERSON:</u> There are two things that occur to me in that regard, and that is the evidence is, I

25th	June 2014 Marikana Comm	nissio	on of Inquiry Preto
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	Page 31356 photographs, identify faces of people, particularly those bearing dangerous weapons, go back to Lonmin, ask them to say who they were, if they could identify them, which you mention that, then get the addresses of these people. Then you remember part of the plan was to have a cordon and search and presumably the idea would have been once you have a list of people who got dangerous weapons and their addresses, you can then do your cordon and search and hopefully seize the weapons in their homes and which would substantially reduce the danger of dangerous weapons being used on the koppie. Apart from that there's evidence of General Mpembe on the Wednesday night, the very night, the night before the killings, a request he addressed to Mr Zokwana, obviously in ignorance of what was being decided at the National Management Forum as they were speaking that the tactical option would be exercised come what may on Thursday if the weapons weren't handed down, what Mpembe said to Zokwana – I don't know if you read that transcript of their discussion – Zokwana said to him why don't you go and take the weapons away, and he says you can't do it, you can't, there's no way you can take weapons or an axe from a man on a koppie if you're got a rifle. You'll have bloodshed. The way you've got to deal with it is you give	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	Page 3132 that they were hoping to get, I take it partly from people they thought would be arrested on the Thursday, but also a result of these two other initiatives that I mentioned. Now all these are relevant in regard to criticism addressed to the police in relation to inadequate information and intelligence and the use or non-use thereof. Would you care to comment? COMMISSIONER HEMRAJ: Can I just add one thing to that? As regards to the request pertaining to the geography of the area, Colonel Scott's request, I understand there was evidence that Mr Sinclair from Lonm was of great assistance to him in orienting him to the area. MR WHITE: And again that may be so and I think that would be around, you know, sort of the configuration of the area and I think he helped in the early stages of sort of Colonel Scott drawing up his plan, but what I was referring to, just to address this particular point first, is that Colonel Scott seems to be asking for intelligence. He's asking for what I would call, you know, atmosphere information, community tension indicators from the point of view of, you know, when we start to roll the plan how are people going to respond to this, and his evidence was that he didn't get any of that
25 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	me, you Zokwana, get your NUM members to come back to me Page 31357 and tell me which people in the hostels and the informal settlement have got weapons and who they are and we will then go and get the weapons from them. Zokwana said we'll do that, but you mustn't say you that we got the information for you. What obviously happened thereafter was there wasn't time for that information to come back to be fed into the plan and implemented perhaps in the cordon and search because of the decision made on the Wednesday night at the National Management Forum that tomorrow is the day when we're going to go to the tactical option if they don't lay weapons down voluntarily. So those two things I put to you are relevant obviously in relation to the information they had, or were hoping to get, and the use they were going to make of it. It does seem as if – this is just a view that obviously one's got to think about; I'm not saying this is so, but it seems as if one of the problems with going over to the tactical option on Thursday was the attempts that had been made to get information which could be used in a cordon and search to disarm the people, the decision to proceed on Thursday was premature, with the consequences that	25 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	Page 3132 To come back to your point, Chair, yes I've read that transcript. I'm aware of all of that and I'm sure we'll come back to this point over the next couple of days around what was said at that meeting by General Mpembe vi à-vis if you go onto the koppie and bloodshed and all of that, which obviously again draws into question this whole issue of the decision on Thursday. However, again as I've said at the opening, I don't, you know, for one second deny that I'm sure there were difficulties in all of this, and certainly, and General Mpembe has asked that that information is brought back and obviously then that information coming back would have post-dated what happened. I accept all of that. But I'm still coming back to the point that difficulties and all, that there are 2/3 pieces of actionable intelligence, and I'm more than happy to engage with the statement of, I think it's Officer – I apologise, I can't remember his rank – Victor, who talks about a lot of these things around what they did, and my basically response will be, well yeah, well if you did all of that I'm assuming they had got some information, what did you do with it, because as I've said
22 23 24	followed. The application for cordon and search had been made, they were going to proceed I think on the Thursday	22 23 24	earlier on I've been told that TT5 represents the composite of – and so I have based this criticism on the fact that are you telling me this is the intelligence for an
25	night to do the necessary obviously based on information	25	operation of this magnitude across a whole week?

25 operation of this magnitude across a whole week?

25 night to do the necessary, obviously based on information

RCHIVE FOR JUSTICE

Pretoria

1	Page 31360	1	Page 31362
1	[12:53] We all have difficulties but there are certain	1	been given to us so we don't know, well, we don't know the
2	things that I still think you would have expected to see	2	details of what was given and he hasn't testified - but
3	moved across into somewhere – maybe this intelligence	3	he's certainly told us they did get information. Of course
4	exists somewhere, maybe it does and maybe my criticisms are	4	there's a further problem which I think you touch on
5	entirely wrong. I am aware of the things, everything that	5	elsewhere in your report and that is, the decision was
6	you've mentioned to me, Chair, I am aware of but it seems	6	taken on the Wednesday night that they would proceed to the
7	to me that then maybe there's a breakdown in the machine as	7	tactical option on the Thursday if the weapons weren't
8	well because this is not getting to the people who are	8	handed down voluntarily and I think the evidence is that
9	making the decisions.	9	that decision was taken in ignorance of the intelligence
10	CHAIRPERSON: What went to the people	10	information. In other words, come what may, if the weapons
11	making the decision or the person making the decision, it's	11	aren't handed down on Thursday we're going to go to the
12	a question that we still have to decide, who made the	12	tactical option. We don't know what the intelligence says
13	decision on the Wednesday night, whether it was Mbombo	13	and we leave it to the JOCCOM to decide how they must do
14	alone or whatever and there's a piece of evidence that she	14	it, that it will be done has been decided, they must do the
15	gave herself on that point that may be relevant but if all	15	how. I think you criticised that quite strongly but it
16	the information they had was what's in TT4, in TTT4, then	16	also has a bearing on the question of a criticism of the
17	wasn't that enough – well, it may well be contended that in	17	intelligence. It seems to me there's more intelligence
18	the light of that information, to decide to do what the	18	that we haven't been told about. You know, we've just in
19	decision was, to proceed to the tactical option on the	19	broad terms, we've been told there's intelligence but it
20	Thursday, knowing they didn't want to give up their	20	does seem prima facie as if the intelligence didn't have
21	weapons, they wouldn't give them up, they didn't want to be	21	any bearing on the decision anyway.
22	dislodged from the koppie and they'd fight to the death.	22	MR WHITE: Chair, I'm very grateful to
23	That in itself was powerful information, was it not?	23	you -
23	MR WHITE: Chair, I'm absolutely	23	CHAIRPERSON: It's put to me that we
24 25	conscious of the fact that you know the evidence much	24	don't know that the intelligence wasn't taken into account
25	conscious of the fact that you know the evidence much	25	don't know that the intelligence wasn't taken into account
	Page 31361		Page 31363
1	Page 31361 better than I, but just on your last point, my	1	Page 31363 but it's an inference which may be drawn but we would
1 2	-	1 2	but it's an inference which may be drawn but we would
	better than I, but just on your last point, my	_	-
2	better than I, but just on your last point, my understanding of the evidence from TTT4 was that 3 000 on the koppie, they wouldn't give up their weapons and they	2	but it's an inference which may be drawn but we would obviously keep an open mind on that until all the argument
2 3	better than I, but just on your last point, my understanding of the evidence from TTT4 was that 3 000 on the koppie, they wouldn't give up their weapons and they would resist the police. I don't if the evidence, I don't	2 3	but it's an inference which may be drawn but we would obviously keep an open mind on that until all the argument has been heard. Anyway, sorry, I'm interrupting. MR WHITE: Chair, I was just about to say
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	Page 31364		Page 31366
1	can deal with it in a minute.	1	question that.
2	MS LE ROUX: No.	2	MS LE ROUX: Thank you, Chair. Mr White,
3	CHAIRPERSON: We'll adjourn till quarter	3	I'd now like to move onto your consideration of the
4	to two.	4	planning of the operation for the 16th and essentially to
5	MS LE ROUX: Thank you, Chair.	5	deal with that in three parts because to assist the
6	[COMMISSION ADJOURNS COMMISSION RESUMES]	6	Commission. Your statement's on the key criticisms fall
7	[13:47] CHAIRPERSON: The Commission resumes. Mr	7	into what evidence you considered and if you could explain
8	White, you're still under oath. Before you ask your next	8	that to the Commission and if that changed over the course
9	question, Ms Le Roux, Commissioner Hemraj wishes to ask the	9	of your statement. How that changed, then if we deal your
10	witness a question. I take it you don't object.	10	criticisms relating to the procedure followed and then the
11	MS LE ROUX: Of course not, Chair.	11	actual content of the plan. So if we can start with what
12	COMMISSIONER HEMRAJ: Mr White, have you	12	evidence did you consider when coming to your conclusions
13	had an opportunity to look at the statement of Brigadier	13	around planning?
14	Engelbrecht about the intelligence, does it have an exhibit	14	MR WHITE: Chair, effectively my
15	number, Ms Pillay?	15	consideration around the issues in relation to planning I
16	MS PILLAY: JJJ167.	16	suppose fell into three phases and consistent with the
17	COMMISSIONER HEMRAJ: It's a six page	17	three statement that I've presented to the Commission. So
18	statement, have had –	18	firstly in relation to my provisional statement, I was
19	MR WHITE: Yes, Chair, I've definitely	19	working off the information contained within the SAPS hard
20	seen a statement by Brigadier Engelbrecht unless you're	20	drive that would have been presented to me. And largely
21	going to tell me there was more than one statement by him	21	around planning I was looking at the statement of
22	then I think we're talking about - if there's only one then	22	Lieutenant-Colonel Scott. Again I read all of the
23	I guess I have seen that.	23	statements but Lieutenant-Colonel Scott I think as I had
24	COMMISSIONER HEMRAJ: And he does set out	24	identified within my provisional statement seems to be the
25	the information or the intelligence received in some detail	25	chief planner. So in relation to planning I've relied in
1	Page 31365 and the steps that were taken around the intelligence.	1	Page 31367 the first instance sort of on that. And Lieutenant-Colonel
2	MR WHITE: Yes, Commissioner, and I	2	Scott gives information in relation to how the planning
3	actually dealt with the statement that I was referring when	2	Scott gives information in relation to now the planning
5		3	process developed and I made comments in that regard And
4		3 4	process developed and I made comments in that regard. And it seems to be that it's a developing plan over a number of
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5 6	I said that I think the ten pieces of intelligence on TTT5, there were maybe two or three which I would consider to be actionable intelligence. Some of the information that Mr	4 5 6	it seems to be that it's a developing plan over a number of days taking into consideration change in circumstances and I think that's entirely fair.
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1	Page 31368 made at the 1:30 JOC. And then Lieutenant-Colonel Scott	1	Page 31370 Scott said, the question then arose well how this was to be
2	who at that particular meeting gives in indication of how	2	implemented. He couldn't remember, he eventually came up
3	this decision might be actioned. And however, by the time	3	with a proposal which was adopted. He said he'd originally
4	I then – on making my third statement, what's referred to	4	remembered that he had worked that out on the Thursday
5	as my supplementary statement, the planning process that	5	morning. But he said he subsequently, around discussion
6	I'm engaging with is different in the sense that the	6	with his colleagues he realised he was mistaken, in fact it
7	evidence seems to suggest that actually the decision isn't	7	had been discussed on the Wednesday afternoon. But he was
8	made at the 3:30 JOC, sorry 13:30 JOC in accordance with	8	then cross-examined quite extensively on it and my
9	General Mpembe's rationale or criteria if you like, for	9	understanding of his evidence in the end was that well he
10	moving through to the tactical option. But actually is as	10	wasn't quite sure which of these two recollections were
11	a result of actioning the decision which may have been made	11	correct. Well I think to be fair, he probably inclined
12	on the evening of the 15th or possibly even on the 14th. So	12	that the Wednesday one was right. A number of points was
13	I need to say that in terms of the phases of the evidence	13	then put to him which tended to indicate that that wasn't
14	that I considered in terms of the planning.	14	so, that his original recollection was correct, that he'd
15	CHAIRPERSON: What I wanted to ask you is	15	only worked it out on the Thursday. He was then asked what
16	have you read his evidence?	16	he did on the Thursday morning, he said he couldn't
17	He was cross-examined at length about a number of	17	remember. It was pointed out to him that according to the
18	matters but in particular the plan and how the plan	18	minute of the 6 o'clock meeting a contingency plan had to
19	developed. And when the plan finally took the form it did.	19	be drawn up in the situation that they might not lay down
20	Have you read that evidence?	20	their arms, the strikers might not. Calitz had said that
21	MR WHITE: Again I have read transcript	21	he was the obvious person to do that and he was then asked
22	evidence of Lieutenant-Colonel Scott and if you can point	22	well why didn't he have anything in writing at the meeting
23	me to particular bits of that because as you say, you know,	23	at 1:30. And he couldn't answer it, he said that he
24	it is very long. So I'm interested in only particular -	24	couldn't remember what he did in the morning. He said
25	CHAIRPERSON: Yes well I haven't got my	25	after the decision was announced by the Provincial
1	Page 31369	1	Page 31371
1	notes with me, if necessary I can have them here tomorrow.	1	Commissioner at the meeting, the question of how it would
2	notes with me, if necessary I can have them here tomorrow. But what happened as the case developed and as things were	2	Commissioner at the meeting, the question of how it would be implemented arose and he waited, no one else there
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	Page 31372		Page 31374
1	communicated to her. And so the implication was that a	1	that he couldn't remember what he was doing. I think I've
2	decision had been made without reference to the	2	read other evidence, possibly a statement from him or
3	intelligence reports that had been received. And obviously	3	somewhere else that I think actually I might be able to
4	in ignorance of the fact that the following morning there	4	help provide an answer to that because somewhere else him
5	was going to be a report which I think you've seen. The	5	saying something about he was helped to be involved in the
6	other thing I must tell you is relevant for your answer.	6	process around recording applications. I can't remember
7	It had appeared while Colonel Scott was being cross-	7	where I saw that.
8	examined and the result of the examination of his computer,	8	CHAIRPERSON: He had finished by twenty
9	that the minutes of the 6:30 meeting were extensively	9	past eight in the morning.
10	edited during the Roots conference. And the final form	10	MR WHITE: Well I remember when I read it
11	which was put before us as the minutes of the meeting were	11	I thought to myself well provides at least part of an
12	dated to some time in the Roots conference. We were then	12	answer as to what he was doing if he couldn't remember.
13	given the handwritten notes made by the then Captain, later	13	CHAIRPERSON: He has an answer up to
14 15	Colonel Moolman at the meeting. Brigadier Pretorius who	14 15	twenty past eight in the morning. MR WHITE: Indeed, Chair, but I only say
	was responsible for the minutes hadn't been there and those		5 5
16 17	minutes told, in some respect, a significantly different story from the minutes that we had previously been given.	16 17	that to give you reassurance that when you said to me the issues in his oral evidence he can't remember what he was
18	It's a matter that we'll have to deal with in our report.	18	doing, yes I have read it and I am familiar with that. I
19	The minutes started by saying today is D Day and they went	19	just didn't want to mislead you in any way. If you had
20	on to say that the time for talking was over and so forth.	20	said to me have you read all of the evidence and could I
21	So it was quite clear that the police version up	20	remember it all to embarrass and hopefully not embarrass
22	to that point was not accurate. Colonel Scott also	22	yourself, Chair, that there was a particular point that I'm
23	conceded that the plan which was in exhibit L was	23	thinking well maybe I haven't read that at all. But all of
24	supposedly the plan to be implemented on the Tuesday	24	the information that you've relayed I can comfortably say
25	already had only come into existence in the way I've	25	I'm familiar with.
	Page 31373		Page 31375
1	Page 31373 described. And he was asked whether what was put in	1	Page 31375 CHAIRPERSON: The reason I put these
1 2	described. And he was asked whether what was put in exhibit L was accurate or was inaccurate and he conceded it	1 2	CHAIRPERSON: The reason I put these points to you was that you were labouring under obvious
	described. And he was asked whether what was put in exhibit L was accurate or was inaccurate and he conceded it was. And he was asked why and he said well it was done		CHAIRPERSON: The reason I put these points to you was that you were labouring under obvious disabilities in drafting a report because there were
2 3 4	described. And he was asked whether what was put in exhibit L was accurate or was inaccurate and he conceded it was. And he was asked why and he said well it was done without malice, just to make it easier for the Commission	2	CHAIRPERSON: The reason I put these points to you was that you were labouring under obvious disabilities in drafting a report because there were various versions. And the impression I got is that you
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	5 0407/		D 01070
1	Page 31376 there.	1	Page 31378 officers in multiple units going to engage in this
2	MR WHITE: I appreciate at that	2	operation, irrespective exactly how the operation rules
3	particular time that was the case but I think it's an	3	out. But given the complexity of it in terms of the
4	ongoing criticism around the entire process.	4	numbers of people, the different types of units, types in
5	MS LE ROUX: And Chair, if I can assist	5	terms of, you know, TRT versus NIU versus POPS, and not
6	at this point, section 2.3 of Mr White's supplementary	6	only that, but the number of units in relation to who needs
7	statement from page 7 onwards deals with the most up to	7	to be going to the north, who needs to be going to the
8	date version that we have of the planning process. That's	8	south.
9	where his –	9	For me in an operation of that complexity it's
10	CHAIRPERSON: Page?	10	extremely important that not only - as I went to great
11	MS LE ROUX: It commences at page 7. The	11	lengths to point out - that the people at the front end
12	consequences of the decision to disarm on the planning	12	know what they're being expected to do, but when it's an
13	process in Mr White's supplementary which has now been	13	operation that is that complex it's not only a requirement
14	marked as BBBB4. That entire section then updates Mr	14	that you understand what you have to do, but I think it's
15	White's –	15	also a requirement that you understand what everybody else
16	CHAIRPERSON: Yes, yes, I was	16	is doing as well and how therefore you fit into that, how
17	hoping to shorten proceedings by telling him about these	17	you complement the actions of A and B and don't contradict
18	things because he didn't know. If I inadvertently	18	the actions of D and C. Given the size of the operation,
19	lengthened the proceedings in the process I apologise.	19	you know, how does anyone hold that in their head, and
20	MS LE ROUX: Mr White, in your	20	therefore for the purposes of clarity that needs to be
21	supplementary statement then and again to orientate you as	21	written down, so it's only fair to the police officers that
22 23	to where we are in your evidence, we've now dealt with what	22 23	you're asking to go and do this job, so that it's crystal clear to them.
23 24	you considered and when. Now if I can turn to that second category of your assistance to the Commission around	23 24	On top of that, again coming back to the policy
24	planning, it's around the procedure and process that was	24	framework, 262 refers to an overall written plan. So
23	planning, it's abund the procedure and process that was	20	nanework, 202 refers to an overall written plan. So
	Page 31377		Page 31379
1	followed. First in that regard is your criticism that	1	that's the South African Police's policy, that there should
2	followed. First in that regard is your criticism that there was no written plan. Could you briefly summarise why	2	that's the South African Police's policy, that there should be an overall written plan. But then, and again I'm sure
2 3	followed. First in that regard is your criticism that there was no written plan. Could you briefly summarise why that is a problem? And in your supplementary statement,	2 3	that's the South African Police's policy, that there should be an overall written plan. But then, and again I'm sure my team will keep me right with regards to the specific
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	Page 31380		. Page 31382
1	for potential confusion and misunderstanding, and I would	1	enough.
2	suggest that that's potentially what happened.	2	We have a plan here which is setting hundreds of
3	MS LE ROUX: Mr White, with respect to	3	heavily armed police officers to engage with a group of
4	the role of Major-General Mbombo –	4	thousands, many hundreds of whom, I don't know how many are
5	CHAIRPERSON: Lieutenant.	5	actually armed, but certainly many. There's intelligence
6	MS LE ROUX: Sorry, Lieutenant.	6	to say that they will resist if they're being asked
7	CHAIRPERSON: A provincial commissioner	7	basically, or forcibly to surrender their arms, and on that
8	is a lieutenant-general. Those –	8	basis I don't think that you need a public order expert. I
9	MS LE ROUX: Apologies, Chair.	9	don't think that you need to be a policing expert to work
10	CHAIRPERSON: Their deputies are major-	10	out there is a high potential that this could result in
11	generals.	11	very high levels of force.
12	MS LE ROUX: Yes, apologies, Chair. The	12	I don't suggest that Lieutenant-General Mbombo is
13	Provincial Commissioner, Lieutenant-General Mbombo, when	13	perhaps an expert herself in relation to tactics. I do
14	she – could you explain the consequence for the absence of	14	expect her to discharge her responsibilities of high office
15	a written plan for her role and decision making?	15	in the police. If she is making the decision to say go,
16	MR WHITE: As I've said from the outset	16	she has to understand the consequences of that action and
17	in my provisional statement I see, and as I said in oral	17	she has to at least ask tell me how you're going to do
18	evidence earlier on, Chair, I see General – sorry,	18	this, reassure me on this point about the bloodshed, and
19	Lieutenant-General Mbombo as being in overall command. She	19	that doesn't seem to have happened and I think that's a
20	makes the key decisions and people respond to those. She	20	failing.
21	made the key decision to Mpembe he must go and deal with	21	MS LE ROUX: Mr White, briefly turning
22	this group on the Monday, and she makes the key decision,	22	then to the consequences of having no POP involvement in
23	perhaps endorsed by her colleagues at very senior level on	23	the planning process, if you could briefly summarise for
24	the 15th, maybe she made it herself on the 14th, whatever,	24	the Commission why you think that is a problem.
25	but the premise we're dealing with now is that she says to	25	MR WHITE: Chair, I think this is a
1	Page 31381 the JOC at 1:30 on the Thursday we're going to the tactical	1	Page 31383 general comment you, on an ongoing basis, Chair, but if I
2	option, therefore she makes the key decision, she's in	2	could point to a particular issue and in the overall scheme
3	overall command.	3	of things perhaps this might to some extent seem relatively
4	I do make a point in my supplementary statement,	4	minor now, but I give you it as an example and I think that
5	and I'll paraphrase and hopefully I've not gone too far off	5	it potentially could have had consequences and that is that
6	track when I say it is entirely appropriate for an officer	6	it's the issue in relation to the rollout of the razor
7	at that level, I would see her as goal commander, strategic	7	wire. Lieutenant-Colonel Scott wants that razor wire to go
8	commander, to delegate the responsibility of the	8	out to protect the police resource and potentially the
9	intricacies of planning to someone else, to people below	9	media, and I think he also wanted it to go out initially
10	her, to her team, to Mpembe, to Annandale, to Lieutenant-	10	around, as sort of an indication to people, because of the
11	Colonel Scott, or whatever. That's entirely appropriate.	11	configuration of the wires the originally wanted, that you
12	Where I feel that she can't do is delegate the	12	know, we don't want you to come this way, we want you to
13	responsibility for the consequences of her orders. She	13	move back and then it's going to be followed up by police
14	needs to understand what that means and I know that there	14	resources that are going to disperse people to the west.
15	is evidence before the Commission in relation to	15	So the original arc of the razor wire again was trying to
16	conversations that may or may not have taken place - and	16	make that statement and we talked this morning how with the
17	again it's not my place to judge – where she was alerted to	17	change of position of Nyala 6 the configuration of the wire
18	the fact that it, you know, this is likely to involve	18	maybe indicated to people a different situation. That's
19	higher levels of force.	19	one point. It's not the point that I'm making.
20	So I know that in oral evidence the Provincial	20	In relation to the rollout Lieutenant-Colonel
	Commissioner basically said that you know, in terms of the	21	Scott basically wanted this as a defensive measure, so what
21		22	he said is it needs to be rolled out simultaneously, it
21 22	intricacies at the time she left that very much to the	~~	
. 10	intricacies at the time she left that very much to the officers below her and she sought assurances that it could	23	needs to go very, very quickly, and there wouldn't be a
22	intricacies at the time she left that very much to the officers below her and she sought assurances that it could be done sort of without blood. In my opinion, and I think		
22 23 24	officers below her and she sought assurances that it could	23	needs to go very, very quickly, and there wouldn't be a

1	Page 31384	1	Page 31386
1	people that you're going to defend yourself? We'll get it	1	but maybe you can help us.
2	out, get it out quickly, and we'll be safe behind it, and I	2	MR WHITE: I'm aware that he seemed to
3	can fully understand that point. You know, that's what he	3	suggest that he would do that because again I'm familiar
4	was trying to achieve.	4	with that evidence. This was the next point I was going to
5	The reason that I say that I sort of think that	5	deal with, Chair, in relation to this issue of the rollout,
6	potentially if there had been POP commanders involved	6	because I think in terms of the interaction between myself
7	there, Lieutenant-Colonel Scott I'm sure is a very	7	and my legal team and the SAPS legal team around some
8	professional officer and highly skilled in lots of areas,	8	points of disagreement there is one issue vis-à-vis sort of
9	but if he's not ordinarily used at dealing with crowds one	9	the issue in relation to the wire. I say in my statement,
10	of the things that we know from sort of research and	10	I think it's my final statement about no tactical
11	whatever is that what tends to happen with crowds is that	11	advantage. Just rather than spending time looking up the
12	you, they will respond to something the police do. I think	12	reference, Chair, I'll ask my legal team to keep me right
13	there is evidence of this in this particular situation over	13	on this, but I do make a comment around this simultaneous
14	the course of the couple of days when the negotiations were	14	versus consecutive and Scott I'm engaging with the point
15	taking place, so that when the police change their	15	that he wants this to go out immediately, quickly and
16	configuration what you get is – I think Mr Noki is the	16	without warning, and I think I describe the rollout of it
17	gentleman, you know he comes forward as the head of the	17	as perhaps shambolic.
18	negotiating group of five and it seems to be quite often	18	I describe the rollout of it as shambolic because
19	he's very aggressive and then credit to Mr McIntosh, I	19	it is categorically not very slick in all happening
20	think is the police officer who's the chief negotiator,	20	simultaneously, and my legal team provided me with the
21	manages to calm him down, but it seems that when the police	21	evidence from, I think it's GW4 is the – I'm just asked for
22	do something, change their configuration, bring the mine	22	the reference number in relation to confirm for me there
23	union leaders, this happens and he approaches.	23	the movement of the vehicles, but it takes place over a
24	So this issue around rolling out the wire, I	24	period of around nine and a half minutes. Chair, I don't
25	think it's entirely predictable that when the police change	25	think that that's in dispute.
	Page 31385		Page 31387
1	Page 31385 their configuration so much, that that is likely to sort of	1	Page 31387 So my comment in relation to shambolic in
1 2		1 2	-
	their configuration so much, that that is likely to sort of		So my comment in relation to shambolic in
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1	Page 31388	1	Page 31390
1	communicated back to Scott. I didn't know this when I was	1	managed to get them calmed down and then we revert back.
2	reading the evidence of Officer Makhubela in relation to	2	So therefore with that in mind, again I would say
3	all of this, in his first statement he talks about the wire	3	that he should have been anticipating that there would be a
4	encircling the protesters, which is a third option which	4	response to this and therefore if this wire has just come
5	was categorically not in Scott's plan, but nevertheless,	5	out as a defensive mechanism, well then tell people in
6	the issue that we're dealing with here is the fact that	6	advance of that so that there is no misperception from the
7	there is a change to the plan and I'm sure absolutely for	7	point of view of the people on the hill. You know, warn
8	very good reasons, I don't question that at all, you know	8	them by use of audio in terms of loudspeakers, and if
9	these are the tactical people on the ground who understand	9	necessary warn them by way of, you know, printed messages,
10	the terrain, who understand, you know, the circumstances	10	actually having a message on a board. Now I – the
11	that they're operating in, but the crucial aspect is that I	11	Commissioners are looking at me, saying oh my goodness, how
12	don't think that was communicated back to Lieutenant-	12	would you do this –
13	Colonel Scott and ultimately he's the chief planner and he	13	CHAIRPERSON: Part of the problem is many
14	has given oral evidence himself to say that had he known he	14	of the rock drill operators were illiterate, so I'm not
15	may have done things differently, but he didn't know.	15	sure a message on a board would have helped.
16	That's another aspect of, you know, breakdown in	16	MR WHITE: Apologies then. I don't maybe
17	communication.	17	fully understand the context, but I'm engaging this in the
18	COMMISSIONER HEMRAJ: Mr White, what	18	way that what ways can we use to advise a crowd, and on
19	would your view be if you factor in that the crowd were	19	occasions when you have time, when you have a day or two to
20	told what the purpose of the barbed wire was at the scene,	20	plan in advance and you want to be able to on the basis of
21	if you had to include that in your consideration?	21	accountability demonstrate that you did everything that you
22	MR WHITE: Absolutely, and as I said	22	possibly could to make sure the crowd were aware, well then
23	earlier on, you know, I don't think most people who	23	one of the mechanisms that you might do is actually to
24	understand sort of crowd dynamics, you know, would	24	print off some signs. Now I appreciate that between 1:30
24	recognise that quite often one of the predeterminants in	25	JOC and 3:30 it's time to move, that's not going to be the
25		23	
	Page 31389		Page 31391
1	Page 31389 relation to crowd activity is what the police do. This is	1	Page 31391 case. However, I would make the point that obviously this
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2	relation to crowd activity is what the police do. This is why we talk about this concept of no surprises. Quite		case. However, I would make the point that obviously this operation has been running not since 1:30 JOC, it's been
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	Page 31392		Page 31394
1	had had that conversation previously, as I said I think	1	that reference to 13:30 is of course two hours before the
2	when the Nyalas first arrived that morning with the wire	2	wire was actually rolled out.
3	and he comes forward. So I would say, you know, those are	3	MS LE ROUX: Mr White, assuming a warning
4	explanations as opposed to warnings. Some people might say	4	was given to the crowd, so assume that to be a fact that a
5	that's a semantic argument. I don't think so.	5	warning was communicated to the entire crowd, what would
6	CHAIRPERSON: Yes. No, the evidence as	6	you expect the crowd to do in response to a warning that
7	far as I recall, there are three points that are relevant,	7	the barbed wire will be deployed?
8	I think. The first is the police themselves say that they	8	MR WHITE: That's maybe hard to say in
9	didn't produce the Nyalas with the wire trailers the	9	terms of again, if the warning is given that barbed wire is
10	previous day because they kept the wire trailers out of	10	going to be rolled out but it's purely for defensive
11	sight because they thought that might provoke the strikers.	11	purposes, then it's likely that, you know, it's not going
12	So that's the first point.	12	to have an impact on the crowd. So potentially therefore
13	The second point is that on the Thursday morning	13	the crowd are not going to move. Now what I can't account
14	they obviously decided this was going to be D-day and so	14	for, you know, is the individual sort of psychology of any
15	they arranged the field as it were so that they could	15	people within that crowd who might decide this is our last
16	proceed on that basis. They brought the wire trailers out.	16	chance if we want to attack the police to move forward –
17	The wire trailers did arouse the anger I think of Noki and	17	you know ordinarily what happens and if you give, look at
18	Mr Noki came and spoke to them about it and according to	18	the context of this situation, that as you describe, Chair,
19	Calitz I think it was, they did explain, or he claims they	19	these Nyalas between the wire have appeared on the scene
20	explained that they were there merely to protect the police	20	for the first time on Thursday morning. I think it's what
21	and the community and so on, and then subsequently when	21	Lieutenant-Colonel Scott describes as stage 2, the show of
22	the, at about 20 to 4 when they started unrolling the wire	22	force but he's very specific in that they only come out on
23	then there was a further response from Noki and once again	23	the Thursday morning and park in their positions, not to
24	the explanation was given. As you say, this was now after	24	deploy the wire and that's exactly what has happened. My
25	the wire had already started being rolled out and so the	25	point was that once that happened, it seemed to get a
	Page 31393		Page 31395
1	crowd had already responded to it, but of course there had	1	response from the crowd, Noki comes forward and this is why
2	crowd had already responded to it, but of course there had been the earlier communication somewhere after 10 o'clock	1 2	response from the crowd, Noki comes forward and this is why we get this thing about, this explanation at around 10
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1	Page 31396	1	Page 31398 MS LE ROUX: Mr White, if we can then
1	evidence that the strikers perceived that the wire was	1	
2	going to box them in. Well, perhaps if there had have been	2	move to the final aspect of your criticisms that fall into
3	a proper warning before the wire was rolled out, which was	3	this category of the procedure. So we've just finished
4	categorically stating what the purpose of the wire was for,	4	with no POP involvement. You also in your final statement,
5	well, then they wouldn't have had that perception. They	5	and if I can direct you in your supplementary and to the
6	would have been clear. The second point is that if we	6	Commissioners as well, page 9 commencing at paragraph
7	follow this line of thought through, now that the strikers	7	2.3.5, there you deal with your criticism that there's no
8	who are on the hill have heard this warning and explained	8	challenge process to the plan. Could you take the
9	to them, so their perception is that the wire is to defend	9	Commission briefly through those criticisms?
10	the police as opposed to encircle us then the question	10	CHAIRPERSON: Paragraphs 2.3.5 and 2.3.6,
11	becomes, do they accept that or do they think the police	11	is that right?
12	are lying to them? So in terms of what you were saying,	12	MS LE ROUX: Yes, Chair, and then it
13	you have to accept, one, that they hear the warning, two,	13	actually continues all the way through to 2.3.9 but if Mr
14	that they understand it, three, that they accept that this	14	White could just summarise this point on the absence of a
15	is the case. But the point is that as it happened the wire	15	challenge process.
16	starts to get rolled out, there has been the warning and	16	MR WHITE: If you're ready, Chair?
17	clearly if there is that perception that you've advised me	17	CHAIRPERSON: Waiting for you.
18	of, well, then people are thinking now we're going to be	18	MR WHITE: Chair, I think in answer to
19	blocked in. It might to explain that Noki comes forwards	19	this question, if I refer you back to something I said
20	very aggressively and basically to challenge the police	20	earlier. When I give you an explanation of the concept or
21	about this. He's given the explanation – I stress	21	the procedure, rather, that I would be used to and I
22	explanation at that stage rather than warning - about what	22	described particularly gold and silver – gold level,
23	the wire is for but of course, as has already been alluded	23	strategic commander, sets the strategic objectives and then
24	to, yes, whilst that conversation, in fact I'm not sure	24	it's the role of the silver commander, the tactical
25	that that conversation takes place over the Tannoy but even	25	commander to come up with the tactical plan, how are we
	····· ································		
	Page 31397		Page 31399
1	if it does, how do we know that all of the other people can	1	going to achieve this, okay. And again I said that I see
2	hear that? You know, we can't be sure that they do, but my	2	Lieutenant-General Mbombo operating in the gold,
3	issue in relation to getting engaged in this conversation	3	effectively gold level and therefore those very senior
4	was basically that, you know, back to this point about what	4	
1 7	was basically that, you know, back to this point about what	4	people at the JOC, Annandale, Mpembe, assisted by technical
4 5	Scott wanted with the wire and therefore that he didn't	4 5	and tactical advisers, if you like, such as Scott then
5	Scott wanted with the wire and therefore that he didn't	5	and tactical advisers, if you like, such as Scott then
5 6	Scott wanted with the wire and therefore that he didn't want to have a warning for it but I think that he might	5 6	and tactical advisers, if you like, such as Scott then operating around the silver level. So part of our process
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		1	
	Page 31400		Page 31402
1	fairness to Lieutenant-Colonel Scott, is he gets told that	1	opportunity for the POP people to come up with inputs and
2	the decision is go, Annandale says how are we going to do	2	responses once the plan was explained to them at 2:30.
3	this, Scott says no-one else volunteered so I said well,	3	Regard being had to the circumstances prevailing, have you
4	look, I've been giving this some thought, here's how we	4	any comment about that?
5	might do this. And I don't think at any stage anyone else	5	MR WHITE: Chair, I think if I remember
6	inputs or anyone else raises any objections. Again I'm	6	Brigadier Calitz's evidence correctly, I think that he also
7	looking at my legal team just for clarification. There is	7	made some comment about the fact that, you know - and this
8	a reference in one of the statements, I think it might be	8	was a direction coming from the JOC, you know, and they are
9	Scott's perhaps, where there is actually an invitation to	9	the senior people so consistent with and in addition to
10	challenge although that might be the JOC in the morning, if	10	what you say, he makes that point. You know, this is, the
11	memory serves me correct, where they go through unit by	11	senior commander said that we're going to do this and then
12	unit and the different people who are represented there put	12	the other bits that he said about, well, if it wasn't
13	their say, no challenge to it. So I might be wrong in that	13	implemented then catastrophic – so on that basis I can
14	that might be the 6AM JOC and talking about a different	14	actually say I have some sympathy with Brigadier Calitz and
15	plan, but the point is that if that is the 1:30 JOC then	15	others who were at that briefing that Lieutenant-Colonel
16	people are specifically asked and they say no, but it's	16	Scott does at 2:30, not least because he's trying to
17	not, still the fact remains that Scott lays out how he	17	explain this plan which has got to be, by any stretch of
18	thinks this should happen and there's no evidence that	18	the imagination, relatively complex given the number of
19	anyone contributes in any way by basically saying, I'm not	19	people that are involved and obviously a highly dangerous
20	so sure about this, I'm not so sure about that or have you	20	plan for all the reasons that we've talked about earlier
21	also thought about – you know, it doesn't seem to be that	21	on. On top of that I note in Scott's consolidated
22	there's any challenge. Ultimately what he lays out,	22	statement, the 149 page statement, he actually gives quite
23	basically people say, yes, that's fine, that's what we'll	23	a lot of detail around some of the other stuff that he
24	do.	24	covers in this briefing with regards to, I think he might
25	MS LE ROUX: Mr White, moving then to the	25	touch on things like use of force and whatever and if he
1	Page 31401	1	Page 31403
1	category of your criticisms around the actual content of	1	has covered all that, the point is that the briefing starts
2	category of your criticisms around the actual content of the plan. We've dealt with the –	2	has covered all that, the point is that the briefing starts at 2:30. I know that Brigadier Pretorius is with him, she
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	Page 31404		Page 31406
1	most when I first engaged with this evidence. So going	1	trying to plan for, the what-ifs, the POP are to go forward
2	back to the time that I'm looking at the evidence in	2	and try and disperse people but then if they don't
3	relation to my provisional statement, that at this meeting	3	disperse, if they resist as the intelligence says that they
4	including very senior people, Scott lays out this plan and	4	will, then following on behind the POP is the TRT line and
5	the plan basically says, to paraphrase, that the pops will	5	the very fact then that the tactic is that you have 60
6	go forward to disperse. The POPS officers basically, if	6	people lined up armed with R5 rifles, as I understand is
7	they come under threat, then they will retreat to their	7	the weapons that they use, I just simply wondered that the
8	Nyalas and if they can't or if the Nyalas, I think he said	8	JOC – and this is dealing with this issue of planning and
9	something about potentially being burned, then the TRT were	9	the challenge process – at what point did someone say,
10	going to follow on behind them. Given the intelligence	10	let's just be clear here, what are we asking the TRT to do?
11	that we do have, which is that here are all of these	11	If they have – so we're basically saying we'll line up 60
12	people, potentially 3 000 and 300, the 300 who are separate	12	people and if they've already sort of, you know, got to the
13	who are, as has been described by some police officers, the	13	position where the POP have moved out of the way, they will
14	warrior group who have certain intent, but even beyond that	14	engage with them proportionately.
15	the 3 000, there are a lot of them who are armed as well	15	[14:46] What does that mean? What is the position we're
16	with traditional weapons. And the intelligence is that if	16	putting these police officers in? What do we think they're
17	you try and take the weapons off, they will resist. So the	17	going to do? I see that as the challenge process, which
18 19	plan, as I said, the POP officers going forward and I think I made comment, the fact that with what I would call	18 19	didn't happen, and to be honest with you, I was actually shocked in terms of reading the evidence.
20		20	shocked in terms of reading the evidence. MS LE ROUX: Mr White, I'd then like to
20	proactive sort of defence in terms of things like water cannon and rubber rounds and whatever, but they were going	20	move on very briefly to the issue of briefing, and Chair,
22	forward in a line with no shields. And I made the point	22	perhaps I can summarise this so we can get through this
23	very quickly that, you know, those shields do not offer	22	point quickly because you have been able to cover a lot of
24	ballistic protection and I think actually how I termed it	24	your briefing criticisms already.
25	was I said I wouldn't like to be standing behind one if	25	CHAIRPERSON: Sorry, please repeat that.
	0		
	Page 31405		Page 31407
1	someone was throwing a spear at me or swinging a machete or	1	MS LE ROUX: Yes, Chair, I'm saying I'm
2	someone was throwing a spear at me or swinging a machete or whatever, but I would much rather have the protection of a	2	MS LE ROUX: Yes, Chair, I'm saying I'm going to try to get through the briefing point fairly
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1	Page 31408 of sympathy, I think he's doing his best in the	1	Page 31410 Thursday. If that's what you're addressing I haven't got a
2	circumstances – he briefs around 20 people, which seem to	2	problem, but if you're only worried about the why 3:30, I
3	be the commanders. They obviously, and there is evidence	3	don't think that merits much further consideration –
4	that they go back and brief their own people, and I say to	4	MR WHITE: Absolutely, Chair. It's why
5	you, you know, the very fact that there is, you know, this	5	Thursday, and it's because we start moving at half 3 and
6	is complicated and there is nothing written down, the	6	I'm just simply saying, and I've said from my provisional
7	difficulty is then – I mean if I respectfully tell the	7	statement I can't understand why if you look at some of
8	Commissioner something who tells you something, Chair, by	8	Scott's original suggestions around there were only a small
9	the time it comes back around to me, 15 people, you know,	9	number of people on the koppie at night time, so I mean I
10	is it going to be exactly the same message, particularly if	10	actually said well why don't they move in at night. Moving
11	it's going – that's human nature.	11	in, in the dark, would cause its own difficulties, but if
12	So you know, the importance of briefing is linked	12	you then bring a lot of artificial light with you, you can
13	to the plan. You know the plan is to tell people exactly	13	give yourself certain – you can use the dark as a tactical
14	what they're going to do and then briefing is just	14	advantage, or conversely why don't we do it at first light.
15	basically a way of communicating that, and all of that I	15	So sorry, my comment in relation to why go at half 3 is why
16	think is impacted on by the rush that we're doing it. If	16	go on Thursday at all. The point is they went at half 3 or
17	you remember, Chair, I said in a large complex operation, I	17	thereabouts. That's why my reference to half 3, Sir.
18	talked about we would have a pre-brief maybe the day before		CHAIRPERSON: When you've reached a
19	or the day before that. I appreciate that you know we're	19	suitable stage, Ms le Roux, we'll take the tea adjournment,
20	talking even across the whole of Marikana, the bit that	20	but I won't dictate to you when it will be. You will tell
21	we're dealing with now, we're talking about a number of	21	me when it's appropriate for you.
22	days, not over the course of the week, but I would come	22	MS LE ROUX: Chair, I think there are two
23	back to the point that – and I think this is one of the	23	related issues and then we can conclude.
24	issues that we didn't cover in relation to, I think there	24	CHAIRPERSON: I'm in your hands.
25	are two fundamental issues in relation to tactics. One is	25	MS LE ROUX: Mr White, with respect to
			·
	Page 31409		Page 31411
1	Page 31409 this POP – sorry, TRT line, and the second issue is why go	1	Page 31411 the – you've identified your concern around the deployment
1 2	5	1 2	
	this POP – sorry, TRT line, and the second issue is why go		the - you've identified your concern around the deployment
2	this POP – sorry, TRT line, and the second issue is why go at half 3.	2	the – you've identified your concern around the deployment of 60 TRT members. Could you also summarise your
2 3	this POP – sorry, TRT line, and the second issue is why go at half 3. CHAIRPERSON: [Microphone off, inaudible]. MR WHITE: Why go at half 3. You know,	2 3	the – you've identified your concern around the deployment of 60 TRT members. Could you also summarise your criticisms of that deployment with respect to the weapons that they were carrying? MR WHITE: Chair, I made the point that I
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1	Page 31412	1	Page 31414
1	argument that this goes beyond that, so would the Northern	1	the mitigating factors might be that we might have snipers
2	Ireland police use R5s or weapons of that kind in a	2	placed, but also we might have trained armed response
3	situation such as we had at Marikana?	3	officers. So whilst every police officer carries a gun we
4	MR WHITE: No.	4	do have specialist firearms teams that respond to what we
5	CHAIRPERSON: You would then I take it	5	call firearms incidents, a robbery at a petrol station,
6	recommend that we should say that that shouldn't happen	6	maybe a domestic hostage situation. So these officers,
7	here either, and I think you do deal in your report with	7	specialist firearms trained and with specialist firearms
8	the equipment that's used by the Northern Ireland police in	8	equipment, like for example ballistic shields, ballistic
9	context of this kind. Is that correct?	9	and protective helmets. So it may well be - I referred to
10	MR WHITE: Chair, I talk about sort of	10	a shield line earlier on. It may well be that we have
11	less lethal type of weaponry, including sort of the	11	police officers that are out on public order equipment,
12	attenuating energy projectile, the AEP, or some people	12	engaging the public order threat, but we have information
13	would still refer to plastic bullets, you know, as a sort	13	intelligence to suggest that there's a simultaneous
14	of a crowd control, although we don't talk about it as a	14	firearms threat, those officers might be deployed at the
15	crowd control weapon because it's not about controlling	15	end of the line. So maybe one actual gun at the end of
16	crowds, it's about identifying an individual threat within	16	each line who are scanning the crowd not for the bricks and
17	a crowd and taking action against that, plus because of the	17	bottles and stones, but actually are looking for the
18	prevailing security threat against police officers – and I	18	particular firearms threat that if it emerges, that they
19	talked about this, this morning with regards to quite often	19	will engage in a proportionate fashion, which hopefully
20	we'll come across situations of a firearms threat within a	20	will be around first of all taking cover and warning
21	public order situation, meaning all police officers, just	21	everybody else to taking cover, warning to the person who's
22	as I see police officers here in South Africa, they all	22	posing the threat to see if we can utilise the threat in
23	carry a sidearm, you know, a handgun, and then depending on	23	any way, and if necessary shoot, and if we are engaging in
24	the nature of the operation we will deploy long arms, as in	24	that type of tactic within a plan, within the challenge
25	you know, Heckler & Koch, MP5 type weaponry, into sort of	25	process, you know that card is on the table and everyone
	Page 31413		Page 31415
1	Page 31413 the, a public order situation as well, consistent with some	1	who signed up to that, you know we talk about the role that
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	the, a public order situation as well, consistent with some		who signed up to that, you know we talk about the role that they will have and everybody understands that in extreme circumstances, well then they may have to shoot and we name
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	Page 31416		Page 31418
1	is going to happen and if we think we know where that is	1	So you know, am I saying that this is purely and
2	going to happen, well first of all we'll try and utilise	2	simply a crowd management situation in like engaging with a
3	that threat in other ways. As the Chairman was discussing	3	football match? Of course I'm not. I've said repeatedly
4	earlier on around the cordon, the search authorities, you	4	it's a complex, difficult situation, dangerous as well.
5	know, we might try and engage that threat by taking the	5	However, in relation to the material that I've referred to
6	gun, getting the gun before it – but my point in dealing	6	and the expression, the opinions that I've expressed within
7	with your question here is around if we can isolate where	7	my statement, there are three and a half thousand people on
8	we think that's going to happen, with the sort of tactics	8	this hill and I don't think it's anyone's case that all
9	and mitigation that we'll use as I have explained earlier	9	three and a half thousand people were trying to kill police
10	on around armed response officers might actually be	10	officers. You know there are people that are protesting
11	involved in the operation at that point, but on the points	11	because it's their right to protest if they're very
12	over here where we're reasonably confident that that	12	aggrieved in relation to the amount of money that they're
13	ballistic threat won't materialise, well then we might just	13	being paid, and they're protesting and I'm sure that there
14	have Public Order Police officers in shield lines.	14	were many, many people - I've no idea what's in the minds
15	MS LE ROUX: Chair, for your assistance,	15	of everyone. I don't know if people intended to kill
16	Mr White, at page 115 of his statement, that's where he	16	police officers, nor again, that's not my position, that's
17	deals with – of his final statement, that's where he deals	17	your position, but I don't think anyone would ever suggest
18	with the deployment of the TRT line with R5 rifles. Mr	18	that everyone was intending to, and the responsibilities
19	White, one final question before we take the tea	19	that the police have in engaging with the situation are
20	adjournment, and it picks up on something that the Chair	20	around the safety and security of many of those people who
21	said, which was the contention by the SAPS that this is not	21	sat on the hill, who basically came purely and simply to
22	a crowd management situation, that Marikana was something	22	protest. I don't know how many of them there are. Is it
23	other than a POP situation, would you care to comment on	23	all of them? Is it only one of them? I don't know. The
24	that at this time?	24	responsibilities of the police surely in terms of the
25	MR WHITE: I think through surely my	25	mission statement, whatever, I'm sure of the South African
1	Page 31417 first two statements, and we haven't felt the need to	1	Page 31419 Police is around providing for the safety and security of
2	comment on my supplementary statement on this, I have said	2	all the people in that operation and the safety and
3	very clearly this is a difficult, complex and dangerous	3	security of the police officers involved in that operation.
4	situation that the South African Police were engaging in.	4	So is this purely and simply a crowd management
5	I know that some of the interchange between my legal team	•	
6		5	situation in the same way that we're dealing with a
		5 6	situation in the same way that we're dealing with a football match or something else? No, it's not, but I've
	and the South African Police legal team I think maybe	6	football match or something else? No, it's not, but I've
7	and the South African Police legal team I think maybe misquotes me if it said I had said it was a relatively easy	6 7	football match or something else? No, it's not, but I've never said that, and, but ultimately this is about dealing
	and the South African Police legal team I think maybe misquotes me if it said I had said it was a relatively easy task of dealing with 3 of 400 people. I never said that.	6	football match or something else? No, it's not, but I've never said that, and, but ultimately this is about dealing with crowds and understanding how crowds work and
7 8	and the South African Police legal team I think maybe misquotes me if it said I had said it was a relatively easy	6 7 8	football match or something else? No, it's not, but I've never said that, and, but ultimately this is about dealing
7 8 9	and the South African Police legal team I think maybe misquotes me if it said I had said it was a relatively easy task of dealing with 3 of 400 people. I never said that. I've said repeatedly and consistently this is a difficult	6 7 8 9	football match or something else? No, it's not, but I've never said that, and, but ultimately this is about dealing with crowds and understanding how crowds work and understanding how when police officers do certain things
7 8 9 10	and the South African Police legal team I think maybe misquotes me if it said I had said it was a relatively easy task of dealing with 3 of 400 people. I never said that. I've said repeatedly and consistently this is a difficult and dangerous situation.	6 7 8 9 10	football match or something else? No, it's not, but I've never said that, and, but ultimately this is about dealing with crowds and understanding how crowds work and understanding how when police officers do certain things the implications and the likely response from crowds, and
7 8 9 10 11	and the South African Police legal team I think maybe misquotes me if it said I had said it was a relatively easy task of dealing with 3 of 400 people. I never said that. I've said repeatedly and consistently this is a difficult and dangerous situation. There was a crowd of around 3 300 people,	6 7 8 9 10 11	football match or something else? No, it's not, but I've never said that, and, but ultimately this is about dealing with crowds and understanding how crowds work and understanding how when police officers do certain things the implications and the likely response from crowds, and working through a system which is planned and well thought
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7 8 9 10 11 12 13	and the South African Police legal team I think maybe misquotes me if it said I had said it was a relatively easy task of dealing with 3 of 400 people. I never said that. I've said repeatedly and consistently this is a difficult and dangerous situation. There was a crowd of around 3 300 people, whatever it is, on the hill. This is a crowd management situation. This is a public order/public disorder	6 7 8 9 10 11 12 13	football match or something else? No, it's not, but I've never said that, and, but ultimately this is about dealing with crowds and understanding how crowds work and understanding how when police officers do certain things the implications and the likely response from crowds, and working through a system which is planned and well thought out so that hopefully we can get to an outcome which means everybody goes home.
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Marikana Commission of Inquiry

	Page 31420		Page 31422
1	opposed to simultaneously, which he's able to do when the	1	function that they would do on a day by day basis.
2	headphone system is working. It's going to slow the	2	COMMISSIONER HEMRAJ: Thank you.
3	proceedings down, I'm afraid, but there's nothing we can do	3	MS LE ROUX: Mr White, why is your
4	about that. I'm told that there is a fair prospect that	4	conclusion only a prima facie conclusion?
5	the plugs will be working again tomorrow morning when we	5	MR WHITE: Chair, I put the words "prima
6	resume but in the meanwhile we must proceed on that basis.	6	facie" in I think for a number of reasons, principally
7	GARY WHITE: (s.u.o.)	7	because it is not my role to say, certainly not whether or
8	EXAMINATION BY MS LE ROUX (CONTD.): Mr	8	not individual police officers were justified in firing.
9	White, moving then to your conclusion which, Chair, for the	9	Only they can give an account of that and whether it's for
10	record is page 112 of Mr White's final statement, paragraph	10	the Commission or anyone else to decide whether or not
11	7.5. Mr White, there you conclude that in the shooting at	11	that's justified, but it's certainly not for me. However,
12	scene 1, you conclude that it's a prima facie	12	I make the point that when you look at the cumulative
13	disproportionate and unjustified use of force.	13	effect, I suppose, of what happened and we have somewhere
14	CHAIRPERSON: Sorry, Ms Le Roux, is it –	14	in the region of 328 rounds fired over a short period of
15	do you have a spare copy of the report, of the final report	15	time, it seems to me that that, on the face of it, is
16	to give to the interpreter, I think it will assist him?	16	excessive and I say that for a number of reasons. One,
17	MS LE ROUX: Thank you, Chair, my	17	some of the video evidence is that it appears that it's
18	attorney will provide that to him.	18	difficult to see that officers could see what they were
19	COMMISSIONER HEMRAJ: Whilst you're	19	firing at. Two, a number of statements that I've seen
20	getting the page, Mr White, can I just ask you, the	20	where police officers are actually saying that they did
21	equivalent of POPS, your POPS, do they carry arms when they	21	fire at the crowd are not statements that I feel give a
22	go out to crowd management situations.	22	full explanation, as I would have expected to see it, of
23	MR WHITE: Every single police officer in	23	the circumstances in which they, you know, should or should
24	Northern Ireland carries a sidearm and the tactical support	24	not be firing. And I think thirdly, the fact that a number
25	group, which would be the opposite number I suppose of	25	of police officers have given evidence to say that their
	Decc 21421		Dogo 21422
1	Page 31421 POPS, the public order group, they would. So therefore	1	Page 31423 weapons were on automatic and I can't think of
1	POPS, the public order group, they would. So therefore	1	weapons were on automatic and I can't think of
2	POPS, the public order group, they would. So therefore each of them carries a sidearm and during the ordinary	2	weapons were on automatic and I can't think of circumstances where engaging a crowd with live ammunition
	POPS, the public order group, they would. So therefore each of them carries a sidearm and during the ordinary course of various duties that they would do, some of them		weapons were on automatic and I can't think of circumstances where engaging a crowd with live ammunition would warrant a weapon being on automatic.
2 3	POPS, the public order group, they would. So therefore each of them carries a sidearm and during the ordinary course of various duties that they would do, some of them would carry long arms.	2 3	weapons were on automatic and I can't think of circumstances where engaging a crowd with live ammunition would warrant a weapon being on automatic. MS LE ROUX: Mr White, when would you
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		I	
1	Page 31424 not to shoot comes down to the officer who's pulling the	1	Page 31426 officers gave evidence that shots were fired at them, so I
2	trigger, on the basis of the threat that they perceive.	2	fully engage with the fact that, as I've said before, it's
3	COMMISSIONER HEMRAJ: If your POPS team	3	a difficult and dangerous situation which has just got a
4	is attending a situation without specialist firearms	4	lot more dangerous but I do understand the requirement and
5	officers present and a situation develops where there's a	5	this is where I talked about issues of commonality, as I
6	firearms threat to them, then the occasion might occur that	6	understand it that the rules of engagement, if you like, in
7	a whole lot of them might shoot if each of them felt they	7	relation to use of firearms are not that different here in
8	were under threat.	8	South Africa and therefore I struggle to think how 328
9	MR WHITE: If each of them felt that they	9	rounds, given the three points that I made earlier on,
10	were under threat to the extent that I've just described	10	could be anything other than, on the face of it therefore
11	then yes, that's true and I'd follow that up potentially	11	prima facie, excessive.
12	with reference to an example, if that's helpful, once the	12	MS LE ROUX: Mr White, you've described
13	translation has come. I was asked the question as to	13	in your statement and in your oral evidence that you accept
			that an individual officer could shoot to neutralise a
14	whether or not there'd ever been anyone under my command who had fired a shot without sort of me commanding them to	14 15	
15	do so and I provide an example in my final statement. The		threat. Could you explain to the Commission the process that you would expect that officer to go through before
16		16	
17 18	circumstances were that there was ongoing disorder that happened across a number of days, including over a period	17 18	discharging a single round, let alone more than one? MR WHITE: I've already said what I
19	of time somewhere in excess of 300 rounds had been fired at	19	consider to be the threshold, the test as to whether or not
20			
20	the police. The police officer that I referred to in the	20 21	that officer should be firing a round. So therefore I
21	example is a TST officer, i.e. POPS. We did have armed		think it's important to understand what is the effect, what
22	response units involved in this operation but they weren't	22	is the intended effect of that shot. In other words, the
	at the particular place where this firearms threat	23	reason the police officer should be firing is to stop the
24 25	spontaneously presented itself. He was in an armoured vehicle but the vehicle had been hit so many times that he	24 25	threat. It's not necessarily about killing someone, it's basically this threat, this is a threat to my life, here's
25	venicle but the venicle had been hit so many times that he	25	basically this threat, this is a threat to my me, here's
	Page 31425		Page 31427
1	Page 31425 was fearful that the glass, which is about this thick, was	1	Page 31427 how it manifests, be it a spear, be it a gun, whatever it
1 2		1 2	<u> </u>
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2	was fearful that the glass, which is about this thick, was just about to give way because it had been hit by numerous	2	how it manifests, be it a spear, be it a gun, whatever it is and therefore I'm shooting in order to protect my life.
2 3	was fearful that the glass, which is about this thick, was just about to give way because it had been hit by numerous rounds.	2 3	how it manifests, be it a spear, be it a gun, whatever it is and therefore I'm shooting in order to protect my life. I'm shooting to neutralise the threat. So for example in
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	D 04400		D 01/00
1	Page 31428 a threat, what would you expect them to have been in a	1	Page 31430 of collateral damage.
2	position to observe before they shoot?	2	CHAIRPERSON: Can it be quite as simple
3	MR WHITE: Well, I would expect them to	3	as that? Can it be quite as simple as that? Assuming a
4	be able to see what the threat is that is an imminent	4	policeman or a number of policemen or ordinary individuals
5	threat to their life or to someone else's life. What I	5	are standing somewhere and they're approached by a group of
6	would expect to see is a statement at a later stage	6	assailants of some kind and the assailants cause smoke,
7	basically outlining those circumstances.	7	they fire a smoke bomb of some sort and which means that
8	MS LE ROUX: Now Mr White, with respect	8	they can no – that the people standing, the first people I
9	to scene 1 we're in a fairly unique position in that we	9	talked about who were standing there and who were being
10	have video footage, RRR17 the Reuters clip of essentially	10	approached by this group of assailants can't see the
11	the police eye view of the shooting. We don't need to play	11	assailants and the assailants start firing at them from the
12	it unless, Chair, you think it would be necessary, but from	12	smoke cloud, are you saying that the individuals I'm
13	what we observed in that video, could you comment as to	13	talking about who are seeking to defend themselves can't
14	what you observed with relation to your conclusion that	14	fire, they can't do anything to defend themselves, to stop
15	says a disproportionate use of force?	15	these people firing at them from out of the dust, out of
16	[15:44] MR WHITE: Chair, I'm not a ballistics	16	the smoke cloud because they can't see who they're firing
17	expert and I've no expert knowledge with regard to how you	17	at? They must just stand there, waiting to be mowed down.
18	might interpret, you know, that video and I say that,	18	Is that, that can't be right, surely?
19	preface my remarks by that comment but I simply watched	19	MR WHITE: Categorically not, Chair, and
20	that video in the same way that any other human being could	20	I'm grateful to you for offering a hypothetical scenario so
21	watch it and at some point during the video, white rounds	21	that perhaps I can respond in kind. So let's say this
22	are clearly being fired, a high number of rounds are	22	smoke cloud has gone off and people are firing from it, do
23	clearly continuing to be fired. Whatever it is the police	23	I think that the police officers just simply need to stand
24	officers are firing at, and they may well have been	24	there? No, I don't. Maybe it's not a very tactical term,
25	absolutely justified, again I stress I can't make a comment	25	the police officers may either run away, here's the first
	Page 31429		Page 31431
1			
	on this but whatever it is that they may be firing at	1	thing.
2	on this but whatever it is that they may be firing at disappears in the dust and as I've said, a high number of	1 2	
2 3			thing.
	disappears in the dust and as I've said, a high number of	2	thing. CHAIRPERSON: They could run away whether
3	disappears in the dust and as I've said, a high number of rounds continue to be fired. So I simply make the point that I certainly cannot see what they're firing at. It may well be that those rounds are being fired from the	2 3	thing. CHAIRPERSON: They could run away whether or not there was a smoke cloud. If they could run away, in the presence or in the absence of a smoke cloud, they must run away because that's the law but obviously one has to
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1	Page 31432	1	Page 31434
1	talked about a dust cloud, imagine it as a curtain as	2	obligation to provide evidence not only to this Commission
2	opposed to a cloud and I know the police officers were not able to do this but if you can imagine freezing a moment in	2	but potentially to courts to that effect. The third point on this is that another thing
4	time and at a point in that video when we can't see because	4	that concerned me was the number of statements that seemed
5	of the dust what is happening, if you can imagine somebody	4 5	changed, and people can remember things differently in
6	pulls that curtain back and we can now see what's happening	6	situations like this, high adrenaline, I fully understand
7	and let's say what that picture then reveals is perhaps	7	that point. What I have, for example the statement of an
8	three or four people who have been shot in the initial	8	officer - and I'm sure my team will be able to point me to
9	burst and who are now lying down because they've been shot,	9	the correct reference to this, I apologise, it's not at the
10	and a lot of people behind that front line who have now	10	front of my head – where this officer gives three
11	turned through 180 degrees and they're running in the other	11	statements. In the first statement I think he talks about
12	direction. So I would ask the question then, would it be	12	firing 10 rounds and in the second statement he says, I
13	justified to shoot those people? Now, if the answer to	13	stood firm, I didn't fire any.
14	that is no, and I suspect the answer has to be no because	14	We also have a number of statements from police
15	they're no longer posing an imminent threat, then if we so	15	officers who said, I fired X number of rounds, whether it
16	pause this moment in time, pull the dust curtain back over	16	be two or three or four. In a subsequent statement from
17	again so that we can't see, I simply ask the question – now	17	them some time after, I think perhaps ballistic sort of
18	that the dust cloud is back in place, is it justifiable to	18	reports have been submitted where they actually say
19	fire? And Chair, I understand the reason that you asked	19	actually it was eight or nine or 10, my weapon was on
20	that question because I think that you're trying to be very	20	automatic, I didn't know. I just find that unacceptable.
21	fair to police officers who are placed in a very, very	21	MS LE ROUX: Chair, I can certainly
22	difficult and dangerous situation, I fully empathise. So I	22	assist Mr White on the first reference. It was Constable
23	do think that the issue, you know, prima facie this is an	23	Majambozi who had the 10 shots that we see on FFF8, the
24	excessive use of force. But the other issue I have is to	24	discharge list, and he then in his supplementary statement
25	take us back to something we were talking about earlier.	25	says I stood firm, no shots. That's VVV6, and then his
1	Page 31433	1	Page 31435
1	What were they doing there, why were they in the	1	various statements are point 1 to point 4. I'll find the
2	What were they doing there, why were they in the configuration that they were and did that play a part in	2	various statements are point 1 to point 4. I'll find the other reference for Mr White.
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2	particular position, that having given this warning
3	statement it seems to me that the circumstances that they
4	set out on the face of it fall short of being able to
5	justify firing a shot at someone. So therefore I would
6	expect even to see in a warning statement either one of two
7	things; either 'On the advice of my lawyer I've been
8	advised to say nothing,' or conversely, 'Here are the
9	circumstances where when I was on duty and asked to do this
10	very difficult role, this is what confronted me; I
11	genuinely feared for my life, here are the circumstances in
12	which I basically had to fire a round which may have killed
13	someone. You know, I had no alternative because of the
14	circumstances I've laid out, and that's what I had to do.'
15	MS LE ROUX: Then Mr White, in addition
16	to the circumstances would you expect your officer to
17	justify each round if for example they fired nine rounds,
18	or could they justify all nine in one explanation?
19	MR WHITE: Chair, as I say I can think of
20	no reason why, you know, in a crowd situation you would
21	ever have a weapon on automatic. Therefore the short
22	answer to Ms le Roux's question is simply yes, I would. If
23	they're firing lethal rounds, live ammunition, of course I
24	would expect them to justify every single round.
25	MS LE ROUX: Chair, I'm about to move on
25	
	721/12 and 21/27
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Pretoria

				Page
A	accountable 31272:10	adjourn 31289:13	31243:16 31261:13	annexures 31229:22,25
AB 31229:1	31272:13 31344:18	31364:3 31437:4,10	31277:21 31293:19	31242:24 31245:23
abandoned 31323:9	accurate 31240:14	ADJOURNED	31295:1,4,14	31245:24
able 31250:18 31255:6	31346:1 31372:22	31437:11	31299:25 31314:5	announced 31369:25
31270:13 31282:4,5	31373:2	adjournment 31279:21	31328:15 31334:17	31370:25 31409:18
31283:3 31290:5,13	accurately 31307:21	31280:5 31289:11	31375:20 31379:1,6	annoyed 31276:4
31312:14 31324:22	31391:19	31290:16 31329:13	31379:14 31413:22	anonymous 31354:12
31325:18,19 31339:1	achieve 31266:7,7	31329:19 31332:8	31417:4,6 31418:25	answer 31249:12
31352:16 31354:7	31302:16 31311:21	31410:19 31416:20	afternoon 31271:21	31251:14 31253:7,21
31374:3 31390:20	31311:22 31384:4	31419:15,17	31340:12 31370:7	31260:17 31261:21
31406:23 31420:1	31399:1,15	ADJOURNS 31290:17	agenda 31369:10	31271:25 31283:22
31427:17 31428:4	acknowledge 31275:6	31329:15 31364:6	aggressive 31384:19	31332:15,18,24,24
31432:3 31434:8	ACPO 31291:5,11	31419:18	31389:23	31333:25 31338:15
31436:4	31292:21	administrative	aggressively 31391:24	31340:5 31346:2
abridged 31365:22	ACPOL 31285:3	31371:15	31396:20	31351:16 31367:22
absence 31377:9	acrimonious 31274:4	adopt 31238:24	aggrieved 31418:12	31370:23 31372:6
31380:14 31398:14	acronyms 31283:21	adopted 31340:10	ago 31304:2	31374:4,12,13
31407:5 31431:4	act 31233:19 31265:7	31344:5 31370:3	agree 31241:9	31391:3 31398:18
absolute 31340:15,19	31338:16	adopts 31341:11	31300:25 31304:21	31409:15 31432:13
31423:12 31429:10	acted 31293:1	adrenaline 31434:6	31323:18	31432:14 31436:22
31429:11	31306:15	Adv 31245:13	agreed 31311:11	answers 31243:16
absolutely 31241:3,17	acting 31307:7,7 31340:1	31361:21	agreement 31243:8	antagonism 31274:13
31241:20 31242:6		advance 31389:9	ahead 31324:23	anticipate 31260:1
31246:2,22 31247:1	action 31253:14	31390:6,20	Aid 31342:21	31264:14,15
31249:12 31254:6	31382:16 31412:17	advantage 31312:14	aide 31292:23	31319:21 31322:11
31259:23 31267:1,5	actionable 31296:15	31386:11 31387:6,14	aimed 31342:25	anticipated 31250:13
31269:19 31277:9	31297:25 31298:1	31410:14	air 31269:8	31258:12 31405:5
31286:10 31287:14	31347:20 31353:17	advantages 31268:3	airtime 31352:2	31421:10
31287:16,18	31353:20 31354:25	adversarial 31399:11	AK 31248:21	anticipating 31390:3
31300:16,25,25	31359:15 31365:6	advice 31233:25	AK47 31413:12,20	anybody 31322:5
31308:17,25	actioned 31297:9,10	31268:25 31269:18	AK47s 31248:10	31353:10
31311:19 31313:10	31298:2,15 31365:15	31320:5 31403:4	alerted 31381:17	anyone's 31418:8
31315:18 31319:21	31367:17 31368:3	31436:7	alignment 31274:18	anyway 31283:1
31321:7 31323:17,18	actioning 31368:11	advise 31267:20	allegations 31310:20	31290:15 31307:18
31324:16 31331:19	actions 31344:21	31390:18	31313:13	31328:8,11,12
31334:17 31343:19	31378:17,18 31397:7	advised 31243:21	alleged 31310:7	31329:11 31352:11
31354:13 31360:24	31415:9	31312:25 31396:17	31351:3	31352:22 31362:21
31387:23 31388:7,22	actively 31355:13	31436:8	allegedly 31313:7	31363:3
31389:8,15 31403:14	activity 31389:1	advisedly 31259:13	allowed 31272:20	apart 31251:2
31410:4 31413:15	acts 31327:21	adviser 31270:9	allows 31379:25	31275:13 31332:25
31428:25	actual 31253:5	31292:10	alluded 31254:9	31356:12 31361:21
academic 31234:19	31264:20 31279:10	advisers 31379:11	31262:22 31396:23	apologies 31246:21
accept 31241:3	31293:15 31294:14	31399:5	alongside 31433:19	31247:1 31248:12
31252:23 31300:2	31296:19 31353:16	advisor 31233:23	Alright 31228:23	31262:24 31264:1
31308:25 31311:7	31366:11 31401:1	31265:2 31267:12 31270:5,14	31231:21,22	31272:11 31328:1,8
31335:10 31346:7	31414:15 31415:21	· · · · · · · · · · · · · · · · · · ·	31290:23 31330:6	31349:6,22 31380:9
31359:13 31396:11	31417:18	advisors 31267:10,13 31267:16 31268:5,25	alternative 31241:14	31380:12 31390:16 31425:7
31396:13,14	add 31358:8 31417:14	· · · · · · · · · · · · · · · · · · ·	31436:13	
31409:21 31426:13	31417:21	31269:17,22 31270:7	amended 31315:20	apologise 31241:9
acceptable 31287:8	addition 31254:11	advisory 31234:12	amendments 31243:15	31281:13 31296:21
accepted 31283:20	31263:22 31347:23	AEP 31412:12	31262:11 ammunition 31423:2	31359:17 31376:19
31304:23 31309:21	31402:9 31436:15 additional 31236:25	affect 31328:4,11 31342:2	31436:23	31387:18 31434:9
31395:15,21	31244:20 31391:19	affirm 31231:4	amount 31274:5,12	apology 31284:1 31349:16
accepting 31312:20				
access 31287:23	31417:14 additionally 31250:15	31245:24 afforded 31315:6	31285:5 31418:12 amounted 31307:6	APP 31283:20,25
31315:20	address 31337:11,22	31316:13 31425:14		31284:3,16,24,24
account 31344:20	31358:18	afraid 31305:11	amplification 31332:4 analysis 31261:12	31285:5,7,10,13,14 31286:8,16 31287:2,5
31362:25 31394:13	addressed 31261:3	31420:3	31347:7	
31422:9	31356:14 31358:4			31287:15,23
accountability 31265:4	31356:14 31358:4	Africa 31238:21	anger 31392:17 angle 31261:9	31288:13,15,23
31272:5,19 31273:8,9		31256:16 31272:23		31289:3
31278:7 31294:15	addresses 31356:4,8	31273:12 31277:5,11	angles 31257:3	apparent 31351:16
31335:15,18,24	addressing 31410:1	31278:11 31280:13	angst 31275:3	apparently 31328:10
31338:1 31390:21	adequate 31339:18	31301:19 31412:22	Annandale 31371:14	appear 31318:12
	212/6.1/ 21250.10	21/06.0		
31433:17,18	31346:14 31352:19 adhere 31341:25	31426:8 African 31235:25	31381:10 31399:4 31400:2 31409:6	31365:21 31393:23 31429:8

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RealTime Transcriptions

Marikana Commission of Inquiry

appeared 31366.5 31366.5 31366.5 31366.5 3142:24 3142:14:20 31366.3 31442.2 3142:14:20 3142:16:14:34:21 31366.14:34:22 authort(3) 125:12 backed 3124:1 31366.3 31362.3 31362.4 31282.4 31282.4 31282.4 31282.4 31282.4 31282.4 31282.4 31282.4 31282.4 31282.4 31282.4 31282.4 31282.4 31282.4 31282.4 31282.4 31282.4 31282.4 31282.4 31442.3 3144.4 31282.4 31282.4 3144.4 31282.1 3144.4 31282.1 3144.4 31282.1 3144.4 31282.1 3144.4 31282.1 3144.4 31282.1 3143.4 3136.1 3144.1 3136.1 3144.1 3136.1 3144.1 3136.1 3144.1 3136.1 3144.1 3136.1 3144.1 3136.1 3144.1 3136.1 3141.4 3136.1 3141.4 3136.1 3141.4 3136.1 3141.4 3136.1 3141.4 3136.1 31428.1 3136	Page
appears 31274:11 31424:21 assistance 31234:4 31266:10:431344:15 31262:118 31348:25 31349:4 31442:42 31225:12 31289:83128:12 antomatic 31423:1,3 31344:16:19 31422:17 arms 3138:15 31376:13:15 31376:14:31:39:7 31342:16:13 31422:17 arms 3138:15:31:37:17:31:37:13:31:37:13:31:37:13:31:37:13:31:37:13:31:3	
31346:32.031347:4 armoured 31248:21 31282:4.31287:21 31348:16.19 31442:13 bit 31316:20.33 31348:25.31349:4 31442:42.3134:21 31289:43.328:17 31434:20.31436:21 31434:20.31436:21 application 31357:23 31370:20.3138:7. 33141:43.1359:7. 31441:43.1359:6. 31341:43.1350:8. 31414:43.1350:6. 31341:5. 31441:43.1350:6. 31342:1.6 3135:1.6 31342:1.6 31342:1.6 31342:1.6 31342:1.6 31342:1.6 31342:1.6 31342:1.6 31342:1.6 313442:1.6 31342:1.6 3134	2
31348:25 31349:4 3142:12 31289:8 3138:12 antomatic 31423:1.3 ballistic 3140:6 application 3137:23 31319:2 31328:61:6:0:23 31318:1:5:1 31318:1:5:1 31318:1:5:1 31318:1:5:1 31318:1:5:1 31318:1:5:1 31318:1:5:1 31318:1:5:1 31318:1:5:1 31318:1:5:1 31328:61:3:1:4:1:5:1 31328:61:3:1:4:1:5:1 31318:1:5:1 3138:1:5:1 3138:1:5:1:3:1:5:1 31328:1:5:1:3:1:5:1: 31328:1:5:1:3:1:5:1: 31328:1:5:1:3:1:3:1:5:1: 31328:1:5:1:3:1:3:1:5:1:3:1:5:1: 31328:1:1:3:1:1:3:1:1:3:1:1:3:1:1:3:1:1:3:1:1:3:1:1:3:1:1:3:1:1:3:1:1:3:1:1:3:1:1:3:1:1:1:3:1:1:1:3:1:1:1:3:1	288:4
argbication arms 3139:25 31376:24 3139:27 31434:20 3144:20 3144:20 3144:20 3144:20 3144:20 31286:16/20.23 3141:41 3142:44 3143:41 3142:44 3143:42 31286:16/20.23 31286:16/20.23 31286:16/20.23 31286:16/20.23 31286:16/20.23 31286:16/20.23 31286:16/20.23 31286:16/20.23 31286:16/20.23 31286:13/20.21 31281:13/20.21 31281:13/20.21 31281:13/20.21 31281:13/20.21 3134:14/13/20.20 31286:13/20/20.21 31312:18/31/20.21 31312:18/31/20.21 31310:9 313110:9	
application 3137:2.3 3139:2.31322:1.8 31416:1.5 available 31285:1.6 31414:8.8 31414:8.8 application 31370:2.0 31827:2.0 asisted 31294:1.2 31284:1.6 31284:1.6 31294:1.2 31394:1.2 31294:1.2 31294:1.2 31394:1.2 31294:1.2 31394:1.2 31394:1.2 31394:1.2 31394:1.2 31394:1.2 3138:1.2 3138:1.2 31394:1.2 31284:1.2 31394:1.2 31394:1.2 31394:1.2 31394:1.2 31394:1.1 31394:1.1 31394:1.1 31394:1.1 31394:1.1 31394:1.1 31394:1.1 31394:1.1 31394:1.1 31394:1.1 31394:1.1 31394:1.1	1335:5
applications 31374-6 31370-20 31382-7 assistant 31232:13 31286:16.20.23 31434:17 apportate 31292:1.12 31422:43 1422-43 1206:08 31297:23 31298:13 31428:16 apprecise 31282:33 Arrow 31342:20 31259:14 31259:45 31349:15 31407:6 31349:15 31407:6 apprecise 31282:33 arrow 31370:13171:2 association 31243:12 31431:43 1350:6 31309:15 31407:6 approach 31282:17 arranged 31392:15 association 31243:12 31312:18 31340:5 banker 31256:5 approach 31282:17 arranged 31392:15 assome 31290:12 31312:18 31340:5 banker 31256:5 approached 31282:2 31392:2 assumig 31314:24 31238:23 3128:4:8:1 barristers 3125 approached 31282:2 3139:25 assumig 31314:24 31237:9:1 barristers 31257:14 approached 31282:9 arterial 3150:14 3140:16 314306:3 31337:10 31327:11 barristers 31257:14 approached 31282:9 arterial 3150:14 3130:25 31330:24 31337:10 31325:11 31336:10 31325:72 31287:11 31304:16 3127:11 3130:25 31324:23 appropriatic 31267:13 arterial 3125:11 31300:25 3	24
app app <td>16:13</td>	16:13
appointed 31292:1,12 31421:4 31259:24 31206:8 31297:23 31298:13 31428:16 apprecise 31288:23 Arrow 31342:0 31268:13 31301:4 3130:6 31301:4 3130:6 31301:4 3130:6 31301:4 3130:7 3131:12 3130:15:15 3133:15 3133:16 3133:16 3133:16 3133:16 3133:16 3133:16 3133:16 3133:16 3133:16 3133:16 3133:17:1 3133:17:130:133:13:13:13:14:13:13:13:13:13:13:13:13:13:13:13:13:13:	
appreciate 31288:23 Army 31344:20 31268:17 31344:13130:6 Baloyi 31307:10 31344:131376:2 arouse 31392:17 arouse 31392:17 31285:431291:6 31430:15 3140:15 3140:15 approach 31282:17 arouse 31392:15 assume 3129:12 31310:15 arouse 31392:12 31324:12 3134:12 3134:12 3134:12 3134:12 3134:12 3134:12 3138:20:13 31379:12 3138:20:16 3132:18 3138:20:13 3137:12 3138:20:16 3132:18 3138:20:16 3132:18 3138:20:16 3132:18:13 3136:12 arrive 3132:11 barrister 3126:5 3139:22:24 314:00:13 3130:25 3133:20:16 3132:23:1318:42:3 3138:20:18 3131:15.15 barrister 3126:5 3128:21:13 3136:12 arriter 3125:17:14 3130:25 3125:11 3130:25:13 3131:14:14 3131:14:14 3131:14:14 3131:14:14 3131:14:14 3131:14:14:13 3130:22:13:13:14:14:13:14:14:13 3130:22:13:13:14:14:13:14:14:13 3130:22:13:13:14:14:13:14:14:13 3130:22:13:13:14:14:13:14:14:13 3130:22:13:13:14:14:13:14:14:13:14:14:13:14:14:14:14:14:14:14:14:14:14:14:14:14:	:15
31344:1 31370:1 arose 31274:8,9 assisted 31399:4 3136):15 banker 31250:5 31390:2431408:19 arouse 31392:17 arouse 31392:17 arouse 31392:17 arouse 31392:17 arouse 31290:12 31310:15 banker 31250:5 approach 31282:17 arrive 31392:17 arrive 31392:17 arrive 31392:17 arrive 31392:17 arrive 31290:12 3134:44 3134:10 3138:20:13 arrive 31392:17 arrive 3129:125:11 arrive 3129:125:11 arrive 3129:125:11 arrive 3129:125:11 arrive 3129:13131:11,15:15 base 3125:11:4 barrister 3120:13:124:16 arrite 1125:11:0 arrite 1125:11:0 assumption 3124:19 3132:61:2 3125:61:2 3125:61:2 3139:23:31:33:124:14 3130:22:31:330:24 3138:12:13:124:14 3130:22:31:33:124:14 3130:22:31:33:124:14 3130:22:31:33:124:14 3130:22:31:33:124:14 3126:12:31:322:14:14 3126:12:31:322:14:14 3126:12:31:322:14:14 3126:12:31:322:14:14 3126:12:31:322:14:14 3126:12:31:322:14:14 3126:12:31:322:14:14:31:313:14:14:15:13:33:14:14:14:13:31:32:14:14:31:313:14	
31390:24 31408:19 31370:1 31371:2 association 31243:12 aviet 3130:15 banker 1256:5 approach 31282:17 arcsed 31392:15 assume 31290:12 31312:18 3130:15 banker 31250:15 31341:12 3131:17 arrested 3139:2 31394:4 31341:12 avided 3139:14 barrier 31235:13 31379:6 arrive 31320:2 assume 31290:12 31323:16 avare 31237:14 barriser 31265:3 approached 31282:22 arrive 31300:8 31330:16 313320:16 avare 31237:14 barriser 31265:3 approached 31282:9 articulate 31350:14 31300:15 31323:7.7 31285:21 31308:19 base 31257:14 approached 31282:9 articulate 31350:14 3130:02.0 31310:24 31334:14.3 31317:10 31325:2 based 31232:5: aj289:11 3130:46 artificial 3140:12 assumption 3124:19 asside 3132:3:13 assertificial 418:3:133:13:14 3134:43 said:3:13:4:1333:13:4:13:4:4:4:8 3130:25 based 3123:2:1:3:3:3:3:3:3:3:3:3:3:3:3:3:3:3:3),12
31435:23 arouse 31392:17 31285:431291:6 avoid 31310:15 banned 31252:1 approach 31282:17 arrested 31358:2 arrested 31358:2 arrested 31358:2 31394:4 3134:10 3134:10 3138:20 313 3139:16 arrive 31290:15 asumed 3124:17 avoided 31339:14 barrier 3125:11 avoided 31339:14 barrier 3125:12 approached 31282:2 31392:2 asumed 3134:24 31232:16 avoide 31339:14 barriers 3129 approached 31282:2 arteria 3150:14 31430:16 3143:03 3131:11,15,15 base 3125:14 approached 31282:9 arteria 3125:11 3130:24 3134:10 3130:25 based 3132:13 approached 31282:9 articulate 3130:14 3130:22 3133:13.14 3136:23 3136:10 31329:23 31310:12 astisting 3135:11 3130:24 3134:10 3136:22 31329:1313 appropriate articulate 3130:14 3130:23 31329:1313 31329:1313 31329:1313 31329:1313 3143:15 articulate 31326:1 3130:23 31329:13133 31329:1333 31329:1313	
approach 31282:17 arranged 3139:15 assumed 3129:12 31312:18 3130:15 3130:16 3133:10 3133:11	
31292:11 3131:6 arrested 31358:2 31394:12 3134:12 3134:12 3134:12 3134:12 31332:16 aware 31237:1 barrier 31253:1 31379:6 arrived 31309:8 3132:16 aware 31237:1 barrier 31253:1 barrier 31253:1 3139:22 assumid 3134:24 31332:16 31323:7,7 31282:23 3138:43 barrier 31267:3 3120:16 31350:14 31350:14 31350:14 31314:10:3 31331:11:15 base 31257:14 approaching 31282:9 articulate 31308:11 3130:20 3130:24 31338:43136:4 3127:91:13330:25 base 31322:13 3130:25 31324:1338:2 base 3132:13:13333:13 3133:11:13330:25 base 3132:13:1333:14 3130:25 3130	
31341:12 arrive 31322:7 arsumed 31241:7 avoided 3139:14 barriser 31257 approached 31282:22 3139:2 assumig 31314:24 31238:23 31284:8,15 barriser 31257 approaching 31282:24 31430:16 31320:16 31230:16 31232:16 31232:17 3128:22 1308:19 baseball 31247 approaching 31282:9 articulate 31350:14 31320:16 31237:11 31302:20 31331:11.15.15 baseball 31247 31351:13 31353:31 335:14 31359:20 3139:43 3131:11.14 31338:43134:64 31232:12 313 31410:21 atriculating 31350:14 3130:22 3130:24 31348:10 31359:23 313 31332:13 314:314:64 31329:13 315 31410:21 atriculating 3130:14 3130:25 3130:24 31360:25 31308:10 31232:13 135 31410:21 atriculating 3132:16 31333:22 atriculating 314:24:14 3130:22 3133:22 3130:22 3133:22 3130:22 3133:22 3139:23 3139:23 3139:23 3139:23 3139:23 3139:23 3132:24:14 3130:24:14 3130:24:14 3130:24:14 3130:24:13 3132:42:14 3130:24:13 <	
31379:6 arrived 31309:8 31332:16 avare 31237:1.1 barrister 31263 approached 31282:22 31392:2 arriving 3139:8 31282:43 1430:5.10 31282:33 1282:33 1284:8.15 barristers 3129 approacheg 31282:9 arterial 3125:10 31250:16 3123:7.7 31285:21 31308:15 base 31257:14 base 31237:12 base 31237:13 base 31237:14 base 31237:14 base 31237:14 base 31237:14 base 31237:13 base 31237:13 base 31237:13 base 31237:13 base 31237:13 base 31237:13 base 31237:14 base 31237:14 base 31237:13 base 31237:14 <td< td=""><td></td></td<>	
approached 31282:22 31392:2 assuming 31314:24 31282:31284:815 barristers 31292:1 31282:24 31340:16 31320:16 31320:16 31323:7.7 31285:21 31308:19 barsisters 3127:14 approaching 31282:9 articulate 31350:12 31331:11,15,15 base 3123:25:12 31331:11,15,15 base 3123:25:21 31330:12 base 3123:25:21 31330:12 base 3123:25:21 31330:12 base 3123:23:25 base 3123:22:3133 31410:21 31330:12 31330:12 31330:12 31360:5,6 31363:10 31359:23 31331:13,14 3134:12 31360:5,6 31363:10 31359:23 31339:23 3140:21 basical 3139:23 3139:23:3133 3143:21 3139:22 3139:23 3139:23:3133:24 3139:23:3133:24 31409:16 3132:41:1 3139:22:3138:124 3139:23:313:33:22 3124:14 3124:14 3126:15 3124:14:18 3124:14:18 3124:14:18 3124:14:18 3126:17 3126:15 3124:14:18 3126:	
3128:2:4 31430:5,10 arriving 31319:8 3120:16 31323:7,7 31285:131308:19 base 31257:14 approaches 3138:2:3 arterial 31251:10 31359:20 31394:3 31313:11,15,15 base ball 31247: approaching 3128:2:9 articulate 31308:11 31359:20 31394:3 31317:10 31325:2 base ball 31247:6 31289:11 31304:6 articulate 31308:11 31309:20 31310:24 31338:413136:4 31327:21 312 31410:21 31415:13 articulating 31350:14 31331:13,14 4131368 31360:25 31330:24 31384:0 31359:2 31337:124 31386:2 31327:23 312 appropriately ascribe 31328:19 ascurace 31286:14 3130:25 basic 31234:10 basic 31234:10 aj1262:12 asted 31235:2 assurance 31286:14 31306:25 31308:13 3124:14:14,18 31366:17 3124:14:14,18 aj1324:14 31266:15,16,20 atmosphere 31388:21 atmosphere 31388:21 3136:17 31266:15 31321:7,3 31267:52 3127 apropo 31365:17 31282:15 31304:16 31324:13 3134:10 31324:13 3134:10 31326:15 3122 31327:13 312:12 3135:13 aster 31239:7 31383:15 31343:12 31355:7 3127:73	
approaches 31384.23 appropriate 31282:9 arterulate 31350:14 articulate 31350:14 31392.20 31394:3 31317:10 31325:2 31317:10 31325:2 baseball 31247:2 31390:21 3130:46 31390:21 3130:46 articulate 3130:11 31300:20 3130:24 31330:25 31327:9,11 3130:25 baseball 31247:2 31390:51 3130:46 articulated 3130:11 3130:20:20 3130:24 31334:10 3136:2 3137:22 31325:2 31335:2 3139:23 3134:6 3139:23 3133:22 3139:23 3139:2 3139:23 3139:2 3139:23 3139:2 3139:23 3139:2 3139:23 3139:2 3139:23 3139:2 3139:23 3139:2 3139:23 3139:2 3139:23 3139:2 3139:23 3139:23 3139:2 3139:23 3139:23 3139:23 3139:2 3139:23 3139:24 3139:23 3139:24 3139:22 3139:11 3130:16 3139:22 3139:11 3130:16 3139:24 3139:11 3130:16 3139:24 3139:11 3139:12 3139:11 3139:14 3129:17 3129:17 3129:17 3129:17 3129:17 3129:17 3129:17 3129:17 3129:17 3139:11 3139:12 3139:13 3139:11 3139:12 3139:12 3139:13 3139:11 3139:14 3139:11 3139:14 3139:11 3139:12 3139:13 3139:11 3139:12 3139:13 3139:13 3139:11 3139:12 3139:13 3139:11 3139:12 3139:13 3139:13 3139:13 3139:13 3139:13 3139:13 3139:13 3139:13 3139:13 3139:13 3139:13 3139:13 3139:13 3139:13 3139:13 3139:13 3139:13 3139:13	2:2
appropriate 3128:2:9 articulate 31350:14 31403:16 31430:3 31317:10 31325:2 31256:12 based 3123:2:5 assumption 31241:9 31327:9,11 3130:2:5 based 31233:2:5 31410:21 31415:13 articulate 3130:12 3130:2:5 3130:2:4 31338:4 31346:4 31327:9,11 3135:7 31410:21 31415:13 articulating 31350:14 31311:4 31346:8 3136:2:5 3136:3:10 31359:2:3 313:3 31431:18 artificial 31410:12 3139:1:5 3133:3:2:1 3130:2:2 31415:12 based 31235:2:11 appropriate 3128:1:6 asciba 3123:1:6 3133:3:2 assumptions 31325:11 3130:2:2 31415:12 basic 31234:16 aj128:7:6 3128:1:6 3123:2:3 3136:1:0 3123:4:14 31230:1:3124:1:18 articulate 3136:1:7 aproposimation 3126:3:1:6 3123:2:3 3136:1:7 3126:6:15 3137:1:7 3125:5 3126:3:37:10 attack 3129:7:3 3138:1:5 3134:1:6 3123:1:3124:1:8 b1228:2:4 3129:2;5 3127:1:2:2:4 3129:2;2 arc 31230:7:3 3138:1:5 3134:1:6 31235:7 3127:7:31300:1:4 31236:1:7 3126:1:5 3137:1:7 3125:5:3128:3 arc 31230:7:3 3138:1:5 <td< td=""><td>17</td></td<>	17
appropriate 31267:25 31353:3 31363:12 assumption 312419 31339:4 3130:25 based 31233:25 31289:11 31304:6 articulated 31308:11 31309:20 31310:24 31338:4 31346;4 31273:21 312 31319:5 31381:6,11 artificial 31410:12 31309:20 31310:24 31338:4 31346;8 31365:5 31363:10 31359:23 313 31431:18 artificial 31410:12 31395:15 31371:24 31386:2 31409:16 basic 3123:13 appropriateness asked 3123:25 assurance 31286:14 3149:23 3129:4314 3124:14 3123:13 314:23 31367:10 31239:4314 31287:6 31283:5,8 31243:14 31244:15 assurance 3138:123 31367:10 3124:14.18 31259:15 3129:23 31287:6 31283:5,8 31283:25 31363:17 31268:15 3122:1361:16 3124:15 3122:1361:16 3124:15 3122:1361:16 3124:15 3122:1361:16 3124:14:18 3126:15 3122:123:125:137 3126:15 3122:123:125:137 3126:15 3122:123:125:137 3126:66:13 3121:23.14 3126:66:13 3121:23.14 3128:125:137 3126:66:13 3121:23.14 3128:125:137:14 3128:125:137:14 3128:123:126:131321:12,3137:14 3128:125:13137:14 3	1/
31289:11 31309:20 31310:24 31348:10 31345:12 31321:1335 31319:5 31315:17 31310:25 31330:24 31348:10 31359:22 31329:1 31329:1 31329:1 31329:1 31331:13 31331:14 31350:23 31331:14 31360:25 31360:25 31360:25 31360:25 31360:25 31359:23 31359:23 31359:23 31359:23 31390:22 31409:16 basically31235: 31371:24 31360:25 31319:23 31360:25 31313:4,23 31336:17 31239:4 31239:4 31239:4 31239:4 31266:15 312239:4 31361:17 31266:15 31261:17 31266:15 31261:14 31229:25 31275:23 31275:23 31275:23 31275:23 31275:23 31275:23 31275:23 31275:22,24 31269:14 31229:25 31275:23 31275:23 31275:23 31275:23 31275:23 31275:23 31275:23 31275:23 31275:23 31275:23 31275:23 31275:23 31275:23 31275:23 31275:23 31275:23 31275:23 <	
31319:5 31381:6.11 31315:17 31310:25 31330:24 31348:10 31350:2 31292:1 3135 31410:21 31415:13 artificial 31410:12 31331:13,14 31346:8 31305:5 (31305:10) 31359:23 313 31431:18 artificial 31410:12 aside 31325:11 31305:25 (31305:16) 31371:24 31366:2 31431:15 appropriateness asked 3125:2 asiurance 31286:14 31425:24 basically 31235 31306:25 31308:13 31243:14 31244:15 assurance 31381:23 auvful 31319:23 31239:4 3124 31306:25 31308:13 31243:14 31244:15 assurance 31381:23 auvful 31319:23 31239:25 3129:22 31232:14 31260:15 3120:23 31361:16 31247:13 312 attack 31229:22 31266:15 3120:23.34 31260:615 3120 31211:41 31300:1 31304:16 31232:1 31243:18 attack 31226:11 3126:15 3120:23.44 3126:15 3120:22.5 3127:12 22.43 area 31230:13 3134:12 31370:21 31370:15 31345:8,22 31394:16 31337:17 3136:14 3126:15 3120:23.4 31291:7 3129 area 3124:17 31382:63 3186:21 31324:23 31241:23 3125:27 31318:22 313 3124:23 3124:	
31410:21 31410:21 31331:13,14 31346:8 31300:5,6 31363:10 31359:23 3133 31431:18 artificial 31410:12 31395:15 31371:24 31386:2 31409:16 appropriately ascribe 31328:19 assumptions 31325:11 31390:22 31415:12 basic 31234:16 31282:25 asked 31235:2 31313:4,23 31333:22 asked 31331:2:16 3123:5 asked 31235:2 31239:1333:22 31302:25 31308:13 31243:14 31244:15 assumptions 31358:21 31367:10 31244:14,18 31237:6 31238:16,16,20 atmosphere 31358:21 31365:17 31267:15 312 31291:14,15 31300:1 31304:16 31232:1 31243:18 b 3128:24 31229:2,5 31271:22,24 37 arc 31239:7 31383:15 31337:15 31345:12 31345:8,2 31399:14 31286:15 31321:2,3,3 arc 31239:7 31383:15 31371:23 31371:15 31345:8,2 31371:73 31394:16 31371:73 3137:14 31285:5 3128 are 31232:21 31232:1 31371:23 31371:13 attacks 31295:21 b ack 31240:25 31312:20 313 31267:27 31267:27 31382:4 31291:91313 31271:73 3130:17 31285:8312	
31431:18 artificial 3[1410:12 31395:15 31371:24 31386:2 31409:16 appropriately ascumptions 31325:11 31390:22 31415:12 31390:22 31415:12 basic 31234:16 appropriateness asked 3123:25 ascurance 31286:14 31425:24 31390:22 31415:12 basic 31234:16 31306:25 31308:13 31243:14 31244:15 assurance 31381:23 31367:10 31243:14 31268:15,16,20 approximation 31268:15,16,20 atmosphere 31388:21 Axes 31361:17 31268:15,12,243 31291:14,15 31300:1 31304:16 31228:23 31228:25 31228:24 31266:15 3120 arc 31239:7 31383:15 31330:1 31304:16 31232:13 31423:18 b 31228:24 31229:2.5 31276:23 31277:23 31277:23 31371:14 31286:5 31321:2,3,4 31280:63 1382:17 31286:83 31371:17 31286:83 31371:14 31280:63 1282:12 31371:17 31446:14 31382:16 31382:16 31371:17 31286:83 31371:14 31280:13 31371:14 31280:13 31371:14 31280:13 31371:17 31280:13 31371:17 31280:13 31371:17 31280:13 31371:13 31371:13 31382:12 31382:12 31382:12 31382:12 31332:12 31371:13 31371:13 31382:12 31382:	
appropriately 31282:25ascribe 31328:19 aside 31312:16 31323:5assumptions 31325:11 assurance 31286:14 31333:2231390:22 31415:12 asical 31324:143120:25 31308:1331243:14 31244:15 31224:1431314:23 3133:22 asturance 31280:1431314:23 3133:22 asturance 31280:1631243:14 3124:15 31324:1431326:10 31243:14 3124:153134:23 3133:22 asturance 31280:10.10.12 atmosphere 31358:21 	//.10
312&:25 aside 31312:16 31323:5 assurance 31286:14 31425:24 basically 31235: appropriateness 3134:23 31333:22 avful 31319:23 31329:14 3124:14 3129:14 3124:15 31236:17 31239:43123:3 approximation 31268:15,16,20 atmosphere 31358:21 ATC 31260:10,12 axe 31356:22 31361:16 3124:14 31250:10 31253:2 ATC 31260:10,12 axe 31356:22 31361:16 31247:13 312:3 approximation 31268:15,16,20 atmosphere 31358:21 Axes 31361:17 31266:15 312.12:3,13 31266:15 3121:23,14 31259:25 3128 31275:2 3127:3 31275:2 3127:3 31275:2 3127:3 31275:2 3127 31275:2 3127 31275:2 3127 31280:6 3128:6 3128:6 3128:6 3128:6 3128:6 3128:6 3128:5 3128 arcs 31241:7 31359:11 31370:15 31345:8,22 31394:16 31337:17 31346:14 31220:55 3128:8 313 31220:313 312220 313 312220 313 312220 313 3122:12 3123:12 31337:1,4 31220:43 3122120 313 3122:12 31252:1 3132:20 3133:12:20 313 arcs 31241:7 31359:11 31370:15 31345:8,22 31394:16 31337:17 3126:13 3137:14 31220:13 313:12:3 3137:14 31220:13 3132:12 31322:12 3133:12	
appropriateness 31306:25 31308:13asked 31235:231313:4,23 31333:22awful 31319:2331239:4 3124: 3124:1431306:25 31308:1331243:14 3124:1531230:10 31253:2ATC 31260:10.12axe 31356:22 31361:1631247:13 312approximation31268:15,16,20atmosphere 31358:21Axes 31361:1731259:25 312431287:631283:5,8,1431363:1731266:15 312April 31232:831289:25 31298:22attached 31229:22B31271:22,243apropos 31365:1731330:1 31304:1631232:1 31243:18b 31228:24 31229:2,531275:2 3127arc 31237:7 31383:15313412 31355:731275:7 31309:1431326:15 31321:2,3,431280:6 3128are 31241:731359:11 31370:1531345:8,22 31394:16313371:7 31346:1431295:8 3128area 31232:13 13371:14attacking 31346:5,831378:17312958,88 313area 31232:13 13371:14attacking 31244:231267:23 3125:731300:17 313231251:22 31252:1931400:16 31424:13attermt 3124:2231267:23 3125:731324:731267:6 31271:7asking 31242:43123:10 3132:1331267:2 3129:193138:17 313231251:22 31252:1931260:3 31274:731326:13 3122:1931389:13 31331261:3 3135:103129:9 31294:1031264:24 31311:43129:9 31397:4 3139931264:131330:18 31332:1631330:18 31332:1631330:1231397:4 31397:4 31397:4 31397:4 31397:4 3139731264:131295:9 31294:1031264:8,8,9 31303:1131302:2931389:13 31331264:131385:103	:25
31306:25 31308:13 31243:14 31244:15 assurances 31381:23 31367:10 31244:14,18 31324:14 31250:10 3123:2 ATC 31260:10,12 are 31356:22 31361:16 31247:13 312 approximation 31268:15,16,20 31363:17 Are 31356:21 Axes 31361:17 31259:25 3129:22 31291:14,15 31300:1 31304:16 31232:1 31243:18 b 31228:24 31229:2,5 31271:22,24 3 arc 31239:7 31383:15 31343:12 31355:7 31275:7 31309:14 313266:15 31321:2,3,4 31280:6 3128 are 31239:7 31383:15 31343:12 31355:7 31275:7 31309:14 31324:15 31371:14 31226:5 3129:5,25 31295:8 313 are 31232:21 3123:1 31371:23 31373:1,3 attack 31295:21 back 31240:25 31312:20 313 31251:22 31252:1 31382:6 31386:21 31324:3 3124:12 31252:7 3138:22 313 31267:6 31271:7 asking 31242:4 31323:10 31324:1 3126:4 31329:19 31300:17 3133 31267:6 31271:7 asking 3124:24 31330:18 3132:16 31330:18 31332:16 31330:18 31332:16 31330:18 31332:16 31267:6 31271:7 asking 3124:24 31326:13 3130:17 313	
approximation31268:15,16,20atmosphere 31358:21Axes 31361:1731259:25 312431287:631283:5,8,1431363:1731266:15 312131266:15 3121April 31232:831289:25 31298:22attached 31229:22B31271:2,2,4331291:14,1531300:1 31304:1631232:1 31243:18b 31228:24 31229:2,531275:2 3127apropos 31365:1731332:13 31342:10attack 31256:1131266:15 31321:2,3,431280:6 3128arc 31239:7 31383:1531343:12 31357:7312757:7 31309:1431324:15 3137:1431285:5 3128arc 31231:1731370:21 31371:14attacking 31346:5,831378:1731295:8,8 313arc 31232:21 31233:131371:23 31373:1,3attacks 31295:21back 31240:253131220:0 31331233:8 31248:14,1931382:6 31386:2131324:331241:23 31252:731382:17 313831252:21 31253:2531432:19 31436:931246:24 31311:431267:62 31271:731329:19 313331267:6 31271:7asking 3124:431332:10 31324:131295:19 312931357:731251:9 3129:9231239:93 31294:10attempt 31254:831301:1 31302:931389:13 31331355:12 31358:1031294:93 3132:1631357:1831304:4 31312:431397:4 31399:13 31331307:17 3138:1731355:10attend 31252:6,18313151:13 31317:631399:24 31431307:17 31331:1731355:1031424:431322:16 31352:131406:11 31431307:17 3136:1231385:1031424:431322:16 3134:1231406:11 31431307:17 31336:1231385:103	
31287:6 31283:5,8,14 31363:17 attached 31229:22 B 31266:15 3121 April 31232:8 31289:25 31298:22 31300:1 31304:16 31232:1 31243:18 b 31228:24 31229:2,5 31271:22,24 3 apropos 31365:17 31332:13 31342:10 31232:1 31243:18 b 31228:24 31229:2,5 31275:7 31209:14 31266:15 31321:2,3,4 31280:6 3128: arc 31239:7 31383:15 31343:12 3135:7 31275:7 31309:14 31324:15 31337:14 31285:5 3128: arc 31232:21 31233:1 31371:23 31373:1,3 attacking 3136:5,8 31378:17 31295:8,8 313 area 31225:12 31253:25 31432:19 3146:9 31244:22 31241:23 31252:7 31318:22 313 31225:21 31253:25 31432:19 31436:9 31244:22 31267:6 31297:19 31330:17 3133 31267:6 31271:7 asking 31242:4 31323:10 31324:1 31285:13 1292:19 31359:19 313 31251:9 31297:20 31260:3 31274:7 31330:18 31332:16 31301:1 31302:9 31389:13 313 31358:13,16 31337:12 3138:10 31291:9 31297:20 31266:3 31274:7 31326:13 3131:7 31394:4 31312:4 31397:4 31392 3120	52:8
April 31232:831289:25 31298:22attached 31229:22B31271:22,24 331291:14,1531300:1 31304:1631232:1 31243:18b 31228:24 31229:2,531275:2 31275apropos 31365:1731332:13 31342:10attack 31256:1131266:15 31321:2,3,431285:5 3128arc 31239:7 31383:1531343:12 31355731345:8,22 31394:1631337:17 31346:1431291:7 31295arcs 31241:731370:21 31371:14attack 31295:21back 31240:2531312:20 313arcs 3123:21 31233:131370:23 31373:1,3attacks 31295:21back 31240:2531312:20 31331231:22 31252:1,931400:16 31424:13attempt 31244:2231267:6 31271.731326:13 3122:0 31331251:22 31252:531432:19 31436:931246:24 31311:431276:4 31284:17,1931330:17 31331267:6 31271:7asking 31242:431323:10 31324:131296:5 31297:2231325:7 313831251:22 31253:1031293:9 31294:1031246:24 31311:431276:4 31284:17,1931330:17 31331267:6 31271:7asking 31242:431323:10 31324:131296:5 31297:2231389:13 31331358:13,163130:18 31332:1631357:1831304:4 31312:431397:4 3139931358:13,1631330:18 31332:1631357:1831304:4 31312:431397:4 3139931362:11aspect 31385:1031262:6,18313131:13 3131:631406:13 314031307:17 3138:11731355:1931424:431327:6 31335:1131406:15 314431307:17 3138:11731358:1031424:431327:6 31335:1131406:15 314431307:17 31338:1	
31291:14,1531300:1 31304:1631232:1 31243:18b 31228:24 31229:2,531275:2 3127apropos 31365:1731332:13 31342:10attack 31256:1131266:15 31321:2,3,431280:6 3128arc 31239:7 31383:1531343:12 31355:731275:7 31309:1431324:15 31371:431280:6 3128arcs 31241:731359:11 31370:1531345:8,22 3139:1431324:15 31371:431295:8,8 313area 31232:21 31233:131371:23 31373:1,3attacki 31295:21back 31240:2531312:20 31331251:22 31252:1,931400:16 31424:13attacki 31294:231267:6 31271:7asking 31242:431323:10 31324:131286:5 31292:731291:9 31297:2031260:3 31274:7313353:731296:5 31297:2231382:7 3138:1731382:7 313831385:12 31358:1031293:9 31294:1031293:9 31294:1031353:731206:3 3127:231382:7 313831380:17 313331351:13 3137:631397:4 313	
apropos31365:1731332:1331342:10attack31256:1131266:1531321:2,3,431280:63128arc31230:731333:1531343:1231355:731275:731309:1431324:1531371:1431285:53128Ardougne31250:131370:2131370:1531345:8,2231378:1731371:73136:143129:73129:8,8313area31222:123123:1131371:2331371:2331371:2331371:2331371:2331322:731312:2031322:731312:2031324:7313231251:2231252:213126:631382:63186:2131324:331246:2431241:2331225:731324:73132231251:2231252:2131432:1931436:931246:2431311:431276:431284:7,1931330:1731331267:6331297:2031260:331274:731335:731296:531292:1931397:431331355:1231287:331274:731355:731304:431302:931382:7313831358:13,163130:183132:1631357:183104:1331302:931389:1331397:431362:11asks31378:2331406:1031262:61.831301:1331321:2331406:1131397:431397:431362:11asks31378:2331406:1031262:1331332:1031321:2331406:1131392:2331406:1131321:2331406:1131321:2331406:1131362:11asks31378:23	
arc 31239:7 31383:1531343:12 31355:731275:7 31309:1431324:15 31337:1431285:5 31286arcs 31241:731359:11 31370:1531345:8,22 31394:1631337:17 31346:1431291:7 3129Ardougne 31250:131370:21 31371:14attacking 31346:5,831378:1731295:8,8 313area 31232:21 31233:131371:23 31373:1,3attacking 31346:5,831378:1731295:8,8 31331231:32:8 31248:14,1931382:6 31386:2131324:331241:23 31252:731318:22 313331251:22 31252:1,931400:16 31424:13attempt 31244:2231267:6 31271:731330:17 313331267:6 31271:7asking 31242:431323:10 3124:131296:5 31297:2931399:19 313331291:9 31297:2031260:3 31274:731335:731296:5 31297:2931389:13 313931355:12 31358:1031293:9 31294:10attempt 31254:831301:1 31302:931389:13 313931358:13,1631330:18 31332:1631357:1831304:4 31312:431397:4 31399:24 314431280:21 31384:831378:22 31406:1031264:8,8 9 31303:131321:25 31322:1031400:23 31400:23 314400:23 314400:23 314400:23 314400:23 314400:23 314400:23 314400:23 314400:23 314400:23 314400:23 314400:25 31422:23 314400:1031362:11aspect 31385:10attends 31303:2031342:9 31342:12 31342:12 314400:13 3142:12 31342:12	
ares 31241:731359:11 31370:1531345:8,22 31394:1631337:17 31346:1431291:7 31292Ardougne 31250:131370:21 31371:14attacking 31346:5,831378:1731295:8,8 313area 31232:21 31233:131371:23 31373:1,3attacks 31295:21back 31240:2531312:20 31331233:8 31248:14,1931382:6 31386:2131324:331241:23 31252:731318:22 313231251:22 31252:1,931400:16 31424:13attempt 31244:2231267:6 31271:7asking 31242:431323:10 31324:131285:1 31292:1931330:17 313331291:9 31297:2031260:3 31274:731335:731296:5 31297:2231382:7 313831355:12 31358:1031293:9 31294:10attempt 31254:831301:1 31302:931389:13 31331358:13,1631330:18 31332:1631357:1831304:4 31312:431397:4 31397:4 31397:4 31397:4 31392:4aren't 31264:1asks 31327:8 31355:3attending 31312:931322:12 31323:1031400:23 314031362:11aspect 31385:1031424:431327:6 31335:1131400:23 314031362:11aspect 31385:1031424:431327:6 31335:1131408:15 314431362:1231385:1331420:2531342:9 31343:123142:27 3142arise 31327:2231280:23 3136:1231281:10 31288:1731342:9 31342:2 51 3135:2531422:1 31356:25arem 4 31363:231385:25attending 31312:931355:21 31356:2,25314331:3 3142arise 31327:2231280:23 3136:1231298:1331322:14 31356:2,25314331:3 314231301:17,18 31302:331430:6,6,1031428	
Ardougne 31250:131370:21 31371:14 31371:23 31373:1,3attacking 31346:5,8 attacks 31295:2131378:1731295:8,8 313area 31232:21 31233:131371:23 31373:1,3 3123:8 31248:14,1931382:6 31386:21 3132:12 3138:23attacks 31295:21 3132:12 31252:7back 31240:25 3124:2331312:20 31331251:22 31252:1,931400:16 31424:13 3125:22 1 31253:2531432:19 31436:9 3124:2431246:24 31311:4 31267:6 31271:731260:3 31274:7 31260:3 31274:731323:10 31324:1 31323:10 31224:131285:1 31292:19 31285:1 31292:1931330:17 3133 31355:12 31358:1031291:9 31297:2031260:3 31274:7 3130:18 31332:1631357:18 31355:12 31358:1031293:9 31294:10 31357:18attempt 31254:8 31304:4 31312:431301:1 31302:9 31304:4 31312:431397:4 31392 31392:4 314431280:21 31384:831378:22 31406:10 31367:17 31331:1731355:19 31424:4314264:8,9 31303:11 31307:17 31331:1731355:19 31424:431422:6 31332:10 31424:431321:25 31322:10 31406:13 3142:931406:13 3140 31406:13 3142:931392:5 31412:1aspect 31385:10 31388:11,16 31398:2attending 3130:20 31242:431327:6 31335:11 31424:431408:15 3140 31303:2031392:5 31412:1 ariseg 31327:2231280:23 31336:12 31388:11,16 31398:231281:10 31288:17 31302:331344:9 31349:23 31425:16 314231301:17,18 31302:331320:23 31336:12 31388:11,16 31398:231281:10 31288:17 31325:2531342:16 31362:25 31442:13 31331302:23 31301:8,13 31301:2231326:22 31336:1231336:12 31336:1231328:12 31336:12	,
area 31232:21 31233:131371:23 31373:1,3attacks 31295:21back 31240:2531312:20 31331233:8 31248:14,1931382:6 31386:2131324:331241:23 31252:731318:22 31331251:22 31252:1931400:16 31424:13attempt 31244:2231267:2 31269:531324:7 3132'31252:21 31253:2531432:19 31436:931246:24 31311:431276:4 31284:17,19313301:7 31331267:6 31271:7asking 31242:431323:10 31324:131285:1 31292:1931359:19 31331291:9 31297:2031260:3 31274:731353:731296:5 31297:2231382:7 313831355:12 31358:1031293:9 31294:10attempts 31254:831301:1 31302:931389:13 31331382:21 31384:831378:22 31406:1031264:8,8,9 31303:131304:4 31312:431397:4 3139'31307:17 31331:1731355:1931426:431227:6 31335:1131400:23 314031307:17 31331:1731385:10attendig 3130:2031342:9 3134:1231405:134431307:17 31331:1731385:10attendig 3130:2031342:9 3134:123145:23 41431392:5 31412:1aspect 3127:2531281:10 31288:1731355:21 31356:2,2531428:12 3144:9 3134:2331392:5 31412:1aspect 3127:2531281:10 31288:1731355:2531428:12 3144:9 3134:2331280:23 31336:1231280:23 31336:1231298:1331355:2531432:13 314231292:5 31412:1aspect 31270:2531281:10 31288:1731355:2531432:13 314231292:5 31412:1aspect 31270:2531281:10 31288:1731355:21 31356:2,2531433:13 3142 <t< td=""><td>,</td></t<>	,
31233:8 31248:14,1931382:6 31386:2131324:331241:23 31252:731318:22 313231251:22 31252:1,931400:16 31424:13attempt 31244:2231267:22 31269:531324:7 313231252:21 31253:2531432:19 31436:931246:24 31311:431276:4 31284:17,193130:17 31331267:6 31271:7asking 31242:431323:10 31324:131285:1 31292:1931359:19 31331291:9 31297:2031260:3 31274:731353:731296:5 31297:2231382:7 313831355:12 31358:1031293:9 31294:1031330:18 31332:1631357:1831304:4 31312:431397:4 3139231358:13,1631330:18 31332:1631357:1831304:4 31312:431397:4 31392areas 31243:8 31278:431378:22 31406:1031264:8,8,9 31303:131321:25 31322:1031400:23 314431307:17 31331:1731355:1931424:431327:6 31335:1131406:11 314031392:5 31412:1aspect 31385:10attendig 31312:931342:9 31343:1231406:11 314031392:5 31412:1aspect 31385:1031281:10 31288:1731344:9 31349:2331425:16 314231392:5 31412:1aspect 31385:1031281:10 31288:1731355:21 31356:2,2531425:16 314231392:5 31412:1aspect 31270:2531281:10 31288:1731355:21 31356:2,2531433:13 314231392:5 31412:131385:2231280:23 31336:1231298:1331355:21 31356:2,2531423:2231392:5 31412:131280:23 31336:1231281:10 31288:1731355:21 31356:2,2531428:7 3142231300:23 31301:8,1331430:6,6,1031390:831379:	
31251:22 31252:1,9 31252:21 31253:25 31252:21 31253:25 31267:6 31271:7 31267:6 31271:7 31260:3 3124:4312empt 31244:22 31223:10 31324:1 31232:10 31324:1 31232:10 31324:1 31285:1 31292:1931324:7 3132' 3130:17 313 3130:17 3132' 31355:12 31358:10 31358:13,16 31330:18 3132:16 31330:18 3132:16 31330:18 3132:16attempt 31244:22 31252:6,18 31301:1 31302:931324:7 3132' 31301:1 31302:9 31389:13 313' 31301:1 31302:9areas 31243:8 31278:4 31280:21 31384:8 31307:17 31331:17 31362:1131307:17 3132:16 31355:19attend 31252:6,18 31264:8,8,9 31303:131304:4 31312:4 31302:931392:4 3140:13 3137.6 31392:4 3140:10 31307:17 31331:17 31355:19argument 31363:2 31392:5 31412:1 argument 31363:2asks 31327:8 31355:3 31388:11,16 31398:2 31388:11,16 31398:2attends 31303:20 31424:431372:6 31335:11 31302:931406:11 3140 31408:15 3141argument 31363:2 31392:5 31412:1 arising 31351:2aspect 31385:10 31388:11,16 31398:2 31388:11,16 31298:24attending 31312:9 31281:10 31288:17 31355:2531342:9 31343:12 31342:9 31342:2331425:16 314/2 31425:16 314/2argument 31363:2 31392:5 31412:1 arising 31351:2aspect 31270:25 31328:12 31385:2531281:10 31288:17 31326:1231355:21 31356:2,25 31433:13 3137:631300:23 31301:8,13 31300:23 31301:8,13 31300:23 31301:8,13 31300:23 31301:8,1331430:6,6,010 31390:831359:1,3,12,12,14 31359:1,3,12,12,1431300:23 31301:8,13 31300:23 31301:8,13 31300:23 31301:8,1331430:6,6,10 31390:831379:19 3138:13 31302:2 313131300:23 31301:8,13 31300:23 31301:8,13 31300:	
31252:21 31253:2531432:19 31436:931246:24 31311:431276:4 31284:17,1931330:17 313331291:9 31297:2031260:3 31274:731323:10 31324:131285:1 31292:1931359:19 313331355:12 31358:1031293:9 31294:1031355:731296:5 31297:2231382:7 313831358:13,1631330:18 31332:1631330:18 31332:1631307:17 313331307:4 31392:931389:13 3139areas 31243:8 31278:431358:20,20attempts 31252:6,1831315:13 31317.631399:24 314431280:21 31384:831378:22 31406:1031264:8,8,9 31303:131321:25 31322:1031400:23 314431307:17 31331:1731355:1931424:431327:6 31335:1131406:11 314031362:11aspect 31385:10attendig 3130:2031342:9 31343:1231445:2 314431392:5 31412:1aspect 31385:10attention 31275:1531344:9 31349:2331425:16 314231392:5 31412:1aspect 31385:1231280:23 3136:1231281:10 31288:1731355:21 31356:2,2531425:16 314231300:23 31301:8,133127:2231385:25attention 31275:1531344:9 31349:2331425:16 314231300:23 31301:8,1331430:11,1131430:6,6,1031429:1831359:1,3,12,12,1431244:11 31231300:23 31301:8,1331430:11,11audio 31390:831379:19 3138:1331302:2 313131301:17,18 31302:331430:11,11audio 31390:831379:19 3138:1331302:2 313131301:17,18 31302:331430:11,11audio 31390:831379:19 3138:1331302:2 313131300:23 31301:8,1331430:11,	
31267:6 31271:7 31291:9 31292:10asking 31242:4 31291:9 31297:20 31260:3 31274:7 31355:12 31358:10 31355:12 31358:10 31355:12 31358:10 31355:12 31358:10 31355:12 31358:10 31358:13,1631260:3 31274:7 31293:9 31294:10 31330:18 31332:1631323:10 31324:1 3130:18 31332:16 31330:18 31332:1631323:10 31324:1 3130:18 31332:1631295:19 31292:19 31294:10 31301:1 31302:931359:19 3138 31389:13 313 31301:1 31302:9areas 31243:8 31278:4 31280:21 31384:8 aren't 31264:1 31307:17 31331:17 31362:1131378:22 31406:10 asks 31327:8 31355:3 31355:19attend 31252:6,18 31264:8,8,9 31303:131321:25 31322:10 3122:4 31322:331400:11 3140 31302:3 31406:11 3140argument 31363:2 31392:5 31412:1 arises 31327:22aspect 31385:10 31388:11,16 31398:2 31388:11,16 31398:2 31388:11,16 31398:2 31388:11,16 31398:2 31388:11,16 31398:2 31388:11,16 31398:2 31280:23 31336:12attending 31312:9 31281:10 3128:17 31355:19 31298:243142:9 31343:12 3142:4:13144:5:16 3142 31327:6 31356:2,25 31433:13 314231300:23 31301:8,13 31300:23 31301:8,13 31300:23 31301:8,13 31300:23 31301:8,13 31300:117,18 31302:331430:1,1,11 ansessing 31338:831322:14 31293:17,2331388:1,12 3130:2 31390:831300:117,18 31302:331430:1,1,11 ansessing 31338:831430:6,6,10 31390:831379:19 31383:13 31302:2 31316:3136	
31291:9 31297:2031260:3 31274:731353:731296:5 31297:2231382:7 313831355:12 31358:1031293:9 31294:10attempts 31254:831301:1 31302:931389:13 31331358:13,1631330:18 31332:1631357:1831304:4 31312:431397:4 3139areas 31243:8 31278:431358:20,20attend 31252:6,1831315:13 31317:631399:24 31431280:21 31384:831378:22 31406:1031264:8,8,9 31303:131321:25 31322:1031400:23 314aren't 31264:1asks 31327:8 31355:3attending 31312:931322:14 31323:331406:11 31431307:17 31331:1731355:1931424:431327:6 31335:1131408:15 31431362:11aspect 31385:10attends 31303:2031342:9 31343:123145:22 31431392:5 31412:1aspect 31270:2531281:10 31288:1731355:21 31356:2,2531425:16 314231392:5 31412:1aspect 31270:2531298:1331357:6 31358:2531433:13 3142arising 31351:231385:25attenuating 31412:1231357:6 31358:2531433:13 3142arising 31351:231385:25attenuating 31412:1231357:6 31358:25basis 31243:22armed 31233:6assailant 31282:22atticude 31363:1831359:1,3,12,12,1431244:11 312431300:23 31301:8,1331430:6,6,10attorney 31420:1831363:18 31378:2431284:13 313031300:23 31301:8,1331430:6,6,10attorney 31420:1831363:18 31378:2431302:2 313131301:17,18 31302;331430:11,11audio 31390:831379:19 3138:1331302:2 313131	
31355:12 31358:1031293:9 31294:10attempts 31254:831301:1 31302:931389:13 313931358:13,1631330:18 31332:1631330:18 31332:1631357:1831304:4 31312:431397:4 3139areas 31243:8 31278:431358:20,20attend 31252:6,1831315:13 31317.631399:24 314031280:21 31384:831378:22 31406:10asks 31327:8 31355:3attending 31312:931321:25 31322:1031400:23 314031307:17 31331:1731355:1931424:431327:6 31335:1131408:15 314031362:11aspect 31385:10attends 31303:2031342:9 31343:1231415:22 314argument 31363:231388:11,16 31398:2attention 31275:1531344:9 31349:2331425:16 314231392:5 31412:1aspects 31270:2531281:10 31288:1731355:21 31356:2,2531433:13 3142ariseg 31327:2231280:23 31336:1231298:1331355:21 31356:2,2531433:13 3142arising 31351:231385:25attenuating 31412:1231357:6 31358:25basis 31243:22armed 31233:6assailant 31282:22attenuating 31412:1231357:6 31358:25basis 31243:22arising 31301:8,1331430:11,11audio 31390:831379:19 31383:1331302:2 313131300:23 31301:8,1331430:11,11audio 31390:831379:19 31383:1331302:2 313131301:17,18 31302:331338:8August 31293:17,2331388:1,12 31390:131331:6 3133	
31358:13,1631330:18 31332:1631357:1831304:4 31312:431397:4 31399areas 31243:8 31278:431358:20,20attend 31252:6,1831315:13 31317:631399:24 314031280:21 31384:831378:22 31406:10asks 31327:8 31355:3attending 31312:931321:25 31322:1031400:23 3140aren't 31264:1asks 31327:8 31355:3attending 31312:931322:14 31323:331406:11 314031362:11aspect 31385:10attending 3130:2031342:9 31343:1231408:15 3140argument 31363:231388:11,16 31398:2attention 31275:1531344:9 31349:2331425:16 314231392:5 31412:1aspect 31280:23 31336:1231281:10 31288:1731355:21 31356:2,2531428:7 31429arises 31327:2231280:23 31336:1231298:1331355:21 31356:2,2531433:13 3142ariseg 31325:24assailant 31282:22attenuating 31412:1231357:6 31358:25basis 31243:22armed 31233:6assailant 31282:22attenuating 31412:1231363:18 31378:2431302:2 313131300:23 31301:8,1331430:6,6,1031430:6,6,1031430:11,1131302:3 31388:1331302:2 313131301:17,18 31302:331328:8August 31293:17,2331388:1,12 31390:131331:6 3139	
areas 31243:8 31278:431358:20,20attend 31252:6,1831315:13 31317:631399:24 314031280:21 31384:831378:22 31406:1031264:8,8,9 31303:131321:25 31322:1031400:23 3140aren't 31264:1asks 31327:8 31355:3attending 31312:931322:14 31323:331406:11 314031307:17 31331:1731355:1931424:431327:6 31335:1131408:15 314031362:11aspect 31385:10attends 31303:2031342:9 31343:1231415:22 314argument 31363:231388:11,16 31398:2attends 31303:2031342:9 31343:1231425:16 314231392:5 31412:1aspect 31270:2531281:10 31288:1731355:21 31356:2,2531428:7 31429arises 31327:2231280:23 31336:1231298:1331355:21 31356:2,2531433:13 3142arising 31351:231385:25attenuating 31412:1231357:6 31358:25basis 31243:22armed 31233:6assailant 31282:22attitude 31363:1831359:1,3,12,12,1431244:11 312431300:23 31301:8,1331430:11,11audio 31390:831379:19 31383:1331302:2 313131301:17,18 31302:3assessing 31338:8August 31293:17,2331388:1,12 31390:131331:6 3133	
31280:21 31384:831378:22 31406:1031264:8,8,9 31303:131321:25 31322:1031400:23 3140aren't 31264:1asks 31327:8 31355:3attending 31312:931322:14 31323:331406:11 314031307:17 31331:1731355:1931424:431327:6 31335:1131408:15 314031362:11aspect 31385:10attends 31303:2031342:9 31343:1231415:22 314argument 31363:231388:11,16 31398:2attends 31303:2031342:9 31343:1231415:22 31431392:5 31412:1aspect 31270:2531281:10 31288:1731355:21 31356:2,2531428:7 31429arises 31327:2231280:23 31336:1231298:1331355:21 31356:2,2531433:13 3142arising 31351:231385:25attenuating 31412:1231357:6 31358:25basis 31243:22armed 31233:6assailant 31282:22attitude 31363:1831359:1,3,12,12,1431244:11 312431300:23 31301:8,1331430:11,11audio 31390:831379:19 31383:1331302:2 313131301:17,18 31302:331338:8August 31293:17,2331388:1,12 31390:131331:6 3134	
aren't 31264:1 31307:17 31331:17 31355:19asks 31327:8 31355:3 31355:19attending 31312:9 31424:431322:14 31323:3 31327:6 31335:1131406:11 3140 31327:6 31335:11argument 31363:2 31392:5 31412:1 arises 31327:22aspect 31385:10 31388:11,16 31398:2 aspects 31270:25attends 31303:20 31280:23 31336:1231342:9 31342:2 31280:23 31336:1231425:16 3142 31298:13arising 31351:2 armed 31233:6 31255:19 31298:24assailant 31282:22 assailant 31282:22 assailant 31430:6,6,10 31430:11,11 31301:17,18 31302:3attending 31312:9 31338:831302:3 1302:3 1336:12 31298:1331302:3 1302:3 1336:12 31298:13	
31307:17 31331:17 31355:1931355:19 aspect 31385:1031424:431327:6 31335:11 31302:2031408:15 3140 31342:9 31342:12argument 31363:2 31392:5 31412:1 arises 31327:2231388:11,16 31398:2 31392:5 31412:1attends 31303:20 attention 31275:1531342:9 31343:12 31328:1731425:16 3142 31344:9 31349:23arises 31327:22 arises 31327:2231280:23 31336:12 31280:23 31336:1231281:10 31288:17 31298:1331355:21 31356:2,25 31298:1331428:7 31422 31355:21 31356:2,25armed 31233:6 31255:19 31298:24assailant 31282:22 assailants 31430:6,6,10 31300:23 31301:8,13 31301:17,18 31302:331430:11,11 assessing 31338:8August 31293:17,2331388:1,12 31390:131301:2 31331:6 31334	
argument 31363:2 31388:11,16 31398:2 arises 31327:2231388:11,16 31398:2 aspects 31270:25attention 31275:15 31280:23 31336:1231344:9 31349:23 31281:10 31288:17 31354:4,8,16,1931425:16 3142 31354:4,8,16,19arises 31327:22 arising 31351:231280:23 31336:12 31385:2531281:10 31288:17 31298:1331355:21 31356:2,25 31433:13 31412:1231432:36 31357:6 31358:2531432:31432 31357:6 31358:25armed 31233:6 31255:19 31298:24assailant 31282:22 assailants 31430:6,6,10 31430:11,11 attorney 31420:18attorney 31420:18 31390:831359:1,3,12,12,14 31363:18 31378:2431284:13 3136 31302:2 313131301:17,18 31302:331430:11,11 assessing 31338:8August 31293:17,2331388:1,12 31390:131331:6 31334	09:6
31392:5 31412:1 arises 31327:22aspects 31270:25 31280:23 31336:1231281:10 31288:17 31298:1331354:4,8,16,19 31355:21 31356:2,2531428:7 31429 31433:13 3143arises 31327:22 arising 31351:231280:23 31336:12 31385:2531298:13 attenuating 31412:1231355:21 31356:2,25 31357:6 31358:2531433:13 3142 31359:1,3,12,12,14armed 31233:6 31255:19 31298:24assailant 31282:22 assailants 31430:6,6,10attenuating 31412:12 attorney 31420:18 audio 31390:831359:1,3,12,12,14 31363:18 31378:2431244:11 3124 31284:13 3130 31302:2 313131301:17,18 31302:331430:11,11 assessing 31338:8august 31293:17,2331388:1,12 31390:131331:6 31334	
arises 31327:2231280:23 31336:1231298:1331355:21 31356:2,2531433:13 3143arising 31351:231385:25attenuating 31412:1231357:6 31358:25basis 31243:22armed 31233:6assailant 31282:22attitude 31363:1831359:1,3,12,12,1431244:11 312431255:19 31298:24assailants 31430:6,6,10attorney 31420:1831363:18 31378:2431284:13 313631300:23 31301:8,1331430:11,11audio 31390:831379:19 31383:1331302:2 313131301:17,18 31302:3assessing 31338:8August 31293:17,2331388:1,12 31390:131331:6 31334	
arising 31351:2 armed 31233:6 31255:19 31298:2431385:25 assailant 31282:22 assailants 31430:6,6,10 31300:23 31301:8,13 31301:17,18 31302:3attenuating 31412:12 attitude 31363:18 attorney 31420:18 audio 31390:831357:6 31358:25 31359:1,3,12,12,14basis 31243:22 31244:11 312431300:23 31301:8,13 31301:17,18 31302:331430:11,11 assessing 31338:8attenuating 31412:12 attitude 31363:1831357:6 31358:25 31363:18basis 31243:22 31244:11 312431301:17,18 31302:331430:11,11 assessing 31338:8attenuating 31412:12 attenue 31360:2831379:19 31383:13 31390:831302:2 3131 31331:6 31334	
armed 31233:6 31255:19 31298:24assailant 31282:22 assailants 31430:6,6,10attitude 31363:18 attorney 31420:18 audio 31390:831359:1,3,12,12,14 31363:18 31378:2431244:11 3124 31284:13 313031300:23 31301:8,13 31301:17,18 31302:331430:11,11 assessing 31338:8audio 31390:8 August 31293:17,2331359:1,3,12,12,14 31363:18 31378:2431244:11 3124 31284:13 3130	36:12
31255:19 31298:24assailants 31430:6,6,10attorney 31420:1831363:18 31378:2431284:13 313031300:23 31301:8,1331430:11,11audio 31390:831379:19 31383:1331302:2 313131301:17,18 31302:3assessing 31338:8August 31293:17,2331388:1,12 31390:131331:6 31334	10.25
31300:23 31301:8,13 31430:11,11 audio 31390:8 31379:19 31383:13 31302:2 3131 31301:17,18 31302:3 assessing 31338:8 August 31293:17,23 31388:1,12 31390:1 31331:6 31334	
31301:17,18 31302:3 assessing 31338:8 August 31293:17,23 31388:1,12 31390:1 31331:6 31334	
21207.421212.0 $accossment 21005.00$ $21000.1221225.14$ $21207.41121200.10$ $21240.1217.7$	
31302:4 31313:9 assessment 31295:20 31299:13 31335:14 31397:4,11 31398:19 31342:13,17 3 31318:14,22 31299:9 31330:23 31346:15 31353:14 31399:11,12 31403:3 31343:3 31354	
31320:25 31354:24 31334:6 31401:22 31404:2 31408:4,9,23 31382:8 3138. 31382:3,5 31404:15 assist 31261:25 authorised 31306:5 31415:10 31427:6 31387:13 3139	
31405:13 31406:6 31283:3,6 31351:17 authorities 31416:4 31431:25 31432:6,16 31392:16 3140	
autorities 51401.0 51451.25 51452.0,10 51592.10 5140	52.13

				Page 3
31419:25 31420:6	blocked 31396:19	31338:8 31339:7	C	carries 31414:3
31422:1 31424:2	blood 31381:24	31342:11 31345:7	c 31261:6,15 31346:16	31420:24 31421:2
bats 31247:18	bloodshed 31323:2	31346:20 31399:12	31378:18	carry 31247:12
31256:12	31356:24 31359:5	31402:15,24 31403:1	cage 31395:7	31253:9 31256:8
battle 31250:4	31361:19 31382:18	31403:6 31406:21,24	calculation 31415:21	31276:21 31277:1,3
BBBB1 31229:6	board 31265:2,3,11	31407:2,5,6,8,10,11	Calitz 31260:21,22	31279:22 31280:5
BBBB2 31229:9	31272:21 31292:1	31407:12,14	31261:1 31303:6,9,19	31304:13 31312:14
31245:7,17	31390:10,15	31408:12,14	31370:20 31391:21	31318:2 31320:1
BBBB3 31229:10	bodies 31240:22	briefings 31263:4,4	31391:24 31392:19	31324:6 31340:20
31237:7	body 31252:13	31264:18 31265:13	31393:19,23	31405:14 31412:23
BBBB4 31229:12	bolts 31248:6	31334:11	31401:10 31402:14	31420:21 31421:4,12
31244:2 31345:17	bomb 31248:3 31430:7	briefly 31232:3	31403:9	carrying 31293:2
31376:14	bombers 31423:22	31233:16 31237:12	Calitz's 31391:9	31411:4,6,13
BBBB5 31229:13	bombs 31247:20,24	31237:15 31244:10	31393:8 31397:17,22	31415:16,16
bearing 31253:21	31254:23	31246:9 31249:14	31402:6	cascaded 31317:6
31356:2 31362:16,21	book 31348:15	31283:23 31337:7	call 31231:2 31249:18	cascading 31312:25
31389:16	31371:16	31344:12 31377:2,8	31250:24 31256:7	case 31241:11
beginning 31257:9	bore 31256:2	31382:21,23 31398:9	31257:15 31260:2	31257:25 31260:17
31285:11 31325:7	boss 31259:21 31317:3	31403:24,25	31263:8 31264:2	31270:7 31274:9
31350:3	31326:25	31406:21	31265:18 31267:9	31292:7 31312:15
belatedly 31306:17	bottles 31247:16	briefs 31408:2	31274:10 31275:16	31317:9 31335:11
Belfast 31232:21,24	31414:17	Brigadier 31260:21,22	31311:20 31358:21	31338:4,12,13
31233:8,21 31250:1	bottom 31247:14	31296:20,25 31298:3	31404:19 31414:5	31340:13 31342:19
31250:21,22 31251:5	31399:22	31303:9 31361:23	31429:10	31342:22 31343:24
31251:22 31252:1	bought 31248:1	31364:13,20	called 31233:24	31344:4 31350:13,15
31258:14 31259:2,4	bound 31301:4	31365:23 31371:14	31252:1,5,5,13	31354:5 31369:2,19
31262:2 31271:8	31322:14	31372:14 31391:8	31256:1 31269:5	31369:21 31375:5
31278:12	bowler 31256:4,6	31393:8,19,23	31282:19,19 31283:9	31376:3 31391:1
belief 31423:10	box 31396:2	31397:17 31401:6,10	31283:16 31291:25	31396:15 31399:7
believe 31273:12	boxing 31395:6	31402:6,14 31403:2	31339:18 31352:13	31418:8 31427:9
31277:6 31331:9,12	branch 31352:24	bring 31248:18	31355:4 31369:5	31431:13
benefit 31340:17	31354:1	31263:10 31269:2,20	31375:25	cases 31282:20
31385:6	bravado 31253:20	31384:22 31410:12	calls 31243:13	casting 31292:20
best 31262:3 31270:1	breach 31240:1	British 31234:3	calm 31384:21	catastrophic 31401:15
31287:4,7,9,13	break 31276:12,13,14	31342:19	calmed 31271:23	31401:17 31402:13
31303:24 31312:13	31276:15 31281:20	broad 31362:19	31390:1	categorically 31386:19
31320:4 31325:4	31283:8 31314:12,17	broke 31271:21	camera 31279:17	31388:5 31396:4
31375:12 31403:6	31332:12 31333:23	bronze 31257:15,16	31429:9	31413:21 31430:19
31408:1	31437:6	31258:7,25 31259:9	camp 31271:12	category 31376:24
better 31237:21	breakdown 31360:7	31259:18,25 31260:9	canalise 31238:14,16	31398:3 31401:1
31240:16 31243:24	31388:16	31260:10,22 31261:1	canister 31310:6	Catholic 31251:1,7
31290:22 31335:25	brevity 31347:14	31261:20 31262:14	cannon 31346:23	31252:9 31266:16
31361:1 31415:24	bricks 31247:16	31263:12,13,14,15,17	31404:21 31407:19	causal 31323:6,14
beyond 31314:10	31414:16	31263:19,20,21	canon 31269:2,14,20	31324:16 31325:19
31316:24 31397:9	brief 31266:4 31280:14	31266:24 31267:4	31270:5,17,19	31340:15,19
31404:14 31412:1	31284:21 31302:18	31270:8 31344:24	canons 31269:3	causation 31341:12
31425:16	31308:19 31371:9	brought 31270:16,20	canvass 31294:3	cause 31229:4
				31305:22 31375:24
big 31317:19	31408:4	31273:2 31288:17	can't 31270:10 31305:6	
bit 31250:24 31253:4	briefed 31262:22	31298:13 31355:24		31410:11 31430:6
bit 31250:24 31253:4 31264:21 31307:19	briefed 31262:22 31314:23 31325:7	31298:13 31355:24 31359:11 31381:25	can't 31270:10 31305:6	31410:11 31430:6 caused 31275:23
bit 31250:24 31253:4 31264:21 31307:19 31315:12 31319:22	briefed 31262:22 31314:23 31325:7 31334:19 31335:3,21	31298:13 31355:24 31359:11 31381:25 31392:16	can't 31270:10 31305:6 31310:18 31317:15	31410:11 31430:6 caused 31275:23 31307:10 31325:16
bit 31250:24 31253:4 31264:21 31307:19 31315:12 31319:22 31334:15 31361:14	briefed 31262:22 31314:23 31325:7 31334:19 31335:3,21 briefing 31262:20	31298:13 31355:24 31359:11 31381:25 31392:16 Budlender 31371:23	can't 31270:10 31305:6 31310:18 31317:15 31336:10 31351:20	31410:11 31430:6 caused 31275:23 31307:10 31325:16 31325:23 31338:5
bit 31250:24 31253:4 31264:21 31307:19 31315:12 31319:22 31334:15 31361:14 31365:22 31403:25	briefed 31262:22 31314:23 31325:7 31334:19 31335:3,21 briefing 31262:20 31263:3 31264:10,13	31298:13 31355:24 31359:11 31381:25 31392:16 Budlender 31371:23 buildings 31419:21	can't 31270:10 31305:6 31310:18 31317:15 31336:10 31351:20 31356:21,22	31410:11 31430:6 caused 31275:23 31307:10 31325:16 31325:23 31338:5 causes 31249:21
bit 31250:24 31253:4 31264:21 31307:19 31315:12 31319:22 31334:15 31361:14 31365:22 31403:25 31405:9,22 31408:20	briefed 31262:22 31314:23 31325:7 31334:19 31335:3,21 briefing 31262:20 31263:3 31264:10,13 31265:8,18,20	31298:13 31355:24 31359:11 31381:25 31392:16 Budlender 31371:23 buildings 31419:21 builds 31236:24	can't 31270:10 31305:6 31310:18 31317:15 31336:10 31351:20 31356:21,22 31359:17 31374:6,17	31410:11 31430:6 caused 31275:23 31307:10 31325:16 31325:23 31338:5 causes 31249:21 caveat 31245:22
bit 31250:24 31253:4 31264:21 31307:19 31315:12 31319:22 31334:15 31361:14 31365:22 31403:25 31405:9,22 31408:20 31413:21	briefed 31262:22 31314:23 31325:7 31334:19 31335:3,21 briefing 31262:20 31263:3 31264:10,13 31265:8,18,20 31266:20 31272:3	31298:13 31355:24 31359:11 31381:25 31392:16 Budlender 31371:23 buildings 31419:21 builds 31236:24 build-up 31278:11	can't 31270:10 31305:6 31310:18 31317:15 31336:10 31351:20 31356:21,22 31359:17 31374:6,17 31381:12 31385:14	31410:11 31430:6 caused 31275:23 31307:10 31325:16 31325:23 31338:5 causes 31249:21 caveat 31245:22 CCTV 31258:1
bit 31250:24 31253:4 31264:21 31307:19 31315:12 31319:22 31334:15 31361:14 31365:22 31403:25 31405:9,22 31408:20 31413:21 bits 31288:20 31296:18	briefed 31262:22 31314:23 31325:7 31334:19 31335:3,21 briefing 31262:20 31263:3 31264:10,13 31265:8,18,20 31266:20 31272:3 31278:6 31294:13	31298:13 31355:24 31359:11 31381:25 31392:16 Budlender 31371:23 buildings 31419:21 builds 31236:24 build-up 31278:11 built 31250:25 31251:2	can't 31270:10 31305:6 31310:18 31317:15 31336:10 31351:20 31356:21,22 31359:17 31374:6,17 31381:12 31385:14 31409:21 31410:7	31410:11 31430:6 caused 31275:23 31307:10 31325:16 31325:23 31338:5 causes 31249:21 caveat 31245:22 CCTV 31258:1 31298:25
bit 31250:24 31253:4 31264:21 31307:19 31315:12 31319:22 31334:15 31361:14 31365:22 31403:25 31405:9,22 31408:20 31413:21 bits 31288:20 31296:18 31368:23 31402:12	briefed 31262:22 31314:23 31325:7 31334:19 31335:3,21 briefing 31262:20 31263:3 31264:10,13 31265:8,18,20 31266:20 31272:3 31278:6 31294:13 31304:9,11 31308:6	31298:13 31355:24 31359:11 31381:25 31392:16 Budlender 31371:23 buildings 31419:21 builds 31236:24 build-up 31278:11 built 31250:25 31251:2 bullet 31241:16	can't 31270:10 31305:6 31310:18 31317:15 31336:10 31351:20 31356:21,22 31359:17 31374:6,17 31381:12 31385:14 31409:21 31410:7 capital 31261:7,15,15	31410:11 31430:6 caused 31275:23 31307:10 31325:16 31325:23 31338:5 causes 31249:21 caveat 31245:22 CCTV 31258:1 31298:25 cease 31282:21
bit 31250:24 31253:4 31264:21 31307:19 31315:12 31319:22 31334:15 31361:14 31365:22 31403:25 31405:9,22 31408:20 31413:21 bits 31288:20 31296:18 31368:23 31402:12 black 31248:4	briefed 31262:22 31314:23 31325:7 31334:19 31335:3,21 briefing 31262:20 31263:3 31264:10,13 31265:8,18,20 31266:20 31272:3 31278:6 31294:13 31304:9,11 31308:6 31309:7,12,15	31298:13 31355:24 31359:11 31381:25 31392:16 Budlender 31371:23 buildings 31419:21 builds 31236:24 build-up 31278:11 built 31250:25 31251:2 bullet 31241:16 31328:7 31375:16	can't 31270:10 31305:6 31310:18 31317:15 31336:10 31351:20 31356:21,22 31359:17 31374:6,17 31381:12 31385:14 31409:21 31410:7 capital 31261:7,15,15 Captain 31329:25	31410:11 31430:6 caused 31275:23 31307:10 31325:16 31325:23 31338:5 causes 31249:21 caveat 31245:22 CCTV 31258:1 31298:25 cease 31282:21 cell 31352:1
bit 31250:24 31253:4 31264:21 31307:19 31315:12 31319:22 31334:15 31361:14 31365:22 31403:25 31405:9,22 31408:20 31413:21 bits 31288:20 31296:18 31368:23 31402:12 black 31248:4 blame 31310:14,22	briefed 31262:22 31314:23 31325:7 31334:19 31335:3,21 briefing 31262:20 31263:3 31264:10,13 31265:8,18,20 31266:20 31272:3 31278:6 31294:13 31304:9,11 31308:6 31309:7,12,15 31311:17 31312:7	31298:13 31355:24 31359:11 31381:25 31392:16 Budlender 31371:23 buildings 31419:21 builds 31236:24 build-up 31278:11 built 31250:25 31251:2 bullet 31241:16 31328:7 31375:16 bullets 31412:13	<pre>can't 31270:10 31305:6</pre>	31410:11 31430:6 caused 31275:23 31307:10 31325:16 31325:23 31338:5 causes 31249:21 caveat 31245:22 CCTV 31258:1 31298:25 cease 31282:21 cell 31352:1 central 31288:25
bit 31250:24 31253:4 31264:21 31307:19 31315:12 31319:22 31334:15 31361:14 31365:22 31403:25 31405:9,22 31408:20 31413:21 bits 31288:20 31296:18 31368:23 31402:12 black 31248:4 blame 31310:14,22 31313:25 31325:16	briefed 31262:22 31314:23 31325:7 31334:19 31335:3,21 briefing 31262:20 31263:3 31264:10,13 31265:8,18,20 31266:20 31272:3 31278:6 31294:13 31304:9,11 31308:6 31309:7,12,15 31311:17 31312:7 31315:8,21 31316:16	31298:13 31355:24 31359:11 31381:25 31392:16 Budlender 31371:23 buildings 31419:21 builds 31236:24 build-up 31278:11 built 31250:25 31251:2 bullet 31241:16 31328:7 31375:16 bullets 31412:13 bureaucracy 31284:24	<pre>can't 31270:10 31305:6</pre>	31410:11 31430:6 caused 31275:23 31307:10 31325:16 31325:23 31338:5 causes 31249:21 caveat 31245:22 CCTV 31258:1 31298:25 cease 31282:21 cell 31352:1 central 31288:25 centuries 31352:15
bit 31250:24 31253:4 31264:21 31307:19 31315:12 31319:22 31334:15 31361:14 31365:22 31403:25 31405:9,22 31403:25 31405:9,22 31408:20 31413:21 bits 31288:20 31296:18 31368:23 31402:12 black 31248:4 blame 31310:14,22 31313:25 31325:16 31328:19 31351:12	briefed 31262:22 31314:23 31325:7 31334:19 31335:3,21 briefing 31262:20 31263:3 31264:10,13 31265:8,18,20 31266:20 31272:3 31278:6 31294:13 31304:9,11 31308:6 31309:7,12,15 31311:17 31312:7 31315:8,21 31316:16 31316:17,20,21,22,23	31298:13 31355:24 31359:11 31381:25 31392:16 Budlender 31371:23 buildings 31419:21 builds 31236:24 build-up 31278:11 built 31250:25 31251:2 bullet 31241:16 31328:7 31375:16 bullets 31412:13 bureaucracy 31284:24 31289:4	<pre>can't 31270:10 31305:6</pre>	31410:11 31430:6 caused 31275:23 31307:10 31325:16 31325:23 31338:5 causes 31249:21 caveat 31245:22 CCTV 31258:1 31298:25 cease 31282:21 cell 31352:1 central 31288:25 centuries 31352:15 century 31250:5
bit 31250:24 31253:4 31264:21 31307:19 31315:12 31319:22 31334:15 31361:14 31365:22 31403:25 31405:9,22 31403:25 31405:9,22 31408:20 31413:21 bits 31288:20 31296:18 31368:23 31402:12 black 31248:4 blame 31310:14,22 31313:25 31325:16 31328:19 31351:12 blast 31247:24 31248:3	briefed 31262:22 31314:23 31325:7 31334:19 31335:3,21 briefing 31262:20 31263:3 31264:10,13 31265:8,18,20 31266:20 31272:3 31278:6 31294:13 31304:9,11 31308:6 31309:7,12,15 31311:17 31312:7 31315:8,21 31316:16 31316:17,20,21,22,23 31316:25 31318:5	31298:13 31355:24 31359:11 31381:25 31392:16 Budlender 31371:23 buildings 31419:21 builds 31236:24 build-up 31278:11 built 31250:25 31251:2 bullet 31241:16 31328:7 31375:16 bullets 31412:13 bureaucracy 31284:24 31289:4 burned 31404:9	can't 31270:10 31305:6 31310:18 31317:15 31336:10 31351:20 31356:21,22 31359:17 31374:6,17 31381:12 31385:14 31409:21 31410:7 capital 31261:7,15,15 Captain 31329:25 31330:23 31331:9,16 31372:13 card 31414:25 care 31273:5 31358:7	31410:11 31430:6 caused 31275:23 31307:10 31325:16 31325:23 31338:5 causes 31249:21 caveat 31245:22 CCTV 31258:1 31298:25 cease 31282:21 cell 31352:1 central 31288:25 centuries 31352:15 century 31250:5 ceremonial 31256:4,8
bit 31250:24 31253:4 31264:21 31307:19 31315:12 31319:22 31334:15 31361:14 31365:22 31403:25 31405:9,22 31408:20 31413:21 bits 31288:20 31296:18 31368:23 31402:12 black 31248:4 blame 31310:14,22 31313:25 31325:16 31328:19 31351:12 blast 31247:24 31248:3 31254:23	briefed 31262:22 31314:23 31325:7 31334:19 31335:3,21 briefing 31262:20 31263:3 31264:10,13 31265:8,18,20 31266:20 31272:3 31278:6 31294:13 31304:9,11 31308:6 31309:7,12,15 31311:17 31312:7 31315:8,21 31316:16 31316:17,20,21,22,23 31316:25 31318:5 31324:4,20 31325:7	31298:13 31355:24 31359:11 31381:25 31392:16 Budlender 31371:23 buildings 31419:21 builds 31236:24 build-up 31278:11 built 31250:25 31251:2 bullet 31241:16 31328:7 31375:16 bullets 31412:13 bureaucracy 31284:24 31289:4 burned 31404:9 burst 31432:9	can't 31270:10 31305:6 31310:18 31317:15 31336:10 31351:20 31356:21,22 31359:17 31374:6,17 31381:12 31385:14 31409:21 31410:7 capital 31261:7,15,15 Captain 31329:25 31330:23 31331:9,16 31372:13 card 31414:25 care 31273:5 31358:7 31407:11 31416:23	31410:11 31430:6 caused 31275:23 31307:10 31325:16 31325:23 31338:5 causes 31249:21 caveat 31245:22 CCTV 31258:1 31298:25 cease 31282:21 cell 31352:1 central 31288:25 centuries 31352:15 century 31250:5 ceremonial 31256:4,8 31256:10
bit 31250:24 31253:4 31264:21 31307:19 31315:12 31319:22 31334:15 31361:14 31365:22 31403:25 31405:9,22 31408:20 31413:21 bits 31288:20 31296:18 31368:23 31402:12 black 31248:4 blame 31310:14,22 31313:25 31325:16 31328:19 31351:12 blast 31247:24 31248:3 31254:23 blissfully 31332:19	briefed 31262:22 31314:23 31325:7 31334:19 31335:3,21 briefing 31262:20 31263:3 31264:10,13 31265:8,18,20 31266:20 31272:3 31278:6 31294:13 31304:9,11 31308:6 31309:7,12,15 31311:17 31312:7 31315:8,21 31316:16 31316:17,20,21,22,23 31316:25 31318:5 31324:4,20 31325:7 31325:18 31329:1	31298:13 31355:24 31359:11 31381:25 31392:16 Budlender 31371:23 buildings 31419:21 builds 31236:24 build-up 31278:11 built 31250:25 31251:2 bullet 31241:16 31328:7 31375:16 bullets 31412:13 bureaucracy 31284:24 31289:4 burned 31404:9 burst 31432:9 business 31353:10	can't 31270:10 31305:6 31310:18 31317:15 31336:10 31351:20 31356:21,22 31359:17 31374:6,17 31381:12 31385:14 31409:21 31410:7 capital 31261:7,15,15 Captain 31329:25 31330:23 31331:9,16 31372:13 card 31414:25 care 31273:5 31358:7 31407:11 31416:23 career 31232:19	31410:11 31430:6 caused 31275:23 31307:10 31325:16 31325:23 31338:5 causes 31249:21 caveat 31245:22 CCTV 31258:1 31298:25 cease 31282:21 cell 31352:1 central 31288:25 centuries 31352:15 century 31250:5 ceremonial 31256:4,8 31256:10 certain 31234:22
bit 31250:24 31253:4 31264:21 31307:19 31315:12 31319:22 31334:15 31361:14 31365:22 31403:25 31405:9,22 31403:25 31405:9,22 31408:20 31413:21 bits 31288:20 31296:18 31368:23 31402:12 black 31248:4 blame 31310:14,22 31313:25 31325:16 31328:19 31351:12 blast 31247:24 31248:3 31254:23 blissfully 31332:19 block 31255:5	briefed 31262:22 31314:23 31325:7 31334:19 31335:3,21 briefing 31262:20 31263:3 31264:10,13 31265:8,18,20 31266:20 31272:3 31278:6 31294:13 31304:9,11 31308:6 31309:7,12,15 31311:17 31312:7 31315:8,21 31316:16 31316:17,20,21,22,23 31316:25 31318:5 31324:4,20 31325:7 31325:18 31329:1 31334:2,20 31335:1,4	31298:13 31355:24 31359:11 31381:25 31392:16 Budlender 31371:23 buildings 31419:21 builds 31236:24 build-up 31278:11 built 31250:25 31251:2 bullet 31241:16 31328:7 31375:16 bullets 31412:13 bureaucracy 31284:24 31289:4 burned 31404:9 burst 31432:9	can't 31270:10 31305:6 31310:18 31317:15 31336:10 31351:20 31356:21,22 31359:17 31374:6,17 31381:12 31385:14 31409:21 31410:7 capital 31261:7,15,15 Captain 31329:25 31330:23 31331:9,16 31372:13 card 31414:25 care 31273:5 31358:7 31407:11 31416:23 career 31232:19 31246:15 31247:16	31410:11 31430:6 caused 31275:23 31307:10 31325:16 31325:23 31338:5 causes 31249:21 caveat 31245:22 CCTV 31258:1 31298:25 cease 31282:21 cell 31352:1 central 31288:25 centuries 31352:15 century 31250:5 ceremonial 31256:4,8 31256:10 certain 31234:22 31236:3,3 31243:15
bit 31250:24 31253:4 31264:21 31307:19 31315:12 31319:22 31334:15 31361:14 31365:22 31403:25 31405:9,22 31408:20 31413:21 bits 31288:20 31296:18 31368:23 31402:12 black 31248:4 blame 31310:14,22 31313:25 31325:16 31328:19 31351:12 blast 31247:24 31248:3 31254:23 blissfully 31332:19	briefed 31262:22 31314:23 31325:7 31334:19 31335:3,21 briefing 31262:20 31263:3 31264:10,13 31265:8,18,20 31266:20 31272:3 31278:6 31294:13 31304:9,11 31308:6 31309:7,12,15 31311:17 31312:7 31315:8,21 31316:16 31316:17,20,21,22,23 31316:25 31318:5 31324:4,20 31325:7 31325:18 31329:1	31298:13 31355:24 31359:11 31381:25 31392:16 Budlender 31371:23 buildings 31419:21 builds 31236:24 build-up 31278:11 built 31250:25 31251:2 bullet 31241:16 31328:7 31375:16 bullets 31412:13 bureaucracy 31284:24 31289:4 burned 31404:9 burst 31432:9 business 31353:10	<pre>can't 31270:10 31305:6</pre>	31410:11 31430:6 caused 31275:23 31307:10 31325:16 31325:23 31338:5 causes 31249:21 caveat 31245:22 CCTV 31258:1 31298:25 cease 31282:21 cell 31352:1 central 31288:25 centuries 31352:15 century 31250:5 ceremonial 31256:4,8 31256:10 certain 31234:22

31279:7 31280:21				Page 4
	channels 31352:17	31253:6 31329:20	31354:19 31356:17	31343:7 31375:24
	characteristics 31246:9	clarifying 31237:17	31356:25 31357:6	31379:5,8,15 31384:6
	charge 31233:4	31284:20	31359:1,3 31362:10	31399:16 31407:8
31333:24 31344:16	31258:8 31308:24	clarity 31276:7	31371:3 31372:25	31408:3
31344:17 31354:24	31315:16 31333:14	31316:15,24	31383:12 31390:4	commanding 31424:15
31360:1 31385:24	31371:15 31377:17	31378:20	31391:22 31394:22	commemorate 31250:4
	chart 31354:5	clashing 31266:13	31398:25 31402:1	commence 31228:7
	Chaskalson 31229:23	clear 31296:16 31306:1	31404:7 31408:22	31294:2 31346:12
e	check 31268:18	31309:23 31311:16	31409:9 31412:20	commenced 31305:10
31241:25 31248:13	31284:17 31315:3	31315:16 31324:4	31419:24 31421:7,17	commences 31376:11
31255:21 31274:19	31329:5	31344:5 31346:11	31424:13 31431:25	commencing 31398:6
	checked 31296:3	31372:21 31378:23	comes 31342:18	comment 31243:14
	checking 31314:17	31389:15 31396:6	31343:12 31384:17	31290:3 31298:19
	chief 31232:13 31233:3	31397:13 31406:10	31392:3 31395:1	31332:22 31335:16
31298:13 31300:12	31258:15,16,18	31411:10 31413:19	31396:19 31399:11	31336:2 31350:7
31314:13,23	31259:1,4,6,8,16,19	31423:7,9	31399:12 31408:9	31358:7 31383:1
31315:13 31321:16	31259:22,24 31260:4	clearly 31239:25	31424:1	31386:13 31387:1,5
31322:5 31335:19	31260:5,8,11	31240:25 31248:22	comfort 31320:12	31402:4,7 31404:19
31338:17 31343:4	31268:17 31285:4	31274:25 31322:15	comfortably 31374:24	31410:15 31411:16
31351:23 31352:7	31291:10 31292:12	31325:10 31330:24	coming 31260:7	31416:23 31417:2
31359:10 31361:7	31366:25 31384:20	31331:22 31396:17	31298:25 31359:12	31425:22 31428:13
31362:3 31382:5	31388:13	31405:5 31417:3	31359:14 31366:12	31428:19,25 31433:6
-	children 31254:4	31428:22,23	31378:24 31391:24	commentary 31238:6,7
	choice 31344:14	31431:10	31402:8 31431:10	commented 31280:15
	choose 31318:14	climate 31350:16	command 31234:7,9	31280:17 31413:9
•	church 31252:6	31352:12,12,12	31257:5,6,7,13,14,19	comments 31241:1
	circ 31427:24 circumstance 31265:20	climb 31256:20,23 clip 31428:10	31258:4 31261:6,13 31263:11 31265:13	31280:8 31300:6 31367:3,23
	circumstances	close 31233:6 31251:9	31269:18 31278:6	commercially 31248:1
31236:23 31237:10	31235:12 31257:23	31255:4 31289:2	31282:8 31294:13	Commission 31228:2
31237:18 31238:2	31282:8 31304:6	cloud 31429:10,16,17	31300:10,10	31231:7 31232:4
31239:3 31240:15	31311:25 31313:24	31430:12,16,22	31320:12 31322:16	31233:16 31235:9,13
31243:2,5 31240:15	31314:2 31317:18,25	31431:3,4,10,12,14	31330:20 31338:1,11	31235:16,19,22
31245:5 31247:14	31318:15 31320:9	31432:1,2,18	31339:10 31342:11	31236:11,13 31237:5
31248:12 31250:9	31323:23 31324:13	club 31274:16	31344:6 31380:19	31244:21,23
31260:25 31278:15	31326:7,22 31328:20	clubs 31274:4	31381:3 31387:19	31245:21,25
31286:12 31299:24	31328:23 31331:24	cocktails 31247:19	31423:15,19	31252:14,25 31272:4
31315:16 31316:2	31334:19 31339:3,25	31254:12,24	31424:14	31272:24 31273:13
31416:3 31417:18	31340:24 31341:2,7	Code 31343:5,6	commandeering	31277:6,7 31281:8
challenge 31322:12	31341:17 31343:16	coffee 31260:4	31257:24 31258:1	31283:23 31287:24
31396:20 31398:8,15	31344:19 31351:15	collateral 31430:1	commander 31232:25	31290:17,17,18
31399:25 31400:10	31352:7 31353:2,13	31431:24	31246:7 31257:18,20	31299:15 31329:15
31400:13,22	31367:5 31388:10	colleague 31284:5	31257:23 31258:7,14	31329:15,16,20,22
31403:15 31405:22	31389:8,13 31402:3	colleagues 31275:5	31258:15,18,19	31335:17 31337:1
31406:9,17 31414:24	31405:25 31407:7	31277:15 31328:16	31259:2,5,10,18,25	31338:4,8,11,18
challenged 31272:16	31408:2 31413:13	31370:6 31380:23	31260:3,9,10,10,12	31343:23 31345:11
chance 31351:10	31415:3 31422:23	31425:14	31260:14,20,21	31347:10,11
31394:16 31431:6	31423:2,12,15,20	college 31284:19	31261:7,15,24	31363:15 31364:6,6,7
change 31240:11	31424:17 31428:7	31286:5,13	31262:2 31263:14	31366:6,8,17 31373:4
31284:8 31317:19	31431:19 31436:3,9	Colonel 31242:16	31265:9,22 31266:6	31376:24 31381:15
31367:5 31383:17	31436:11,14,16	31304:20,20 31305:9	31266:24 31268:1	31382:24 31393:7
	city 31250:23 31256:5	31315:7 31329:7	31270:8 31297:5	31398:9 31403:23
31388:7	31275:22	31333:4,7,12	31303:6,7 31306:4	31407:11 31411:23
	civilian 31234:2	31358:10,17,19	31308:21 31326:20	31419:18,18,19
	claims 31392:19	31363:16 31369:25	31333:14 31344:24	31422:10 31426:15
31285:12 31286:8	31393:19	31372:7,14,22	31344:24,24	31434:1 31437:11
	clarification 31228:17	31373:6 31375:10	31375:18 31379:20	commissioner
31317:18 31318:1	31242:2 31243:9	31381:11 31385:5	31381:7,8 31398:23	31241:13 31266:23
31341:3 31366:8,9	31283:17 31323:19	31387:2 31388:13	31398:24,25 31399:7	31289:22 31315:5,19
31385:3 31389:23	31400:7	31401:6 31403:13	31399:10,12,20	31315:25 31316:12
	clarifications 31229:11	come 31239:8,20,25	31402:11 31403:12	31317:10 31318:11
changes 31237:8,9	31237:7,12,16 clarified 31303:15	31252:7 31256:16 31263:22 31265:12	commanders 31263:12 31263:14 31267:4	31321:2,8 31322:18 31328:24 31329:6,9
212/2.2 212/14.6		51205.22 51205:12	51205:14 51207:4	51520.24 51529:0,9
		31267.4 5 7 22	31260.18 22 21205.1	31332.0 13 31222.1
31285:13 31287:1	clarifies 31286:6	31267:4,5,7,22 31290:1 31294:15	31269:18,23 31305:1 31305:1 10 31307:2	31332:9,13 31333:4 31334:1 5 10 31358:8
31285:13 31287:1		31267:4,5,7,22 31290:1 31294:15 31317:6 31344:9	31269:18,23 31305:1 31305:1,10 31307:2 31311:16 31313:1	31332:9,13 31333:4 31334:1,5,10 31358:8 31364:9,12,17,24

				Page
31365:2,17,21	compiling 31234:24	31315:8	31367:9	continue 31230:3
31369:25 31371:1,18	31243:21,22 31245:3	conference 31372:10	consideration 31319:24	31306:3 31329:21
31380:7,13 31381:21	complain 31264:21	31372:12 31409:19	31340:8 31341:8	31429:3
31388:18 31393:11	31385:21	confident 31237:1	31366:3,15 31367:5	continues 31271:2
31397:13 31408:8	complement 31378:17 31379:21	31286:10 31287:18	31388:21 31409:12 31410:3	31398:13
31409:18 31413:10 31415:15,20	complete 31262:18	31332:25 31334:12 31334:13 31348:5	considered 31232:22	continuing 31337:19 31428:23
31420:19 31421:5,16	31290:6	31334.13 31348.3	31244:11,12 31366:7	continuum 31269:1
31422:2 31423:14	completely 31316:16	configuration 31238:12	31368:14 31376:23	contracts 31234:6
31424:3 31435:3,19	31324:15	31239:7,12 31312:13	consistent 31242:15	contradict 31378:17
31435:22	completing 31367:7	31358:16 31383:11	31258:21 31262:12	contrary 31316:3
Commissioners	complex 31263:6	31383:17 31384:16	31297:18 31304:1	31334:21 31335:8
31369:15 31390:11	31378:13 31402:18	31384:22 31385:1	31366:16 31402:9	31369:18
31398:6	31403:6 31408:17	31389:24 31433:2	31413:1	contribute 31270:24
Commissioner's	31417:3 31418:4	confirm 31233:13	consistently 31375:19	contributed 31280:18
31391:4	31419:21	31235:10 31279:4	31417:9	contributes 31400:19
Commission's	complexity 31378:3,9	31353:11 31386:22	consolidated 31330:4	control 31254:20
31407:12	31379:25 31417:15	confirmed 31353:9	31367:10 31393:22	31278:6 31294:13
commit 31319:13	31417:19	conflict 31246:16	31397:16 31402:21	31338:1,11 31342:11
committed 31417:17	compliance 31265:6	31305:4,6 31310:3	conspiracy 31310:13	31405:15 31411:24
common 31238:21,22	compliant 31321:23	31346:7	31310:21 31313:17	31411:25 31412:14
31375:24	31322:2	conflicting 31304:15	31314:24 31316:8	31412:15
commonalities	complicated 31408:6	31306:20 31346:4	31325:3	controlling 31412:15
31277:19	complicating 31275:4	confront 31347:1	constable 31229:14	controversial 31252:10
commonality 31278:1	comply 31322:11	confrontation	31232:10,11,14	31252:16 31268:12
31280:16 31281:1	composite 31296:2,6	31249:10,12 31253:3	31257:9 31258:15	controversy 31274:12
31426:5	31353:14 31354:16	31312:18 31405:6	31259:4,17,22,24	conversation 31279:4
communicate 31253:13	31359:22	confronted 31242:18	31260:8 31267:14	31281:13,17 31284:5
31266:10 31311:8	computer 31288:3	31436:10	31268:17 31291:10	31284:7 31297:7
31322:3	31369:3 31372:8	confronting 31251:12	31434:22	31320:10 31365:13
communicated	conceded 31371:5	confusion 31308:25	constables 31263:25	31391:20 31392:1
31304:25 31305:8,9	31372:23 31373:2	31315:18 31333:17	31264:1 31315:2	31396:24,25 31397:3
31306:3 31307:1,2	concentrating	31380:1	Constabulary	conversations
31311:22 31312:12	31293:10 31294:22	congratulate 31250:8	31272:24 31291:20	31354:15 31381:16
31313:23 31317:4,23	concentration 31279:18 31280:4	31297:5 31303:23 31319:3	31352:15 construct 31313:18	conversely 31410:14
31318:4 31355:21		connection 31274:10		31436:8 2000/21240:12
31372:1 31388:1,12	concept 31319:4		constructing 31262:7 consultant 31233:20	convey 31240:13
31391:13 31393:9 31394:5 31397:11	31379:13 31389:2 31398:20 31435:24	31323:14 31324:17 31325:19 31340:16	consumed 31274:6	conveyed 31240:11 convinced 31242:6
communicates 31297:2	concepts 31277:24	31340:19	contacted 31233:22	31287:14
31302:16 31312:22	31289:1	conscious 31236:9	contained 31253:22	copies 31343:23
31327:7	concern 31255:2	31241:1 31250:3,9	31290:9,14 31366:19	copper 31248:4
communicating	31297:8 31305:22	31272:15 31360:25	CONTD 31291:1	cops 31302:3 31326:12
31325:1 31408:15	31403:23 31411:1	consecutive 31386:14	31420:8	31326:12,12
communication	31436:1	31387:6 31397:10	contend 31345:8	copy 31420:15
31266:20 31388:17	concerned 31306:2,14	31437:8	contended 31346:9	cordon 31356:6,8
31393:2	31307:3 31328:15	consecutively 31385:19	31360:17	31357:7,19,23
communications	31338:12 31425:13	31387:15 31419:25	content 31283:25	31416:4
31263:21 31264:9	31433:8,11 31434:4	consequence 31341:8	31288:15 31366:11	correct 31229:20
31270:22 31393:12	concerns 31433:17	31380:14 31403:15	31401:1 31403:19	31233:14 31236:22
communities 31247:8	conclude 31410:23	consequences 31342:3	contention 31401:4	31237:9,10 31242:24
31249:19 31250:25	31420:11,12	31357:21 31376:12	31416:21	31243:2 31245:4
31251:1,3,4,7,12	conclusion 31280:11	31381:13 31382:16	contents 31279:6	31288:16 31299:23
31266:13 31276:1	31297:11 31302:1	31382:22 31383:5	contested 31252:3	31307:18 31314:16
community 31267:7,8	31348:21 31420:9	31387:10 31397:7	31345:8	31328:10 31331:13
31273:24,25,25	31422:4,4 31428:14	31415:6	context 31250:12	31332:10,10,21
31275:24 31276:2,3	conclusions 31236:3	consider 31244:15	31274:9 31287:5	31341:21 31349:7,21
31355:15 31358:21	31243:25 31246:4	31296:15,19	31290:8 31294:22	31350:2,4 31353:14
21201.10 21202.21	31278:4,14,23	31297:25 31304:5	31302:8 31340:11	31365:20 31370:11
31391:10 31392:21	31294:1,4,5 31335:16	31353:16 31365:5,8	31343:4 31344:14	31370:14 31373:24
31395:14			31377:19 31387:7	31375:23 31391:15
31395:14 company 31233:20	31337:5 31347:7	31366:12 31426:19		
31395:14 company 31233:20 compare 31286:24	31337:5 31347:7 31349:20 31366:12	considerable 31232:25	31390:17 31394:18	31395:24 31397:19
31395:14 company 31233:20 compare 31286:24 31288:14	31337:5 31347:7 31349:20 31366:12 concrete 31255:5	considerable 31232:25 31244:24 31327:17	31390:17 31394:18 31412:9 31423:11,18	31395:24 31397:19 31400:11 31412:9
31395:14 company 31233:20 compare 31286:24 31288:14 comparison 31260:25	31337:5 31347:7 31349:20 31366:12 concrete 31255:5 31310:8	considerable 31232:25 31244:24 31327:17 31389:17 31391:3	31390:17 31394:18 31412:9 31423:11,18 contingency 31322:25	31395:24 31397:19 31400:11 31412:9 31434:9
31395:14 company 31233:20 compare 31286:24 31288:14 comparison 31260:25 31290:9	31337:5 31347:7 31349:20 31366:12 concrete 31255:5	considerable 31232:25 31244:24 31327:17	31390:17 31394:18 31412:9 31423:11,18	31395:24 31397:19 31400:11 31412:9

Tel: 011 021 6457 Fax: 011 440 9119

RealTime Transcriptions

Marikana Commission of Inquiry

Pretoria

				Page
correction 31332:3	31288:19 31311:20	31253:1,3,24	31278:19 31282:12	decision 31269:23,24
corrections 31237:13	31429:16	31255:18 31275:12	31283:1 31286:16	31272:3 31280:22
correctly 31282:19	creates 31269:6	31275:13 31287:20	31293:24 31299:18	31303:1,2 31304:22
31292:13 31295:6	31405:23	31384:9,11 31385:7	31300:20 31301:6,7	31304:24 31306:23
31315:1 31402:6	creating 31395:7	31397:8 31412:16	31302:3 31307:16	31311:8,9,15
costs 31343:11	credit 31318:24	31419:8,8,10	31308:1,5 31318:20	31315:21 31317:14
cough 31269:9	31384:19	crucial 31388:11	31319:19 31320:24	31317:20 31318:12
couldn't 31239:8,22,25	criminal 31363:10	crude 31247:25	31329:21 31336:11	31320:13 31340:9,14
31305:13 31333:24	crisply 31345:5	31256:12	31337:8 31341:2	31341:13,18,23
31342:24 31370:2,16	criteria 31368:9	crux 31346:3	31345:20,21	31342:2,3,6 31345:7
31370:23,24 31371:8	critical 31319:15	crystal 31315:16	31351:10 31352:22	31346:25 31354:22
31371:22 31374:1,12	31435:9	31378:22 31389:15	31356:24 31364:1	31357:8,20 31359:7
Council 31275:22	criticise 31302:25	CS 31309:6,11	31366:5,9 31372:18	31360:11,11,13,19
counsel 31369:3,16	31303:3 31311:13	cumulative 31422:12	31377:9,15,18	31361:13 31362:5,9
counting 31317:12	31318:16 31322:22	cup 31260:4	31380:21 31386:5	31362:21 31363:9
31332:15	31326:17	current 31233:16	31398:7 31409:19	31367:25 31368:3,7
countries 31277:13	criticised 31317:15	31234:12 31276:2	31412:7 31413:25	31368:11 31369:4,17
31326:11	31339:19 31342:24	31287:2 31290:11	31423:13	31369:19,24
country 31246:14	31362:15	currently 31233:17,19	dealing 31234:8	31370:25 31371:17
31251:24 31252:18	criticism 31300:25	31252:25	31238:9 31248:16	31371:17,21 31372:2
31254:1 31277:10,12	31302:19 31304:17	curtain 31432:1,6,16	31251:14 31252:17	31376:12 31380:15
couple 31249:24	31311:1 31315:21	CV 31229:25 31230:16	31253:5 31262:12,13	31380:21,22 31381:2
31275:19 31285:23	31325:17 31331:23	31232:1 31233:13	31265:21 31266:1	31382:15 31389:7
31299:7 31359:3	31350:7 31358:4	31234:10,20	31268:12 31270:11	31400:2 31415:7
31384:14 31395:24	31359:23 31362:16	31242:25	31273:19 31274:1,9	31423:25
course 31232:14	31363:11 31375:17		31275:1,20,24	decisions 31252:14
31234:7 31235:5,7	31376:4 31377:1	D	31278:10,11 31281:3	31261:11 31269:18
31247:15 31273:8,11	31385:9 31398:7	d 31266:17 31346:20	31287:19 31315:17	31272:15 31341:3,7,9
31273:16 31276:9	criticisms 31299:14	31372:19 31378:18	31349:24 31377:6	31360:9 31361:6
31277:4 31282:13	31300:18 31326:15	daily 31421:21	31380:25 31384:9	31363:13 31380:20
31285:12 31303:17	31326:19 31342:25	damage 31248:7	31385:7 31388:6	decommissioned
31303:24 31305:2,4	31347:11 31360:4	31297:14 31430:1	31389:3 31406:8	31283:18 31284:23
31306:9,20 31307:13	31366:6,10 31375:7	31431:24	31408:21 31416:6	defence 31338:7,13,13
31310:22 31311:8	31377:8 31398:2,9	danger 31324:24	31417:8 31419:5,7	31338:16 31340:2
31313:9 31314:24	31401:1 31406:24	31327:14 31356:10	31423:19	31404:20
31322:25 31325:25	31407:5 31411:3		deals 31238:11 31281:8	defend 31282:23
	cross 31255:20 31372:7	dangerous 31238:23		31384:1 31391:10
31331:6,9 31332:11		31282:10 31313:7	31282:15 31349:9	
31345:20 31351:24	cross-examined	31317:1 31320:16	31376:7 31407:9	31396:9 31430:13,14
31353:18 31362:3	31351:25 31368:17	31321:1 31356:2,7,10	31416:17,17	defensive 31383:21,25
31364:11 31366:8	31370:8	31387:22 31402:19	dealt 31248:11	31387:13 31389:6
31377:20 31384:14	crowd 31240:25	31417:3,10 31418:4	31273:18,20,20	31390:5 31394:10
31385:12,20 31389:9	31249:6 31253:20	31426:3,4 31432:22	31282:11 31283:1	definitely 31364:19
31391:13 31393:1,25	31269:5 31275:2,9	dark 31410:11,13	31305:23 31351:11	31413:21
31394:1 31395:5	31279:10,12 31282:9	date 31293:21 31376:8	31365:3 31376:22	degree 31236:7
31396:23 31408:22	31298:23 31321:22	dated 31235:14	31401:2	31279:5 31301:15
31413:15 31418:3	31354:22 31361:9	31372:12	death 31360:22	31302:5 31312:7
31421:3 31425:11	31385:2 31388:19,24	day 31258:18 31259:11	31361:7,12 31431:17	31365:14
31436:23	31389:1,3,21	31260:3 31267:17	deaths 31338:5	degrees 31432:11
courses 31234:19	31390:18,22	31271:13 31272:17	31339:23 31340:1	delegate 31381:8,12
court 31232:17	31391:13 31393:1,10	31291:9,19 31340:20	31341:17	deliberately 31325:15
31342:19,23	31393:24 31394:4,5,6	31342:4 31357:10	debate 31254:13	demanding 31288:11
31343:24	31394:12,13,15	31363:20 31369:13	31310:23 31401:25	democratic 31275:22
courts 31273:9 31434:2	31395:1 31405:12,15	31371:5 31372:19	debrief 31336:7,20	demonstrate 31390:21
cover 31234:11	31405:16 31411:18	31390:19 31392:10	deceased 31241:14	demonstration
31235:5,6 31294:5	31411:24,25	31408:18,19 31422:1	decide 31268:1 31316:3	31385:17
31310:2 31406:23	31412:14,15,17	31422:1	31316:24 31339:4	demonstrations
31408:24 31414:20	31413:11,25	days 31252:12 31266:3	31360:12,18	31279:13
31414:21 31427:9,18	31414:16 31415:18	31275:23 31294:24	31362:13 31394:15	denies 31306:22
covered 31403:1	31416:22 31417:11	31299:7 31359:3	31422:10	deny 31359:9
covers 31251:24				department 31233:4
/ 31 1 1 22	31417:12 31418:2	31367:5 31384:14	decided 31305:7	
31296:13 31402:24	31419:4 31420:22	31408:22 31424:18	31310:1 31323:1	31259:6,11 31264:9
covert 31353:4	31422:21 31423:2	de 31243:9 31411:16	31356:15 31362:14	31270:22 31314:5
cover-up 31316:8	31436:20	31413:9	31392:14 31427:25	31328:15
create 31248:7	crowds 31246:11	deal 31230:1 31237:21	decides 31287:17	departments 31232:18
created 31237:24	31247:5,6,12	31238:1 31249:22	31304:2 31312:21	depend 31265:21
31259:11,13	31249:10 31252:21	31260:16 31275:8	31317:25	depended 31317:5
ARCHIVE FO	R JUSTICE	L	I	1

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RealTime Transcriptions

Pretoria

				Page
depending 31257:23	device 31248:1	31398:5	31258:23,24 31260:1	31378:16 31379:22
31262:8 31263:5	31256:18,22	directed 31274:13	31260:2 31264:15	31385:17 31387:11
31267:5 31412:23	devices 31256:12	31283:12 31293:16	31266:2,12 31271:21	31389:13 31408:1,16
depends 31282:13	dictate 31410:20	31315:13 31387:2	31273:20 31274:18	31433:1,3
31331:10	didn't 31259:12	directing 31349:23	31275:8 31299:7	domestic 31414:6
deploy 31297:16	31262:7 31289:23	31429:9	31417:13 31424:17	31421:24
31394:24 31412:24	31304:21 31305:18	direction 31301:10	dispersal 31242:7	door 31351:15
31421:6	31306:1,10 31308:17	31304:1 31318:19	disperse 31323:24	31425:16
deployable 31234:2	31311:7 31314:19,21	31326:25 31379:9	31383:14 31404:6	double 31268:10
deployed 31262:20	31331:7,15 31336:6	31402:8 31432:12	31406:2,3	doubt 31273:22
31344:17 31365:18	31336:23 31342:6	Directive 31279:14	dispersed 31309:6	31297:15
31394:7 31414:14	31358:24 31370:22	directly 31238:16	disposed 31231:23	download 31286:17
deploying 31421:9	31371:12 31374:19	31393:24	disproportionate	DPP 31292:3
deployment 31338:10	31376:18 31385:21	director 31265:16	31347:5 31420:13	draft 31279:12
31346:17 31403:22	31388:1,15 31392:9	disabilities 31375:3	31428:15	drafting 31375:3
31411:1,3 31416:18	31406:18 31408:24	disadvantages 31268:4	dispute 31305:15	dramatically 31237:3
deployments 31264:20	31409:12,14	disagreement 31243:8	31307:12 31308:22	31286:9
deputies 31380:10	31433:14,23,25	31386:8	31315:15 31345:13	draw 31243:25
deriving 31379:11	31434:13,20	disappears 31429:2	31352:14 31353:1	31260:25 31278:4,4
describe 31229:7	died 31291:17 31336:1	disarm 31301:9,14	31386:25	31278:13 31281:10
31233:16 31249:15	31339:25,25	31302:4,10 31303:3,3		31294:6 31347:8
			disputed 31241:8	
31257:5 31287:4,9	31340:23,25 31341:1	31308:15 31309:10	disputes 31274:20	31352:9
31291:3 31386:16,18	31341:14,15,16,16	31309:16 31311:9	distance 31327:17	drawing 31358:17
31394:18	31342:4 31351:19	31312:3,5,9,11,19	distracting 31276:11	drawn 31246:4
described 31264:25	31354:21	31317:20,24	31276:20,22 31277:1	31297:11 31363:1
31266:13 31272:2	difference 31255:11	31318:23 31320:2,20	31280:3	31370:19
31307:10 31325:6	differences 31435:4,5	31321:3,4,17 31323:1	district 31232:25	draws 31359:6
31326:6 31329:23	different 31232:15	31323:8,9,24 31324:1	31259:1 31262:2	dress 31256:3,4
31373:1 31398:22	31242:24 31255:10	31324:7 31326:25	31265:9	drew 31236:3
31403:12 31404:13	31255:11 31258:18	31357:20 31376:12	disturbing 31280:3	drill 31390:14
31413:3 31421:11	31261:9 31288:4	disarmament 31320:15	doctrine 31285:6	drive 31235:23 31236:1
31424:10 31426:12	31294:5 31295:9	disarmed 31304:23	31287:1,2 31306:24	31277:16 31279:3
describes 31394:21	31314:3,6 31316:6,16	31309:6,17	document 31228:17	31293:13 31295:2
description 31433:9	31318:1 31320:11	disarming 31304:1	31229:11 31237:6,7,8	31366:20 31367:13
designed 31234:7	31325:25 31326:11	31318:15 31321:16	31227:12,17	31403:5
despite 31246:12	31353:2 31368:6	31322:23	31279:10 31281:14	
-				driving 31407:19
31311:10 31369:17	31372:16 31373:14	discharge 31382:14	31283:9,13 31284:9	Drumcree 31252:1,6
detail 31237:22	31378:4 31379:7,10	31434:24	31284:11,25	31271:17
31239:6 31247:11	31383:18 31399:16	discharging 31426:17	31286:20 31288:20	due 31235:6 31336:17
31281:16 31321:19	31400:12,14	disciplinary 31306:16	31289:20,25 31290:2	31345:20
31322:3 31335:25	31405:11 31423:21	31307:23 31310:16	31290:6 31291:3,4	dust 31429:2,7,10,15
31336:4 31364:25	31426:7	discover 31326:23	31292:22 31296:1,8	31429:17 31430:15
31367:11 31399:18	differently 31388:15	discretion 31282:20	31296:13,18 31298:7	31431:12 31432:1,5
31402:23 31407:4	31399:17 31434:5	31347:2 31385:23	31344:11	31432:16,18
31435:12,14	differs 31280:20	31423:16	documents 31228:14	duties 31421:3
detailed 31324:3	difficult 31232:22	discuss 31267:24	31230:20 31234:24	duty 31264:7 31273:5
31340:8 31407:6	31273:7 31275:20,25	31375:11	31235:12 31242:9	31433:13,20 31436:9
details 31256:2	31313:25 31316:23	discussed 31290:8	31243:1,4,12,15,19	dynamic 31249:15
31281:15 31345:23	31326:6 31350:20	31324:8 31369:11	31243:21 31277:20	31265:18 31270:13
31362:2	31353:2 31385:15	31370:7 31371:21,22	31278:3,20 31279:8	31302:13 31304:5
		-		31308:8,10 31311:3
detectives 21255.04	31/05.5 21/17.2 0	discussing 2 221.17		51500.0,10 51511.5
detectives 31355:24	31405:5 31417:3,9	discussing 31331:12	31279:13 31280:6	-
develop 31261:24	31418:4 31422:18	31416:3	31281:15,16	31311:17,20
develop 31261:24 31267:19 31399:8,9	31418:4 31422:18 31426:3 31432:22	31416:3 discussion 31356:20	31281:15,16 31283:25 31285:3	31311:17,20 31317:18 31320:13
develop 31261:24 31267:19 31399:8,9 developed 31341:10	31418:4 31422:18 31426:3 31432:22 31436:10	31416:3 discussion 31356:20 31365:19 31370:5	31281:15,16 31283:25 31285:3 31286:25 31290:15	31311:17,20 31317:18 31320:13 31377:16
develop 31261:24 31267:19 31399:8,9 developed 31341:10 31367:3,18 31368:19	31418:4 31422:18 31426:3 31432:22 31436:10 difficulties 31350:15	31416:3 discussion 31356:20 31365:19 31370:5 dislodged 31360:22	31281:15,16 31283:25 31285:3 31286:25 31290:15 31292:21 31293:4,15	31311:17,20 31317:18 31320:13 31377:16 dynamics 31388:24
develop 31261:24 31267:19 31399:8,9 developed 31341:10 31367:3,18 31368:19 31369:2	31418:4 31422:18 31426:3 31432:22 31436:10 difficulties 31350:15 31352:25 31353:22	31416:3 discussion 31356:20 31365:19 31370:5 dislodged 31360:22 dismount 31266:15	31281:15,16 31283:25 31285:3 31286:25 31290:15 31292:21 31293:4,15 31344:12 31375:21	31311:17,20 31317:18 31320:13 31377:16 dynamics 31388:24 D-day 31392:14
<pre>develop 31261:24 31267:19 31399:8,9 developed 31341:10 31367:3,18 31368:19 31369:2 developing 31367:4</pre>	31418:4 31422:18 31426:3 31432:22 31436:10 difficulties 31350:15 31352:25 31353:22 31354:19 31359:10	31416:3 discussion 31356:20 31365:19 31370:5 dislodged 31360:22 dismount 31266:15 disobeyed 31311:12	31281:15,16 31283:25 31285:3 31286:25 31290:15 31292:21 31293:4,15 31344:12 31375:21 doesn't 31268:24	31311:17,20 31317:18 31320:13 31377:16 dynamics 31388:24
develop 31261:24 31267:19 31399:8,9 developed 31341:10 31367:3,18 31368:19 31369:2 developing 31367:4 development 31284:10	31418:4 31422:18 31426:3 31432:22 31436:10 difficulties 31350:15 31352:25 31353:22	31416:3 discussion 31356:20 31365:19 31370:5 dislodged 31360:22 dismount 31266:15	31281:15,16 31283:25 31285:3 31286:25 31290:15 31292:21 31293:4,15 31344:12 31375:21 doesn't 31268:24 31354:9 31365:15	31311:17,20 31317:18 31320:13 31377:16 dynamics 31388:24 D-day 31392:14 31409:17
<pre>develop 31261:24 31267:19 31399:8,9 developed 31341:10 31367:3,18 31368:19 31369:2 developing 31367:4</pre>	31418:4 31422:18 31426:3 31432:22 31436:10 difficulties 31350:15 31352:25 31353:22 31354:19 31359:10 31359:14 31360:1 31410:11	31416:3 discussion 31356:20 31365:19 31370:5 dislodged 31360:22 dismount 31266:15 disobeyed 31311:12	31281:15,16 31283:25 31285:3 31286:25 31290:15 31292:21 31293:4,15 31344:12 31375:21 doesn't 31268:24	31311:17,20 31317:18 31320:13 31377:16 dynamics 31388:24 D-day 31392:14
develop 31261:24 31267:19 31399:8,9 developed 31341:10 31367:3,18 31368:19 31369:2 developing 31367:4 development 31284:10	31418:4 31422:18 31426:3 31432:22 31436:10 difficulties 31350:15 31352:25 31353:22 31354:19 31359:10 31359:14 31360:1	31416:3 discussion 31356:20 31365:19 31370:5 dislodged 31360:22 dismount 31266:15 disobeyed 31311:12 disobeys 31327:21	31281:15,16 31283:25 31285:3 31286:25 31290:15 31292:21 31293:4,15 31344:12 31375:21 doesn't 31268:24 31354:9 31365:15	31311:17,20 31317:18 31320:13 31377:16 dynamics 31388:24 D-day 31392:14 31409:17
develop 31261:24 31267:19 31399:8,9 developed 31341:10 31367:3,18 31368:19 31369:2 developing 31367:4 development 31284:10 31293:5 develops 31424:5	31418:4 31422:18 31426:3 31432:22 31436:10 difficulties 31350:15 31352:25 31353:22 31354:19 31359:10 31359:14 31360:1 31410:11 difficulty 31240:4	31416:3 discussion 31356:20 31365:19 31370:5 dislodged 31360:22 dismount 31266:15 disobeyed 31311:12 disobeys 31327:21 disorder 31233:9 31246:20,22 31247:2	31281:15,16 31283:25 31285:3 31286:25 31290:15 31292:21 31293:4,15 31344:12 31375:21 doesn't 31268:24 31354:9 31365:15 31382:19 31393:23	31311:17,20 31317:18 31320:13 31377:16 dynamics 31388:24 D-day 31392:14 31409:17 <u>E</u> e 31266:17 31346:25
develop 31261:24 31267:19 31399:8,9 developed 31341:10 31367:3,18 31368:19 31369:2 developing 31367:4 development 31284:10 31293:5 develops 31424:5 deviate 31305:11	31418:4 31422:18 31426:3 31432:22 31436:10 difficulties 31350:15 31352:25 31353:22 31354:19 31359:10 31359:14 31360:1 31410:11 difficulty 31240:4 31288:4 31296:22	31416:3 discussion 31356:20 31365:19 31370:5 dislodged 31360:22 dismount 31266:15 disobeyed 31311:12 disobeys 31327:21 disorder 31233:9 31246:20,22 31247:2 31247:4 31248:12,16	31281:15,16 31283:25 31285:3 31286:25 31290:15 31292:21 31293:4,15 31344:12 31375:21 doesn't 31268:24 31354:9 31365:15 31382:19 31393:23 31407:22 31411:18 doesn't 31363:25	31311:17,20 31317:18 31320:13 31377:16 dynamics 31388:24 D-day 31392:14 31409:17 E e 31266:17 31346:25 earlier 31251:21
develop 31261:24 31267:19 31399:8,9 developed 31341:10 31367:3,18 31368:19 31369:2 developing 31367:4 development 31284:10 31293:5 develops 31424:5 deviate 31305:11 deviated 31305:15,19	31418:4 31422:18 31426:3 31432:22 31436:10 difficulties 31350:15 31352:25 31353:22 31354:19 31359:10 31359:14 31360:1 31410:11 difficulty 31240:4 31288:4 31296:22 31309:3 31408:7	31416:3 discussion 31356:20 31365:19 31370:5 dislodged 31360:22 dismount 31266:15 disobeyed 31311:12 disobeys 31327:21 disorder 31233:9 31246:20,22 31247:2 31247:4 31248:12,16 31249:18,22,24	31281:15,16 31283:25 31285:3 31286:25 31290:15 31292:21 31293:4,15 31344:12 31375:21 doesn't 31268:24 31354:9 31365:15 31382:19 31393:23 31407:22 31411:18 doesn't 31363:25 doing 31297:5	31311:17,20 31317:18 31320:13 31377:16 dynamics 31388:24 D-day 31392:14 31409:17 E e 31266:17 31346:25 earlier 31251:21 31254:9 31255:24
develop 31261:24 31267:19 31399:8,9 developed 31341:10 31367:3,18 31368:19 31369:2 developing 31367:4 development 31284:10 31293:5 develops 31424:5 deviate 31305:11 deviated 31305:15,19 31325:15	31418:4 31422:18 31426:3 31432:22 31436:10 difficulties 31350:15 31352:25 31353:22 31354:19 31359:10 31359:14 31360:1 31410:11 difficulty 31240:4 31288:4 31296:22 31309:3 31408:7 31409:23	31416:3 discussion 31356:20 31365:19 31370:5 dislodged 31360:22 dismount 31266:15 disobeyed 31311:12 disobeys 31327:21 disorder 31233:9 31246:20,22 31247:2 31247:4 31248:12,16 31249:18,22,24 31250:12,16	31281:15,16 31283:25 31285:3 31286:25 31290:15 31292:21 31293:4,15 31344:12 31375:21 doesn't 31268:24 31354:9 31365:15 31382:19 31393:23 31407:22 31411:18 doesn't 31363:25 doing 31297:5 31303:23,24 31317:7	31311:17,20 31317:18 31320:13 31377:16 dynamics 31388:24 D-day 31392:14 31409:17 <u>E</u> e 31266:17 31346:25 earlier 31251:21 31254:9 31255:24 31259:7,20 31261:21
develop 31261:24 31267:19 31399:8,9 developed 31341:10 31367:3,18 31368:19 31369:2 developing 31367:4 development 31284:10 31293:5 develops 31424:5 deviate 31305:11 deviated 31305:15,19 31325:15 deviating 31306:13	31418:4 31422:18 31426:3 31432:22 31436:10 difficulties 31350:15 31352:25 31353:22 31354:19 31359:10 31359:14 31360:1 31410:11 difficulty 31240:4 31288:4 31296:22 31309:3 31408:7 31409:23 direct 31244:22	31416:3 discussion 31356:20 31365:19 31370:5 dislodged 31360:22 dismount 31266:15 disobeyed 31311:12 disobeys 31327:21 disorder 31233:9 31246:20,22 31247:2 31247:4 31248:12,16 31249:18,22,24 31250:12,16 31251:18,20	31281:15,16 31283:25 31285:3 31286:25 31290:15 31292:21 31293:4,15 31344:12 31375:21 doesn't 31268:24 31354:9 31365:15 31382:19 31393:23 31407:22 31411:18 doesn't 31363:25 doing 31297:5 31303:23,24 31317:7 31323:13 31338:17	31311:17,20 31317:18 31320:13 31377:16 dynamics 31388:24 D-day 31392:14 31409:17 <u>E</u> e 31266:17 31346:25 earlier 31251:21 31254:9 31255:24 31259:7,20 31261:21 31264:5 31265:25
develop 31261:24 31267:19 31399:8,9 developed 31341:10 31367:3,18 31368:19 31369:2 developing 31367:4 development 31284:10 31293:5 develops 31424:5 deviate 31305:11 deviated 31305:15,19 31325:15	31418:4 31422:18 31426:3 31432:22 31436:10 difficulties 31350:15 31352:25 31353:22 31354:19 31359:10 31359:14 31360:1 31410:11 difficulty 31240:4 31288:4 31296:22 31309:3 31408:7 31409:23	31416:3 discussion 31356:20 31365:19 31370:5 dislodged 31360:22 dismount 31266:15 disobeyed 31311:12 disobeys 31327:21 disorder 31233:9 31246:20,22 31247:2 31247:4 31248:12,16 31249:18,22,24 31250:12,16	31281:15,16 31283:25 31285:3 31286:25 31290:15 31292:21 31293:4,15 31344:12 31375:21 doesn't 31268:24 31354:9 31365:15 31382:19 31393:23 31407:22 31411:18 doesn't 31363:25 doing 31297:5 31303:23,24 31317:7	31311:17,20 31317:18 31320:13 31377:16 dynamics 31388:24 D-day 31392:14 31409:17 <u>E</u> e 31266:17 31346:25 earlier 31251:21 31254:9 31255:24 31259:7,20 31261:21

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RealTime Transcriptions

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				Page 8
31320:6 31326:6	endured 31352:14	equipment 31269:4	31378:15 31401:21	exists 31360:4
31331:3 31333:11	energy 31412:12	31412:8 31414:8,11	31414:21 31415:2	exonerate 31310:14
31334:15,24	engage 31277:17	equivalent 31260:22	31419:13	expect 31301:2 31302:6
31335:12 31337:24	31284:4 31298:23	31411:24 31420:21	evils 31302:8 31304:3	31321:5 31382:14
31344:23 31348:24	31301:17 31354:22	errata 31228:17	31320:17	31394:6 31423:5,7
31349:17 31353:15	31359:16 31367:14	31229:11 31237:7,12	evolved 31341:2	31426:16 31427:24
31359:22 31365:13	31378:1 31382:3	erroneous 31237:25	31373:5	31428:1,3,6 31429:16
31377:14 31380:18	31385:2 31405:12,16	31310:25	exact 31332:25 31333:2	31435:13 31436:6,16
31388:23 31389:20	31406:14 31413:17	error 31348:11	exactly 31240:16	31436:24 31437:1
31393:2 31398:20	31414:19 31415:14	erupt 31251:12	31250:2 31261:10	expectation 31297:13
31402:20 31413:11	31416:5 31426:2	escalated 31274:21	31266:21 31270:18	expected 31299:1
31414:10 31416:4,9	31431:8	escalation 31369:20	31296:7 31318:17	31308:7 31310:6
31417:19 31421:15	engaged 31233:17	escaping 31431:6	31319:4 31327:18	31319:10 31322:5
31423:24 31426:9	31242:15 31284:12	escort 31302:9,11	31332:24 31348:4	31328:22 31335:24
31432:25	31303:13 31314:2	31304:4,8,22 31309:5	31349:1 31351:21	31360:2 31371:11
early 31246:15 31252:9	31316:6 31317:2	31309:10,12	31353:3 31363:12	31378:12 31422:22
31340:21 31358:17	31321:10 31325:1	31311:11 31312:20	31378:2 31394:24	expecting 31283:1
Earth 31407:8	31326:19 31353:25	31315:22 31317:14	31408:10,13	experience 31233:9
easier 31373:4	31354:11 31385:6	31317:20 31318:9	31413:23,24,24	31246:6,10,10,14
easy 31319:21 31351:6	31397:3 31404:1	31320:18 31321:21	31415:20	31247:15 31249:15
31351:9 31417:7	31405:7 31417:24	31321:24 31322:10	examination 31231:13	31251:14,18,19,22,25
edge 31239:16	engagement 31230:2	31324:2,16,18,22,22	31291:1 31372:8	31253:4 31257:10
edited 31372:10	31334:14 31426:6	31325:21 31327:5	31420:8	31258:9 31266:1
editorial 31293:3	engaging 31275:2	escorted 31305:8	examine 31273:2	31267:18 31271:2,5
effect 31236:14	31279:6 31281:2	31327:19	examined 31372:8	31273:9,11,12,25
31240:11 31281:13	31326:14 31345:23	escorting 31305:10	example 31251:25	31274:17 31277:4,6
31298:11 31422:13	31367:24 31368:6	31306:3 31315:9	31258:13 31263:8	31277:14 31318:5
31426:21,22 31434:2	31373:23 31386:14	31316:25 31317:11	31266:11 31268:4	31326:7 31340:17
effectively 31233:21	31387:8,11 31390:17	31323:3,11 31324:21	31270:3 31271:15	31342:13 31399:16
31236:24 31239:7,17	31414:12,23 31417:4	31329:2 31333:18	31295:21 31373:20	31413:11
31239:24 31251:6	31418:2,19 31423:2	essentially 31245:8	31383:4 31389:5	experienced 31246:17
31263:24 31268:2	Engelbrecht 31296:20	31366:4 31428:10	31413:18 31414:8	expert 31230:2 31234:2
31269:6,7 31274:14	31296:25 31298:4	est 31375:8	31424:12,16,21	31243:9 31287:5
31284:24 31312:23	31361:23 31364:14	establish 31352:16	31425:18 31427:3,4	31382:8,9,13
31353:7 31366:14	31364:20 31365:14	established 31271:12	31434:7 31436:17	31387:22 31411:14
31373:5 31399:3	Engelbrecht's	et 31421:25,25,25	examples 31250:16	31411:15,16 31413:8
eight 31252:15 31374:9 31374:14 31434:19	31297:13 31365:7,23	etcetera 31258:1,2,2 31272:24,25,25	31265:25 31407:10	31428:17,17
either 31238:23	England 31265:16 31291:6	31272:24,25,25 31309:18,18,18	31435:18 exam-in-chief 31235:8	expertise 31267:20 experts 31234:15
31239:19 31267:21	English 31405:19	31334:20,20,20	excess 31424:19	explain 31235:11,15
31277:1 31293:20	enhanced 31280:21	31342:12 31407:9	excessive 31347:3	31237:15 31243:19
31277.1 31293.20	enquire 31328:25	31417:25,25,25	31422:16 31426:11	31244:10 31258:11
31325:14 31327:19	ensure 31288:18	Ethics 31343:6,6	31429:13 31432:24	31277:5 31283:23
31333:23 31343:13	enter 31326:17	European 31342:18	exchange 31243:13	31347:11 31366:7
31371:4 31412:7	entire 31289:24,25	31343:24	excluded 31270:3	31371:8 31379:17
31430:25 31436:6,7	31290:2 31296:3	evening 31271:23	excuse 31285:21	31380:14 31392:19
election 31234:8	31376:4,14 31394:5	31368:12 31369:6	31340:22	31396:19 31399:14
electronic 31244:16	entirely 31241:9	31409:10	Executive 31273:2	31402:17 31426:15
element 31326:11	31275:25 31303:17	event 31238:25	exercise 31258:4	explained 31245:20
else's 31423:11	31304:5 31307:18	31260:6 31264:11	31288:14 31323:11	31259:7 31292:3
31427:20 31428:5	31319:5 31360:5	31265:19 31269:20	31338:20	31316:1 31320:6
email 31284:19,20	31367:6 31381:6,11	31279:20 31291:14	exercised 31356:17	31334:15 31344:23
31286:4	31384:25 31391:18	31310:2,21 31328:14	31403:25	31369:12 31379:10
embarrass 31374:21,21	31395:23 31401:12	31391:23 31401:21	exercises 31278:22	31392:20 31393:20
embedded 31350:23	entries 31296:8,10,13	31421:10	exhibit 31228:6,19,22	31393:24 31396:8
emerges 31414:18	31297:24 31310:3,12	events 31271:2	31228:24 31241:6	31401:7 31402:2
empathise 31432:22	31353:16	31280:19 31291:14	31283:7 31289:14	31416:9 31423:24
emphasise 31272:18	entry 31365:8	31291:19 31293:10	31290:10 31298:6	explanation 31238:4
employ 31265:5	31371:16,19	31293:16,17,18,23,24	31309:2 31364:14	31240:23 31268:6,7
employer 31274:17	environmental	31293:25 31296:14	31372:23 31373:2	31377:22 31391:22
encircle 31396:10	31278:12	31298:8 31333:1	exhibited 31230:3	31392:24 31395:2,12
encircling 31388:4	environments	31417:15	exhibits 31228:15	31395:15,16,19,20,21
encountered 31352:21	31232:23	eventually 31370:2	31281:7 31286:18	31396:21,22
ended 31268:19	equally 31331:9	everybody 31238:1	31295:9 31296:1	31398:20 31422:22
endorsed 31369:12	31344:7	31279:19 31306:9	exist 31259:12	31436:1,18
31380:23	equation 31266:17	31313:10 31317:7	existence 31372:25	explanations 31392:4
ARCHIVE FO				

RealTime Transcriptions

Pretoria

				Page
explode 31248:8	31306:1 31307:12,25	31431:14	31317:7 31400:23	31388:3 31389:11
explosive 31248:4	31310:5,8,9 31311:10	farmland 31252:21	finger 31313:25	31391:18 31392:2,8
exposed 31367:8	31316:3 31326:8	fashion 31312:25	fingers 31425:5	31392:12 31394:20
express 31294:1	31331:1,3 31334:25	31414:19	finish 31285:25	31404:1 31410:14
expressed 31245:25	31335:7 31338:18	fault 31284:6 31313:19	31344:3 31367:21	31414:20 31415:11
31293:11 31341:20	31346:5 31347:20	31317:8 31334:17	31421:8	31416:2 31417:1
31418:6	31348:11,13	favour 31342:24	finished 31343:23	31430:8,25 31434:11
expresses 31365:14	31351:18 31354:18	favourite 31320:22	31374:8 31398:3	31434:22
expressing 31236:7	31354:21 31359:23	feared 31436:11	fire 31241:7 31271:20	firstly 31284:1
31297:8	31360:25 31367:15	fearful 31425:1	31282:20,21 31306:2	31329:21 31366:18
expression 31418:6	31370:6 31372:4	February 31234:14	31307:11 31325:21	fit 31286:10 31378:16
extend 31247:25	31377:6 31381:18	31296:9	31325:21 31338:6	five 31237:13 31262:3
31293:20	31387:5 31388:6	fed 31264:21 31354:8	31339:12 31347:2	31262:3 31336:1
extending 31247:18	31394:4 31396:24	31357:7	31422:21 31423:11	31384:18 31393:13
extensive 31285:3	31400:17 31402:7	feed 31431:6	31427:13,15,20,21,22	flag 31275:21
extensively 31370:8	31404:19 31406:5	feeds 31267:9	31430:7,14 31432:19	flash 31251:15
31372:9	31408:5 31409:16	feel 31320:11 31365:15	31434:13 31436:12	flickering 31276:10
extent 31246:17	31415:10 31417:17	31381:12 31422:21	firearm 31411:6,10	flows 31281:4
31252:23,23	31417:22 31422:24	feels 31365:9	31413:20	fly 31275:22
31274:11 31282:14	31426:2	feet 31255:8	firearms 31234:16	focus 31293:16
31285:8 31294:8	factions 31274:15,16	fell 31366:16 31369:21	31248:10,10	31308:10
31383:3 31407:21	31275:7 31350:23	felt 31375:18 31415:13	31344:13,17	focusing 31262:5
31424:10 31431:21	factor 31275:4	31417:1 31424:7,9	31411:13,14	folders 31244:17
extract 31286:17	31388:19 31401:19	fences 31256:17,25	31412:20 31413:8,17	follow 31309:22
31289:23	31401:20	fewer 31341:16	31414:4,5,7,7,14,18	31331:17 31396:7
extraordinary 31369:9	factors 31414:1	FFF8 31434:23	31415:16,16,18	31404:10 31405:9
extreme 31306:11	factory 31274:24	field 31287:5 31375:24	31417:23,25 31421:6	31424:11
31415:2	facts 31307:15,17	31392:15 31401:7	31421:11,12,17,21	followed 31242:13,21
extremely 31263:3	31311:13 31314:2	fierce 31255:14	31424:4,6,23 31426:7	31282:20 31357:22
31348:23 31353:20	factual 31243:22	fifth 31427:12,13	fired 31241:16 31305:3	31366:10 31377:1
31353:23 31354:24	31246:3 31331:11	fight 31360:22 31361:6	31306:11 31307:9	31383:13
31378:10 31411:17	failing 31382:20	31361:12	31310:6,9 31314:18	following 31246:25
31413:7	failure 31322:24	figure 31332:25	31339:2,3,4 31342:15	31260:6,7 31283:19
extremities 31429:6	31323:6,7,14	31333:2	31422:14 31424:15	31318:19 31348:6
eye 31292:20 31428:11	31324:17 31397:15	file 31244:16	31424:19 31425:17	31361:11 31372:4
e-mails 31243:14	fair 31274:5 31294:20	final 31228:16 31229:9	31425:23 31426:1	31405:16 31406:4
	31367:6 31370:11	31229:11,21 31232:1	31427:5,7,14	follows 31307:19
F	31378:21 31415:4	31235:1 31236:15,21	31428:22,23 31429:3	31322:21 31341:14
f 31347:4	31420:4 31432:21	31236:24 31237:5,9	31429:5 31434:15	follow-up 31291:20
fabricate 31435:17	fairly 31253:19	31237:14,17 31239:6	31435:4 31436:17	31307:23
face 31266:16 31325:9	31265:1 31281:7	31243:18 31244:25	fires 31431:9,12	foolhardy 31323:25
31393:14,14	31345:5 31407:2	31245:8,18 31246:8	firework 31248:1	footage 31428:10
31422:15 31426:10	31428:9	31278:2,24 31283:9	firing 31407:19	31429:8
31436:4	fairness 31237:25	31284:13 31287:22	31422:8,19,24	football 31258:17
faced 31254:10	31279:23 31281:17	31289:9 31291:2	31425:16 31426:20	31274:1,4,5,16
31320:9	31308:24 31327:12	31294:2 31299:20	31426:23 31428:24	31418:3 31419:6
faces 31356:1	31387:2 31391:25	31302:24 31335:14	31429:1,4,14,22,24	footnote 31329:10
faceted 31275:11	31400:1 fall 31366:6 31398:2	31337:5,16 31341:24	31429:24 31430:11	31393:7,17,18 forma 21264:8 16 22
facie 31362:20 31395:17 31420:12		31349:5,15,25	31430:15,16,22	force 31264:8,16,23
	31436:4	31367:7,24 31372:10	31434:12 31436:5,23	31269:1,2 31270:21
31422:4,6 31426:11	false 31310:13,21	31375:9,12 31386:10	firm 31434:13,25 first 31228:0 31235:10	31277:23,23
31432:23 facilitation 31277:24	31331:8,10 familiar 31238:18	31398:2,4 31413:17 31416:17,19	first 31228:9 31235:10 31235:14,22	31279:14 31281:8 31306:6 31319:4
facilities 31258:1	31284:11 31297:16	31410:17,19 31420:10,15	31235:14,22 31237:13 31238:4	
facing 31249:6	31284:11 31297:16 31373:19 31374:18	31420:10,15 31424:16	31237:13 31238:4 31241:18 31244:17	31343:8,10 31344:8 31344:13 31346:19
fact 31236:6 31238:19	31374:25 31375:5	finally 31241:12	31253:17 31259:25	31381:19 31382:11
31239:11 31240:24	31386:3 31413:5	31242:1 31243:17	31276:13,15	31394:22 31402:25
31241:2,6,20 31250:3	families 31336:17	31322:6 31368:19	31277:10,16,17	31405:25 31402.23
31250:10 31259:7	famous 31252:2	31411:20	31280:15 31284:4	31405.25 31420.15
31265:8 31272:15	31291:15	find 31310:19 31325:18	31293:23,25	31428.15 31429.14 31431:18 31432:24
31277:9 31280:16	fantastic 31308:16	31325:19 31329:12	31293.23,23	forcible 31320:15
11 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1			31204.24 51290.8	forcibly 31312:9
31283.18 31286.11	far 31230.8 31238.23	1111410 1111819		
31283:18 31286:11 31293:2 31296:10	far 31230:8 31238:23 31240:16 31257:18	31334:16 31338:19 31339:11 31434:20		
31293:2 31296:10	31240:16 31257:18	31339:11 31434:20	31308:8,14 31332:1	31318:15 31321:3,4
31293:2 31296:10 31298:9 31299:5	31240:16 31257:18 31288:22 31306:2,13	31339:11 31434:20 31435:1	31308:8,14 31332:1 31334:16 31348:2	31318:15 31321:3,4 31321:17 31323:24
31293:2 31296:10	31240:16 31257:18	31339:11 31434:20	31308:8,14 31332:1	31318:15 31321:3,4

				Page 10
forget 31387:17,18	full 31231:16,17,22	generally 31284:6	31344:18 31355:20	governmental
31397:23	31267:15 31387:15	31377:8,13	31367:2,10 31368:2	31233:24
forgive 31250:21	31422:22 31435:11	generals 31380:11	31379:19 31393:21	governs 31280:12
31295:2 31405:18	fully 31317:22	General's 31304:24	31402:22 31434:10	grab 31256:20
forlorn 31311:6	31335:10 31349:14	Geneva 31234:15	31435:14	grade 31248:9
form 31251:3 31306:6	31350:14 31384:3	gentleman 31291:16	giving 31274:18	grasses 31350:25
31368:19 31372:10	31390:17 31426:2	31384:17 31417:18	31319:11 31352:3	31351:1
31375:16	31432:22 31434:6	genuinely 31436:11	31400:4 31435:25	grateful 31242:4
formal 31285:20	31435:22	geographic 31263:15	glass 31425:1,5,12	31281:22 31282:3,12
forms 31244:11	function 31258:4	geography 31250:22	go 31237:20 31240:9	31362:22 31363:5
formulated 31371:5	31260:19 31261:7	31251:5 31358:10	31254:4 31264:11,22	31430:20
forth 31258:20 31323:12 31350:17	31293:3 31304:13 31422:1	getting 31271:23 31302:14 31305:24	31266:4 31269:25 31270:12 31275:12	great 31268:23 31270:18 31350:15
31351:5 31372:20	functional 31263:17,18	31350:16,18	31298:22 31300:24	31358:12 31378:10
fortunate 31248:19	31263:19,20	31352:25 31360:8	31303:6 31305:13	grenade 31305:3
Forum 31356:16	functions 31232:18	31397:3 31416:6	31311:23 31312:4	31307:11 31310:9
31357:9 31369:7,9	31233:5	31420:20	31315:13 31318:14	31431:12
31371:21	fundamental 31387:25	Gibraltar 31342:20	31318:20,23 31319:7	grenades 31248:9
forward 31242:8	31408:25	give 31231:7 31238:5	31319:24 31320:14	31325:22,22
31254:17 31268:21	further 31237:8	31247:10 31268:4,8	31321:23 31322:22	31323.22,22
31270:20 31347:1	31239:22 31254:17	31269:17 31272:4	31324:25 31326:25	ground 31254:21
31361:9 31365:11	31271:15 31337:1	31280:9 31282:4	31327:6,15 31333:24	31258:8 31259:9,15
31384:17 31389:22	31362:4 31367:8	31286:14 31304:15	31340:7,9,11	31259:24 31260:8,9
31391:24 31392:3	31369:23 31371:13	31306:1,5,12,21	31341:13,18 31351:1	31264:12 31265:14
31394:16 31395:1	31375:11 31385:11	31307:8 31309:12,13	31354:15 31355:25	31270:8 31388:9
31404:6,18,22	31392:23 31395:4	31312:13 31319:24	31356:2,20 31357:3	group 31233:21
31405:4 31406:1	31403:17 31410:3	31323:22 31330:8	31357:10 31359:5	31234:5 31264:3
forwards 31396:19	Furthermore 31433:11	31331:7,15 31337:10	31361:15 31362:11	31270:15 31299:3,5
found 31342:23	fusel 31269:2,5	31339:2 31340:8	31371:9 31375:11	31300:21,23 31302:3
31352:1		31342:1 31343:23	31378:22 31380:21	31302:3 31303:1,2,4
four 31244:4 31333:6	G	31351:10 31356:24	31382:15 31383:7,9	31303:22 31307:4
31427:5,8,14	Gary 31229:9,12,13	31360:20,21 31361:3	31383:23 31386:15	31317:13 31318:20
31431:16 31432:8	31231:10,17	31363:20 31371:7	31400:2,11 31404:6	31320:25 31326:25
31434:16	31290:25 31420:7	31374:16 31377:22	31406:1 31408:4	31327:6 31354:23
fourth 31296:9	gather 31348:19	31381:25 31383:4	31409:1,5,22	31355:24 31380:22
fracas 31327:22	gathered 31407:16	31394:17 31395:16	31410:15,16	31382:3 31384:18
frame 31293:24	gathering 31263:19	31395:21 31397:15	31420:22 31421:22	31393:13,21
framed 31241:18	31353:22	31398:20 31409:12	31423:22 31426:16	31404:14 31417:23
31345:21	Gauteng 31355:25	31410:13 31420:16	goal 31259:5 31381:7	31420:25 31421:1
framework 31277:18	general 31260:20	31422:9,21 31425:2	God 31231:9,10	31430:5,10
31277:21 31278:19	31261:2,8,11,14	31425:15 31435:8	goes 31254:13	groups 31318:22
31280:18,19,20,24	31281:5 31289:18	31436:1	31262:25 31295:24	guards 31313:8
31281:1 31284:14	31297:3,7 31298:22	given 31240:21	31297:19 31302:22	31321:22 31354:10
31293:14 31344:15	31298:25 31300:7,7	31270:4 31282:18,18	31303:4,20 31318:6	guess 31326:9
31347:9 31378:25	31301:9 31302:13,22	31289:23,24	31323:3 31412:1	31364:23
31379:14	31303:4,16,21	31293:13 31295:12	31419:13	guidance 31347:14
frameworks 31272:5	31304:1,22 31305:7	31297:12 31298:10	gold 31257:15,15,18,20	guided 31237:19
31280:11,22 frotornity 31326:13	31308:7,11,20,23	31299:4 31306:8,8,14 31309:5 31310:8	31258:14,18,22	31238:2 31375:20
fraternity 31326:13 freezing 31432:3	31309:9,12,13 31310:7 31311:19,23	31309:5 31310:8 31311:24 31314:4	31260:12 31261:3,20 31261:21 31262:14	gun 31339:12 31414:3 31414:15 31416:6,6
frequently 31247:5	31310:7 31311:19,23	31318:19 31324:5,13	31344:23 31398:22	31414:15 31410:0,0 31421:23 31427:1,16
31265:12	31315:24 31317:12	31325:24 31336:21	31398:22 31399:2,3,7	gunfire 31254:10,21
Friday 31295:5	31318:7,12,18,19,24	31339:17 31341:4,8	31399:16,19	31255:14
31339:23	31320:2 31321:12	31354:20,20,21	good 31239:10	gunman 31425:15,17
friend 31229:23	31324:6,6,21	31362:1,2 31363:8	31264:17 31265:1	GW10 31230:19
31283:6	31326:20 31327:13	31372:13,17 31378:3	31270:5,17 31287:16	31242:25 31283:11
front 31242:19,20	31330:18 31331:7,10	31378:18 31379:8,8	31287:19 31319:17	31283:23
31249:7 31254:18	31331:14,15,20,23	31388:14 31392:24	31361:9 31381:25	GW2 31287:22
31255:1 31256:8	31335:7,9 31336:2	31394:4,9 31395:19	31388:8 31391:5,5	GW3 31229:25
31257:11 31263:1	31343:9 31347:16,19	31396:21 31402:18	31411:7 31413:23	31230:16 31232:1
31313:3 31316:5	31353:12 31355:8	31403:22 31404:10	31415:24	31242:25
31317:8 31378:11	31356:12 31359:4,11	31413:16 31422:25	goodness 31390:11	GW4 31230:1,17
31432:10 31434:10	31361:14 31368:9	31426:9 31435:8,10	Google 31407:8	31243:6 31386:21
frontline 31407:18	31369:7,11 31377:15	31436:2	Gordon 31291:25	GW6 31229:22,24
frustration 31254:16	31380:18 31383:1	gives 31309:9 31319:1	31292:4,17	31243:18
31365:14	31407:20	31319:2 31327:9,15	government 31234:3	GW6A 31230:11

				Page 1
GW8 31230:1	31424:18 31431:15	helicopter 31305:17	high 31297:16	31433:17
GW8A 31230:17	happening 31263:9	helmets 31414:9	31382:10,11,14	hugely 31342:2
GW8B 31230:18	31294:23 31295:13	help 31231:9,10	31405:23,24	31433:8
GW9 31230:18	31319:21 31386:19	31243:24 31290:13	31428:22 31429:2	human 31264:22
G-A-E 31229:20	31391:23 31432:5,6	31349:12 31374:4	31434:6	31265:2,5,6,10
G20 31291:14	happens 31302:10	31386:1 31397:14	higher 31255:12	31272:23 31292:2
020 31271.14	31321:12 31327:18	helped 31292:14	31264:16 31309:25	31342:19,23 31353:5
Н	31327:20 31384:23	31358:16 31374:5	31381:19	31408:11 31428:20
hadn't 31236:9	31394:17 31399:25	31390:15	highlight 31234:12	hundred 31348:16,22
31314:23 31371:8	happy 31268:4	helpful 31236:11	31298:8 31337:7	hundreds 31247:21
31372:15	31281:19 31282:6	31281:19 31286:12	highlighted 31339:8	31373:15,16,16
half 31276:15 31283:8	31283:4 31308:12	31288:2 31294:7	31435:18	31377:25 31382:2,4
31319:9 31320:6	31315:3,12 31340:7	31307:20 31330:11	highlights 31245:18	hurt 31273:4
31386:24 31387:4	31359:16 31401:12	31349:17 31424:12	highly 31340:9 31384:8	husband 31421:24
31409:2,5,8,15,22	hard 31235:23 31236:1	helpfully 31244:16	31402:19	hypothetical 31430:20
31410:5,15,16,17	31277:16 31279:3	helping 31267:18	hill 31389:17 31390:7	hypothetically 31389:7
· · · ·	31293:13 31295:2	31336:11	31396:8 31417:12	hypothetically 31389.7
31418:7,9 31425:12 31437:6	31326:3,13 31333:22	helps 31319:13	31418:8,21	I
		-	himself/herself	Ian 31291:16
halfway 31323:20	31366:19 31367:12 31394:8	31379:17 31433:21		
hamlet 31252:5		Hemraj 31241:13	31339:11	idea 31270:17 31285:4
hammered 31256:13	hardcopy 31288:7	31245:13 31266:23	history 31250:9	31330:21 31356:6
hand 31231:9 31247:17	hasn't 31320:14	31289:22 31315:5,19	his/her 31344:20	31361:9 31373:17
31248:9,10 31295:3	31351:25 31361:25	31315:25 31316:12	hit 31241:15 31255:8	31389:5 31391:5,6
31302:7 31325:12	31362:2	31317:10 31318:11	31424:25 31425:2	31411:7 31418:14
31355:6 31371:3,12	hasten 31351:4	31321:2,8 31322:18	31431:23	ideas 31371:4
31377:21 31433:23	hat 31256:6	31328:24 31329:6,9	hitting 31429:25	identified 31245:22
handed 31233:13	hats 31256:5	31332:9 31333:4	31431:22	31279:7 31308:8
31278:4 31356:18	haven't 31230:2	31334:1,5,10 31358:8	HMIC 31291:24	31347:9 31366:24
31362:8,11 31369:8	31277:9,10 31281:14	31361:21 31364:9,12	31292:6,8	31411:1
31369:14	31313:15 31334:7	31364:17,24	hold 31302:14	identify 31246:9
handgun 31412:23	31348:17 31362:18	31365:17,21	31361:14 31378:19	31329:24 31336:16
handle 31399:17	31368:25 31373:7	31388:18 31393:11	holding 31257:12	31337:21 31354:8
handler 31297:1	31374:23 31389:24	31397:13 31413:10	home 31247:20	31356:1,3 31361:10
handlers 31350:17	31410:1 31417:1	31415:15 31420:19	31275:19 31419:13	31427:5
31361:24	head 31255:6 31259:10	31421:5,16 31422:2	31431:16	identifying 31243:8
hands 31228:13	31266:24 31302:14	31423:14 31424:3	homes 31256:17	31283:7 31300:14
31401:9 31410:24	31303:21 31318:18	31435:3,19	31356:9	31412:16
handwritten 31372:13	31377:17 31378:19	here's 31400:4	homework 31281:18	identity 31275:16
31373:20	31384:17 31434:10	31426:25 31430:25	31344:10	ifs 31322:16
hangs 31294:21	heading 31300:11	he'd 31305:22	home-made 31247:23	ignorance 31356:15
happen 31250:20	headline 31375:16	31308:21 31326:25	honest 31333:25	31362:9 31372:4
31258:14 31263:16	headphone 31420:2	31370:3,14 31371:4,6	31406:18	illiterate 31390:14
31264:17 31266:8	headphones 31419:22	31385:23	honestly 31423:10	images 31252:24
31275:17,18	Health 31273:1	he's 31234:20 31297:7	hope 31234:17 31311:6	31429:12
31306:10 31322:23	31336:9	31302:14 31306:1	hopefully 31340:17	imagination 31402:18
31323:2 31325:14	hear 31245:11 31268:8	31310:7 31312:19,19	31356:9 31374:21	imagine 31246:25
31336:23 31384:11	31280:2 31283:2	31312:19 31314:14	31381:5 31414:19	31352:18 31432:1,3,5
31400:18 31405:21	31290:8 31330:19	31314:24 31315:1	31419:12 31437:7	immediately 31295:3
31406:18 31407:22	31393:15 31396:13	31318:18 31319:5,15	hoping 31357:14	31330:20 31351:16
31412:6 31413:12,24	31397:2	31320:9,18 31324:10	31358:1 31376:17	31386:15 31393:25
31416:1,2,8	heard 31272:8	31328:22 31355:10	horrified 31284:17	imminent 31423:9,10
happened 31239:21	31279:24 31280:2	31358:20 31362:3	hostage 31414:6	31428:4 31432:15
31305:2 31310:2,23	31330:17 31363:3	31384:9,19 31387:10	31421:24	impact 31394:12
31311:1 31323:4,15	31395:25,25 31396:8	31387:11,18,22	hostels 31357:1	impacted 31408:16
31328:3 31336:4,15	heart 31345:13	31388:13 31394:22	hour 31319:8,9	implement 31323:10
31336:21 31339:13	heavily 31267:9	31396:21 31402:16	31320:6,6 31371:22	implemented 31357:7
31339:21 31341:18	31301:17,18 31302:3	31408:1 31419:25	31371:23 31401:23	31370:2 31371:2
31342:8 31343:13,25	31302:4 31313:9	31420:1 31423:16	31409:23 31419:17	31372:24 31401:16
31345:10 31354:7	31382:3	he/she 31343:16	31437:6	31401:22 31402:13
31357:5 31359:13	heavy 31254:12	HHH27 31309:16	hours 31271:3 31301:2	implication 31372:1
31365:24 31369:2	31255:7	HHH30 31309:4	31302:20 31319:7	implications 31342:21
31371:20 31380:2	Heckler 31411:8	HHH31 31309:6	31394:1	31411:11 31419:10
31382:19 31394:24	31412:25	HHH33 31309:11	housekeeping 31228:6	implicit 31350:19
31394:25 31396:15	held 31232:4 31247:17	HHH38 31309:15	31228:9 31230:24,25	31352:3
31401:15,17	31248:10 31369:10	hidden 31246:18	huddled 31403:12	implied 31254:5
31417:15 31422:13	31423:10	31247:2	huge 31273:5 31275:23	importance 31236:20
	R LUSTICE	1		· · · · · · · · · · · · · · · · · · ·

				Page 1
31408:12	index 31228:14,16,18	31414:12 31415:17	intended 31248:22	invitation 31400:9
important 31231:23	31229:7,8,10 31245:6	31417:22 31435:9,10	31297:10 31301:21	invite 31265:2
31235:3 31237:23	31245:16	informed 31286:5	31327:6 31418:15	invited 31234:15
31263:3 31264:24	indicate 31351:23	31287:15	31426:22	31243:25 31244:18
31267:21 31269:22	31352:7 31370:13	informer 31353:7	intending 31418:18	31265:8
31311:2 31313:2	31425:4	informers 31350:18,23	intent 31249:10,12	involve 31267:2
31343:17 31355:18	indicated 31244:19	31351:7	31253:3 31354:24	31381:18
				involved 31232:15
31378:10 31397:11	31329:19 31383:18	informing 31295:1	31404:14	
31407:12,15	indicates 31254:22	informs 31284:21	intention 31239:4	31234:17 31255:18
31426:21	indicating 31245:16	inherent 31403:22	31240:9,13 31303:3	31261:20 31262:9,10
importantly 31265:24	31385:17	initial 31235:1 31279:2	31303:25 31312:5,10	31264:4 31267:18
31302:16 31345:7	indication 31368:2	31299:19 31312:5	31319:16 31323:23	31268:16,19 31269:7
imposed 31251:4	31383:10 31413:16	31323:6 31327:2	31324:2,5,18 31327:7	31270:22 31271:6
impression 31375:4	indications 31309:24	31432:8 31435:20	31387:3	31292:4,9 31299:6
impressions 31237:24	31309:25	initially 31252:11	intentions 31299:4	31326:4 31334:15
inaccuracy 31350:6	indicators 31355:10	31303:5,22 31308:20	inter 31273:24	31336:12 31343:1
inaccurate 31347:25	31358:22	31312:2 31383:9	interaction 31299:21	
				31344:6 31363:9
31373:2	indistinct 31276:5	31435:10	31321:22 31386:6	31374:5 31384:6
inadequate 31349:25	individual 31256:21	initiatives 31358:3	interactions 31299:24	31402:19 31416:11
31351:12,13 31358:5	31282:18 31326:18	injure 31254:8	interchange 31417:5	31419:3 31424:22
inadvertently 31376:18	31338:5 31339:1	injured 31327:23	interest 31335:21	involvement 31262:14
31431:14	31342:14,22	31328:17 31336:20	31347:13	31284:10 31293:4
inappropriate	31344:14,20	input 31243:15	interested 31287:3	31382:22 31398:4
31269:19	31379:15 31394:14	31245:23 31267:12	31290:8,14 31367:16	involving 31262:8
inasmuch 31375:11	31412:16 31422:8	31292:16,24,25	31368:24 31375:8	inward 31252:7
inaudible 31304:18	31423:20,25	31348:6 31375:18	interesting 31254:13	IPID 31272:23
31309:19 31409:4	31426:14		31254:25 31255:10	Ireland 31232:5,7,23
		inputs 31400:6 31402:1		
inch 31425:12	individually 31311:24	inquiries 31259:16	Interestingly 31292:18	31234:25 31246:16
incident 31248:24	individuals 31430:4,12	inside 31240:1 31248:5	interfere 31322:9	31246:18 31247:3,20
31249:24 31252:18	induced 31401:19	insofar 31307:16	interfering 31279:18	31247:24 31248:19
31257:21 31268:11	indulge 31329:4	inspector 31258:19,19	internal 31298:7	31249:18,25
31271:16,18,20	31345:25	31264:2,6 31291:19	international 31233:23	31251:23 31253:25
31291:15 31294:19	indulgence 31314:16	31292:12	31247:3 31423:8	31265:3 31267:13
31300:2,5 31301:6	industrial 31274:9,20	instance 31235:22	interplay 31295:19	31271:7 31272:6,9
31308:9 31336:1,13	31351:2	31238:4 31244:17	interposing 31274:14	31292:1,5,8,15
31377:15,19	inevitability 31405:23	31259:25 31277:16	interpret 31419:25	31350:22 31352:18
31417:24	inference 31352:10	31300:15 31308:8	31428:18	31353:4 31411:23
incidents 31247:20	31363:1	31334:16 31367:1	interpretation 31297:3	31412:2,8 31420:24
31249:22 31250:11	inform 31292:8	31389:11 31415:11	31298:3,3 31310:20	Ireland's 31265:6
31250:12,14	31299:9 31316:14	instances 31247:23	31330:22	irrespective 31378:2
31251:15 31258:23	informal 31238:15	31253:23 31255:24	interpreted 31239:19	Island 31342:13
31258:24 31262:4	31239:9 31240:5	31256:9	interpreter 31419:24	31343:5
31294:14 31295:13	31244:21 31284:5	instantaneous 31327:4	31420:16	isn't 31238:22 31368:7
31414:5 31421:22	31305:11,12,13,16,24	instantaneously	interpreting 31296:5	31391:15 31411:25
inclined 31370:11	31314:20 31324:25	31317:19	interrelate 31290:15	31413:14 31417:22
		instruct 31308:14	interrelation 31281:24	
include 31228:15	31327:14 31330:22			isolate 31338:21
31268:13 31329:7	31330:24 31355:9,15	instructed 31309:10,11	31282:14	31415:25 31416:7
31388:21	31357:1	31309:15,17	interrogate 31354:5	issue 31234:8 31238:10
included 31346:17	informant 31365:9	instructing 31281:9	interrogated 31235:25	31239:11 31242:5
including 31232:18,24	information 31236:2	instruction 31279:11	interrogatories	31273:5 31275:20
31234:6 31257:11	31285:9 31296:18	31299:1 31306:6	31243:1 31283:12	31278:1 31284:16
31270:21,21 31279:9	31298:24 31313:19	31307:8,9 31309:5,13	interrupt 31236:19	31287:3 31295:23
31279:14 31291:23	31333:21 31341:4	31313:22 31318:3,3,7	31349:3	31296:5 31298:9,22
31296:14 31328:15	31348:3 31350:18,20	31319:7 31320:2,19	interrupting 31363:3	31300:17 31303:19
31336:1 31346:22	31350:25 31351:8	31325:8,14 31327:9	interviewed 31273:1	31303:19 31304:7
31354:3,10,23	31352:4,16,19	31327:16 31331:8,16	interviewing 31354:10	31306:22 31308:5,18
		31331:17		
31363:7 31373:23	31355:3,8,16,21		intimidation 31350:17	31313:13,16
31404:4 31412:11	31357:5,6,13,19,25	instructions 31266:14	31351:5 31352:12	31315:18 31316:8,16
31424:18	31358:5,21 31359:11	31318:8	intricacies 31381:9,22	31316:23 31325:2
incorporated 31236:20	31359:12,21	insubordination	introduce 31229:3	31331:21 31333:13
increase 31295:17	31360:16,18,23	31307:7 31310:16	introduced 31285:14	31333:16,17
1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1	212(1.24.25.212(2.2	31323:12	intrusive 31399:17	31335:22 31336:5
increased 31346:18	31361:24,25 31362:3			
		intend 31235:4	investigation 31291:18	31338:2 31345:21
31347:2	31362:10 31364:25	intend 31235:4 31238:25 31245:19	investigation 31291:18 31291:20	31338:2 31345:21 31346:3 31348:25
31347:2 independent 31265:3	31362:10 31364:25 31365:6,9,10	31238:25 31245:19	31291:20	31346:3 31348:25
31347:2	31362:10 31364:25			

Tel: 011 021 6457 Fax: 011 440 9119

RealTime Transcriptions

31384:24 31386:5,8,9 job 31259:12 31267:15 31380:22,122 31284:53 3134:8 31406:14,31421:1 31397:3 31406:8,21 31352:20 31326:22 kill 31254:83 1418:9,15 31301:18 31302:2,3 31302:2,3 31301:18 31302:2,3 1302:13 31302:2,3 1302:13 31302:2,3 13124:11 31436:2 31431:9,24 31432:24 31352:25 31378:22 kill 31254:83 3146:15 31327:23 3136:18 31302:2,3 1300:18 31302:2,3 13108:13 31302:2,3 13108:13 31302:2,3 13108:13 31302:2,3 13108:13 3142:1 13108:63 3136:18 31302:2,3 13108:13 31302:2,3 13108:13 31302:2,3 13102:13 3128:6 31328:6 31328:6 31328:6 31328:6 31328:6 31328:6 31328:6 31328:6 31328:6 31328:6 31328:13 31402:3 31406:13 3146:14 1142:2,3 14306:14 1142:2,3 14306:14 1142:2,3 14306:14 1142:2,3 14306:14 1142:2,3 1430:15 31426:12 30:24:12 31436:7 3128:16 31289:2 3128:16 31289:2 31302:12 31321:15 31326:12 31321:15 31326:12 31321:15 31326:12 3128:16 31289:12 3144:16 3136:12 31321:12 31326:13 3139:2,17 3128:16 31289:2 31326:12 3128:16 31289:12 31325:12 3144:16 3136:12 3128:13 3140:12 3140:16 3136:12 3128:16 3128:12 31331:12 31331:12 31331:12 31402:13 3142:2 31325:12 3134:15 31326:13 3128:12 31325:12 31325:13 3139:2,17 <th></th> <th></th> <th></th> <th></th> <th>Page 1</th>					Page 1
3138424 313865, 312919 313417 3138020.21.22 312852 31294.8 314051.4 314021.4 314021.4 31302.23 31302.17 31302.33 314021.4 31332.2 31302.33 314021.4 31332.2 31302.33 314021.4 31332.2 31332.2 31332.1 313361.5 313061.5 31306.1	31363:6 31383:2,6	JJJ178.9 31230:17	31347:11 31366:6	31271:9 31279:5	31346:18 31347:3,4
31387:25 31388:6 31291:9 3134:7 31381:2 31407:5 31300:23 31301:17 31423:11 314302 31491:924 31432:23 31352:25 31328:22 313252:03 31252:02 3133252:03 31252:03 31301:15 31301:15 31301:15 31301:15 31301:15 31301:15 31301:15 31403:18 31405:1 313224 31331:21 31361:5 31307:18 31336:15 31301:15 31301:15 31301:15 31403:18 31405:1 312264:11 3120:20 31361:5 31307:18 31417:21 3146:12 31476:21 31436:14 Inters 1328:6 3135:5 31400:14 1:15 31430:21 3142:7 31257:13 31430:12 31420:14 Inters 1328:6 3135:0:1 31430:21 3142:7 31257:13 3136:15 3130:21 3126:14 3123:27 31322:13 3130:1:1 3132:22 3131:15 31329:19 3132:22 3131:15 31329:23 3131:15 31329:23 3131:15 31329:23 3131:15 31329:23 3131:15 31381:7 31389:2,17 3132:14:1337:11 31337:12 3137:11 31337:12 3137:11 31337:12 3137:11 31337:13 31319:2,17 31329:14:11 31329:12 3129:12 31332:12 3129:12 31332:12 3129:12 31332:12 3129:12 31329:13 3131:15 31329:13 3131:15 31329:13 3131:15					
31307:3 314006.8,21 31325:20 31326:22 kill 31254:8 31418.9,15 31301:18 31302:2.3 ieters 3126:7.7 31432:4 31437:7 jobs 312737 jobs 312737 31336:1.8 3136:6.1.8 3136:6.2 31306:6.2 31306:6.2 31306:6.2 31306:6.2 31306:6.2 31306:6.2 31306:6.2 31306:6.2 31306:6.2 31306:6.2 31306:6.2 31306:6.2 31306:6.2 31306:6.2 31306:6.2 31306:6.2 31406:19 31406:19 31406:19 31406:19 31406:19 31406:12 31375:13 31405:19 31406:19 31406:12 31375:13 31405:19 31406:12		0			31423:11 31436:23
31409:1,7 31427.7 31355:25 31378:22 Killed 31313:8 31408:17 31421:10 E* 31228:23 3130:81 31431:924 31432:23 JOC 31296:10 31348:1 31336:12 31336:12 31336:12 31336:12 31336:13 3130:12 3136:15 31367:18 31306:13 310:12 3136:13 1367:18 31407:21 3148:61 3149:12 31377:21 3136:12 31402:13 1367:18 31407:21 3148:13 3147:21 3146:12 31375:13 31402:13 1367:18 31407:21 3148:13 3146:62:4 31375:13 31400:10,14:15 S1292:12 2124:14,16 31391:23 1390:25 31402:13 1310:21 3147:13 1310:21 S1292:12 31292:13 31377:21 31300:25 31322:03 1365:12 31436:13 31202:13 1310:21 31202:13 1310:21 31202:13 1310:21 31202:13 1310:21 31202:13 1310:21 31202:13 1310:21 31202:13 1310:21 3132:20 3136:52 31337:21 3337:11 3370:19 3138:17 31399:2,6,18 31337:21 23 3237:13 13377:13 3130:2,17 31337:13 31319:2,17 31337:13 3370:12,23 3142:12 31322:13 23 312:12 31322:13 23 312:12 31322:13 23 312:12 31322:13 23 312:12 31322:13 23 312:12 31322:13 23 31337:13 31377:13 3130:2,17 31415:12 23 3134:16 3136:12 3142:12 23 31377:13 31307:11 3142:12 23 23 23 23 23 23 23 23 23 23 23 23 23		31325:20 31326:22	kill 31254:8 31418:9,15		letters 31261:7
3143224 31320 31254:10 31326:19 31254:10 31326:19 31400:19 issued 31315:12 3136:15 3136:12 3137:12 attos 3137:12 31400:19 31400:19 31400:19 31400:19 31400:11 31400:19 31400:11 31400:19 31400:11 31400:19 31400:11 31400:19 31400:11 31400:19 31400:11 31400:11 31400:11 31400:11 31400:11 31400:11 31400:11 31400:11 31400:11 31400:11 31400:11 31257:16.16.17 313400:11 31257:16.16.17 31340:11 31257:16.16.17 31340:13 31270:12 31270:12 31270:12 31270:12 31270:12 31270:12 31270:12 31270:12 31270:12 31270:12 31270:12 31270:12 31270:12 31270:12 31270:12 31270:12 31270:12 31270:13 31270:12 31270:13 31270:12 31270:13 31270:12 31270:13 31270:13 31270:13 31270:13 31270:13 31270:13 31270:13 31270:13 31270:13		31355:25 31378:22	killed 31313:8	31408:17 31421:10	let's 31228:23 31304:3
issue 31313:21 issue 31313:21 issue 31327:18 31361:53 1361:53 1361:53 1361:53 31261:53 1377:21 31381:13 31377:21 31381:15 31377:21 31370:21 31282:12 31287:23 31307:23 31400:10,14:15 31282:21 31297:24 31307:23 3140:63 31392:23 3130:23 31307:23 31307:13 31377:21 31370:13 31377:21 31370:13 31377:21 31370:13 31377:21 31370:13 31377:21 31370:13 31377:13 3130;22 31377:31 31370:21 31337:13 3130;22 31377:31 31370:21 313377:43 3132:22 31337:43 3132:23 31337:43 3132:24 31337:43 3132:24 31332:24 31332:24 31337:43 3132:24 31337:43 3132:24 313	31431:9,24 31432:23	jobs 31273:7	31327:23 31336:18	largely 31287:15	31308:6 31389:7
issues 31237:18 31254:11 31263:20 31264:12 31287:20 31282:12 31287:20 31292:12 31294:14,16 31391:2 31399:425 31292:13 31307:21 31391:2 31399:425 31292:13 31307:21 31302:23 31399:425 31292:13 31307:24 31302:23 31302:24 31302:23 31307:24 31302:23 31307:24 31302:23 31307:24 31302:23 31307:24 31302:23 31307:24 31302:23 31307:24 31337:21 3313121 J0ming 31232:7 31327:21 33389:78, 11 j0ming 31232:7 31327:21 33389:78, 11 j0ming 31232:7 31327:21 313397:81 j0ming 31232:7 31327:21 31375:11 31377:12 31392:21 31377:12 31375:13 31377:12 31397:14 j0ming 31232:7 31429:14 31429:128 31429:14 31429:128 31429:14 31429:128 31429:14 31429:128 31429:14 31429:128 31429:14 31429:128 31429:14 31429:128 31429:14 31429:128 31429:14 31429:128 31429:14 31429:128 31429:14 31429:128 31429:14 31429:128 31429:14 31429:128 31429:14 31429:14 31429:128 31429:14 31440:14 31429:14 31440:14 31440:14 31440:14 31440:14 31440:14 31440:14 31440:14 31440:14 31440:14 31440:14 31440:14 31440:14 31440:14 31440:14 314	31432:24 31433:17	JOC 31296:10 31348:1	31336:19 31340:15	31294:10 31366:20	31403:18 31405:18
31254:11 31263:20 31368:1.8,8 31371:15 killing 31301:23 Inunch 31346:14 level 31247:7 3128 31262:22 31287:03 31377:21 31381:1 31377:21 31381:1 Jatk6:24 Invyer 31263:13 3132:33 31423:7 J1257:16.16.17 31282:12 31299:1 31391:2 31399:425 kind 3127:18 Invyer 31264:16 J1270:21 31291:24 J1302:12 J1261:6 J1267:16.16.17 3130:2 31332:23 J130:22 J1400:10.14.15 J1282:11 31310:7.16 J1270:21 31291:24 J1302:12 J1322:1 J1415:1:1 J1415:1:1 J1415:1:1 J1415:1:1 J1415:1:1 J1414:1:1:1 J1414:1:1:1:1 J1414:1:1:1:1:1 J1414:1:1:1:1:1:1:1:1:1:1 J1414:1:1:1:1:1:1:1:1:1:1:1:1:1:1:1:1:1:	issued 31313:21	31348:6 31349:2	31352:5,7 31417:20	latest 31328:6 31375:5	31405:19 31406:10
3124:21 21278:7.13 31377:21 31381:1 31476:24 law 31233:23 31423:7 31257:16.16.17 31282:21 31287:20 313851:3 3109:25 31389:12 31399:425 sind (31274:18 31401:5 13402:8 1403:3 31399:23 151:22 31406:7 31302:12 3122:12 31406:7 31302:12 3122:12 31406:7 31301:23 3131:12 31340:16 3139:23:15:12 31346:7 31381:15 31392:23 3151:12 31346:7 31392:13 3131:23:17 31392:33 3131:23 31392:13 3122:10 31331:23 3131:23 31337:13 3139:2,17 31392:23 3131:15 31392:23 31351:15 31392:23 31351:15 31392:23 31351:14 31392:23 31351:14 31392:23 31351:14 31407:19 3143:24 3149:18,20 31407:19 3143:24 31406:17 3198:22 31337:11 31370:19 3142:12:25 1447:19 3143:29 31337:11 31370:19 3142:14:15 3127:12 3137:11 31370:19 3142:14:15 3127:12 31325:10 1442:14:15 3151:12 3126:41 63126:20 31324:14:15 13127:12 31325:41 3127:12 31325:41 3127:12 31325:41 3127:12 31325:41 3127:12 31325:41 3127:12 3126:13 128:12 3126:14 1322:12 1326:14 1322:14:13 127:12 3126:14 1322:14:13332:12 1326:14 1332:12 1326:14 1332:12 1326:14 1332:12 1326:14 1332:12 1326:14 1332:12 1326:14 1332:12 1					31430:21 31432:7
31282:1231287:20 31385:1313090:25 killings 31356:14 3141:5 31286:1631269:2 31296:1731298:1 31400:10,14,15 31392:231399:4,25 31436:7 31392:23139:22 31406:8 31352:2031365:22 31436:7 31391:23139:21 31391:23139:23 31391:231391:231391:23139:23 31391:231391:2313			0		level 31247:7 31255:1
$\begin{array}{c c c c c c c c c c c c c c c c c c c $					
$\begin{array}{c c c c c c c c c c c c c c c c c c c $					
31299:1.18 31307:22 31402:8 31403:3 31339:2 31351:22 31436:7 31342:16 31392:10 31306:3 31337:21,25 31337:21,3378.11 join 31232:10 join 43122:9 31317:13 31319:2,17 31319:25 31311:5 31319:25 31311:5 31319:2,31319:2,17 31339:2,31319:2,17 31339:2,31319:2,17 31339:2,31319:2,17 31337:21,22 31338:14 3145:17,23 31339:2,3137:19,3139:2,17 31435:10,12 31319:2,513119:2,17 31435:10,12 31319:2,513119:2,17 31437:19,3139:2,17 31437:19,3139:2,17 31437:19,3139:2,17 31437:19,3139:2,17 31437:19,3139:2,17 31435:10,12 3139:2,523 31357:10,13123:2,10 31445:1,01,12 31445:1,01,12 31445:1,01,12 31445:1,01,12 31445:1,01,12 31445:1,01,12 31445:1,01,12 31445:1,01,12 31445:1,01,12 31445:1,01,12 31445:1,01,12 3145:1,13,13,12 3145:1,13,13,12 3145:1,13,13,12 31445:1,12,23 3139:2,01 31344:1,51,31,13,13 3144:1,51,31,12,2,31 3144:1,51,2,23 31345:1,13,13,12,11,11 31445:1,2,23 31345:1,31,31,12,2,31 3144:1,51,31,12,2,31 3144:1,51,31,12,2,31 3144:1,51,31,13,13,13,13,13,13,13,13,13,13,13,13					
31307:24.25 31406:8 31352:20 31365:22 31381:7 31372:3 3137:13 3139:23 3137:13 3139:23 3137:13 3137:13 3137:13 3147:15 3142:23 3142:23 3142:23 3142:23 3142:23 3142:23 3140:4 3126:16 3126:16 3126:16 3126:16 3126:16 3126:16 3126:16 3126:16 3126:16 3126:16 3126:16 3126:16 3126:16 3126:16 3138:10 3138:10 3138:10 3138:10 3138:10 3138:10 3138:12 3138:16 3142:17 3142:13 3140:52.4 3138:10 3138:12 3138:12 3138:12 3138:10 3138:10 3138:10 3138:12 3138:12 3138:12 3138:12					
31308:13 31312:12 JOCCOM 31362:13 31412:2,9 314306:21 ay 31301:25 3131:15 31392:36 3137:13 31392:36 3137:13 31392:36 3137:13 31392:36 3137:13 31392:36 3137:13 31392:36 3137:13 31392:36 3137:13 31392:36 3137:13 31392:36 3137:13 31392:36 3137:13 31392:36 3137:13 31392:36 3137:13 31392:36 3137:13 31392:36 3137:13 31392:37 31336:12 31372:14 3147:17 13455:10,12 13455:10,12 13455:10,12 13455:10 1264:16 31262:1 31362:12	-				
31316:3 31329:19 join 31232:10 Kingdom 31232:9 3137:13 31319:2,17 3145:12.23 313312:3 1337:8,11 joining 11232:7 j1237:12 31325:13 31317:11 31370:19 31445:10,12 31338:9 31339:7.8 joining 11232:7 j1232:12 31325:13 31357:11 31370:19 31445:10,12 31335:3 3136:15 31238:24 31381:17 knie's 3121:15 3139:25 31317:4 3140:17:14 3126:16 3127:42 3137:17 31375:15 31429:18,20 knowing 31360:20 knowing 31360:20 at40:17:22 31341:535:3 31404:25 judgeal 3145:9 knowing 31360:20 at40:17:22 31384:23 ilaison 31293:1 3140:25 judgeal 2120:9 j1288:16 at332:20 at385:431385:20.3138:42 liaed 3127:11 3140:52.4 3140:24 judgeal 2120:9 j1288:13 3127:12 31325:43138:20.23 31384:23 liaes 3137:25 Licutenant 3136:21 31355:1336:1322:13 3132:543335:1338:12 liaes 3137:75 Licutenant 20:15 3130:24,83:11 justifiable 31432:18 justifiable 31432:18 3130:44,833337:67 ji283:6338:423 liaiss:1336:21 31336:21 3130:25:12 31336:12 justifiable 31432:18 ji3130:44,833137:11	-				
31331:2 3137:8.11 joined 31257:9 knew 31311:15 3137:21,25 31351:14 31417:19 31433:9 31337:21,25 31338:2 joining 31232:7 31232:12 31325:13 31357:11 31370:19 31435:10,12 31338:913397:8 joining 31232:7 31232:12 31325:13 31357:11 31370:19 31435:10,12 31347:15,19 31348:2 juige 31278:14 knife 31421:25 layers 31417:14 levels 31262:15 31377:10 31408:24 juige 3128:17 knowing 31360:20 statives 31255:23 layers 31417:14 listifies 3128:17 31408:15 31387:4 31332:24 statives 31255:42 layers 31413:4 31405:24 31381:19 31408:17 laeders 3124:31 listis 3136:12 31428:17 laeds 31377:25 liead 31237:4 lies 31325:4 1235:20 31261:21 31235:24 31385:20,23 31336:21 31336:21 31336:21 31336:21 31336:21 3138:22 3138:20 31337:2 3138:32 3138:27 31235:20 31267:23 3138:12 juini field a1381:17:12 juini field a138:17:22 31336:14 lie and 31237:11 lie and 31237:12 lie and 31237:12 <					
31337:21,25 31337:21,25 31337:21,23 31323:12 31331:13 31344:13 3123:12 31331:13 31344:13 3132:14 31331:13 31344:13 31331:13 3140:14 31341:13 3140:12 3140:12 3140:12 3140:12 3140:12 3140:12 3140:12 3140:12 31331:13 3140:13 3140:12 31331:13 31331:13 31331:13 31331:13 31331:13 31331:13 31331:13 31331:13 31331:13 31331:13 31331:12 31331:12 31331:12 31331:13 31331:13 31331:13 31331:13 31331:13 31331:13 31331:13 31331:13 31331:13 31331:13 31331:13 31331:13 31331:13 31331:13 31331:13 31331:13 31331:13:13 31331:13 31331:13					
31338:9:3139:7.8 joint 3123:20 31325:20.23 layers 31417:14 lavels 3147:14 layers 31417:14 layers 31416:14 layers 31416:11 layers 31416:14 layers					
$\begin{array}{c c c c c c c c c c c c c c c c c c c $					· ·
31355:3 31366:15 31374:17 31375:15 31428:17 31428:17 13137:10 31408:25 31408:25 31410:23 31408:25 31410:23 31408:25 31410:23 31428:17 Iavs 31400:17,22 13140:17 3144:15 31312:2 1avs 31400:17,22 31402:17 31344:15 31312:2 1avs 31400:17,22 31428:17 31344:15 31312:2 1avs 31400:17,22 31428:17 31344:15 31312:2 1avs 31400:17,22 31428:17 31344:15 31312:2 1avs 31400:17,22 31288:63 1384:23 31381:19 31382:1 1avs 31400:17,22 31288:63 1384:23 31381:19 31382:1 1avs 31400:17,22 31288:63 1384:23 31381:19 31382:1 1avs 31402:17 313428:17 Iavs 31400:17,22 31288:63 1384:23 31381:19 31382:1 1avs 31402:17 31381:19 31382:1 1avs 31428:18 Iavs 31400:17,22 31288:63 1384:23 31381:19 31382:1 1avs 31428:18 Iavs 31400:17,22 31288:63 1384:23 31342:1 1avs 31402:14 31381:19 31382:1 1avs 31284:18 Iavs 31400:17,22 31288:18 31381:24 31282:14 31381:19 31382:1 1avs 3128:11 Iavs 31400:17,22 31282:14 31384:12 31282:14 31381:29 31282:14 31384:12 31282:14 31384:12 31282:14 31384:12 31282:14 31384:12 31385:14 31384:12 31385:14 31381:19 31382:14 31385:13 31385:14 31385:14 Iavs 31400:17,22 31384:12 31384:12 31282:14 31384:12 31282:14 31384:12 31282:14 31384:12 31282:14 31384:12 31282:13 31385:12 31292:12 31385:12 31385:12 31323:12 31385:12 31327:12 31385:12 31327:12 31385:12 31327:12 31385:12 31327:12 31385:12 31327:12 31345:12 31327:12 31345:12 31327:12 31345:12 31327:12 31345:12 31327:12 31345:12 31327:12 31345:12 31327:	<i>,</i>				
31374:17 31375:15 31397:10 31408:24 31397:10 31408:24 31426:5 31429:18,20 judgent 31236:1 31327:4 31332:22 31337:4 31332:22 31337:4 31332:22 31338:6,20 31343:24 31325:4 31385:20,23 31328:7 31249:25 31288:7 31294:3 31326:23 31338:6,20 31343:24 31326:23 31338:6,20 31343:24 31326:23 3138:6,20 31343:24 31326:23 3138:6,20 31343:24 31326:23 31338:6,20 31343:24 31326:23 3138:6,20 31343:24 31326:23 3138:6,20 31343:24 31326:23 3136:12 31288:7 31294:33 31355:11 31346:1 31355:12 31366:3 31429:21 31432:18 31412:25 31282:2 31366:3 31282:2 31366:1 31325:1 31342:2 31326:1 31325:1 31282:2 31282:2,6 31325:1 31342:1 31335:1 3134:12 31335:1 3134:12 31342:12 31308:21 31342:12 31308:21 31342:12 31308:21 31342:12 31308:21 31342:12 31308:21 31342:12 31308:21 31342:12 31342:12 31342:13 3134:12 31342:12 31342:12 31342:13 3134:12 31342:13 3134:12 31342:13 3134:12 31342:13 3134:12 31342:12 31308:12 31342:12 31308:12 31342:12 31308:12 31342:12 31308:12 31342:12 31308:12 31342:12 31308:12 31342:12 31308:12 31342:12 31308:12 31342:12 31308:12 31342:12 31308:12 31342:13 3134:12 31342:13 31342:1 31342:13 31342:1 31342:12 31342:1 31342:13 31342:1 31342:13 31342:1 31342:13 31342:1					
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31408:25 31410:23 31426:5 judgment 31236:1 31327:4 31332:22 31338:62.0 31343:24 31428:17 31283:6 31384:23 justicry 31283:6 31383:20 justicry 31283:6 justification 31423:12 item 31369:10 July 31249:25 31387:20 31388:14 leaders 31377:25 Lieutenant 31242:1 item 31369:10 July 31249:25 31387:20 31388:14 leaders 31377:25 Lieutenant 31242:1 item 31360:25 31313:19 Junoi 31254:16 Knows 31254:3 31377 learned 31229:23 31381:10 31385:1 31306:25 31313:19 justification 31427.6 Kooph is 31302:9 learning 31285:10 Lieutenant-Colonel 31429:21 31433:10 31304:4.8 31321:25 31362:13 31297:18 31348:12 31283:7 31283:7 31283:7 31283:7 31283:7 31283:7 31283:7 31328:7 31366:22 31262:23 1267:22 31339:5 3134:15 31327:6 31348:9,17 leaving 31395:7 31356:13 3136:12 31367:19 31368:12 31367:19 31368:12 31367:19 31368:12 31367:19 31369:12 31387:23 31389:7 31358:77 31394:22 31367:19 31389:12 31387:23 31389:7 31387:23 31389:7 31387:23 31389:7 31328:77 31394:12 31298:18 3137:23 31389:1					
31426:5 31327:4 31332:22 known 31274:2 31283:6 31384:23 liberty 31284:18 issuing 31399:23 31338:6,20 31343:24 31325:4 31385:20,23 31393:20 liberty 31284:18 item 31369:10 July 31249:25 31387:20 31388:14 leads 31377:25 Lieutenant 31242:1 itag 3125:4 31271:12 3125:4 31387:20 31388:14 learnd 31292:23 31388:12 31388:12 31388:12 31306:20 June 31228:1 31271:6 Koopie 31302:9 learnd 31282:13 31388:12 31403:1 31406:20 31429:21 31433:10 31304:4,8 31321:25 31362:13 31367:13 31348:0 31256:2 31267:22 31339:5 31343:15 31342:13 31356:11,23 31349:17 31288:18 31371:23 31366:22 31281:22 31282:2,6 31422:8,11 31427:11 31356:11,23 31349:57 s13267:13 31306:11 s1384:7 31394:21 31331:5 3134:12 31436:51,7 314366:12 31346:12 31346:12 31400:1 31402:15 31331:5 31386:12 31436:12 31436:12 31346:12 31346:12 31346:12 31331:5 13386:12 3142:23 13436:5,17 314366:12 31242:13 3136:11 31382:2 <					
issuing 31399:23 31338:62.0 31343:24 31325:4 31385:20,23 31393:20 lies 31325:4 item 31369:10 July 31249:25 31387:20 31388:14 leads 31377:25 Lieutenant 31242:1 i12325:20 31261:21 31288:13 31271:9 stass:13 3127:1 stass:13327:4 learned 31229:23 31388:10 31385:4 31306:25 31313:19 junior 31254:16 Koch 31411:9 31282:16 stass:10 31288:12 3128:12 31388:12 3138:110 31385:4 31406:20 31429:21 31433:10 31304:4,8 31321:25 31362:13 31297:18 31348:1 31238:12 31265:2 31267:22 31395:3 51343:15 31327:6 31348:9,17 leaving 31395:7 81328:17 31346:2 3128:12 31266:2 31360:21 31428:21 31422:13 31360:22 31361:3 31387:20 31367:1 81373:23 31387:1 3128:12 31308:11 justify 31429:24 31360:22 31359:1 leaving 31395:7 leaving 31395:7 81357:1 3136:7:1 3138:15 31386:12 justify 31429:24 31360:22 31361:3 31381:2 31387:20 31387:20 31387:20 31387:20 31387:23 31387:1 31381:5 31386:12 justify 31429:1 31436:51 31387:1		• •			
item 31369:10July 31249:2531387:20 31388:14leads 31377:25Lieutenant 31242:1I'd 31235:20 31261:2131258:13 31271:93128:123 131271:1231320:24learn 31336:2131363:15 31380:231306:25 31313:19jumior 31254:16Koch 31411:931229:2331388:12 31403:13135:11 31346:11justifiable 31432:1831412:25learning 31285:10Lieutenant-Colonel31306:2031429:21 31433:1031304:48 31321:2531362:1331297:18 31348:1231281:22 31267:2331325:13 3138:17,2231327:6 31348:9,17leave 31323:5 1348:20312327:8 31367:731282:12 31308:1231422:8,11 31427:61Koph 31304:48 31321:2531302:9leave 31323:5 1348:2031283:7:3 31367:19 31365:131281:22 31267:2231395: 5 31343:1531327:6 31348:9,17leave 31323:5 13348:1031367:3 31367:19 31366:131281:22 31282:12 31308:1231422:8,11 31427:1131348:20,22 31354:4a1292:15,2531367:19 31366:131313:15 31314:12justify 31429:2431360:22 31361:331381:2231400:131402:1531329:4,12 31334:1331436:18,2431409:9,10,13legal 31235:18,2431407:7,2531329:4,12 31334:1331436:12,31440:1931244:16 31262:331371:19 31380:1231345:1Keep 31251:1 31269:431307:23 31325:1431224:1262:1331244:16 31262:331342:19 31424:1131379:3 31386:12Jia24:16 31372:2331342:13,17,2231340:1131421:9 31424:2131379:3 31386:12Jia23:220 31330:1831290:5 31292:1031244:16 31372:13 <t< td=""><td></td><td></td><td></td><td></td><td>-</td></t<>					-
I'd 31235:20 31261:21 31258:13 31271:9 knows 31254:3 31317:7 learn 31336:21 31363:15 31380:5 31208:7 31294:3 junoi 31228:1 31271:12 3130:24 learned 31229:23 31381:10 31385:4 31305:25 31313:19 juntifiable 31432:18 31411:9 31283:6 31388:12 31403:1 31352:22 31366:3 justification 31427:6 koopie 31302:9 learning 31285:10 lieuve 31323:5 31348:20 31406:20 31339:5 31343:15 31327:6 31348:9,17 31339:5 31343:15 31327:6 31348:9,17 31281:22 31282:2,6 31422:8,11 31427:11 313356:11,23 31359:5 left 31233:18 31306:11 31384:7 31394:21 31331:5 3134:12 justified 3138:17,22 31366:12 31366:12 31367:1,9 31368:1 31282:12 31308:21 31428:25 31432:13 31356:11,23 31359:5 left 31233:18 31306:11 31384:7 31394:21 31331:5 3134:12 justified 3133:17,24 31360:12 31400:9,10,13 legal 31235:18,24 31407:7,25 313314:16 31315:12 31436:12 Xhun 31306:14,15 31243:12,16,21 lieutenant-general 313314:10 31348:12 justified 31338:10 31337:20 31367:12 31380:19 31382:1 31380:19 31382:1 31342:13 3140:12	-				
31288:7 31294:3 31306:25 31313:19 June 31228:1 31271:12 junior 31254:16 31320:24 learned 31229:23 31381:10 31385:4 31313:13 1313:11 justifiable 31432:18 justification 3147:6 justifiable 31432:18 Step 1 31288:12 31403:1 31406:20 31429:21 31433:10 justified 31338:17,22 31304:4,8 31321:25 31362:13 31297:18 31348:1 31281:2 31267:2 31267:22 31339:5 31343:15 31342:22 31354:1 31327:6 31348:9,17 s1395:7 31355:1 31366:22 31281:2 31282:12 31308:21 31428:25 31432:13 31348:02 31359:5 s1381:5 31346:12 s1373:23 31366:12 31313:15 31314:12 justify 31429:24 31360:22 31364:13 31298:18 31372:23 31384:7 31394:21 31332:2 3134:13 31428:25 31432:17 31400:21 31400:22 31381:4007:7,25 s1380:19 31380:12 31313:15 31314:12 justify 31429:24 31307:23 31325:14 31243:12,16,21 s1243:12,16,21 s1243:12,16,21 s14007:7,25 31331:5 31386:12 justify 31436:5,17 31436:18,24 s1307:23 31325:14 31243:12,16,21 s1243:12,16,21 s1243:12,16,21 s1243:12,16,21 s1243:12,16,21 s1243:12,16,21 s1243:12,16,21 s1244:16 31246:3 s1399:2 s1243:12,16,21 </td <td></td> <td></td> <td></td> <td></td> <td></td>					
31306:25 31313:19 31306:25 31314:10 3135:11 31346:1 31406:20 junior 31254:16 justifiable 31432:18 justification 31427:6 31409:20 Koch 31411:9 3141:225 31283:6 learning 31285:10 31388:12 31403:1 1'II 31237:19 31238:2 31266:2 31267:22 justification 31427:6 31392:5 31343:15 justified 31338:17,22 justified 31348:12 justified 31338:17,22 justified 31348:17,23 justified 31338:17,22 justified 31348:12 justified 31348:17,23 justified 31348:17,313466:22 justified 31348:17,313466:22 justified 31356:11,23 31348:17 justified 31356:11,23 31346:12 justified 31356:17,31346:12 justified 31356:17,31346:12 justified 31356:17,31346:12 justified 31366:12 justified 31366:12 justified 31366:12 justified 3136:17,21 justified 31366:12 justified 31376:13					
31315:11 31346:1 31352:22 31366:3 31406:20 justifiable 31432:18 justificati 0 31427:6 31429:21 31433:10 31412:25 koppie 31302:9 31304:4,8 31321:25 learning 31285:10 leave 31323:5 31348:20 31362:13 Lieutenant-Colonel 31238:17 31242:1 31362:13 PII 31237:19 31238:2 31256:2 31267:22 justificat 31338:17,22 31339:5 31343:15 31304:4,8 31321:25 31327:6 31348:9,17 justificat 31336:12 31327:6 31348:9,17 justificat 31336:12 31327:6 31348:9,17 justificat 31336:12 31355:1 31366:22 31367:1,9 31366:2 31367:1,9 31368:13 31281:22 31282:2,6 31282:12 31308:21 31422:83 113427:11 31428:25 31432:13 31355:11,23 31349:5 left 31237:18 31306:11 31355:1 31366:12 31387:23 31387:1 31335:20 31377:22 31381:5 3134:12 justificati 0 3145:8,24 justificati 0 3142:4 31400:7,25 31335:20 31377:22 justificati 0 31300:11 31335:1 justificati 0 3146:12 justificati 0 31302:4 31335:1 keep 31251:1 31269:4 justificati 0 31302:1 justificati 0 31302:1 justificati 0 31372:2 313421:9 31424:21 justificati 0 31366:12 justificati 0 31366:12 justificati 0 31366:12 justificati 0 31372:2 313421:9 31424:21 justificati 0 31366:12 justificati 0 31366:12 justificati 0 31372:2 justificati 0 31372:2 justificati 0 31372:2 justificati 0 31372:2 justificati 0 31372:1 justificati 0 3					
31352:22 31366:3 31406:20 justification 31427:6 31429:21 31433:10 koppie 31302:9 31304:4,8 31321:25 leave 31323:5 31348:20 31362:13 31238:17 31242:1 31362:13 I'll 31237:19 31238:2 31256:2 31267:22 justified 31338:17,22 31325:1 31363:27 31322:11 31323:4 31327:6 31348:9.17 justified 31338:17,22 31327:6 31348:9.17 justified 31338:17,22 31327:6 31348:9.17 justified 31338:17,22 31327:6 31348:9.17 justified 31338:17,22 31327:6 31348:9.17 justified 31338:17,323 justified 31338:17 justified 31373:23 justified 31338:17 justified 31338:17 justified 31338:17 justified 31338:13 justified 31338:13 justified 31338:13 justified 31338:13 justified 31388:13 justified 31388:					
31406:20 31429:21 31433:10 31304:4,8 31321:25 31362:13 31297:18 31348:1 1'II 31237:19 31238:2 31339:5 31343:15 31322:11 31323:4 leaving 31395:7 31355:1 31366:22 31282:12 31262:2 31339:5 31343:15 31327:6 31348:20,22 31354:4 31298:18 31373:23 31383:7 31282:12 31308:21 31429:24 31336:12,3 3135:5 31440:9,9,10,13 legal 31235:18,24 31400:1 31402:15 31335:20 31377:22 31436:18,24 31346:5,17 31440:9,9,10,13 legal 31235:18,24 31400:1 31402:15 31335:20 31377:22 31436:18,24 31306:22 3136:12 31243:612 31410:9 31243:612 31400:1 31402:15 31381:5 31386:12 31427:51 31310:11 31307:23 31325:14 31281:73 1229:2 31380:19 31382:1 31421:9 31424:21 3137:23 31366:12 31397:23 31326:12 31397:23 31322:0 31342:13,17,21 31428:55, 51431: 3129:123 31308:16 31283:24 31284:2,8 31377:2 31343:3 31367:11 31342:55, 51431: 31397:20 31400:7 31428:55, 51431: 3129:125 31292:4 3128:29:3 31285:8 3128:21 31323:5 31342:33367:11 life 31423:0 31426:12 3129:253 31292:10 3128:23 31					
I'll 31237:19 31238:2 31256:2 31267:22justified 31338:17,22 31395: 5 31343:15 31281:22 31282:2,631329:13 31323:4 31422:8,11 31427:11 31348:20,22 31354:4leaving 31395:7 31298:1831355:1 31366:22 31327:6 31348:9,1731281:22 31282:2,6 31422:2 31308:21 31313:15 31314:12 31314:16 31315:12 31314:16 31315:1231428:25 31432:13 31428:25 31432:1331366:22 31364:4 31348:20,22 31354:431298:18 31335:0:1,23 31359:5313298:18 left 31233:18 31306:1131384:7 31394:21 31384:7 31394:2131329:4,12 31334:12 31335:20 31377:22 31325:1431436:18,2431409:9,10,13 31409:9,10,13legal 31235:18,24 31243:12,16,2131407:7,25 lieutenant-general 31381:5 31386:12 31337:23 31380:1231325:3 3136:12 31425:3 3136:12Keep 31251:1 31269:4 31275:13 31310:1131307:23 31325:14 31307:23 31325:14312244:16 31246:3 31290:5 31292:1031371:19 31380:8 31290:5 31292:1031421:9 31424:2131377:23 31386:12 31397:21 31401:20 31283:24 31284:23,25 31285:83127:20 31330:18 31292:25 31322:031422:5,5 31431:1 31342:13,17,21Jack 31270:1031284:23,25 31285:8 31285:9,13 31286:7 31285:9,13 31286:731286:7,12,20 31327:21 31287:231360:18 31375:1 31342:13,17,21Jane 31291:25 31292:431286:20 31287:1,6 31284:23,25 31285:831369:51 31323:5 31367:1231400:7 31360:18 31375:1Jane 31291:25 31292:431286:20 31287:1,6 31285:9,13 31286:731289:9 31403:4 31417:5,631409:23 31401:1 31405:24 31431:2Jane 31291:25 31292:431286:20 31287:1,6 31286:13,15,21,2531369:51 31368:15 31433:2531400:7 31400:7 <td></td> <td></td> <td></td> <td></td> <td>31297:18 31348:15</td>					31297:18 31348:15
31256:2 31267:2231339:5 31343:1531327:6 31348:9,17led 31292:15,2531367:1,9 31368:131282:12 31308:2131422:8,11 31427:1131348:20,22 31354:431298:1831373:23 31383:73131282:12 31308:2131428:25 31432:1331356:11,23 31359:531361:1331381:2231384:7 31394:213131315 1231432:13 1436:5,1731409:9,10,13legal 31235:18,2431407:7,2531329:4,12 3134:1331436:18,2431409:9,10,13legal 31235:18,2431407:7,2531335:20 31377:2231436:18,2431410:931243:12,16,21lieutenant-general31435:1keep 31251:1 31269:431306:14,1531277:21 31279:231380:19 31380:1831421:9 31424:2131379:3 31386:1231377:20 31302:1431290:5 31292:1031427:2,20,2231421:9 31424:2131379:3 31386:1231377:22313421:3 3130:1131372:20 31302:1831275:2331283:24 31284:2,831299:25 31322:0031427:2,20,2231427:2,20,2231291:25 31292:431285:9,13 31286:731284:23,25 31285:831377:231343:3 31367:1131292:1731286:20 31287:1,631286:20 31287:1,631372:231433:2531400:31400:731292:1731286:13,15,21,2531426:313128:1331426:1231368:1731409:23 3140:1431292:1731287:14,16,2231369:5 31436:141140:1431322:13146:1831326:1731292:1731287:14,16,2231369:5 31436:1431368:1731405:24 31431:231292:1631288:3,15,21,2531445:1231368:1731346:19 <td></td> <td></td> <td></td> <td></td> <td>31355:1 31366:22,23</td>					31355:1 31366:22,23
31281:22 31282:2,6 31422:8,11 31427:11 31348:20,22 31354:4 31298:18 31373:23 31383:7 31282:12 31308:21 31428:25 31432:13 31356:11,23 31359:5 left 31233:18 31306:11 31384:7 31394:21 3131:15 3134:12 31428:25 31432:13 31360:22 31361:3 31381:22 31400:1 31402:15 31329:4,12 3134:13 31436:18,24 31409:9 (1,1) 31243:12,16,21 31407:7,25 31335:20 31377:22 31436:18,24 31410:9 31242:16 31246:3 31371:19 31380:8 31345:1 keep 31251:1 31269:4 31307:23 31325:14 31290:5 31292:10 31421:9 31424:21 3137:24 31363:2 Mun 31306:14,15 31290:5 31292:10 life 31423:10 31426 3137:29 31325:3 31347:19 31317:24 31363:2 31377:22 31300:11 31377:22 31302:10 31428:5,5 31431:1 3129:253 31347:19 3137:21 31401:20 L 31290:5 31292:10 life 31423:10 31426 3137:29 31424:21 3137:21 31401:20 L 31241:6 31372:23 31342:3 31367:11 31428:5,5 31431:1 31275:23 31283:24 31284:2,8 31283:24 31284:2,8 31397:20 31400:7 31360:18 31375:1 31292:17 31286:20 31287:1,6 31286:20 31287:1,6 <td< td=""><td></td><td>•</td><td></td><td></td><td>31367:1,9 31368:1,22</td></td<>		•			31367:1,9 31368:1,22
31313:15 31314:12 31314:16 31315:12 31329:4,12 31334:13 31335:20 31377:22 31335:20 31377:22 31335:1justify 31429:24 31436:18,2431360:22 31361:3 31409:9,10,13 31409:9,10,13 31409:9,10,13 31410:931381:22 legal 31235:18,2431400:1 31402:15 31243:12,16,2131335:20 31377:22 31335:1031436:18,2431409:9,10,13 31436:18,2431243:12,16,21 31243:12,16,21lieutenant-general 31243:12,16,2131435:1Keep 31251:1 31269:4 31275:13 31310:1131307:23 31325:14 31307:23 31325:1431277:21 31279:2 31295:3 31342:1531380:19 31380:19 31399:2I've 31254:9 31255:3 31347:19 31421:9 31424:2131275:13 31310:11 31397:21 31401:2031327:20 31330:1831290:5 31292:10life 31423:10 31426 31299:25 31322:20JJ 31283:24 31284:2,8 31285:9,13 31286:7313275:2 31285:9,13 31286:7313375:2 31286:71,631342:13,17,21 31360:18 31375:1Jane 31291:25 31292:4 31292:1731286:20 31287:1,6 31288:13,15,21,2531289:6 31308:15 31369:5 31436:1431409:23 31410:14 31307:21 3140:14January 31235:15 jet 31269:431291:23 31292:1031282:91:3,11 31289:8 31291:3,1131425:12 31445:1231405:24 31431:2 31440:14JJ167 31364:1631291:23 31292:1031291:23 31292:1031425:12 31430:9,1631425:12 31425:1231405:24 31431:2 31430:14	31281:22 31282:2,6	31422:8,11 31427:11		-	31373:23 31383:7,20
31314:16 31315:12 31433:21 31436:5,17 31409:9,10,13 legal 31235:18,24 31407:7,25 31329:4,12 31334:13 31436:18,24 31410:9 31243:12,16,21 31243:12,16,21 31371:19 31380:8 31335:20 31377:22 31386:12 K 31242:16 31265:4 31277:21 31279:2 31380:19 31380:8 31421:9 31424:21 31275:13 31310:11 31377:24 31363:2 31307:23 31325:14 31290:5 31292:10 life 31423:10 31426 J 31397:21 31401:20 31397:21 31401:20 31377:22 31342:13,17,21 31426:12 Ja 31230:12 31308:16 31283:24 31284:2,8 31292:5 31332:20 31428:5,5 31431:1 31377:2 314428:5,5 31431:1 31291:25 31292:4 31284:23,25 31286:7 31284:23,25 31286:7 31386:12 31397:20 31400:7 31360:18 31375:1 Jana 31291:25 31292:4 31287:14,16,22 31289:6 31308:15 31403:25 31400:73.5 31400:23 31410:14 January 31235:15 31288:13,15,21,25 31289:6 31308:15 31432:25 31400:24 31417:5,6 31400:24 3140:14 JJJ167 31364:16 31291:23 31292:10 31289:6 31303:9,16 length 31275:19 31405:24 3143:22	31282:12 31308:21	31428:25 31432:13	31356:11,23 31359:5	left 31233:18 31306:11	31384:7 31394:21
31329:4,12 31334:13 31335:20 31377:22 31381:5 31386:12 31435:1 31436:18,24 31410:9 kraal 31346:12 31243:12,16,21 31244:16 31246:3 lieutenant-general 31371:19 31380:18 31435:1 K Kaal 31346:12 31244:16 31246:3 31371:19 31380:18 31435:1 keep 31251:1 31269:4 31307:23 31325:14 31277:21 31279:2 31380:19 31380:19 31380:19 31421:9 31424:21 31377:24 31363:2 31377:20 31330:18 31290:5 31292:10 life 31423:10 31426 J 31397:21 31401:20 L 31241:6 31372:23 31342:13,17,21 31436:11 Ja 31230:12 31308:16 31283:24 31284:2,8 31283:24 31284:2,8 31375:2 31386:7,7,12,20 31403:4 3147:5,6 Jane 31291:25 31292:4 31285:9,13 31286:7 31285:9,13 31286:7 31286:20 31287:1,6 31282:9,6 31308:15 31403:4 31417:5,6 31409:23 31401:1 January 31235:15 31288:13,15,21,25 31289:6 31308:15 31428:21 31368:17 31322:1 31346:18 JJJ167 31364:16 31291:23 31292:10 31428:21 31428:21 31368:17 31322:1 31346:18	31313:15 31314:12	justify 31429:24	31360:22 31361:3	31381:22	31400:1 31402:15
31335:20 31377:22 31381:5 31386:12 31435:1kraal 31346:1231244:16 31246:331371:19 31380:831435:1Keep 31251:1 31269:4 31275:13 31310:1131307:23 31325:14 31377:2 31327:20 31330:1831277:21 31279:2 31281:17 31284:1531380:19 31382:1 31290:5 31292:10I've 31254:9 i.e 31255:3 31347:19 31421:9 31424:2131275:13 31310:11 31317:24 31363:2 31379:3 31386:1231307:23 31325:14 31327:20 31330:1831290:5 31292:10life 31423:10 31426 31290:5 31292:10J31377:1 31401:20 keeping 31283:10,16L 31241:6 31372:23 31397:21 31401:2031373:231342:13,17,21 31343:3 31367:1131426:11 lift 31255:7Ja 31230:12 31308:16 Jack 31270:1031283:24 31284:2,8 31285:9,13 31286:731283:24 31284:2,8 31285:9,13 31286:7albouring 31375:2 lack 31315:21 31323:531367:7,12,20 31366:7,7,12,20light 31273:10 31360:18 31375:1Jane 31291:25 31292:4 31292:1731286:20 31287:1,6 31288:13,15,21,2531289:6 31308:15 31432:531400:7 31400:731360:18 31375:1 31432:25January 31235:15 jet 31269:431289:8 31291:3,11 31291:23 31292:1031248:21 31425:1231368:17 31324:1331322:1 31346:18 31376:19JJJ167 31364:1631291:23 31292:10Ianguage 31303:9,16length 31376:19 lengths 31378:11likewise 31266:18	31314:16 31315:12	31433:21 31436:5,17	31409:9,10,13	legal 31235:18,24	31407:7,25
31381:5 31386:12 31435:1KKuhn 31306:14,1531277:21 31279:231380:19 31382:11've 31254:9 31255:3 31347:19 31317:24 31363:2 31421:9 31424:2131275:13 31310:1131307:23 31325:1431290:5 31292:10life 31423:10 31426131317:24 31363:2 31397:21 31401:20131379:3 31386:1231290:5 31292:10life 31423:10 31426131397:21 31401:20 31397:21 31401:20131283:24 31284:2,831397:2231342:13,17,2131426:11131230:12 31308:16 31283:24 31284:2,831283:24 31284:2,831373:231342:13,17,2131436:1131275:23 31275:2331285:9,13 31286:7 31285:9,13 31286:731285:9,13 31286:7 31285:9,13 31286:731286:20 31287:1,631375:231397:20 31400:731360:18 31375:131291:25 31292:431286:20 31287:1,6 31287:14,16,22131369:5 31436:14 31329:5 31436:14length 31273:131409:23 31410:1431292:1731287:14,16,2231369:5 31436:14 31289:8 31291:3,1131425:12length 31273:131322:1 31346:1831269:431289:8 31291:3,1131425:1231368:1731322:1 31346:1831269:431299:23 31292:1031425:12116gth 31376:1931405:24 31431:231364:1631291:23 31292:1031425:12180gth 31376:1931405:24 31431:2	31329:4,12 31334:13	31436:18,24		31243:12,16,21	lieutenant-general
31307:2331307:2331325:1431281:1731281:1731281:17I've 31254:931275:1331310:1131307:2331325:1431281:1731281:1731281:17i.e 31255:331347:1931317:2431363:231327:2031330:1831290:531299:2531427:2,20,2231421:931424:2131379:331386:12Iffe31327:2031342:13,17,2131428:5,531428:5,5JJkeeping31283:10,1631373:231343:331367:11Iiff31255:7Ja 31230:1231283:2431284:28,831397:5231343:331367:11Iiff31255:7Jack31291:2531285:9,1331286:731286:731307:2031400:731360:1831375:131291:2531292:1731287:14,16,2231369:531436:14Iength31273:131409:2331410:14January31285:1531288:13,15,21,2531289:631308:1531423:2531409:2331405:2431364:16JJJ16731364:1631291:2331291:3,1131425:12Iengthened31376:1931405:2431366:18JJJ16731364:1631291:2331292:10Ianguage31303:9,16Iengths31376:1931405:2431431:2Iikewise31266:2631292:10Ianguage31303:9,16Iengths31376:1931405:2431366:18			kraal 31346:12	31244:16 31246:3	31371:19 31380:8,13
I*ve 31254:931275:13 31310:1131327:20 31330:1831290:5 31292:10life 31423:10 31426i.e 31255:3 31347:1931317:24 31363:2131372:4 31363:231290:5 31292:1031427:2,20,2231421:9 31424:2131379:3 31386:12L31290:5 31329:25 31322:031428:5,5 31431:1jj31397:21 31401:20L 31241:6 31372:2331342:13,17,21314366:11jj31283:24 31284:2,8abouring 31375:231386:7,7,12,20at436:11jack 31270:1031284:23,25 31285:8ack 31315:21 31323:531397:20 31400:731360:18 31375:1j1275:2331285:9,13 31286:7ack 31315:21 31323:531397:20 31400:731360:18 31375:1jane 31291:25 31292:431286:20 31287:1,6alacking 31298:931403:4 31417:5,631409:23 31410:14january 31235:1531288:13,15,21,2531369:5 31436:14length 31273:13140:14jet 31269:431291:23 31291:3,1131425:12anguage 31303:9,16anguage 31303:9,16anguage 31303:9,16					31380:19 31382:12
i.e 31255:3 31347:19 31421:9 31424:2131317:24 31363:2 31379:3 31386:12 31397:21 31401:2031295:25 31329:25 31332:20 31283:10,1631427:2,20,22 31428:5,5 31431:1JJ31397:21 31401:20 8ceping 31283:10,16L31241:6 31372:23 31373:231342:13,17,21 31343:3 31367:1131436:11 1ift 31255:7Ja 31230:12 31308:16 Jack 31270:1031283:24 31284:2,8 31284:2,325 31285:8L31281:21 31323:5 ack 31315:21 31323:531343:3 31367:11 31397:20 31400:7lift 31255:7 31360:18 31375:1Jane 31291:25 31292:4 31292:1731286:20 31287:1,6 31287:14,16,22lack 31315:21 31323:5 alcek 31308:1531403:4 31417:5,6 31433:2531409:23 31410:1 31409:23 31410:14January 31235:15 jet 31269:4 JJJ167 31364:1631291:23 31292:1031425:12 language 31303:9,16lengthened 31376:19 lengths 31378:11likewise 31266:18		-			
31421:9 31424:2131379:3 31386:12L31299:25 3132:2031428:5,5 31431:1JJ31397:21 31401:20L 31241:6 31372:2331342:13,17,2131436:11Ja 31230:12 31308:1631283:24 31284:2,8Iabouring 31375:231386:7,112,20Iift 31255:7Jack 31270:1031284:23,25 31285:8Iack 31315:21 31323:531397:20 31400:731360:18 31375:1Jane 31291:25 31292:431285:9,13 31286:7Iacking 31298:931403:4 31417:5,631409:23 31410:1Jane 31291:25 31292:431287:14,16,2231369:5 31436:14Iength 31273:1Iikelihood 31264:16January 31235:1531288:13,15,21,25Iach 31248:2131368:1731322:1 31346:18JJJ167 31364:1631291:23 31292:10Ianguage 31303:9,16Iengthened 31376:19Iikewise 31266:18			31327:20 31330:18		life 31423:10 31426:25
JJispite 31397:21 31401:20L 31241:6 31372:2331342:13,17,2131436:11Ja 31230:12 31308:1631283:24 31284:2,831373:231343:3 31367:1131436:11Jack 31270:1031284:23,25 31285:8labouring 31375:231386:7,7,12,20light 31273:10Jane 31291:25 31292:431286:20 31287:1,6lack 31315:21 31323:531403:4 31417:5,631409:23 31410:1Jane 31291:25 31292:431286:20 31287:1,6laid 31289:6 31308:1531433:2531409:23 31410:1Jane 31291:25 31292:431286:20 31287:1,6laid 31289:6 31308:1531433:2531410:14Jane 31291:25 31292:431288:13,15,21,25laid 31289:6 31308:1531433:2531410:14January 31235:1531288:13,15,21,25laid 31248:2131368:1731322:1 31346:18JJJ167 31364:1631291:23 31292:10Ianguage 31303:9,16length 31376:1931405:24 31431:2				·	
Jkeeping 31283:10,1631373:231343:3 31367:11lift 31255:7Ja 31230:12 31308:1631283:24 31284:2,8labouring 31375:231386:7,7,12,20light 31273:10Jack 31270:1031284:23,25 31285:8lack 31315:21 31323:531397:20 31400:731360:18 31375:131275:2331285:9,13 31286:7lacking 31298:931403:4 31417:5,631409:23 31410:1Jane 31291:25 31292:431286:20 31287:1,6laid 31289:6 31308:1531433:2531409:23 31410:1January 31235:1531288:13,15,21,25Land 31248:2131368:1731322:1 31346:18jet 31269:431291:3,1131425:12lengthened 31376:1931405:24 31431:2JJJ167 31364:1631291:23 31292:10language 31303:9,16lengths 31378:11likewise 31266:18	31421:9 31424:21				31428:5,5 31431:11
Ja 31230:12 31308:1631283:24 31284:2,8labouring 31375:231386:7,7,12,20light 31273:10Jack 31270:1031284:23,25 31285:8lack 31315:21 31323:531397:20 31400:731360:18 31375:131275:2331285:9,13 31286:7lacking 31298:931403:4 31417:5,631409:23 31410:1Jane 31291:25 31292:431286:20 31287:1,6laid 31289:6 31308:1531433:2531409:23 31410:1January 31235:1531288:13,15,21,25Land 31248:2131366:1731322:1 31346:18jet 31269:431289:8 31291:3,1131425:12lengthened 31376:1931405:24 31431:2JJJ167 31364:1631291:23 31292:10language 31303:9,16lengths 31378:11likewise 31266:18					
Jack 31270:1031284:23,25 31285:8lack 31315:21 31323:531397:20 31400:731360:18 31375:131275:2331285:9,13 31286:7lacking 31298:931403:4 31417:5,631409:23 31410:1Jane 31291:25 31292:431286:20 31287:1,6laid 31289:6 31308:1531433:2531410:1431292:1731287:14,16,2231369:5 31436:14length 31273:1likelihood 31264:16January 31235:1531288:13,15,21,25Land 31248:2131368:1731322:1 31346:18jet 31269:431291:3,1131425:12lengthened 31376:1931405:24 31431:2JJJ167 31364:1631291:23 31292:10language 31303:9,16lengths 31378:11likewise 31266:18					
31275:2331285:9,13 31286:7lacking 31298:931403:4 31417:5,631409:23 31410:1Jane 31291:25 31292:431286:20 31287:1,6laid 31289:6 31308:1531433:2531410:1431292:1731287:14,16,2231369:5 31436:14length 31273:1likelihood 31264:16January 31235:1531288:13,15,21,25Land 31248:2131368:1731322:1 31346:18jet 31269:431291:3,1131425:12lengthened 31376:1931405:24 31431:2JJJ167 31364:1631291:23 31292:10language 31303:9,16lengths 31378:11likewise 31266:18					
Jane 31291:25 31292:431286:20 31287:1,6laid 31289:6 31308:1531433:2531410:1431292:1731287:14,16,2231369:5 31436:14length 31273:1likelihood 31264:16January 31235:1531288:13,15,21,25Land 31248:2131368:1731322:1 31346:18jet 31269:431291:3,1131425:12length end 31376:1931405:24 31431:2JJJ167 31364:1631291:23 31292:10language 31303:9,16lengths 31378:11likewise 31266:18					
31292:1731287:14,16,2231369:5 31436:14length 31273:1likelihood 31264:16January 31235:1531288:13,15,21,25Land 31248:2131368:1731322:1 31346:18jet 31269:431289:8 31291:3,1131425:12length end 31376:1931405:24 31431:2JJJ167 31364:1631291:23 31292:10language 31303:9,16lengths 31378:11likewise 31266:18					
January 31235:1531288:13,15,21,25Land 31248:2131368:1731322:1 31346:18jet 31269:431289:8 31291:3,1131425:12lengthened 31376:1931405:24 31431:2JJJ167 31364:1631291:23 31292:10language 31303:9,16lengths 31378:11likewise 31266:18					
jet 31269:431289:8 31291:3,1131425:12lengthened 31376:1931405:24 31431:2JJJ167 31364:1631291:23 31292:10language 31303:9,16lengths 31378:11likewise 31266:18					
JJJ167 31364:16 31291:23 31292:10 language 31303:9,16 lengths 31378:11 likewise 31266:18					
1 3 3 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1					
JJJ178 31229:23 Keir 31265:15 31292:3 31401:7 31403:14 31401:24 31295:24					
	/ 31 1 1 25-				line 31242:13,13,19,20
					31248:15 31249:3,4,7
					31254:18 31255:1
					31257:12 31273:21
					31282:17 31298:23
JJJ178.8 31230:16 31294:18 31346:21 31263:6,13 31267:2 lethal 31269:1 31303:1 31341:9		Parts Victorian Internal		-	
333170.0 51250.10 51540.21 51205.0,15 51207.2 Fedda 51205.1 51541.7			51205.0,15 51207.2		

RealTime Transcriptions

			. ,	
				Page 1
31344:25 31346:25	31363:25 31364:13	main 31251:10	materialise 31416:13	member 31352:9
31361:11 31363:21	31373:17 31377:19	31303:10 31339:16	matter 31273:17	members 31262:20
31363:21,21 31396:7	31394:17 31400:4	31339:16 31340:2	31274:12 31278:9	31307:4 31310:1
31399:22 31404:22	31403:13 31410:7	31369:10	31288:17 31290:13	31325:12,13 31338:6
31406:4,11 31407:17	31422:12	maintain 31297:21	31300:22 31317:21	31346:17 31347:1
31409:1 31411:8	looked 31245:2	Majambozi 31434:23	31331:6,12 31338:17	31356:25 31377:6
31414:10,15,16	31315:14	Majesty's 31272:24	31338:18 31352:6	31411:2 31433:5
31415:10 31416:18	looking 31234:16	31291:19	31372:18 31409:20	memoire 31292:23
31429:6 31432:10	31277:7 31293:14	major 31380:10	matters 31368:18	memory 31285:15
31433:14,14	31294:19,25 31302:1	majority 31232:19,20	Maximus 31276:1	31292:13 31295:6
lined 31249:6 31406:6	31337:24 31339:6,7	31249:21 31251:21	mayhem 31351:5	31314:15,25
lines 31242:18	31343:13 31344:11	31262:4 31273:23	31352:13	31400:11
31250:24 31251:9	31353:13 31355:10	31285:9 31289:8	ma'am 31399:13	men 31311:9
31257:1 31263:1	31366:21 31386:11	Major-General	Mbombo 31261:3,11	mention 31309:7,11
			-	
31264:4 31314:19	31390:11 31397:20	31298:18 31328:20	31298:25 31318:19	31316:19,22 31335:1
31416:14	31400:7 31404:2	31371:14 31380:4	31324:7 31360:13	31349:12 31352:11
link 31323:6	31405:10,17	makeup 31299:4	31369:7 31371:19	31356:4 31413:10
linked 31408:12	31414:17 31417:15	Makhubela 31387:17	31380:4,13,19	mentioned 31234:25
liquor 31274:5	31417:16 31429:12	31388:2	31382:12 31399:2	31253:25 31272:21
list 31280:7 31285:1,2	looks 31256:5 31313:18	making 31240:8	31407:21	31278:20 31335:19
31292:19 31337:11	lost 31328:16 31437:7	31241:9,19,23	Mbombo's 31301:9	31358:3 31360:6
31356:7 31434:24	lot 31233:9,10	31242:21 31253:8	31304:1 31320:2,19	mentoring 31268:17
listed 31237:19	31248:18 31250:12	31261:9 31272:3	31369:11	menu 31268:3
31279:8,15 31295:9	31250:23 31256:15	31279:17 31280:22	McCain 31342:18	Merafe 31304:20
listen 31373:12	31258:24 31266:1	31317:5 31328:4,11	McCann 31343:24	31305:9 31306:4
listening 31419:22	31267:18 31275:8,18	31338:6 31345:7	McIntosh 31384:19	31307:1 31308:20,24
literally 31247:21	31277:20 31281:15	31360:9,11,11	31389:25 31391:21	31311:14,16
31249:5				
	31292:5 31297:16	31368:4 31380:15	mean 31246:20	31312:23,23,25
little 31253:4 31297:23	31299:17 31301:12	31382:15 31383:19	31253:18 31255:22	31313:22,22 31315:7
31347:20 31355:17	31319:23 31333:2,19	31435:15	31274:19 31281:19	31315:11,15 31317:5
31361:14	31334:25 31340:14	Malawi 31234:7	31295:8 31313:7	31317:5,6,8 31318:5
live 31254:3,4 31267:22	31352:2 31359:18	malice 31373:4	31371:7 31375:6	31318:7 31333:7,12
31270:7 31423:2,5	31367:10 31402:23	man 31356:23	31405:18 31406:15	31333:15
31436:23	31403:8,11 31404:15	managed 31234:11	31408:7 31410:9	Merafe's 31304:20
living 31251:8	31406:23 31407:25	31329:24 31390:1	31411:9 31413:18	31333:5
LLL11 31298:6	31409:11 31410:12	management 31279:10	31427:16	Merafi 31329:7
located 31258:3	31424:7 31426:4	31279:12 31356:16	meaning 31412:21	merely 31392:20
31312:1	31432:10 31435:16	31357:9 31369:7	means 31248:17	merits 31410:3
Loest 31305:17	lots 31256:22 31258:22	31371:20 31416:22	31266:10 31338:18	message 31240:12,13
logical 31302:1	31271:4 31272:8	31417:12 31418:2	31352:19 31381:14	31390:10,15
31348:21	31273:9 31292:21	31419:4 31420:22	31415:12 31419:12	31408:10
London 31233:25	31297:20 31304:14	manages 31384:21	31427:15 31430:7	messages 31390:9
31256:6 31283:19	31307:25 31313:17	manifests 31427:1	meant 31237:23	met 31333:22
31291:15	31326:7 31348:19,20	marches 31249:23	31296:7 31342:4	metal 31247:18
long 31241:16	31384:8 31399:16	31252:4	measure 31383:21,25	31248:6 31256:13
31247:18 31268:8	loudspeaker 31393:13	marching 31249:19,20	31387:13 31389:6	31257:2
31326:3,13 31368:24	31393:20	Marikana 31260:19	mechanism 31390:5	Microphone 31304:18
31397:24,25	loudspeakers 31390:8	31277:7 31293:8,20	mechanisms 31272:20	31309:19 31409:3
31412:24 31421:4	low 31274:25	31294:23 31345:6	31354:2 31390:23	middle 31231:18,19
longer 31271:6	lower 31255:3	31407:13 31408:20	media 31240:3 31383:9	31268:14 31275:13
31272:11 31333:23	lowest 31232:10	31412:3 31416:22	31409:19	31278:12
31367:9 31432:15	Loyalist 31251:8	31433:13	medium 31270:22	mightn't 31255:6
longstanding 31350:21	lucky 31417:21	marked 31229:22	meet 31260:3	miles 31252:1
31352:14 31353:4	lumens 31354:5	31230:21 31231:25	meeting 31234:15	military 31248:9
Lonmin 31356:2	lunch 31333:23	31237:6 31244:2	31262:10 31264:9	mind 31253:21
31358:11	31437:6	31245:7,17 31283:11	31348:2,4,6 31349:2	31294:19 31310:11
look 31237:12 31270:1	luxury 31266:2,4	31376:14	31359:4 31361:15	31311:21 31319:6
31277:18 31278:2	lying 31396:12 31432:9	masonry 31254:12	31368:2 31369:7,9,10	31321:13 31324:12
31281:19,22	L-A-T-O 31229:18	31255:3	31369:24 31370:18	31324:14 31363:2
31284:25 31285:18	L-A-T-O-W-G-A-E	massive 31318:25	31370:22 31371:1,13	31389:16 31390:2
31292:18 31293:18	31229:19	match 31258:17	31372:9,11,14	minds 31418:14
31294:22 31296:17	a for the second	31274:5 31418:3	31375:25 31377:21	mine 31384:22
31302:7,18 31308:21	M	31419:6	31404:3	miners 31309:8,16,17
31314:13 31315:13	machete 31405:1	material 31260:18	meetings 31262:11	31311:5 31312:1
31316:13 31323:22	machine 31360:7	31287:1 31333:20	31265:12	31313:8 31327:24
31342:10,15 31343:9	magnitude 31359:25	31418:5	meets 31399:20	31336:18
ARCHIVE FO	R JUSTICE		L	<u> </u>

RealTime Transcriptions

Pretoria

				Page 1
minimal 31431:7,23	31395:3 31400:10	31248:13	31324:10 31327:2	31350:22 31352:18
minimising 31343:8	31412:19 31420:5	murder 31351:5	negotiates 31303:22	31353:4 31411:23
minimum 31277:23	31437:4,10	31352:13 31417:17	31312:17 31319:1	31412:1,8 31420:24
31319:4	move 31241:23	murders 31417:16	31327:3	Northumbria 31291:10
minor 31250:18	31246:6 31260:15	mustn't 31357:4	negotiating 31384:18	notable 31251:25
31383:4	31268:23 31284:24	M-O 31229:17	negotiation 31277:24	note 31333:15 31334:9
minute 31363:24	31298:15 31317:21	M-O-L-A-T-O-W-A	31320:14 31391:14	31334:21 31335:3,9
31364:1 31369:8,8,24	31337:2 31361:9	31229:16	negotiations 31321:5	31373:20 31402:21
31370:18 31387:4	31363:23 31366:3		31384:14	31435:19
31403:5,5	31383:13 31390:25	<u>N</u>	negotiator 31384:20	notebooks 31313:18
minutes 31276:21	31394:13,16 31398:2	n 31299:6	neighbourhood	notes 31332:18 31334:8
31289:14 31304:2	31403:18 31405:8 31406:21 31410:10	nails 31248:2 31256:13	31267:6 neutral 31240:2	31369:1 31372:13
31319:9 31320:7 31329:14 31348:1	31406:21 31410:10	name 31231:17,19 31291:16 31415:3	31334:23	noticed 31413:8 notified 31250:14
31371:7 31372:9,11	moved 31239:11,12	names 31231:16,18,22	neutralise 31426:14	no-one 31400:3
31372:15,16,17,19	31242:20 31270:15	31296:22 31354:12	31427:3,22,25	NUM 31351:20
31386:24 31403:7,8	31276:7 31285:9	National 31356:16	never 31255:9	31352:4,9 31356:25
31437:1	31292:6 31360:3	31357:9 31369:7	31262:23,24	number 31229:21
misapprehension	31406:13	31371:20	31273:11 31274:21	31232:17 31234:6
31307:5	movement 31238:13	nationalist 31252:9	31277:4 31306:7	31240:21 31248:24
mischief 31305:24	31346:11 31386:23	natural 31285:14	31308:6 31333:21	31250:19 31252:15
misinterpretation	moving 31247:22	31348:19	31353:9 31417:8	31252:19,20
31242:5	31248:8 31324:14	nature 31248:16	31419:7	31255:24 31256:24
misinterpreted	31327:18 31335:13	31258:21 31262:9	nevertheless 31388:5	31257:2,2,6 31259:18
31332:19,20	31338:10 31368:10	31263:5 31267:5	new 31228:15 31229:4	31267:2 31277:13
mislead 31285:16	31375:15 31400:25	31269:21 31295:25	31244:15	31279:13 31280:14
31374:19	31410:5,10 31420:9	31310:4 31311:24	news 31247:3	31280:23 31282:11
misperception 31390:6 misquotes 31417:7	mowed 31430:17 Mnombo 31260:20	31354:20 31408:11 31412:24 31435:21	night 31260:5 31292:21	31282:17 31292:14
misquotes 51417.7 missed 31373:10	Mpembe 31260:20 31261:2,8,14 31297:3	near 31435:12	31329:12 31356:13 31356:13,13 31357:9	31294:11,24 31296:4 31296:11 31298:10
mission 31418:25	31297:7,9 31298:18	nearly 31271:16	31357:25 31360:13	31300:21 31301:2,17
mist 31269:6	31298:22 31300:8	necessarily 31254:20	31361:15 31362:6	31301:18 31308:4
mistaken 31370:6	31301:11 31302:13	31255:20 31395:11	31401:15,18 31410:9	31312:23 31316:19
misunderstanding	31302:22 31303:4,16	31426:24	31410:10	31336:8 31346:21
31380:1	31305:20 31306:13	necessary 31286:17,19	nine 31329:3 31332:15	31364:15 31367:4,8
misunderstood	31307:9,15 31308:7	31306:7 31324:4	31332:18,24 31334:1	31368:17 31370:12
31332:9 31373:10	31308:11,20,23	31357:25 31369:1	31386:24 31434:19	31373:21 31378:6
31397:7 31407:10	31309:4,15,16	31390:9 31414:23	31436:17,18	31386:22 31402:18
mitigate 31295:22	31310:10,12,14,22,25	31415:14 31428:12	NIU 31378:5 31405:16	31408:21 31409:13
mitigating 31414:1	31311:20 31313:14	necessity 31423:12	31433:14	31410:9 31415:15,18
mitigation 31416:9	31313:21 31314:1,19	need 31230:15	NIU/STF 31242:14	31420:25 31422:6,16
mode 31269:3,5	31315:24 31317:4,9	31235:10 31250:17	noise 31279:18	31422:19,24
models 31280:22 modification 31385:21	31317:12,25	31265:23 31266:6	Noki 31384:16	31424:18 31425:22
modifying 31385:22	31318:12,24 31321:12 31324:6,21	31276:11 31295:3 31300:24 31317:2	31389:21 31391:14 31391:21,23	31425:25 31428:22 31429:2 31430:4
Molatowagae 31229:14	31325:16,25	31318:1 31320:20	31392:17,18,23	31429.2 31430.4
Molotov 31247:19	31326:20,24	31321:17,19 31322:3	31393:9,21 31395:1	31431:15 51455:12
31254:12,24	31327:13 31328:20	31346:18 31361:13	31396:19	31435:4
moment 31262:5	31331:7,10,14,15,23	31368:13 31382:8,9	non 31309:14 31375:8	numbering 31246:11
31290:21 31303:21	31335:7,9 31356:13	31407:22 31409:7	non-use 31358:6	31247:5
31307:1 31323:5	31356:18 31359:4,11	31413:25 31415:5	normally 31271:17	numbers 31228:6
31432:3,16	31361:14 31365:11	31417:1 31423:22	north 31232:21,24	31264:1 31309:3
Monday 31380:22	31365:12 31377:15	31427:25 31428:11	31233:7 31250:1,21	31378:4
31417:24	31380:21 31381:10	31430:23	31251:5,22 31259:2	numerous 31242:9
money 31418:12	31399:4	needed 31298:14	31262:2 31271:8	31247:23 31250:16
monitor 31265:5	Mpembe's 31300:7	31323:25	31378:7 Northern 31232:5 7 23	31254:10 31255:14
Moolman 31372:14 moral 31433:20,25	31303:21 31305:7 31306:23 31307:12	needs 31254:22 31258:3 31297:5	Northern 31232:5,7,23 31234:25 31246:16	31256:11 31258:9 31262:10,17
moral 31433:20,25 morning 31264:10	31309:8 31311:23	31258:5 31297:5	31234:25 31240:16 31246:18 31247:3,20	31265:25 31316:4
31272:2 31283:11	31313:19 31318:18	31313:4 31378:6,7,20	31240.18 31247.3,20 31247.3,20	31425:2
31340:22 31369:20	31331:20 31368:9	31381:14 31383:22	31247.24 51248.19	nuts 31248:6
31370:5,16,24	MP5 31412:25	31383:23 31407:20	31251:23 31253:25	Nyala 31238:13
31371:5 31372:4	multi 31275:11	negotiate 31253:24	31265:3,6 31267:13	31239:10 31383:17
31374:9,14 31383:16	multiple 31378:1	31254:2 31268:22	31271:7 31272:6,9	31391:15
31389:18 31392:2,13	multi-day 31271:2	31318:13 31319:16	31292:1,5,8,15	Nyalas 31242:17
31393:3 31394:20,23	munitions 31247:23	31319:25 31321:4,11	31342:13 31343:5	31305:12,23
ARCHIVE FO	R JUSTICE	L	l	1

Tel: 011 021 6457 Fax: 011 440 9119

RealTime Transcriptions

Marikana Commission of Inquiry

				Page 1
31389:17 31392:2,9	31371:16	31383:1 31424:17	opposed 31248:25	outside 31239:15
31394:19 31404:8,8	October 31245:2	onwards 31376:7	31251:3 31284:2	31240:4 31274:23
	31285:17 31363:20	on-street 31247:4	31285:13 31303:6,18	31293:20 31375:17
0	31397:24	open 31241:20,21,24	31315:1 31317:9	overall 31233:1
o 31261:6,15	odd 31295:12 31334:9	31252:21 31278:10	31347:16 31373:15	31238:5,7 31260:20
oath 31231:4,5	31354:25	31310:11 31363:2	31392:4 31396:10	31261:6,7,12,14
31233:13 31235:10 31290:24 31329:17	offer 31267:24 31277:15 31308:2	opening 31359:8 operated 31401:21	31420:1 31432:2 opposing 31268:13	31277:22 31278:24 31280:10,23 31286:9
31364:8	31309:1 31340:16	operating 31258:9	31275:7	31294:3 31297:4
object 31364:10	31349:1 31404:23	31261:1 31290:22	opposite 31420:25	31303:5 31332:22
objection 31239:15	offered 31341:23	31346:23 31388:11	opposition 31275:9	31335:23 31337:5
31240:3 31401:16	offering 31314:9	31399:2,6	option 31270:1	31349:20 31378:25
objections 31400:6	31430:20	operation 31242:7	31318:15 31319:17	31379:2,8,19,23
objective 31240:11	office 31272:22	31252:19 31258:21	31320:22,22 31321:2	31380:19 31381:3
31243:23 31310:5,8	31382:14	31260:3,11 31261:23	31321:3,3,4 31324:11	31383:2
objectives 31261:22	officer 31232:7,9 31246:6 31257:11	31262:9,12,20,21	31327:2 31339:18,20	overly 31319:15
31262:1 31398:23 31399:20	31259:8,15,23	31263:5,6,8,13 31264:12,13,25	31339:22 31356:17 31357:10,18	overnight 31281:22 31282:3
obligation 31434:1	31271:5 31292:12	31267:10 31270:11	31360:19 31362:7,12	oversee 31292:2
observe 31428:2	31303:6 31304:12	31271:22 31273:3	31368:10 31369:5,13	overseen 31272:9,12
observed 31428:13,14	31309:4 31311:24	31277:5,7 31295:1	31381:2 31388:4	overwhelmingly
observer 31277:12	31313:5,6 31314:5,14	31296:3 31298:18,20	options 31269:25	31423:23
obtained 31369:3	31315:1 31326:5,10	31299:13,19	31405:14	over-viewing 31257:20
obvious 31245:22	31326:18 31327:20	31300:13 31313:7	oral 31298:10 31315:14	owner 31233:20
31312:17 31370:21	31330:18 31331:4	31317:1 31318:25	31333:18 31337:21	oxygen 31269:8
31375:2 31403:21 31429:23	31339:11 31342:15 31343:15 31344:8,14	31321:1 31323:25 31326:21 31335:15	31342:1 31355:20 31363:7,18,22	oxymoron 31250:24 o'clock 31370:18
obviously 31236:25	31344:16,18,20	31337:2,9 31344:7	31373:24 31374:17	31389:19 31393:2
31244:24 31248:7	31354:1 31359:17	31346:13,16,20	31380:17 31381:20	31437:4,10
31254:5,18,21	31381:6 31384:8,20	31347:8,12,24	31388:14 31397:22	o'clock 31393:21
31265:21 31271:6	31387:17,18 31388:2	31350:9 31353:18	31409:11 31426:13	31395:3
31273:5 31277:12	31391:21,24 31414:3	31354:20 31359:25	Orange 31256:1,2	
31281:25 31282:10	31420:23 31424:1,20	31365:10 31366:4	Orchard 31292:13	P
31285:16 31287:4	31424:21 31425:18	31375:21 31378:2,2,9	31293:1	packed 31248:5
31288:17 31294:23	31425:19 31426:14	31378:13,18	ordered 31244:16	page 31244:3 31278:21
31297:8,12 31301:13 31301:22 31306:12	31426:16,20,23 31427:25 31431:9,11	31379:24 31391:2 31403:7 31408:17	orders 31381:13 31399:24	31278:24 31294:2 31299:22 31329:25
31309:21 31310:10	31433:22,23 31434:8	31403.7 51408.17 31412:24 31416:11	order/public 31417:13	31337:6,13 31345:3
31310:18 31314:3	31434:10 31435:25	31419:2,3 31421:14	ordinarily 31267:11	31345:14,15,18
31325:24 31333:21	31436:16	31424:22	31299:2 31318:4	31350:3 31363:21,22
31338:4 31339:23	officer's 31329:23	operational 31232:20	31384:9 31394:17	31364:17 31367:10
31356:15 31357:5,13	31423:16	31257:17 31258:7	ordinary 31232:15	31376:7,10,11
31357:15,25 31359:6	official 31351:20	31260:21 31264:10	31421:2 31430:4	31377:4 31393:7,17
31359:12 31363:2	oh 31390:11	31267:22 31303:7	ordinated 31292:14	31393:18 31397:14
31372:3 31373:7	okay 31235:7 31238:9	31336:15 31377:6	organisation 31233:24	31398:6 31402:22 31403:13,20
31375:9 31391:1 31392:14 31397:24	31268:23 31276:24 31322:6 31367:23	operations 31233:4 31248:17,17 31257:5	31265:4 31272:23 31285:10 31326:18	31405:15,20
31402:19 31408:3	31389:10 31399:1	31248.17,17 31257.5	31338:23 31339:9	31420:20
31427:14,17 31431:5	ombudsman's	31259:19 31261:18	organisations 31233:22	pages 31337:20
occasion 31424:6	31272:22	31262:17 31265:14	31255:25	31349:5,14 31373:16
occasionally 31355:12	once 31242:19 31311:7	31267:2 31270:8	orientate 31376:21	paid 31418:13
occasions 31247:21	31356:7 31392:23	31273:5 31343:7	orienting 31358:12	pangas 31320:25
31248:7,9 31253:19	31394:25 31402:2	operators 31390:14	original 31239:6	paper 31272:3
31253:22 31254:10	31409:20 31424:12	opinion 31293:11	31300:12 31370:14	31319:13
31255:14,17 31256:11,24	31429:15 31437:5 ones 31334:8,22	31308:2 31314:9 31323:23 31329:1	31383:15 31410:8 originally 31297:12	para 31393:7,23 parade 31252:4,10,15
31259:19 31272:25	31399:23	31341:20 31345:5	31349:18 31370:3	31256:1,8 31268:12
31289:2 31296:4	one's 31350:25 31352:9	31346:9 31381:24	31383:11 31389:18	31268:14 31271:11
31308:5 31390:19	31357:16	31397:16	outcome 31268:18	31271:13,14
31413:3 31435:8	ongoing 31234:17	opinions 31245:25	31273:3 31280:19	paraded 31271:8
Occupation 31336:9	31246:16 31266:20	31337:9 31418:6	31308:16 31354:14	parades 31249:20
occur 31355:23	31271:22 31275:21	opportunity 31281:6	31419:12	31252:14 31255:25
31424:6	31275:25 31293:1	31281:11 31315:6	outlined 31265:25	31256:10 31271:14
	31295:12,19 31299:6	31316:13 31319:1,2	outlining 31428:7	parading 31255:23
occurred 31345:6,9				
occurred 31345:6,9 31435:23 occurrence 31348:15	31310:23 31336:22 31353:18 31376:4	31332:10 31364:13 31401:5,8 31402:1	outset 31321:20 31322:6 31380:16	paragraph 31237:19 31238:6,9,11

Tel: 011 021 6457 Fax: 011 440 9119

RealTime Transcriptions

Marikana Commission of Inquiry

31249:20 31252:15 31275:3 31275:3,20 perform 31268:17 performed 3123:2 31351:7 31353:18 31381:16,17 31300:4 31427:16 points 31241:3,24 31424:3,21 31425:17 portfolio 31291:8 31280:13 31281:8 31280:23 31292:23 31299:19 31326:20 31328:18 31261:8 31260:19 31341:5,58,11 31391:20 31396:25 31244:23 313280:15 31284:21 31335:21 31244:23 31280:15 31284:21 31335:21 portfolio 31291:8 portfolio 31291:8 31320:12,13 31331:1 period 31252:11,20,25 31335:6 31337:7 31252:3 31271:18,24 3144:2 31432:12 313391:17 31392:7 31239:13 31240:21 31335:6 31337:7 31250:18 31386:24 31414:2 31432:21 31391:17 31392:7 31239:13 31240:21 31335:6 31337:7 31229:14 31386:24 31414:2 31432:21 31391:17 31392:7 31239:13 31240:21 31335:6 31337:7 31229:14 31386:24 plain 31405:19 31426:59 313242:60 31335:19 31367:16 31409:9 31422:14 31379:20 31388:13 polex 31247:18,18 31342:16 31343:2 313376:3 31377:19 31258:3,8 31265:7 31266:17,21 31266:25 31242:9 31344:6 31353:4 31338:2 31384:13 31299:24 31303:18 31266:12 31266:25 31248:14 3145:16 3144:6 313432:1 31337:53 31377:19				J	Treton
B1240.18 S1242.214 B3398.22 31403.19 31408.10 pernd 31247.19 31414.5 B1247.19 31377.25 3128.8 B1249.51 6 325.11 31377.25 3128.8 31390.17 31351.8 JIST 2019 JI					Dago 1
31244/4 31279/8 31408:10 3144/4.5 3133725 31338/8 31261:1322.19 312807 31302:11 3135725 0 313301:1318 31201:17,233128/2 31261:17,233128/2 313301:131318 313725 0 313725 0 313341:17 31344:6 31262:17,233128/2 31340:25313714 31396:16 313831:17 31384:17 31384:17 31344:12 31361:13 31272:13128/2 31366:16 31272:13128/2 31272:128/3128/2 31272:13128/2 31272:13128/2 31272:14128/2 3128/2 3128/2 3128/2 3128/2 3128/2 3128/2 3128/2 3128/2 3128/2					Fage 1
31244.4 31290.8 31408.10 3144.45 31337.25 31338.8 31261.71.33138.8 31261.71.33138.8 31280.71.30.01 31330.17 3130.17 3130.17 3130.17 3130.17 3130.17 3130.17 3130.17 3130.17 3130.17 3130.17 3130.17	31240:18 31242:2.14	31398:22 31403:19	petrol 31247:19	31324:1.3.8.9	31249:5.16 31251:18
312207 31302:24 parties 31280:18 parties 3136:10 31387:31342:11 3120:17.12.31282.1 31330:17 31331:8 31333:14 31381:7 31345:7 31345:7 31345:7 31345:7 31345:7 31345:7 31345:7 31345:7 31345:7 31345:7 31345:7 31355:3 31265:1 31355:3 31365:1 31365:1 31365:1 31365:1 31365:1 31365:1 31365:1 31365:1 31365:1 31365:1 31365:1 31365:1 31365:1 31365:1 31365:1 31365:1 3137:1					
31322:20 31330:17 31330:17 31330:17 31330:17 31330:17 31330:17 31330:17 31330:12 31350:12 31360:12 31350:12 31360:13 31360:13 31360:13 31360:13 31360:13 31360:13 31360:13 31360:13 31360:13 31360:13 31360:13 31360:13 31360:13					
31330:17 313318 31375:20 photocopic 31322:1 313456 31346:16 31327:22 31280:1 313374:31348/91:9 parts 31209:1332:1 31355:13365:43365:44 31328:1321232:12 31374:31388/6 parts 3129:15 photocopic 31322:14 31367:231368:51.4 31297:193136:15 31373:231398:10 parts 3129:15 photocopic 31202:10 31376:12.52 31423:11 31237:231398:10 31355:12 photocopic 31202:14 31376:12.53 31232:13 31404:5 parts 31232:15 31279:14 3120:12 31279:14 3128:12 3128:13 31223:13 31404:5 parts 3129:12 31250:24 31250:1 3128:13 3126:33 3136:4 31379:13 31407:6 3128:13 3126:5 3120:24 31251:2 3129:24 3120:1 31250:24 3126:1 3128:13 3126:5 31278:13 31278:1 3120:24 31251:2 3129:24 31251:2 3128:13 3126:5 31278:13 3126:5 3128:14 3126:5 3120:24 31251:2 3128:14 3128:15 3126:24 3126:12 31375:21 3186:14 31375:21 3186:14 3120:24 31251:2 3128:14 3128:15 3128:14 3128:15 3128:14 3128:15 3128:14 3128:14 3120:24 3128:15					
31337;4 31362,3137;4 31362,413 31365,413 31366,41,33 31261,2138,213 31362,3137;4 31366,132,124 31355,31366,1,41 31355,31366,1,41 31355,31366,1,41 31357,1231366,1,41 31366,152,123 31361,143 31291,2231202,1 31366,152,123 31366,152,123 31366,152,123 31366,152,123 31366,152,123 31366,152,123 31366,152,123 31366,152,123 31366,152,123 31366,152,123 31366,152,123 31366,152,123 31357,123,1337,123,1357,133,132,135 31366,152,123 31357,123,137,123,1357,131,123 31366,152,123 31357,123,137,123,132,123,133,132,133,133,133,133,146,133,133,146,133,133,146,133,133,146,133,133,146,133,133,146,133,133,146,133,133,146,133,133,146,133,133,146,133,133,146,133,133,146,133,133,146,133,133,146,133,133,146,133,133,146,133,133,142,133,133,142,133,133,144,123,1378,144,133,133,144,123,1378,144,133,133,144,123,1378,144,133,133,144,123,1378,144,133,133,144,123,1378,144,133,133,144,133,133,144,133,133,144,133,133		1 0			
3139/25313724 31359:1931306:5 photocopy 31322:14 31366:15,21,25 31129:123129:12 31379:31398:6 past/hwork 31251:6 photocopy 3129:510 31376:12382:93141:15 31376:12382:93141:15 31237:2331257:12 parter 31232:16 photocopy 3129:10 31376:12382:93141:15 31423:11 31237:2331257:12 parter 31232:16 photocopy 3129:17 31377:16 31328:233138:2 31328:233138:233138:2 31328:2331326:331354:33134:128:233126:631249; photocopy 31322:14 photocopy 31322:14 photocopy 31322:14 photocopy 31322:14 photocopy 31322:14 photocopy 31322:14 photocopy 3132:23 photocopy 3132:23:14 photocopy 3132:23:128:128:128:128:128:128:128:128:128:128	31330:17 31331:8	31375:20	phone 31260:2 31352:1	31345:6 31346:16	31272:21 31280:12
3139/25313724 31359:1931306:5 photocopy 31322:14 31366:15,21,25 31129:123129:12 31379:31398:6 past/hwork 31251:6 photocopy 3129:510 31376:12382:93141:15 31376:12382:93141:15 31237:2331257:12 parter 31232:16 photocopy 3129:10 31376:12382:93141:15 31423:11 31237:2331257:12 parter 31232:16 photocopy 3129:17 31377:16 31328:233138:2 31328:233138:233138:2 31328:2331326:331354:33134:128:233126:631249; photocopy 31322:14 photocopy 31322:14 photocopy 31322:14 photocopy 31322:14 photocopy 31322:14 photocopy 31322:14 photocopy 3132:23 photocopy 3132:23:14 photocopy 3132:23:128:128:128:128:128:128:128:128:128:128	31337:14 31349:19	parts 31290:7 31312:1	photocopied 31301:4	31355:3 31366:4.13	31280:12 31283:21
31379-31308-6 pass 31305:1 photocopy 31295:10 31367:2 31368:5.14 31367:2 31368:5.14 31367:2 31368:5.14 31367:2 31368:5.14 31367:2 31368:5.14 31367:2 31368:5.14 31367:2 31368:5.14 31367:2 31368:5.14 31367:2 31368:5.14 31367:2 31368:5.7 31367:2 31368:7 31367:2 31368:7 31367:2 31368:7 31367:2 31368:7 31367:2 31368:7 31367:2 31368:7 31367:2 31368:7 31367:2 31368:7 31367:2 31368:7 31367:2 31368:7 31367:2 31368:7 31367:2 31368:7 31367:2 31368:7 31367:2 31368:7 31367:2 31368:7 31367:2 31368:7 31367:2 31368:7					
31403:20 31420:10 patchwork 31251:6 photographer 31377:23 31376:12,19 31376:8 31376:12,25 3142:13 31237:23 31398:10 att355:12 photographs 31279:17 31376:12,25 3142:13 31237:22 31398:10 att355:12 photographs 31279:17 31382:53 31362:53 31362:53 31322:16 parameters 3138:5 paus 3129:23 31280:33 31382:53 31328:12 31382:57 31234:43 3128:12 31277:15,30 31277:15,30 31277:15,30 31277:15,30 3128:13 3128:13 3128:13 3128:13 3128:12 3128:12 3128:12 3128:12 3128:12 3128:12 3128:12 3128:12.13 3128:12.13 3128:12 3128:12 3128:12 3128:12 3128:12 3128:12 3128:12 3128:12 3128:12 3128:12 3128:12 3128:12 3128:12 3128:12 3128:12 3128:12 3138:12 3138:12 3138:12 3138:12 3138:12 3137:11 3136:12 3138:12 3137:11 3136:12 3138:12 3138:12 31328:12 3138:12 3138:12					
paragraphs parteril jaraphras jaraphras <thjaraphras< th=""> <thjaraphras< th=""> <thj< td=""><td></td><td></td><td></td><td></td><td></td></thj<></thjaraphras<></thjaraphras<>					
3123722 31398:10 31255:12 photographs 31299:17 31377:16 31381:9 31232:28 parameters 3128:12 photographs 3129:19 31280:23 3128:12 31280:23 3128:12 31280:23 3128:12 31280:23 3128:12 31280:23 3128:12 31280:23 3128:12 31280:23 3128:12 31280:23 3127:14 31280:23 3128:12 31280:23 3127:14 31280:23 3127:14 31280:23 3128:14 31280:12 31280:12 31280:12 31280:12 31280:12 31280:12 31280:12 31280:12 31280:12 31280:12 31280:12 31280:12 31280:12 31280:13 31280:12 313280:12 31280:12 31280:12 313280:12 31280:12 31280:12 313280:12 31280:12 31280:12 313280:12 31280:12 313280:12 31280:12	31403:20 31420:10	patchwork 31251:6	photographer	31375:12,19 31376:8	31382:9 31411:15
3123722 31398:10 31255:12 photographs 31299:17 31377:16 31381:9 31232:28 parameters 3128:12 photographs 3129:19 31280:23 3128:12 31280:23 3128:12 31280:23 3128:12 31280:23 3128:12 31280:23 3128:12 31280:23 3128:12 31280:23 3128:12 31280:23 3127:14 31280:23 3128:12 31280:23 3127:14 31280:23 3127:14 31280:23 3128:14 31280:12 31280:12 31280:12 31280:12 31280:12 31280:12 31280:12 31280:12 31280:12 31280:12 31280:12 31280:12 31280:12 31280:13 31280:12 313280:12 31280:12 31280:12 313280:12 31280:12 31280:12 313280:12 31280:12 31280:12 313280:12 31280:12 313280:12 31280:12	paragraphs 31237:13	patrol 31232:16	31279:24 31280:2	31376:12,25	31423:11
parameters 31257:e2 pattern 31348:19 31279:19,20,21 31382:23 31385.7 31234:24 31288:1 314045 pause 3143:129:13 3129:31 31280:33 3134:5 31406:68 31278:19 31278:19 31406:81 pause 3143:216 31382:1 31380:5 31379:53 31407:6 31278:19 31279:20 31233:21233:21237:1 pause 3143:216 pixet 3139:31322:17 physically 3128:4 31389:13 3129:4:25 31280:19 3129:4:23 31280:19 3129:4:23 31280:19 3129:4:23 31280:19 3129:4:23 31280:19 3128:4:13 3134:4:13 3138:1: 31393:4 3142:13 31344:12 31378:4: 31393:4 31432:1 31280:19 3128:1: 31280:19 3129:2:13 31280:19 3129:2:13 31280:19 3129:2:13 31280:19 3128:1: 3136:1279:1 31280:1279:12 31292:13 3129:1 31280:13 3130:0: political 3124:6:3130:0: political 3124:6:3130:0: political 3124:6:3130:0: 1336:1: 31280:13 3130:0: political 3124:6:13 1280:1 3136:1:13:3130:0: 3136:1:13:3130:0: 3136:1:13:3130:0: 3136:1:13:3130:0: 3136:1:13:3130:0: 3136:1:13:3130:0: 3136:1:13:3130:0: 3136:1:13:3130:0: 3136:1:13:3130:0: 3136:1:13:3130:0: 3136:1:13:3130:0: 3136:1:13:13:13:1:13:3130:0: 3136:1:13:3130:0:<		-	photographs 31279.17	31377.16 31381.9	policy 31232.18
paraphrase 31381.5 Paul 31292:13 31295:1 31280:3 3154:3 31406:8 31277:18.20 park 31394:23 pays 31392:23 1322:17 physically 31288:4 31379:5 31407:6 31280:18,19.20.24 part 31232:23 1236:12 pase 3124:21 31280:10,16.24 31280:10,16.24 31280:10,16.24 31241:5 31246:71.5 31285:10,16.24 picket 31237:14 31379:5 31407:6 31299:14 31343:42 31260:23 31266:25 31285:89,13 31286:8 jipses 31283:13,16.24 jipses 3126:15 jipses 3126:17 jipses 3126:12 jipses 3126:12 jipses 3126:12 jipses 3126:13.8 pipses 3124:13.38 pipses 3126:13.8 pipses 3124:13.38 pipses 3126:13.8 pipses 3124:13.38 pipses 3124:13.38 pipses 3124:13.38 jipses 3124:13.38 pipses 3123:13.8 jipses 3124:13.38 pipses 3123:13.9 jipses 3124:13.38 pipses 3124:13.38 pipses 3124:13.38 pipses 3124:13.38 jipses 3124:13.338					
31404:5 pause 3134:2:16 pause 3133:2:16 pause 3133:2:18 pause 313:2:18 pause 313:2:18		-			
park 1328-23 pay 31319-22 31322:17 physically 31288:4 31379:5 31407:6 31280:18,19.20,24 ard 12332 31236:19 31280:10,16,24 31281:01,61,62 31281:01,62 31281:01,62 31281:01,62 31281:01,62 31281:01,62 31281:01,62 31281:01,62 31281:01,62 31281:01,62 31393:43,432:7 31290:21,3128:13 31393:43,432:7 31391:431:31:14 31371:5 31281:20,128:15 31286:19,3128:19 31286:19,3128:19 31286:19,3128:19 31281:20,31274:14 9131:41:23,3178:24 31290:23,1282:19 31281:20,3128:19,3129:12 31281:20,31279:16 3133:31:43,3375:14 3133:31:43,3375:14 3133:31:43,3375:14 3133:31:43,3375:14 3133:31:43,3375:14 3133:31:43,3375:14 3133:31:43,3375:14 3133:31:43,3375:14 3133:31:43,3375:14 3133:31:43,3375:14 3133:31:43,3375:14 3133:31:43,3375:14 3133:31:43,3375:14 3133:31:43,3375:14 3133:31:43,3375:14 3133:31:43,333:14:33,338:14 3133:31:43,3371:14 3132:41:32:44 3139:44 3139:44 3139:45,333:46 3139:45,333:46 3139:45,333:46 3139:45,333:46 3139:45,333:46 3139:45,333:46 3139:45,333:46 3139:45,333:46 3139:46,332:26,333:1					
jard jard <th< td=""><td>31404:5</td><td>pause 31432:16</td><td>31356:1</td><td>plans 31294:25</td><td>31278:19 31279:8,10</td></th<>	31404:5	pause 31432:16	31356:1	plans 31294:25	31278:19 31279:8,10
jard jard <th< td=""><td>park 31394:23</td><td>pay 31319:22 31322:17</td><td>physically 31258:4</td><td>31379:5 31407:6</td><td>31280:18.19.20.24</td></th<>	park 31394:23	pay 31319:22 31322:17	physically 31258:4	31379:5 31407:6	31280:18.19.20.24
31241:5 312467.115 31250:2 31256.12 31283:10,16.2 31283:10,16.2 31283:10,16.2 31283:10,16.2 31283:10,16.2 31282:10,128:12 31282:10,128:12 31282:10,128:12 31282:10,128:12 31282:10,128:12 31282:10,128:12 31282:10,128:12 31282:10,128:12 31282:10,128:12 3128:12:12 3129:12:12:12 3129:12:12:12:12 3129:12:12:12:12:12:12:12:12:12:12:12:12:12:					
31253:17,21 31256:1 31283:01,06,24 picks 31416.20 piausible 31303:17 31344:12 31378:24 31262:3 31266:25 31284:28,82,325 picture 31355:8 jlaysel 31432:7 jlaysel 3128:11 jlaysel 3128:12 jlaysel 3128:11 jlaysel 3128:12 jlaysel 3126:11 playsible 31303:17 jlaysel 3126:13 jlaysel 3126:13 jlaysel 3126:13 jlaysel 3126:12 jlaysel 3126:13 jlaysel 3136:14 jlaysel 3136:14 jlaysel 3136:14 jlaysel 31375:43 jlaysel		-		-	
31262:3 31266:25 31284:2,8,23.25 jicture 31355:8 jigy 31428:11 31433:2 31379:1 31269:24 31278:21 3128126:80 31281:43 3126:13 jigy 31428:11 jigy 31428:11 jigy 31428:11 jigy 31428:11 jigy 31428:12 jigy 31428:12 jigy 31428:13 jigy 31428:13 jigy 31428:13 jigy 31428:13 jigy 31428:14 jigy 31428:13 jigy 3143:13 jigy 3143:13 jigy 3143:13 jigy 3143:13 jigy 3143:13 jigy 3142:13 jigy 3142:14 jigy 3143:13 jigy 3143:14 jigy 3143:13 jigy 3143:14 jigy 3143:13 jigy 3143:14 jigy 3143:15 jigy 3143:15 <					,
31269:24 31278:21 31285:8,9,13 31286:8 31393:4 314327 piayed 1261:17 politics 31251:8 31281:17 31282:15 31287:15,16,22 31315:14 31331:1 3135:6 31360:14 3136:14 31331:1 3136:14 31331:1 3136:14 31331:1 3136:14 31331:1 3136:14 31331:1 3136:14 31331:1 3136:14 3135:2 31334:14 3135:18 31336:14 3135:2 31334:14 3135:12 31334:14 3135:12 31334:14 3135:12 31335:14 3135:2 31334:14 3135:12 3135:14 3135:2 31334:14 3135:12 3135:14 3135:2 3135:14 3135:2 3135:14 3135:2 3135:14 3135:2 3135:14 3135:2 3136:15.16 31385:18 3130:1 3140:15 3140:2 3140:31 310:31 40:31 3140:1 3140:15 3140:2 3140:15 3140:2 3140:15 3140:2 3140:15 3140:2 3140:15 3140:2 3140:14 3139:13 3140:15 3140:2 3140:14 3139:13 3140:15 3140:1 3140:15 3140:1 3140:15 3140:1 3146:17 3140:14 3139:14 3141:13 310:1 3140:15 3140:1 3140:15 3140:1 3140:15 3130:1 3140:15 3130:1 3140:15 3130:1 3140:15 3130:1 3140:15 3130:1 3140:15 3130:1 3140:15 3140:1 3140:15 3140:1 3140:15 3140:1 3140:15 3140:1 3140:12 317:1 3124:15 313	·				
31269:24 31278:21 31285:8,9,13 31286:8 31393:4 314327 piayed 1261:17 politics 31251:8 31281:17 31282:15 31287:15,16,22 31315:14 31331:1 3135:6 31360:14 3136:14 31331:1 3136:14 31331:1 3136:14 31331:1 3136:14 31331:1 3136:14 31331:1 3136:14 31331:1 3136:14 3135:2 31334:14 3135:18 31336:14 3135:2 31334:14 3135:12 31334:14 3135:12 31334:14 3135:12 31335:14 3135:2 31334:14 3135:12 3135:14 3135:2 31334:14 3135:12 3135:14 3135:2 3135:14 3135:2 3135:14 3135:2 3135:14 3135:2 3135:14 3135:2 3136:15.16 31385:18 3130:1 3140:15 3140:2 3140:31 310:31 40:31 3140:1 3140:15 3140:2 3140:15 3140:2 3140:15 3140:2 3140:15 3140:2 3140:15 3140:2 3140:14 3139:13 3140:15 3140:2 3140:14 3139:13 3140:15 3140:1 3140:15 3140:1 3140:15 3140:1 3146:17 3140:14 3139:14 3141:13 310:1 3140:15 3140:1 3140:15 3140:1 3140:15 3130:1 3140:15 3130:1 3140:15 3130:1 3140:15 3130:1 3140:15 3130:1 3140:15 3130:1 3140:15 3140:1 3140:15 3140:1 3140:15 3140:1 3140:15 3140:1 3140:12 317:1 3124:15 313	31262:3 31266:25	31284:2,8,23,25	picture 31355:8	play 31428:11 31433:2	31379:1
31278:24 31279:2 31286:20 31287:26 piece 31284:3 31263:15 31262:19 31350:8 pior 31345:66,67 31289:35,1824:1 31287:15,16,22 3135:63 31360:14 pieces 31256:13,21 3134:64 31350:8 pior 31345:66,67 31290:23 1294:2 31291:23 11292:11 31257:13 1269:44 31287:15,169:44 31280:2 31333:14 3135:23 31333:14 3135:23 31333:14 3135:24 31333:14 3135:25 31333:14 3135:25 31333:14 3135:25 31333:14 3135:25 31333:14 3135:25 31333:14 3135:25 31333:14 3135:25 31333:14 3135:25 31333:14 3135:25 31333:14 3135:25 3134:13 3135:25 3134:12:0 3134:13 1129:27 3140:25 31437:11 3140:15 3140:21 3140:15 3140:21 3140:15 3140:21 3140:15 3140:21 3140:15 3140:21 3140:15 3141:27 3140:15 3141:27 3140:15 3141:27 3140:15 3141:27 3140:15 3141:27 3140:15 3141:27 3140:15 3141:27 3140:15 3145:14 3130:27 3140:15 3145:14 3130:27 3140:15 3145:14 3130:27 3140:15 3145:14 3130:27 3140:15 3145:14 3130:27 3140:15 3145:14 3130:27 3140:15 3145:14 3130:27 3140:15 3145:14 3130:27 3140:15 3145:14 3130:27 3140:15 3145:14 3130:27 3140:21 3145:14 3127 3126:24 3126:24	31269:24 31278:21		-		political 31246:13.16
31281:9 31287:15,16,22 3135:15,21 3135:6 3135:6 3135:6 3135:6 3135:6 3135:6 3135:6 3135:6 3135:6 3135:6 3135:6 3135:6 3135:6 3135:6 3135:6 3135:6 3135:6 3135:6 3135:6 3136:1 3135:6 3136:1 3135:6 3136:1 3135:6 3136:1 3135:6 3136:1 3135:6 3136:1 3135:6 3136:1 3135:6 3136:1				1 0	
31283:17 31288:13,15.21 31335:6 31335:12 31335:12 31335:12 31335:12 31342:13.12 31346:17.21 31291:23 31291:23 31291:23 31292:11 3135:25 31257:131269:4 31257:1031269:4 31335:12 31335:14 31357:24 31354:25 31355:15 31280:23 31383:14 31357:24 31354:25 31355:15 31280:13 31383:18 31385:18 31365:4 31365:4 31365:4 31383:18 31383:18 31383:18 31365:4 31365:16 31400:15 31341:12:17 31406:15 31402:1 31406:14,13 31402:1 31406:14,13 31402:1 31406:14,12 31406:14,12 31406:14,12 31406:14,12 31406:14,13 31406:14,12 31406:14,13 31406:14,12 31406:14,13 31406:14,13 31406:14,12 31406:14,13 31406:14,12 31406:14,13 31406:14,13 31406:14,12 31406:14,12 31406:14,12 31406:14,12 31406:14,13 31406:14,13 31406:14,13 31406:14,13 31406:14,13 31406:14,13 31406:14,13 31406:14,12 31406:14,13 31406:14,12 31406:14,12 31406:14,12 31406:14,12 31406:14,12					
31289:39,18,24 31289:19,31291:31 pices 51256:13.21 pices 51231:38.8 POP 31242:16.20 31307:4 31310:13.21 31292:18 31292:11 31257:131269:41 31279:20.21 31280:2 31338:43 31353:19 31279:20.21 31280:2 31338:43 31358:19 31279:20.21 31280:2 31338:43 31388:12 31337:24 31382:22 31337:6,7 313391:1 penterating 3130:21 3156:4 31406:25 31384:63 31389:12 31384:63 31389:12 31337:6,7 313391:1 penterating 3130:21 3156:4 31406:25 31384:63 31389:14 31356:5 31367:16 penje's 31255:17 31364:15.16 plage 31251:23 plage 31419:20 31406:14,13 31390:61.013127:25 perceive 31255:11 31300:52 31316:17 31330:23 31316:17 3142:23 31402:13 400:14 31291:4 31390:10 31339:16 31338:25 31300:43 3142:17 31462:33 31402:13 4109:11 31402:13 4109:11 31291:4 31390:17 31335:16 31338:25 31300:43 3142:13 31300:43 3142:13 31300:43 3142:13 31402:13 3140:13 31402:13 3140:12 31402:13 3140:12 31402:13 3140:12 31402:13 3140:12 31424:23 3142:12 31424:23 3142:12 <td></td> <td></td> <td></td> <td></td> <td>-</td>					-
31200:2 31294:2 31291:23 31292:1 31257:1 31260:4 31247:160:31270:16 31333:14 31375:18 3130:4 31310:13,21 31292:18 1293:3 31348:13 3135:19 31279:20,21 31280:2 31375:18 31298:4 31324:11 31328:18 penceful 31277:24 31354:25 31359:15 31280:5 31397:14 31384:6 31385:19 3134:20 31347:22 pencies 31256:17 31364:15,16 placesd 31373:11 3140:12 3140:18 31339:13 3136:17 31385:18 preceive 31255:11 31364:13 31299:7 31420:5 31437:7 3140:12 31404:18 31399:0,10 31433:2 perceive 31255:11 31305:23 3136:17 3140:12 31404:18 3140:12 31404:18 31291:4 31396:1 31395:43 3136:17 3140:12 31404:18 3140:12 31404:18 31291:4 31396:1 3139:12 31331:617 3140:12 31404:18 3140:12 31404:18 31291:4 31396:1 3139:12 31331:617 3140:12 31404:18 3142:17 post 3126:62 31267:4 31291:4 31396:1 3139:12 31331:617 313014:3132:17 3140:23 3142:137:1 3130:12 3136:13 3126:12 3126:13 3126:12 3126:13 3126:12 3126:12 3126:12 3126:12 3126:12 3126:12 3126:12 3126:12 3126:12 3126:12 3126:12 3	31283:17 31285:19	31288:13,15,21	31335:6 31360:14	playing 31274:14	31346:17,21
31200:2 31294:2 31291:23 31292:13 31257:13 31260:4 31247:16 31333:14 31375:18 3130:4 31310:13,21 31292:18 1293:3 31348:13 31351:9 31279:20,21 31280:2 31375:18 31298:4 31324:11 31328:18 penceful 31277:24 31354:25 31359:15 31280:5 31397:14 31384:6 31385:19 3134:20 31347:22 penies 31256:17 31364:13 31299:7 31341:9 3140:52 3140:15 31402:1 31374:11 31390:13 penies 31256:17 31364:13 31299:7 31420:5 31437:7 3140:12 31404:18 31399:0,10 31433:2 perceive 31255:11 3130:25 313316:17 3140:17 pos 31263:23 31291:4 31396:1 3139:12 31338:16 piotx 3140:310 31412:17 pos 31263:23 31291:4 31396:1 31339:12 3137:12 31323:11 pocketbooks 3130:3 31266:24 31267:4 31291:4 31396:1,97 31339:12 3137:13 3130:13 31266:24 31267:4 31260:21 3142:132 31291:4 31396:1,97 31339:12 3137:13 3130:13 3120:13 31262:13 3127:13 3132:13 3130:13 3120:13 31262:13 3120:13 3120:13 3130:13 3120:13 3130:13 3120:13 3130:13 3120:13 3120:13 3130:13 3120:13 3130:13 3120:13 3130:13 3120:13 3130:13 3120:13 3130:13 3120:13 3130:13 3120:13 3130:13 3120:13 3120:13 3120:13 3120:13 3120:13 3120:13 3120:13 3120:13 3120:13 3120:	31289:3,9,18,24	31289:1,9 31291:3,11	pieces 31256:13,21	please 31231:3,8	POP 31242:16,20
31307:4 31310:13.21 31292:18 31292:3 31348:13 31353:19 31279:20.21 31280:2 31375:4 31382:22 31314:24 31315:23 peaceful 31277:24 31354:25 31359:15 31280:25 31397:14 31384:6 31385:12,1 31337:67 31339:13 pentertaing 3130:21 31365:4 31406:25 31387:11 31406:25 31387:11 31401:5 31402:1 31356:5 31367:16 31385:18 31365:4 31406:12 31401:5 31402:1 31406:12 31401:5 31402:1 31356:5 31367:16 31385:18 31309:1,0,1,0,1,14 plugs 31403:10 31406:23 31406:23 31399:6,10 31432:2 31424:2 31427:17 31300:9,1,0,1,14 plugs 31403:10 31406:23 31291:4 31396:1 31305:23 31316:17 31420:5 31420:21 31406:23 31241:1,9 1248:18 perception 31269:15 31335:16 31338:25 pointing 31240:5 31404:23 31241:1,9 1248:18 perform 31268:17 31351:13 3135:13 31306:21 3142:16 313402:13 31242:19 12324:124 31392:10,13352:1 31300:11 313412:16 31342:12 31300:11 313412:16 31248:21 213275:20 performin 31268:17 <td></td> <td></td> <td>-</td> <td>-</td> <td></td>			-	-	
31314:24 3135:23 peaceful 31277:24 3135:423 3135:4 3138:46 31385:12 31332:13 3136:54 31406:25 3138:18 3138:18 3138:18 3138:12 31341:20 3137:71 3136:54 3136:54 31406:25 3138:18 3138:18 3138:18 3138:12 3140:25 3139:14 3140:12 31404:18 3140:12 3140:12 3140:12 3140:12 3140:12 3140:14 3140:12 3140:14 3140:12 3140:14 3140:14 3140:14 3140:14 3140:14 3140:12 3140:14 3140:14 3140:14 3140:14 3140:12 3140:14 3140:14 3140:12 3140:14 3140:14 3140:12 3140:14 3141:12 3136:14 3136:14 3136:14 3136:13 3136:14 3136:14 3136:14 3136:12 3140:14 3140:12 3140:12 3140:14 3140:12 3140:12 3140:12 3140:12 3140:12 3140:12 3140:12 3140:12 3140:12 3140:12 3140:12 3136:13					
31324:11 31328:18 penterating 31330:21 31365:4 31406:25 31385:18 31398:41 31337:6.7 31339:13 penple's 31256:7 31385:18 31365:4 910ting 31373:11 31401:5 31402:1 31356:5 31367:16 31385:18 31365:4 910ting 31341:9 31406:1,4,13 3139:10 3122:5 31424:2 31427:17 31300:9,10,13,14 plugs 31409:10 31416:23 9114 31396:1 31305:23 31316:17 31402:1 31407:18 31409:10 31416:23 9129:14 9129:3123:211 pecterive 31355:6 31332:24 pointed 3133:13 31308:21 31378:5 9129:14 9129:2126:24 9129:2126:24 9129:2126:24 9126:24 9126:24 9129:14 91249:20 31252:15 91396:59,17 31335:16 31382:25 910ting 31240:5 31402:21 31426:12 9129:123 3129:17 31341:18 31348:7 90ints 31241:32.4 Pertodwn 31225:5 91422:31 3135:17 31335:6 3138:12 91422:31 3126:12 9142:32 3126:12 9142:32 3126:12 9144:32 3126:12 9144:32 3126:12 9144:32 3126:12 9144:32:3136:13 9126:12 9126:12 3142:12:15 91339:16,16 31340:2 9143:32:16 3136:13 3126:12:42:33 3126:13 9126:12:13:12 9126				-	
31337:6,7 31337:6,7 31337:6,7 31337:6,7 31337:11 31401:5 31301:5					
31341:20 31347:22 pople's 31256:17 31364:15,16 ploting 31341:9 31403:12 31402:13 31356:5 31367:16 31385:18 place 31251:23 place 31251:23 31406:14,13 31374:11 31390:13 31424:2 31427:17 31300:9,10,13,14 plas 31403:10 31412:17 participation 31272:5 perceive 31255:11 31335:16 313382:5 pols 31266:24 31267:4 j 219:4 perceive 31257:11 31334:15 31382:5 j 31042:13 3135:13 31306:3 1402:13 j 2149:14 perceive 31257:11 31334:15 31386:23 j 31044:56 31442:14 31404:16:33 3129:14 3129:15 perceive 31223:2 j 31381:16,17 j 31304:4427:16 j 31442:1423:1425:1 3129:23 3129:15 j 2126:18 j 3126:12 8 j 31384:15 31386:23 j 31244:23 31427:16 j 31424:23 31292:23 3129:19 performig 3129:9 j 414:32:103399:16,16 31340:22 j 3144:22 j 3139:16,16 31340:22 j 3144:23 3139:12,13 31321:1,3 31321:1,3 3139:16,13332:12,3332:12,120,25 j 3144:23 31432:12 j 3139:14,333:141:335:12 j 31432:15 3139:17 31402:12 j 31432:15 31339:17 31402:12	31324:11 31328:18	penetrating 31330:21	31365:4		31385:18 31398:4
31341:20 31347:22 pople's 31256:17 31364:15,16 ploting 31341:9 31403:12 31402:13 31356:5 31367:16 31385:18 place 31251:23 place 31251:23 31406:14,13 31374:11 31390:13 31424:2 31427:17 31300:9,10,13,14 plas 31403:10 31412:17 participation 31272:5 perceive 31255:11 31335:16 313382:5 pols 31266:24 31267:4 j 219:4 perceive 31257:11 31334:15 31382:5 j 31042:13 3135:13 31306:3 1402:13 j 2149:14 perceive 31257:11 31334:15 31386:23 j 31044:56 31442:14 31404:16:33 3129:14 3129:15 perceive 31223:2 j 31381:16,17 j 31304:4427:16 j 31442:1423:1425:1 3129:23 3129:15 j 2126:18 j 3126:12 8 j 31384:15 31386:23 j 31244:23 31427:16 j 31424:23 31292:23 3129:19 performig 3129:9 j 414:32:103399:16,16 31340:22 j 3144:22 j 3139:16,16 31340:22 j 3144:23 3139:12,13 31321:1,3 31321:1,3 3139:16,13332:12,3332:12,120,25 j 3144:23 31432:12 j 3139:14,333:141:335:12 j 31432:15 3139:17 31402:12 j 31432:15 31339:17 31402:12	31337:6,7 31339:13	pennies 31248:7	Pillay 31289:16	pleased 31373:11	31401:5 31402:1
31356:5 31367:16 31385:18 place 31251:23 31405:23 31406:1,4,13 31374:11 31390:13 31424:2 31420:5 31437:7 31407:18 31407:12 31427:13 31412:17 31407:12 31427:13 31407:12 31427:13 31407:12 31407:12 31407:12					
31374:11 31390:13 perceive 31255:11 31264:13 31299:7 31420:5 31430:7 31400:11 31291:4 31390:6,10 31395:1 31300:9,10,13,14 31300:9,10,13,14 31412:17 pus 31403:10 31416:17 participation 31272:5 31396:1 31335:16 31335:23 31317:12 312323:11 pocket 31331:3 31264:13 31299:7 31402:56:24 31262:13 31291:4 31396:1 31335:16 31335:16 31335:13 31262:13 31262:13 31262:13 31262:13 31262:13 31262:13 31262:13 31242:12 31242:15 31404:56 31420:15 31424:23 31424:23 31424:23 31424:23 31242:15 31424:23 31424:23 31242:12 31424:23 31242:15 31424:23 31242:15 31424:23 31242:12 31424:23 31242:12 3144:22 31322:15 portad 31331:1 postion 31232:16 31332:142:12 3144:22 31332:15 31242:12 31342:13 31242:12 31424:23 31242:12 31332:143332:15 postion 3			-		
31399:6,1031424:231424:231427:1731300:9,10,13,14plus31406:1031416:23participation3127:5perceived31390:5,2,1131335:2331316:1731305:2331312:17pocketbooks31313:331308:2131308:2231308:2131308:2131308:2131308:2131308:2131308:2131308:2131308:2131308:2131308:2131308:2231308:2131308:2231308:2131308:2231308:2131308:2131308:2231308:2131308:2131308:2131308:2131308:2131308:2131308:2131308:2131308:2131308:2131308:2131308:213					
participation 31272:5 31291:4perceived 31395:8,11 31396:131305:23 31316:17 31397:12 31323:11 31397:12 31323:11 31397:12 31323:11 pocketbooks 3131:13 31396:25,9,1731305:23 31316:17 31317:12 31323:11 pocketbooks 3131:13 31306:12 3139:12 3138:12 31307:17 31385:8pops 31263:23 3126:24 31267:4 31302:13138:12 31302:21 3138:12 31302:21 3138:12 31202:23 3129:19perceived 31395:8,11 sigerform 31268:17 perform 31268:17 31259:18 31260:8 31259:18 31260:8 31261:831305:23 31316:17 31339:23,2431402:21 31420:21 31302:33124:23 3138:12 31242:23 31242:13 31242:33 3124:21 31332:11 31242:33 3124:21 31332:12pops 31263:23 31302:13 3131:13 31302:23 31302:333129:223 3129:19 31222:23 31299:19 31226:20 3128:18 31326:18 31260:19 31326:21 31262:11 313302:13 3138:1231302:12 31302:12 31242:23 31242:13 31242:13 3135:1131302:13142:12 31242:23 31242:14 31339:16,16 31340:2 31332:3384:13 31335:6 31337:731225:3 31271:18,24 3126:14 31319:10 31322:1531242:20 31282:10 31322:1231242:20 31282:10 31322:1231335:6 31337:7 31335:6 31337:731252:3 31271:18,24 31326:14 31349:10 31326:14 31349:1031402:13 3140:11 31326:24 31232:17 31329:13 31240:21 31326:25 31326:193126:14 31342:10 31323:16 13140:21 31326:24 31242:18 31337:10 31372:193126:14 31334:12 3126:14 31334:17 31406:13 31232:16 31323:1631335:6 31337:19 					
31291:431396:131317:12 31323:11pocketbooks 31310:331266:24 31267:4particular 31233:731396:5,9,1731335:16 3138:2531370:17 31385:83140:45,6 31420:2131241:1,19 31248:183129:7:1131331:13 3131:133130:21 31378:53140:45,6 31420:2131249:20 31252:15perform 31268:1731351:7 31353:1831300:4 31427:1631424:3,21 31425:531280:13 31281:831259:18 31260:831384:15 31386:2331244:23 31240:2131242:3,2431282:8 31287:331261:831391:20 31396:2531244:23 31261:531244:23 31240:2131330:12,13 3131:1perform 31268:1731391:20 31396:2531244:23 31240:1531242:42.331330:2,13 330:12,13 3131:1perform 31262:931414:13 31415:58,1131339:16,16 31336:12posed 31234:2331336:12,13 3131:1perform 31262:931442:23 31432:1831391:17 31392:731239:13 31240:2131336:2,13 330:12,13 3131:1perform 31262:931442:23 31432:1931375:2 31386:831392:17 31392:731336:13 337:731290:14 3139:103144:23 31445:17 31392:731339:10,1131284:20 31286:631342:14 31344:1131280:12431326:25 31281:431342:16 31343:231368:12 31367:1631409:9 31422:1431379:20 31388:139126:251.731339:10,1131368:23 31244:1331268:21,53 31282:1231262:8,10,10,1531277:5,9,11,143144:8:16,1731377:10 31377:1031264:21 31351:931266:731266:731267:11,12,2231242:931384:6339:10,113138:13 3144:1231266:21 312	31399:6,10 31433:2	31424:2 31427:17	31300:9,10,13,14	plus 31403:10	31416:23
31291:431396:131317:12 31323:11pocketbooks 31310:331266:24 31267:4particular 31233:731396:5,9,1731335:16 3138:2531370:17 31385:831406:5,6 31420:2131241:1,19 31248:18perfectly 31327:1131331:13 3131:13130:17 13353:1831300:4 31427:1631404:5,6 31420:2131249:20 31252:15perform 31268:1731351:7 31353:1831300:4 31427:1631424:3,21 31425:1531420:21 31421:1,931280:13 31281:831259:18 31260:831384:15 31386:2331244:23 31280:1531244:3,23 11241:3,24Portadown 31252:531282:8 31287:3.2031261:831391:20 31396:25 31241:3,21431349:14 31335:16,16 31336:12posed 31234:2331330:12,13 3131:1perform 31262:93144:4:23 31432:1831391:17 31392:731432:1531335:6 31337:73129:123 31271:18,243144:23 31432:2131391:17 31392:731339:13 31240:2131336:13 3134:13129:14 3138:123144:23 31432:2131391:17 31392:731339:13 31240:2131345:4 31354:131320:18 31386:2431347:16 31432:2531391:17 31392:731339:10,1131368:23 3144:1131326:82,18 3126:731326:25 31281:5131322:8,125 31149:1131326:31342:16 31342:25 31326:15 31264:1231266:731262:17,21 31262:17,21 31262:1731339:10,113136:33377:1931268:2,15 31282:2231266:731266:731266:27	participation 31272:5	perceived 31395:8.11	31305:23 31316:17	31412:17	pops 31263:23
particularperception31269:1531335:1631338:25pointed31331:1331308:2131378:53129:43129:43129:43129:43139:52,32431370:1731385:831404:5,631420:2131421:153124:1131241:1831341:1831348:731300:1731385:831404:5,631420:2131421:1531273:331257:331267:1731323:231381:16.1731300:431421:32431300:431424:323124:2331280:153124:2331280:153124:2331280:153124:2331280:153124:2331280:153124:2331280:153124:2331280:1531232:12portfoi 31291:831232:12posed3123:23:1631252:831282:831232:1331260:1931424:2331430:1231339:16.1631340:231432:1531339:133124:2331339:1631342:1431329:133124:2331349:1431370:1231432:1531339:133129:133124:2331391:1731328:1631342:1431329:133124:2331349:1431239:133124:233124:233124:233124:233124:233124:233123:1631342:1431239:133124:2331349:1431239:133124:2331349:1431239:133124:233124:2331239:133124:233124:233124:233124:233124:233124:233124:233124:233124:233124:233124:233124:233124:233124:233124:233124:233124:233124:23 <td></td> <td></td> <td></td> <td>*</td> <td></td>				*	
31239:4 31240:24 31396:5,9,17 31339:23,24 31370:17 31385:8 31404:5,6 31420:21 31241:1,19 31248:18 perfectly 31327:11 313311:8 31348:7 31300:4 31427:16 31424:23 31280:13 31275:3,20 performed 31233:2 31381:16,17 31339:23,24 31300:4 31427:16 90tfolio 31291:8 31280:13 31281:8 31260:23 31281:8 3139:20,31386:23 31244:23 31280:15 90tfolio 31291:8 31282:8 31280:13 performing 31259:9 3141:3:3 31415:5,8,11 31339:16,16 31340:2 90sing 31414:22 31335:6 31337:7 31252:3 31271:18,24 31414:2 31432:1 31391:17 31392:7 31424:23 31335:6 31337:7 31252:3 31271:18,24 31414:2 31432:21 31391:17 31392:7 31232:82:8 31386:5 31335:6 31337:7 31252:3 31271:18,24 3144:2 31432:21 31391:17 31392:7 31284:20 31286:6 31335:1 2 3136:1 31320:18 3136:24 31341:14:23 1432:1 31391:17 31392:7 31282:20 31286:6 31335:1 31339:1 31296:14 3139:10 31242:23 31428:1 31392:7 31282:28 31386:7 31336:1,25 31367:16 31409:9 31422:14 313414:23 1432:1					
31241:1,19 31248:18 31249:20 31252:15 31270:3,20perfectly 31327:11 perform 31268:17 performed 31233:231341:18 31348:7 31351:7 31353:18pointing 31240:5 31300:4 31427:1631420:21 31421:19 31420:21 31422:1631270:3,20 31280:13 31281:831259:18 31260:8 31282:8 31287:331259:18 31260:8 31282:8 31287:331241:23 31380:15 31261:8points 31241:23 31280:15 portfolio 31291:8portadown 31252:5 portfolio 31291:83129:223 31299:19 31292:23 31299:19 31326:02 31328:18performing 3129:99 performing 31232:11,20,25 placed 31353:731244:23 31349:14 31370:12 31342:12 31432:1831349:14 31370:12 31432:15postig 31414:22 31339:10,11 31391:17 31392:731232:83 31240:21 31432:1531335:6 31337.7 31335:12 31339:131296:14 31319:10 31320:18 31386:243144:22 31432:21 3144:23 31432:2131391:17 31392:7 31292:3 31240:2131284:20 31286:8 31342:14 3134:1131345:4 31354:1 313367:16 31347:4 31389:17 313376:3 31377:1931256:14 31391:10 31256:12 31266:731323:8,25 31419:11 31268:10,16,1531247:12 31242:931242:21 31323:8,25 31419:11 31273:11 31274:2031342:6 31334:15,1 31342:6 31334:15,131345:4 31354:1 313376:3 31377.19 31258:318 31265:731266:17,21 31262:12 31266:17,21 31262:1231248:24 31249:9 31267:21 31267:14 31351:19 31268:10,16,1931248:24 31249:9 31326:12 31266:12 31266:11 31277:59,11,1431436:42 31428:9 31433:19,23144:18 31424:23 31306:4,10,12 31266:12 31266:12 31266:11 31269:14 31270:2331240:24 31266:12 31264:1531263:14339:10 31267:2 31264:1531266:11,12,23 31266:25 31360:11 31269:14 3139:10	-			-	
31249:20 31252:15 31273:3 31275:3,20perform 31268:17 performed 31233:231351:7 31353:18 31381:16,1731300:4 31427:16 points 31241:3,2431424:3,21 31425:15 Portadown 31252:531280:13 31281:831261:831391:20 31396:2531244:23 31280:159ortfolio 31291:831292:23 31299:19 31326:20 31328:1831260:1931414:23 31435:18313391:6,16 31340:29ortfolio 31232:1331330:12,13 3131:1 31330:12,13 3131:1period 31232:11,20,2531414:23 31432:1831339:16,16 31340:231432:1531335:6 31337:731252:3 31271:18,243144:23 31432:2131391:17 31392:731233:1631335:6 31337:731226:14 3139:103144:23 31432:1231432:14 3139:1731228:8 31386:2431345:4 31354:131320:18 31386:2431232:8,25 31419:1131246:931322:8 313815,131345:4 31357:1631409:9 31422:1431323:8,25 31419:1131436:231324:16 31343:231376:3 31377:1931258:2,15 3128:2231261:17,21 31262:131247:1231344:6 31353:431376:3 31377:1931268:2,15 3128:2231265:12 31266:2531247:123144:6 31353:431411:12,1331291:24 31303:1831265:12 31266:2531277:5,9,11,143144:6 31435:1931425:1531370:21 31385:1231272:2,14 31270:2331430:431423:23,23 31428:1031250:21 31251:531370:21 31385:1231272:2,14 31270:2331430:4312423:2331250:21 31251:531370:21 31385:1231272:2,14 31270:2331430:431243:2331250:21 31251:531370:21 31385:1231272:2,14 31270:23 <td></td> <td></td> <td></td> <td></td> <td>· · · · · · · · · · · · · · · · · · ·</td>					· · · · · · · · · · · · · · · · · · ·
31249:20 9erform 31268:17 31351:7 31351:7 31351:7 31300:4 31427:16 31424:3,21 31425:1 31273:3 31275:3 31280:15 31280:15 31280:15 31241:3,24 312280:15 312280:15 312280:15 312280:15 31242:23 3123280:15 31242:23 31239:12 31339:120 31391:20 31396:25 31242:23 31242:23 31399:16.16 31340:2 portfolio 31423:28 posed 31232:15 posed 31232:16 31339:16.16 31340:2 31349:14 31370:12 31432:16 31349:14 31370:12 31432:16 31424:23 31432:18 31375:2 31291:13 31240:21 31432:16 31422:10 31432:16 31424:23 31420:12 31432:16 31424:23 31420:12 31424:23 31420:12 31424:23 31420:12 31424:23 31420:12 31424:23 31420:12 31424:23 31420:12 31424:23 31240:12 31291:13 31271:13 31242:14 31385:14 31424:13 312424:29 312424:29 313224:13	31241:1,19 31248:18	perfectly 31327:11	31341:18 31348:7	pointing 31240:5	31420:21 31421:1,9
31273:3 31275:3,20 performed 31233:2 31381:16,17 points 31241:3,24 Portadown 31252:5 31280:13 31281:8 31259:18 31260:8 31391:20 31396:25 31284:21 31335:21 posed 31234:23 31292:23 31299:19 performing 31259:9 31413:3 31415:5,8,11 31391:20 31396:25 31339:16,16 31340:2 posed 31234:23 31330:12,13 3131:1 period 31232:11,20,25 plained 3153:7 31335:6 31337:7 31252:3 31271:18,24 3144:22 31432:21 31391:17 31392:7 31228:18 posing 31414:22 31335:6 31337:7 31256:14 3139:10 plained 31270:12 3144:23 14432:21 31392:7 31228:13 31240:21 31345:4 31354:1 31320:18 31386:24 planned 31270:12 31426:9 31322:8 31381:51, 31376:3 31377:19 31258:3,8 31265:7 31261:17,21 31262:1 31248:24 31249:9 31333:17 31406:13 31376:3 31377:19 31258:3,8 31265:7 31262:8,10,10,15 31277:59,11,14 31342:43 3139:10 31376:3 31374:22 person 31254:2 31262:12 31266:25 31262:8,10,10,15 31277:59,11,14 31446:31333:4 31376:3 31377:19 31258:33831265:7 31261:17,21 31262:1		perform 31268:17	31351:7 31353:18		
31280:13 31281:8 31282:8 31287:3 31292:23 31292:1931259:18 31260:8 31261:8 31261:831384:15 31386:23 31391:20 31396:25 31413:3 31415:5,811 313391:10 31391:10 31391:10 31332:02 31328:18 313331:131261:8 performing 31259:9 31413:3 31415:5,811 31330:12,13 3131:1 attack at an antice of the state of the st					
31282:8 31287:3 31292:23 31292:19 31326:20 31328:1831261:8 performing 31259:931391:20 31396:25 31413:3 31415:5,8,11 31326:20 31328:1831284:21 31335:21 31330:12,13 3131:1 performing 31259:9posed 31234:23 posing 31414:22 31335:6 31337:7 31252:3 31271:18,2431391:20 31396:25 31424:23 31432:18313391:6,16 31340:2 31342:12 31349:14 31370:12 31345:5 31339:1posed 31234:23 posing 31414:22 31335:6 31337:7 31252:3 31271:18,2431424:23 31432:12 31296:14 31319:1031342:14 31340:2 31296:14 31319:1031442:23 31423:16 31320:18 31386:24 31326:14 3139:1031296:14 31319:10 planed 31270:12 31342:14 3134:1131296:14 3139:10 31326:3 31377:1031296:14 3139:10 3136:2,18,23,2431405:19 31422:14 31337:10 31374:2231296:14 3139:10 3136:2,18,23,2431422:14 31326:231422:14 31326:231262:2 31262:231262:2 31262:2031262:2 31262:21 31262:2131262:21 31262:21 31277:5,9,11,143134:6 31353:4 31342:16 31343:231376:3 31377:1931258:3,8 31265:7 31262:17,21 31262:2131277:5,9,11,14 31277:5,9,11,143144:21 3134:6 31353:431411:12,13 31291:24 31303:18 31262:15 31264:1231266:2,15 31266:25 31326:11 31326:2231267:1,11,21,23 31262:12 31266:253134:21 3136:10 31326:12 31266:2531250:21 31251:5 31250:21 31254:19 31252:3 31254:1431306:4,10,12 31292:14 31251:1931267:1,11,21,23 31262:14 31250:11 31267:1,11,21,2331267:2,1274:40 31326:11 31329:1031242:15 31264:10 31241:15 312284:031262:15 31264:15 31262:14 31251:19 31262:15 31264:1531300:17 31301:3,15 31262:14 3120:223124:15 31264:10,11<		-	-	-	
31292:23 31299:19 31326:20 31328:18performing 31259:9 31260:1931413:3 31415:5,8,11 31424:23 31432:1831339:16,16 31340:2 31342:14 31370:12posing 31414:22 31432:1831330:12,13 3131:1 31335:6 31337:731260:1931424:23 31432:18 31335:6 31337:731375:2 31386:8 31339:1 31292:731432:1231432:1231338:1,25 31339:1 31345:4 31344:1131292:13 1271:18,2431414:2 31432:21 placed 3135:731375:2 31386:8 31391:17 31392:731239:13 31240:21 31391:17 31392:731239:13 31240:21 31391:17 31392:731345:4 31354:1 31345:4 31354:131290:18 31386:24 31367:1631409:31422:14 3149:01 31422:14planned 31270:12 31423:8,25 31419:11 planner 31366:253142:16 31342:1 31323:8,25 31419:11 planner 31366:2531322:8 31339:10,11 31342:16 31342:131376:3 31377:19 31258:3,8 31265:7 31377:1931258:3,8 31265:7 31261:17,21 31262:131247:18,18 31247:12 3124:2931344:6 31342:1 31344:6 31353:431414:18 31424:23 31306:4,10,1231265:12,31262:21 31262:8,10,10,1531277:5,9,11,14 31382:12 3126:22,13 3126:22,13 3127:5,9,11,14 31242:23,23 31428:13144:21 3135:19 31268:10,16,1931250:21 31251:5 31252:3 31254:19 31262:15 31264:15 312251:4 31267:13 31264:1531236:11 3139:10 3124:21 31351:1931268:10,16,19 31268:10,16,1931250:21 31251:5 31252:3 31254:19 31266:14 31277:13 31282:73124:21 31385:12 3124:21 31351:1931268:10,16,19 31243:16 31295:11 31268:10,16,193134:30:4 31242:223124:15 31263:10 3124:15 31258:10 3124:15 31258:10 3124:15 31258:10 31243:15 31258:10 31243:16 31295:11 31344:93					-
31326:20 31328:18 31330:12,13 31321:131260:19 period 31232:11,20,25 31335:6 31337:731242:23 31432:18 31342:12 31345:131349:14 31370:12 31375:2 31386:831432:15 position 31233:1631330:12,13 3131:1 31335:6 31337:7 31338:1,25 31339:131252:3 31271:18,24 31296:14 31319:1031414:2 31432:21 plane 3126:19313414:2 31432:21 31414:2 31432:2131391:17 31392:7 313403:21 31416:1131233:16 31298:28 31336:2431342:14 31344:11 31345:4 31354:1 31368:2,18,23,2431387:4 31389:17 31424:1831320:18 31386:24 plane 3126:2131426:9 plane 3126:2531247:18,18 31242:931342:16 31343:231368:2,18,23,24 31368:2,18,23,243144:18 3142:1231426:29 31254:2431326:25 31264:15 31282:2231261:17,21 31262:1 31268:2,15 31282:2231227:18,127:5,9,11,14 31266:12,17,21 31266:2531241:12,13 31266:12,17,21 31266:2531414:18 31424:23 31306:4,10,1231265:12 31266:25 31261:17,21 31266:1331318:14 31415:16 31267:1,11,21,2331318:14 31415:16 31423:23,23 31428: 31318:14 31415:1631428:9 31433:19,2 31430:431252:3 31254:19 31252:13 31254:19 31262:15 31264:1531241:21 31243:16 31295:11 31266:124 31277:2331430:4 31292:14,18 31299:13,15,1831299:13,15,18 31300:17 31301:3,153123124:031262:15 31264:15 31264:1531266:14 901ice* 31241:15 31258:10 31226:15 31264:1531266:14 31300:17 31301:3,1531301:71 31302:22 31310:1,1431342:9 31301:1,1431262:15 31264:15 31264:1531266:14 901ice* 31220:131241:15 31258:10 31225:1231299:13,15,18 31300:17 31301:3,153	31282:8 31287:3			31284:21 31335:21	
31326:20 31328:18 31330:12,13 31321:131260:19 period 31232:11,20,25 31335:6 31337:731242:23 31432:18 31342:12 31345:131349:14 31370:12 31375:2 31386:831432:15 position 31233:1631330:12,13 3131:1 31335:6 31337:7 31338:1,25 31339:131252:3 31271:18,24 31296:14 31319:1031414:2 31432:21 plane 3126:19313414:2 31432:21 31414:2 31432:2131391:17 31392:7 313403:21 31416:1131233:16 31298:28 31336:2431342:14 31344:11 31345:4 31354:1 31368:2,18,23,2431387:4 31389:17 31424:1831320:18 31386:24 plane 3126:2131426:9 plane 3126:2531247:18,18 31242:931342:16 31343:231368:2,18,23,24 31368:2,18,23,243144:18 3142:1231426:29 31254:2431326:25 31264:15 31282:2231261:17,21 31262:1 31268:2,15 31282:2231227:18,127:5,9,11,14 31266:12,17,21 31266:2531241:12,13 31266:12,17,21 31266:2531414:18 31424:23 31306:4,10,1231265:12 31266:25 31261:17,21 31266:1331318:14 31415:16 31267:1,11,21,2331318:14 31415:16 31423:23,23 31428: 31318:14 31415:1631428:9 31433:19,2 31430:431252:3 31254:19 31252:13 31254:19 31262:15 31264:1531241:21 31243:16 31295:11 31266:124 31277:2331430:4 31292:14,18 31299:13,15,1831299:13,15,18 31300:17 31301:3,153123124:031262:15 31264:15 31264:1531266:14 901ice* 31241:15 31258:10 31226:15 31264:1531266:14 31300:17 31301:3,1531301:71 31302:22 31310:1,1431342:9 31301:1,1431262:15 31264:15 31264:1531266:14 901ice* 31220:131241:15 31258:10 31225:1231299:13,15,18 31300:17 31301:3,153	31292:23 31299:19	performing 31259:9	31413:3 31415:5,8,11	31339:16,16 31340:2	posing 31414:22
31330:12,13 3131:1 31335:6 31337:7 31355:6 31337:7period 31232:11,20,25 31252:3 31271:18,24 31290:14 31319:10 31345:4 31354:1placed 31353:7 31250:18 31366:24 atta 31341:1131325:2 3138:18 31290:18 31366:24 31342:14 31344:11poiced 31232:1 31323:8,25 31419:11 atta 3136:24 31337:10 31374:22poiced 31232:1 31342:14 31344:11poiced 31232:1 31323:8,25 31419:11 atta 3138:15,1 31323:8,25 31419:11 atta 31366:25 atta 3137:10 31374:22poiced 31242:14 31409:9 31422:14 31323:8,25 31419:11 planner 31366:25 atta 3137:10 31374:22poiced 31247:18,18 31268:2,15 31282:22poiced 31247:12 31323:8,25 31419:11 atta 3137:10 31374:22atta 3136:13 3133:10,11 31268:2,15 31282:2231376:3 31377:19 31376:3 31377:19 31258:3,8 31265:7 31364:1331268:2,15 31282:22 31268:2,15 31282:2231242:29 31262:1,01,01,531277:5,9,11,14 31277:5,9,11,143144:6 31353:4 3144:6,17 3144:213138:14 3141:12,13 31250:21 31264:231306:4,10,12 31370:21 31385:1231265:12 31266:25 31264:10,10,1531277:5,9,11,14 31277:5,9,11,1431428:9 31433:19,2 31318:14 31415:16 31428:2,3,23 31428: 31322:4 31350:11 31269:24 31270:23 31242:1231318:14 31415:16 31436:231428:9 31433:19,2 31321:4 3139:1031250:21 31251:5 31264:1531370:21 31385:12 31277:13 31282:7 31284:9 3124:1531268:2,12 31264:12 31241:15 31258:1031241:15 31258:10 31241:15 31258:1031262:15 31264:15 31262:15 31264:1531242:19 31241:1431241:15 31258:10 31241:15 31258:1031241:15 31258:10 31241:15 31258:1031262:15 31264:15 31264:1431266:14 31300:17 31301:3,1531301:3,15 <td></td> <td></td> <td></td> <td></td> <td></td>					
31335:6 31337:7 31252:3 31271:18,24 31338:1,25 31339:1 313296:14 3139:10 					
31338:1,25 31339:1 31342:14 3134:1131296:14 31319:10 31320:18 31386:24 31320:18 31386:24 31323:8,25 31419:11 planned 31270:1231403:21 31416:11 31426:931284:20 31286:6 31322:8 31338:15,1 31322:8 31338:15,131345:4 31354:1 31358:19 31367:1631309:18 31386:24 31409:9 31422:14 31409:9 31422:1431323:8,25 31419:11 planned 31270:1231403:21 31416:11 31426:931284:20 31286:6 31322:8 31338:15,131358:19 31367:16 31368:2,18,23,24 31376:3 31377:19 31376:3 31377:1931409:9 31422:14 31258:3,8 31265:731379:20 31386:13 31268:2,15 31282:2231379:20 31386:13 31261:17,21 31262:131247:18,18 31242:9931344:6 31343:2 31344:6 31343:231414:12,13 3144:18 31424:23 31306:4,10,1231268:10,10,15 31267:131251:531291:24 31303:18 31344:21 31351:1931265:12 31266:25 31266:10,10,1531277:5,9,11,14 31318:14 31415:1631423:23,23 31428: 31436:231250:21 31251:5 31250:21 31251:531370:21 31385:12 31262:13 31262:13 31262:14 31270:23 31435:1231269:24 31270:23 31269:14 31270:2331430:4 31269:24 31292:11policema 31282:18 31436:231250:21 31251:5 31250:21 31261:531370:21 31385:12 31241:15 31258:10 31266:1431299:13,15,18 31299:13,15,1831243:16 31295:1 31243:16 31295:131263:11 3139:10 31243:16 31295:131262:15 31264:15 31227:4431286:14 personal 31425:19 personal 31425:1931299:13,15,18 31299:13,15,1831232:22 31299:13,15,1831243:16 31292:1 31243:16 31292:131266:14 312277:13 31282:731286:14 31300:25 31303:231302:5,12 31304:5 31302:5,12 31304:531232:22 	-				-
31342:14 31344:1131320:18 31386:24planned 31270:1231426:931322:8 31338:15,131345:4 31354:131387:4 31389:1731323:8,25 31419:11polarised 31251:731339:10,1131358:19 31367:1631409:9 31422:1431424:1831379:20 31388:13polarised 31247:18,1831342:16 31343:231373:10 31374:2231424:1831424:1831379:20 31388:13policed 31247:1231344:6 31353:431376:3 31377:1931258:38 31265:731261:17,21 31262:131273:11 31274:2031406:15 31415:1131383:2 31384:1331268:2,15 31282:2231265:12 3126:2531277:5,9,11,1431418:16,1731411:12,1331291:24 31303:1831265:12 3126:2531267:1,11,21,2331430:431423:23,23 31428:31435:18 31436:231344:21 31351:1931268:10,16,1931318:14 31415:1631436:2particularly 31243:731370:21 31385:1231272:2,14 31273:431430:4police*s 31240:931250:21 31251:531370:21 31385:1231272:2,14 31273:431430:4police*s 31240:931265:12 31264:1531264:1431299:11,1831243:16 31295:131263:11 3139:1031267:2 31274:431282:731299:11,1831344:931243:2231267:2 31274:431286:1431300:3231300:7 31304:531344:931284:9 31293:1031282:731246:1431232:2231284:9 31293:1031242:331242:2231304:531267:2 31274:431303:231300:7 31304:53144:931284:9 31293:1031282:731236:1431309:22 <t< td=""><td></td><td></td><td></td><td></td><td></td></t<>					
31345:4 31354:1 31387:4 31389:17 31358:19 31367:1631387:4 31389:17 31409:9 31422:14 31409:9 31422:14 31368:2,18,23,24 31373:10 31374:22 31373:10 31374:2231387:4 31389:17 31424:18 person 31254:2 31258:3,8 31265:7 31258:3,8 31265:7 31258:3,8 31265:7 31258:2,15 31282:2231323:8,25 31419:11 planner 31366:25 31273:11 31274:20polarised 31251:7 policed 31247:12 31248:24 31249:9 31273:11 31274:2031339:10,11 31344:6 31353:431370:20 31388:13 planning 31242:931268:2,15 31282:22 31261:17,21 31262:131273:11 31274:20 31266:2531406:15 31415:11 31277:5,9,11,1431418:16,17 31418:16,1731411:12,13 31414:18 31424:23 31445:18 31436:231206:4,10,12 31344:21 31351:19 31269:24 31270:2331266:12 31266:25 31266:10,16,1931318:14 31430:4 31318:14 31415:16 31430:431423:23,23 31428: 31430:431250:21 31251:5 31250:21 31251:5 31250:21 31251:531370:21 31385:12 31241:1231269:24 31270:23 31269:24 31272:2,14 31273:4 31269:24 31272:2,14 31273:4 31225:13 31254:1931269:24 31272:4 31243:16 31295:1 31243:16 31295:1 31243:16 31295:1 31243:16 31295:1 31263:12 31251:2931260:17 31301:3,15 31295:11,18 31295:11,18 31295:11,1831314:4:9 90lice 31280:11 31243:16 31295:1 31243:16 31295:1 31344:931267:2 31274:4 31226:15 31264:15 31264:1531286:14 personal 31425:19 personal 31425:19 31286:1431302:5,12 31304:5 31302:5,12 31304:590lice 31280:11 31233:2,32,55 31234:4 31234:6 31246:10,1131288:22 31309:24 31309:25 31300:2031267:2 31274:4 31286:1431302:2 31335:25 31356:131302:2 31302:231302:2 31302:20 </td <td>31338:1,25 31339:1</td> <td>31296:14 31319:10</td> <td>-</td> <td>31403:21 31416:11</td> <td></td>	31338:1,25 31339:1	31296:14 31319:10	-	31403:21 31416:11	
31345:4 31354:1 31387:4 31389:17 31358:19 31367:1631387:4 31389:17 31409:9 31422:14 31409:9 31422:14 31368:2,18,23,24 31373:10 31374:22 31373:10 31374:2231387:4 31389:17 31424:18 person 31254:2 31258:3,8 31265:7 31258:3,8 31265:7 31258:3,8 31265:731323:8,25 31419:11 planner 31366:25 31379:20 31388:13 planning 31242:9polarised 31251:7 polse 31247:18,18 31248:24 31249:931339:10,11 31344:6 31353:431370:10 31374:22 31383:2 31384:13 31383:2 31384:13 31414:18 31424:23 31414:18 31424:2331268:2,15 31282:22 31266:2,15 31282:2231261:17,21 31262:1 31265:12 31266:25 31265:12 31266:2531277:5,9,11,14 31277:5,9,11,1431418:16,17 31418:16,1731414:18 31424:23 31435:18 31436:231306:4,10,12 31243:731267:1,11,21,23 31268:10,16,1931318:14 31430:4 313269:24 31270:23 31268:10,16,1931318:14 31415:16 31430:431428:9 31433:19,2 31430:431250:21 31251:5 31250:11 31250:21 31251:5 31262:15 31264:1531344:21 31351:19 31243:731269:24 31272:2,14 31273:4 31229:21 31325:2931248:6 31295:1 31243:16 31295:1 31243:16 31295:131241:15 31258:10 31243:16 31295:1 31243:16 31295:131267:2 31274:4 31262:15 31264:153144:21 31286:1431300:17 31301:3,15 31300:17 31301:3,1531242:9 31322:2231232:22 31234:6 31242:93128:10 3139:10 31255:13 31282:7 31284:9 31293:10 31335:25 31356:131302:2 31302:21 31322:2231234:6 31246:10,1131309:25 3130:203128:12311:4 31309:25 31310:2031302:21 31322:2231234:6 31246:10,1131309:25 3130:20	31342:14 31344:11	31320:18 31386:24	planned 31270:12	31426:9	31322:8 31338:15,19
31358:19 31367:16 31368:2,18,23,24 31373:10 31374:2231409:9 31422:14 31424:18 person 31254:2planner 31366:25 31379:20 31388:13 planning 31242:9poles 31247:18,18 31248:24 31249:931342:16 31343:2 31344:6 31353:431373:10 31374:22 31376:3 31377:1931258:3,8 31265:7 31268:2,15 31282:2231261:17,21 31262:1 31268:2,15 31282:2231261:17,21 31262:1 31261:17,21 31262:131248:24 31249:9 31266:12 31266:1231344:6 31353:4 31248:24 31249:931411:12,13 31411:12,1331291:24 31303:18 31264:10,1231265:12 31266:25 31267:1,11,21,2331267:1,11,21,23 9liceman 31430:431423:23,23 31428: 31436:231435:18 31436:2 31250:21 31251:531344:21 31351:19 31353:8 31360:11 31250:21 31251:531344:21 31351:19 31269:24 31270:23 31248:12 31370:21 31385:1231269:24 31270:23 31269:24 31270:23 31269:24 31270:2331318:14 31415:16 31436:231250:21 31254:19 31259:14 31261:19 31262:15 31264:153144:21 31267:2,11,1831243:16 31295:1 31295:11,1831243:16 31295:1 31243:16 31295:131243:16 31295:1 31243:16 31295:131267:2 3127:4:4 31267:2 31274:431286:14 31295:11,1831242:19 31295:11,1831243:16 31295:1 31243:16 31295:131241:15 31258:10 31243:16 31295:131267:2 31274:4 31262:15 31264:1531245:19 personal 31425:19 personal 31425:1931295:11,18 31295:11,1831243:16 31295:1 31243:16 31295:131243:16 31295:1 31243:16 31295:131267:2 31274:4 31286:1431286:14 personal 31303:231302:5,12 31304:5 31301:3,1531244:9 31232:2231234:6 31246:10,1131288:22 31309:24<					
31368:2,18,23,24 31373:10 31374:22 31376:3 31377:1931424:18 person 31254:2 31258:3,8 31265:7 31258:3,8 31265:7 31261:17,21 31262:1policed 31247:12 31248:24 31249:9 31248:24 31249:931344:6 31353:4 31383:17 31406:13 31415:11 31383:2 31384:13 31268:2,15 31282:22313261:17,21 31262:1 31268:2,15 31282:22 31262:8,10,10,1531277:11 31274:20 31267:1,11,21,23 31266:25 policeman 31430:4 31414:18 31424:23 31306:4,10,1231265:12 31262:1 31265:12 31266:25 31265:12 31266:2531277:5,9,11,14 31418:16,1731418:16,17 31418:16,1731435:18 31436:2 particularly 31243:7 31250:21 31251:531344:21 31351:19 31353:8 31360:11 31259:14 31261:19 31259:14 31261:1931269:24 31270:23 31295:11,1831430:4 31269:24 31270:23 31430:4policewan 31430:4 31430:4positions 31232:4 31242:931250:21 31251:5 31250:21 31251:531370:21 31385:12 3144:2131277:2,14 31273:4 31278:6 31294:1231243:16 31295:1 31278:6 31294:1231243:16 31295:1 31243:16 31295:131263:11 31339:10 31394:23 possession 31352:1 31263:11 31339:1031267:2 31274:4 31282:7 31284:9 31293:1031311:4 persuade 31303:2 31311:431302:5,12 31304:5 31302:21 31322:2231233:23,25 31234:4 31320:21 31322:2231234:6 31246:10,1131284:9 31293:10 31335:25 31356:1partaining 31358:931320:21 31322:2231234:6 31246:10,1131309:25 31310:20					· · · · · · · · · · · · · · · · · · ·
31373:10 31374:22 31376:3 31377:19 31258:3,8 31265:7 3128:2 31384:13 3141:12,13 person 31254:2 31258:3,8 31265:7 31268:2,15 31282:22 31261:17,21 31262:1 31262:8,10,10,15 31265:12 31266:25 31265:12 31266:25 policeman 31430:4 policeman 31430:4 policeman 31430:4 policeman 31430:4 states 31428:23,23 31428:7 31258:38 31360:11 31259:14 31251:5 planning 31242:9 31268:10,10,15 31267:1,11,21,23 31268:10,16,19 31318:14 31415:16 31430:431383:17 31406:13 31277:5,9,11,14 31418:16,17 particularly 31242:7 31250:21 31251:5 planning 31262:2 31370:21 31385:12 planning 31262:12 31266:25 31267:1,11,21,23 31268:10,16,19 policeman 31430:4 31318:14 31415:16 31428:9 31433:19,2 31430:4 particularly 31243:7 31250:21 31251:5 31370:21 31385:12 31414:21 31277:2,14 31273:4 31269:24 31270:23 31225:13 31254:19 31225:13 31264:15 31277:13 31282:7 31286:14 31286:14 31286:14 31200:17 31301:3,15 31302:5,12 31304:5 31302:5,12 31304:5 31302:5,12 31304:5 31232:2231243:16 31295:1 31232:22 31234:6 31242:14 31232:22 31234:6 31246:10,11 31277:13 31282:7 31284:9 31293:10 31335:25 31356:1 personal 31253:23 31311:4 planning 31358:9 biling 31358:9 31302:5,12 31322:22 31320:21 31322:22 31248:61(10,11131232:22 31234:6 31246:10,11 31309:25 31310:20					
31376:3 31377:19 31383:2 31384:13 31411:12,13 31411:12,13 31414:18 31424:23 31435:18 31436:231258:3,8 31265:7 31268:2,15 31282:22 31291:24 31303:18 31291:24 31303:18 31306:4,10,12 31435:18 31436:231261:17,21 31262:1 31265:12 31266:25 31265:12 31266:25 31267:1,11,21,2331273:11 31274:20 31266:25 policeman 31430:4 31282:1831406:15 31415:11 31418:16,1731414:18 31424:23 31435:18 31436:231291:24 31303:18 31306:4,10,1231265:12 31266:25 31267:1,11,21,2331265:12 31266:25 31269:24 31270:23policeman 31430:4 31318:14 31415:1631428:9 31433:19,2 31436:231250:21 31251:5 31250:21 31251:531370:21 31385:12 31414:2131269:24 31270:23 31269:24 31270:2331430:4 31243:16 31295:1 31243:16 31295:1police's 31240:9 31243:16 31295:131263:11 3139:10 31263:11 3139:1031262:15 31264:15 31267:2 31274:4 31267:2 31274:431246:14 91253:2331299:13,15,18 31300:17 31301:3,1531344:9 90licies 31280:11 31344:9policies 31280:11 31344:931277:13 31282:7 31284:9 31293:1031311:4 91323:2331302:5,12 31304:5 31302:21 31322:2231233:23,25 31234:4 31223:2331288:22 31309:2431309:25 31310:20					
31376:3 31377:19 31383:2 31384:13 31411:12,13 31411:12,13 31414:18 31424:23 31435:18 31436:231258:3,8 31265:7 31268:2,15 31282:22 31291:24 31303:18 31291:24 31303:18 31306:4,10,12 31435:18 31436:231261:17,21 31262:1 31265:12 31266:25 31265:12 31266:25 31267:1,11,21,2331273:11 31274:20 31266:25 policeman 31430:4 31282:1831406:15 31415:11 31418:16,1731414:18 31424:23 31435:18 31436:231291:24 31303:18 31306:4,10,1231265:12 31266:25 31267:1,11,21,2331265:12 31266:25 31269:24 31270:23policeman 31430:4 31318:14 31415:1631428:9 31433:19,2 31436:231250:21 31251:5 31250:21 31251:531370:21 31385:12 31414:2131269:24 31270:23 31269:24 31270:2331430:4 31243:16 31295:1 31243:16 31295:1police's 31240:9 31243:16 31295:131263:11 3139:10 31263:11 3139:1031262:15 31264:15 31267:2 31274:4 31267:2 31274:431246:14 91253:2331299:13,15,18 31300:17 31301:3,1531344:9 90licies 31280:11 31344:9policies 31280:11 31344:931277:13 31282:7 31284:9 31293:1031311:4 91323:2331302:5,12 31304:5 31302:21 31322:2231233:23,25 31234:4 31223:2331288:22 31309:2431309:25 31310:20	31373:10 31374:22	person 31254:2	planning 31242:9	31248:24 31249:9	31383:17 31406:13
31383:2 31384:13 31435:1231268:2,15 31282:22 31291:24 31303:18 31291:24 31303:18 31435:18 31436:231268:2,15 31282:22 31291:24 31303:18 31265:12 31266:25 31267:1,11,21,23 31268:10,16,1931277:5,9,11,14 policeman 31430:4 policemen 31282:18 31318:14 31415:16 31436:231418:16,17 31423:23,23 31428:particularly 31243:7 31250:21 31251:531353:8 31360:11 31370:21 31385:12 31252:3 31254:19 31259:14 31261:1931269:24 31270:23 31251:531272:2,14 31273:4 31272:2,14 31273:4 31278:6 31294:1231243:16 31292:10 31295:11,18 31295:11,1831241:15 31258:10 31295:11,18 31300:17 31301:3,1531267:2 31274:4 31267:2 31274:4 31267:2 31274:431286:14 a1286:1431300:17 31301:3,15 31302:5,12 31304:5 31302:5,12 31304:531232:22 31302:5,12 31304:5 31320:21 31322:2231232:22 31234:6 31246:10,1131418:16,17 31423:23,23 31428:31277:13 31282:7 31284:9 31293:10gersonal 31425:19 a1311:431266:14 31303:231202:1 31301:3,15 31302:5,12 31304:531232:22 31302:5,12 31304:531267:2 31274:4 31286:1431286:14 a13285:1931300:17 31301:3,15 31302:5,12 31304:531344:9 31302:5,12 31304:5policing 31232:22 31234:6 31246:10,1131284:9 31293:10 31335:25 31356:1gersuade 31303:2 a1335:25 31356:131302:21 31322:2231234:6 31246:10,1131309:25 31310:20	31376:3 31377:19			31273:11 31274:20	31406:15 31415:11
31411:12,1331291:24 31303:1831265:12 31266:25policeman 31430:431423:23,23 31428:31414:18 31424:2331306:4,10,1231267:1,11,21,23policemen 31282:1831428:9 31433:19,231435:18 31436:231344:21 31351:1931268:10,16,1931318:14 31415:1631436:2particularly 31243:731353:8 31360:1131269:24 31270:2331430:4positions 31232:431250:21 31251:531370:21 31385:1231272:2,14 31273:431243:16 31295:131241:15 31258:1031252:3 31254:1931414:2131278:6 31294:1231243:16 31295:131263:11 31339:1031259:14 31261:19personal 31425:1931295:11,1831351:14 31379:1,1431394:2331267:2 31274:431286:1431300:17 31301:3,1531344:9possibility 31241:1831277:13 31282:7persuade 31303:231302:5,12 31304:531233:23,25 31234:431288:22 31309:243135:25 31356:1pertaining 31358:931320:21 31322:2231234:6 31246:10,1131309:25 31310:20					
31414:18 31424:23 31435:18 31436:231306:4,10,12 31344:21 31351:19 31344:21 31351:1931267:1,11,21,23 31268:10,16,19 31269:24 31270:23policemen 31282:18 31318:14 31415:1631428:9 31433:19,2 31318:14 31415:16particularly 31243:7 31250:21 31251:531370:21 31385:12 31414:2131269:24 31270:23 31272:2,14 31273:4jolicemen 31282:18 31269:24 31270:2331418:14 31415:16 31430:431436:2 positions 31232:431250:21 31251:5 31252:3 31254:19 31259:14 31261:19 31262:15 31264:1531414:21 personal 31425:19 personal 31425:1931278:6 31294:12 31295:11,1831243:16 31295:1 31295:11,1831243:16 31295:1 31351:14 31379:1,1431394:23 possession 31352:1 possibility 31241:18 possibility 31241:18 possibility 31241:18 possibility 31241:18 policing 31232:2231299:13,15,18 31302:5,12 31304:5 31302:21 31322:22jolicing 31232:22 31234:6 31246:10,11july and an					
31435:18 31436:2 particularly 31243:7 31250:21 31251:531344:21 31351:19 31353:8 31360:11 31252:3 31254:19 31252:3 31254:19 31252:3 31254:1931268:10,16,19 31370:21 31385:1231268:10,16,19 31269:24 31270:23 31272:2,14 31273:4 31278:6 31294:1231318:14 31415:16 31430:4 police's 31240:931436:2 positions 31232:431250:21 31251:531370:21 31385:12 31414:2131278:6 31294:12 31295:11,1831243:16 31295:1 31251:14 31379:1,1431241:15 31258:10 31263:11 31339:1031262:15 31264:15 31267:2 31274:4personal 31425:19 personal 31286:1431299:13,15,18 31300:17 31301:3,1531344:9 policies 31280:1131394:23 possibility 31241:18 possibility 31241:18 possibility 31241:1831277:13 31282:7 31284:9 31293:10persuade 31303:2 31311:431302:5,12 31304:5 31302:21 31322:2231233:23,25 31234:4 31234:6 31246:10,1131309:25 31310:20	· · · · · · · · · · · · · · · · · · ·				
particularly 31243:731353:8 31360:1131269:24 31270:2331430:4positions 31232:431250:21 31251:531370:21 31385:1231272:2,14 31273:431241:15 31258:1031252:3 31254:1931414:2131278:6 31294:1231243:16 31295:131259:14 31261:19personal 31425:1931295:11,1831351:14 31379:1,1431267:2 31274:431286:1431300:17 31301:3,1531344:931277:13 31282:7persuade 31303:231302:5,12 31304:531232:2231284:9 31293:1031311:431308:10 31319:1931233:23,25 31234:43135:25 31356:1pertaining 31358:931320:21 31322:2231234:6 31246:10,11				policemen 31282:18	31428:9 31433:19,21
particularly 31243:731353:8 31360:1131269:24 31270:2331430:4positions 31232:431250:21 31251:531370:21 31385:1231272:2,14 31273:431241:15 31258:1031252:3 31254:1931414:2131278:6 31294:1231243:16 31295:131262:15 31264:15personal 31425:1931295:11,1831351:14 31379:1,1431267:2 31274:431286:1431300:17 31301:3,1531344:931277:13 31282:7persuade 31303:231302:5,12 31304:531232:2231284:9 31293:1031311:431308:10 31319:1931233:23,25 31234:43135:25 31356:1pertaining 31358:931320:21 31322:2231234:6 31246:10,11	31435:18 31436:2	31344:21 31351:19	31268:10,16,19	31318:14 31415:16	31436:2
31250:21 31251:531370:21 31385:1231272:2,14 31273:4police's 31240:931241:15 31258:1031252:3 31254:1931414:2131278:6 31294:1231243:16 31295:131263:11 31339:1031259:14 31261:19personal 31425:1931295:11,1831351:14 31379:1,1431394:2331262:15 31264:15personal 31425:2331299:13,15,1831300:17 31301:3,1531344:9policies 31280:1131277:13 31282:7persuade 31303:231302:5,12 31304:531304:5policing 31232:22possibility 31241:1831284:9 31293:1031311:431308:10 31319:1931233:23,25 31234:431288:22 31309:2431335:25 31356:1pertaining 31358:931320:21 31322:2231234:6 31246:10,1131309:25 31310:20					
31252:3 31254:19 31259:14 31261:19 31262:15 31264:15 31267:2 31274:431414:21 personal 31425:19 personal 31425:19 a1267:2 31274:431278:6 31294:12 31295:11,18 31299:13,15,18 31300:17 31301:3,1531243:16 31295:1 31295:11,18 31351:14 31379:1,1431263:11 31339:10 31394:23 possession 31352:1 possibility 31241:18 possibility 31241:18 possibility 31241:18 possibility 31241:18 policing 31232:2231277:13 31282:7 31284:9 31293:10 31335:25 31356:131414:21 personal 31425:19 a1303:231278:6 31294:12 31299:13,15,18 31300:17 31301:3,15 31302:5,12 31304:5 31302:5,12 31304:5 31302:21 31322:2231243:16 31295:1 31351:14 31379:1,14 31394:23 possibility 31241:18 possibility 31241:18 possible 31251:11 31288:22 31309:24 31320:21 31322:22					
31259:14 31261:19 31262:15 31264:15 31267:2 31274:4personal 31425:19 personally 31253:2331295:11,18 31299:13,15,18 31300:17 31301:3,1531351:14 31379:1,14 policies 31280:1131394:23 possession 31352:1 possibility 31241:18 possibility 31241:1831277:13 31282:7 31284:9 31293:10 31335:25 31356:1personal 31425:19 personally 31253:2331299:13,15,18 31301:3,1531351:14 31379:1,14 policies 31280:1131394:23 possession 31352:1 possibility 31241:18 policing 31232:2231286:14 31282:7 31284:9 31293:1031303:2 31311:431302:5,12 31304:5 31302:5,12 31304:5 31302:21 31322:2231323:23,25 31234:4 31233:23,25 31234:431288:22 31309:24 31309:25 31310:20			-		
31262:15 31264:15 31267:2 31274:4personally 31253:23 31286:1431299:13,15,18 31300:17 31301:3,15policies 31280:11 31304:9possession 31352:1 possibility 31241:18 possibility 31241:1831277:13 31282:7 31284:9 31293:10 31335:25 31356:1persuade 31303:2 31311:431302:5,12 31304:5 31302:5,12 31302:21 31322:22policies 31280:11 31311:4possibility 31241:18 possibility 31241:1831286:14 31302:5,12 31304:5 31320:21 31322:2231302:5,12 31304:5 31308:10 31319:19size 31232:22 31234:6 31246:10,11possibility 31241:18 31288:22 31309:24	/ 31 1 132				
31262:15 31264:15 31267:2 31274:4personally 31253:23 31286:1431299:13,15,18 31300:17 31301:3,15policies 31280:11 31304:9possession 31352:1 possibility 31241:18 possibility 31241:1831277:13 31282:7 31284:9 31293:10 31335:25 31356:1persuade 31303:2 31311:431302:5,12 31304:5 31302:5,12 31302:21 31322:22policies 31280:11 31319:19possibility 31241:18 policing 31232:2231286:14 persuade 31303:2 31311:431302:5,12 31304:5 31302:5,12 31302:21 31322:22policing 31232:22 31234:6 31246:10,11possibility 31241:18 31288:22 31309:24	31259:14 31261:19	personal 31425:19	31295:11,18	31351:14 31379:1,14	31394:23
31267:2 31274:4 31286:14 persuade 31303:2 31284:9 31293:1031286:14 persuade 31303:2 31311:431300:17 31301:3,15 31302:5,12 31304:5 31302:5,12 31304:5 31308:10 31319:1931344:9 policing 31232:22 31233:23,25 31234:4possibility 31241:18 possible 31251:11 31288:22 31309:2431284:9 31293:10 31335:25 31356:131302:5,12 31304:5 pertaining 31358:931302:21 31322:2231314:9 31320:21 31322:22possible 31251:11 31233:23,25 31234:4			-	-	possession 31352:1
31277:13 31282:7 31284:9 31293:10persuade 31303:2 31311:431302:5,12 31304:5 31308:10 31319:19policing 31232:22 31233:23,25 31234:4possible 31251:11 31233:23,25 31234:431305:25 31356:1pertaining 31358:931302:21 31322:2231234:6 31246:10,11131309:25 31310:20	In II Detter				-
31284:9 31293:10 31311:4 31308:10 31319:19 31233:23,25 31234:4 31288:22 31309:24 31335:25 31356:1 pertaining 31358:9 31320:21 31322:22 31233:46 31246:10,11 31309:25 31310:20					
31335:25 31356:1 pertaining 31358:9 31320:21 31322:22 31234:6 31246:10,11 31309:25 31310:20			-		
	the man () because of he	P. X. Unit and M. Low P. L.		-	
	31335:25 31356:1	pertaining 31358:9	31320:21 31322:22	31234:6 31246:10,11	31309:25 31310:20
ARCHIVE FOR JUSTICE		R JUSTICE		, 	

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RealTime Transcriptions

Marikana Commission of Inquiry

				Page 18
31343:22	31387:12	31385:17	property 31297:14	31302:23 31303:14
possibly 31296:12	presumably 31350:24	procedural 31343:3	proportionate	31341:24 31366:18
31297:2 31353:16	31351:7 31352:5	procedure 31366:10	31414:19 31415:17	31366:24 31380:17
31368:12 31374:2	31356:6 31401:20	31376:25 31398:3,21	31415:20	31404:3 31410:6
31390:22 31391:21	presumption 31241:20	procedures 31307:23	proportionately	provoke 31389:21
post 31279:3 31367:18	Pretorius 31371:14	proceed 31231:23	31405:12,17	31392:11
post-dated 31359:13	31372:14 31401:6	31239:1 31337:3	31406:14	PSNI 31292:24,24
post-mortem 31328:6	31403:2	31357:20,24	proposal 31369:12	· · · · · · · · · · · · · · · · · · ·
		· · · · · · · · · · · · · · · · · · ·		psychological 31336:12
potential 31324:3,24	pretty 31348:4	31360:19 31362:6	31370:3	psychology 31394:14
31327:14 31380:1	prevailing 31402:3	31369:4 31392:16	proposing 31276:15	PT4 31365:22
31382:10	31412:18	31419:24 31420:6	31282:1	public 31233:6,7,9
potentially 31266:4	prevent 31330:21	proceedings 31228:1	prosecutions 31265:16	31234:8 31242:8,16
31277:14 31280:21	31395:7 31427:12	31376:17,19 31420:3	prosecutor 31232:17	31246:6,9,14,17,19
31282:24 31295:21	preventative 31297:21	process 31230:2	prospect 31420:4	31246:20,22 31247:2
31299:4,5 31303:16	prevented 31429:19	31234:17 31235:21	protect 31305:12	31248:11,12,16
31312:2 31313:16	prevents 31429:18	31243:13 31246:13	31324:2 31383:8	31249:5,21,24
31315:23 31317:1	previous 31253:25	31262:1,8,19	31392:20 31395:13	31250:12,16
31320:15 31326:15	31284:5 31291:12	31266:20 31267:21	31427:2,18,19	31251:18,20
31342:7 31373:14	31294:24 31301:23	31267:23 31268:19	protected 31251:9	31253:17 31254:17
31380:2 31383:5,8	31321:22 31375:7	31269:24 31270:23	protection 31233:6	31255:13 31258:12
31384:6 31385:8	31392:10 31417:16	31272:14 31278:6	31240:2 31249:7	31258:23,24 31260:1
31394:12 31404:9,12	previously 31293:13	31279:2 31284:8,12	31240.2 31249.7 31251:3 31389:14	31260:1 31261:17
31409:13 31417:21	31313:20 31330:25	31284:25 31289:3	31404:24 31405:2,3,9	31263:23,24
31417:24 31424:11	31372:17 31392:1	31292:9,14 31294:12	31425:13,19	31264:15 31265:16
31429:14 31434:2	pre-brief 31263:8,9,22	31301:3 31305:10	protective 31414:9	31266:1,12 31267:10
powder 31248:4	31264:6,8 31266:3	31326:4,17 31334:14	protest 31268:13,21	31267:12,12,15
powerful 31360:23	31408:18	31334:16 31340:7	31269:7 31271:2,10	31269:15 31271:21
31411:17 31413:7	prima 31362:20	31355:3 31367:3	31271:12,14	31272:19 31279:9,13
PowerPoint 31367:13	31395:17 31420:12	31368:5 31374:6	31275:17,21	31279:14 31280:12
practical 31286:16	31422:4,5 31426:11	31375:12,17 31376:4	31277:11,11,25	31283:21 31284:6
31385:16	31432:23	31376:8,13,19,25	31393:21 31418:11	31285:18 31291:11
practice 31283:20	principally 31422:6	31379:10 31382:23	31418:22	31291:21 31353:10
31287:4,7,9,14,17,18	principle 31379:13	31385:7 31398:8,15	Protestant 31251:1,7	31382:8 31412:21
31287:19	principles 31234:16	31399:6,10,25	31266:18	31413:1,18 31414:11
practise 31263:7	31277:22 31289:5	31403:15 31405:22	protesters 31238:14	31414:12 31416:14
31264:17 31265:1,7	31290:14	31406:9,17 31414:25	31301:18 31323:24	31417:13 31421:1,10
31265:10 31267:17	print 31390:24	31426:15	31388:4	pull 31256:22 31415:7
	printed 31371:7		protesting 31418:10,13	31432:16
preceded 31290:10		produce 31392:9	protesting 31418:10,15 protests 31277:13	
predeterminants	31390:9	produced 31243:1		pulled 31435:17
31388:25	printout 31287:24	31281:7 31287:7	protruding 31257:2	pulling 31344:21
predictable 31384:25	prior 31312:10	31292:24	provable 31241:10	31424:1
preface 31328:18	31393:25	production 31243:10	provide 31233:25	pulls 31432:6
31428:19	private 31338:7,13,16	products 31234:4	31234:3 31238:4	purely 31293:16
prefer 31238:3 31288:7	31340:1	professional 31283:20	31287:25 31329:22	31394:10 31418:1,21
31290:1 31346:1	privilege 31326:10	31384:8	31336:4 31363:15	31419:4
preliminary 31236:20	privy 31313:20	profile 31297:17	31374:4 31389:14	purpose 31244:3
premature 31357:21	31316:7	progress 31290:21	31420:18 31424:16	31286:10 31388:20
premise 31380:25	proactive 31404:20	31327:16	31433:20 31434:1	31393:19 31396:4
premises 31274:24	probably 31228:8	projectile 31412:12	provided 31228:14,15	purposes 31253:7
preparation 31291:4	31233:12 31251:25	projects 31234:1	31235:9,13 31246:3	31287:10 31290:2,3
prepare 31250:15	31252:16 31258:15	promoted 31232:13	31287:23 31333:1	31337:20 31378:20
31287:24	31261:1 31272:9	31259:22	31367:11 31386:20	31394:11
prepared 31231:3,5	31297:15 31303:18	promotion 31277:23	provides 31242:12	pushed 31291:16
			-	
31235:12,18 31244:5	31319:12 31322:4	prompted 31346:12	31268:2 31374:11	pushes 31269:8
31326:16 31342:1	31334:14 31350:22	pronunciation	providing 31236:8	put 31236:2 31307:18
presence 31431:4	31370:11 31403:4,16	31296:22 31309:4	31262:16 31272:18	31309:20,24
present 31243:23	31403:25	proper 31264:13	31284:12 31363:17	31310:14,19
31248:14 31265:13	problem 31275:23	31306:16 31324:1,20	31419:1	31311:14 31318:8
31369:15 31413:12	31276:19 31290:19	31325:18 31396:3	provincial 31369:14,25	31336:7 31341:11,13
31415:18 31424:5	31305:2 31311:17	31409:12	31370:25 31371:18	31341:13 31343:2,2
		manandr. 21209.2.15	31380:7,13 31381:20	31351:17 31357:12
presentation 31241:6	31328:2 31362:4	properly 31298:2,15		
presentation 31241:6 presented 31295:25	31328:2 31362:4 31377:3,13 31382:24	31305:5 31308:3	31409:17	31361:21 31362:24
			-	31361:21 31362:24 31363:16 31369:22
presented 31295:25	31377:3,13 31382:24 31390:13 31410:2	31305:5 31308:3	31409:17 provisional 31235:14	
presented 31295:25 31340:24 31366:17 31366:20 31424:24	31377:3,13 31382:24 31390:13 31410:2 problematic 31377:9	31305:5 31308:3 31312:12 31313:23 31314:23 31322:22	31409:17 provisional 31235:14 31236:2,5,6,8,24	31363:16 31369:22 31370:13 31371:12
presented 31295:25 31340:24 31366:17	31377:3,13 31382:24 31390:13 31410:2	31305:5 31308:3 31312:12 31313:23	31409:17 provisional 31235:14	31363:16 31369:22

31401:4.8,11,25 31248:1631250:20 31325:51329:11 31371:251372:33 31296:1 31407:1431415:4 31251:113125:19 31330:12,144,14 receining 31293:13 31329:1 31407:1431415:4 31258:2231275:6 31332431334:14 receining 31293:13 31355:9 313324 puts 31377:21 31285:331291:15 31332431334:7 receinise 31429:14 31365:9 31356:3 31295:1731406:16 31300:1317:19 31350:12,25 31372:21 31359:13166:19 31332:23 31366:19 31370:8,103172:19 31352:53384:18 31368:13399:13166:10 31372:21 31376:31384:18 31368:13399:13166:19 31322:23 31377:31377:1377:21 recollection 31370:14 31422:23 quadifications 31234:19 31407:143142:19 recollection 31370:14 31322:23 31322:331411:23 31322:331411:23 31322:42 31366:1 3122:23 31332:10 31332:17 31388:231406:19 31332:17 31388:149:13 3127:23 31326:33141:22 31326:32:11 31326:32:11 31326:32:11 31326:32:11 31326:32:11 31326:13344:19 3126:23:11 31326:12 <th>11 31304:11 15 31328:25 14,23 31338:9 15 31363:19 12 31367:12 4 31389:20 18 31414:9 18 31418:5 20 g 31228:21 3 31271:7 13 31332:17 4 31349:14 18 31363:23 3,7 31393:16 282:7 31296:9 10 31378:25 131289:1 n 31241:18 d 31305:5</th>	11 31304:11 15 31328:25 14,23 31338:9 15 31363:19 12 31367:12 4 31389:20 18 31414:9 18 31418:5 20 g 31228:21 3 31271:7 13 31332:17 4 31349:14 18 31363:23 3,7 31393:16 282:7 31296:9 10 31378:25 131289:1 n 31241:18 d 31305:5
31401:4,8,11,25 31248:16 31250:20 31325:5 1329:11 31371:25 1372:33 31296:1 31407:14 31415:4 31251:11 31252:19 31330:12,14,14,16 receiring 31293:13 31296:1 31402:25 31423:6 31275:16 31332:45 3133:2,66 31297:1 3136:12 31332:4 puts 31377:21 31285:3 3129:15 31332:4 31334:7 recognise 31355:4 31365:3 31300:1 3130:12 31300:1 3137:19 31330:1332:4 31334:7 recognise 31355:19 31335:19 313708.10 31372:21 31378:10 3137:21 31378:10 3137:41374:210 recollections 31370:14 31422:3 quadruple 3128:25 31388:25 3137:7 31374:1374:210 recollections 31370:14 3122:23 quatifications 3123:419 3140:12:3:440:22 3138:7:3 1374:131.51 3129:24 3138:41:83 quater 3136:6:1 quater 3136:6:1 3129:21 3138:23:13:31:31:31:31 3129:24 3136:6:3 quater 3136:6:1 radio 3130:6:9 3138:7 recoir 3134:19 3129:24 3136:6:3 3129:24 3136:6:3 quater 3136:12 radio 3130:6:9 3138:7 radis 3134:19 3129:23:3141:12:3314:12:33:14:12:3	5 31283:9 14,21 11 31304:11 15 31328:25 14,23 31338:9 15 31363:19 12 31367:12 4 31389:20 18 31414:9 18 31418:5 20 g 31228:21 3 31271:7 13 31332:17 4 31349:14 18 31363:23 3,7 31393:16 282:7 31296:9 10 31378:25 131289:1 n 31241:18 d 31305:5
31401:44,81.125 31248:16 31250:20 31335:5 31329:11 31371:25 31372:33 31289:1 31405:18,19 31251:11 31252:19 31330:12,14,14,16 receiring 31293:13 31296:1 31402:25 31423:6 31275:16 31332:45 31332:4,13 31297:1 31365:9 31332:4 puts 31377:21 31285:3 3129:15 31332:4 31334:7 recognise 31355:4 31365:3 31300:13 3100:13 317:19 31300:13 317:19 313329:13 1366:19 recognise 31355:19 31337:3 1377:3137:51 QQQ9 3120:25 31338:25 31388:25 31377:1377:41774:2,10 recollections 31370:14 31422: 3122:2:13 3140:12:2 31402:22 3137:7 31377:13774:2,10 recollections 31370:14 3122:23 quadrifications 3123:4:19 31407:14 3142:10 recollections 31370:14 3125:23 3122:33 quatres 1346:6 quatres 1346:6 3129:24 31388:23:11 31239:24 31365:3 quatres 1326:17 ratio 3130:69 31318:7 realise 3134:19 3127:23 3142:23 3127:23 3132:24:3 31325:10 3125:11 ratio 3130:69 31318:7 realis 41409:25 31264:18 31270:24.6	14,21 11 31304:11 15 31328:25 14,23 31338:9 15 31363:19 12 31367:12 4 31389:20 18 31414:9 18 31418:5 20 g 31228:21 3 31271:7 13 31332:17 4 31349:14 18 31363:23 3,7 31393:16 282:7 31296:9 10 31378:25 131289:1 n 31241:18 d 31305:5
31401:4,8,11,25 3124:61 3125:020 3132:5:3132:11 3137:233 3129:11 31405:18,19 3125:11 3125:12 31330:12,14,14,16 receiving 3129:13 3129:11 31422:53 3123:22 3127:25 31332:25 31332:4 3134:7 receiving 3129:12 31332:4 puts 3177:21 3125:31317:19 3135:12,137:7 receiving 3135:19 3135:12 3135:19 3136:19 j1270:16 31332:17 3130:12,1317:19 3135:1359:1336:19 recognises 3135:19 3139:13 3136:19 j1270:16 31335:23 31372:21 3137:37:1377:41.7 recoliterions 31370:14 3142:2 QQQ9 31329:23 3138:25 3137:37:1377:41.7 recoliterions 31370:14 7142:23 j1229:24 3140:12:19 3137:41.3739:121 recoliterions 31370:14 7142:23 j1238:23 3127:23 3138:23:1334:14:129 recoliterions 31370:14 7142:23 j1238:14 31430:12 3143:14:19 reconfiguration 3135:13 3132:23 j1238:13 3140:12:19	11 31304:11 15 31328:25 14,23 31338:9 15 31363:19 12 31367:12 4 31389:20 18 31414:9 18 31418:5 20 g 31228:21 3 31271:7 13 31332:17 4 31349:14 18 31363:23 3,7 31393:16 282:7 31296:9 10 31378:25 131289:1 n 31241:18 d 31305:5
31405:18,19 3125:11 31252:1 31332:1 31333:2,1,4,4,4,6 receiving 129:13 3129:61 31407:14 31253:23 31273:23 31273:23 31322:5 31333:2,6,6 31297:1 31365:9 31332:1 putis 3137:21 31285:3 3129:1:6 31333:2,43334:7 reckless 31429:1 31365:7 31292:16,02,025 31346:1 3146:131489:12 recollextis 31385:25 31365:4 31395:17 3140:12 31352:23 3136:13 31365:1 31373:5 31395:1 31373:5 31395:1 31395:1 31395:1 31395:1 31395:1 31365:2 31395:1 31395:1 31395:1 31395:1 31397:1 31417:1 31373:5 31417:1 31373:7 3137:5 31397:1 31397:1 31397:1 31397:1 31397:1 31397:1 31397:1 31397:1 31397:1 31417:1 31322:1 31373:1 31417:1 31397:1 31397:1 31397:1 31397:1 31397:1 31397:1 31397:1 31397:1 31397:1 31397:1 31397:1	11 31304:11 15 31328:25 14,23 31338:9 15 31363:19 12 31367:12 4 31389:20 18 31414:9 18 31418:5 20 g 31228:21 3 31271:7 13 31332:17 4 31349:14 18 31363:23 3,7 31393:16 282:7 31296:9 10 31378:25 131289:1 n 31241:18 d 31305:5
31407:14 31415:4 31258:22 31272:16 31332:25 313332:6,6 31297:131361:25 31332:1 puts 31377:21 31285:3 31291:15 31333:1,1,9,10 31365:9 31333:1 puts 31377:21 3129:1,620,25 31336:1,13,19,10 31355:4 31365:1 31395:17 31406:16 3132:1,13137:19 31350:12,22 31356:12 recognise 31355:19 31393:1 0 31300:13137:21 31359:1366:22 recollect 31370:10 referring 31300:23,10 31382:25 31388:25 31373:7 31374:2,10 recollect 31370:10 referring 31302:2,3,10 31389:2 3136:6,20,22 recollect 31370:10 referring 31329:1336:2 31301:13 31302:2,5 31407:14 31442:19 reding 31296:5,6 31239:23 31361:1 31239:23 31361:1 qualifications 31234:19 31413:14 31400:2,4 31338:23 3137:15 31338:12,9 31338:23 31239:23 31362:3 31239:23 31362:3 31239:23 31362:3 3129:24 31338:23 31329:29:33 31339:29:33 31329:29:33 31329:29:33 31339:29:33 31239:29:33	15 31328:25 14,23 31338:9 15 31363:19 12 31367:12 4 31389:20 18 31414:9 18 31418:5 20 g 31228:21 3 31271:7 13 31332:17 4 31349:14 18 31363:23 3,7 31393:16 282:7 31296:9 10 31378:25 131289:1 n 31241:18 d 31305:5
31422:5 31423:6 3127:23 31275:6 31333:4,11,13,19,19 31365:9 31332:1 puts 31377:21 31285:3 31291:15 31333:24 31334:7 reckless 31429:14 31361:1 31270:16 31305:23 31300:1 3137:19 31350:12,25 31336:19 recognice 31358:25 31368:4 31395:17 3140:16 31370:23 3136:12,25 31368:18 31368:4 31368:12,25 31338:25 31368:19 quadrupe 3128:24 31385:25 31388:25 31366:16,20,21 recollection 31370:10 referring quadrupe 31228:24 31380:23 3191:11 31374:21,01 recollections 31370:10 referring 31229:2,5 31401:22 31440:22 31387:7 31374:2,10 recollections 31370:10 referring quadrupe 31228:24 3140:22 31387:7 31374:2,10 recollections 31370:10 referring 313229:12 3140:12 3136:4 31332:17 3138:4 31332:17 31335:0 3149:14 31322:17 3138:4 31332:13 31224:23 3124:5,11 referetion quatified 31364:3 3130:19 realised 3134:19 31224:13 3126:3,11 referetion	14,23 31338:9 15 31363:19 12 31367:12 4 31389:20 18 31414:9 18 31418:5 20 g 31228:21 3 31271:7 13 31332:17 4 31349:14 18 31363:23 3,7 31393:16 282:7 31296:9 10 31378:25 131289:1 n 31241:18 d 31305:5
puts 3127:21 3128:33:291:15 31332:431334:7 recless 3149:14 3136:1 puting 31245:13 31292:16,20,25 31346:131349:12 recognise 31355:4 31365:1 31395:17,31406:16 31328:17,31362:15 31352:23,31366:22 recognise 31357:10 31393:1	15 31363:19 12 31367:12 4 31389:20 18 31414:9 18 31418:5 20 g 31228:21 3 31271:7 13 31332:17 4 31349:14 18 31363:23 3,7 31393:16 282:7 31296:9 10 31378:25 131289:1 n 31241:18 d 31305:5
putting 31245:13 31292:16,20,25 31346:1 31349:12 recognises 31355:4 31365:1 31395:17 31300:1 313017:19 31350:12,25 31373:25 31355:4 31365:1 0 31370:10 31372:17 31350:12,25 31373:15 31373:15 31365:19 31330:1 0 31370:13 31372:12 31335:25 31385:25 31373:7 31370:10 31412:12 31300:2,3,10 31385:25 31385:25 31373:7 31371:15 31271:23 31310:11 31229:2,5 31407:14 3142:22 31337:13 reconmend 31412:6 31271:23 13126:3 31407:14 31430:23 31332:17 reading 3136:15 3129:23 3136:1 13136:3 quoting 3128:16 readis 3134:19 3129:23 3127:23 3129:21 31382:31406:19 record 3125:11 refers 312 13136:1 quoting 3128:16 readis 3134:19 3129:41 31326:17 3129:41 31326:13 13136:1 realiste 3134:19 3129:41 3129:41	12 31367:12 4 31389:20 18 31414:9 18 31418:5 20 g 31228:21 3 31271:7 13 31332:17 4 31349:14 18 31363:23 3,7 31393:16 282:7 31296:9 10 31378:25 131289:1 n 31241:18 d 31305:5
31270:16 31305:23 31300:1 3137:19 31350:12,25 31372:33188:25 31373:4 QQ9 31329:25 31375:5 3138:18 31368:16,20,21 recollect 31373:15 31447:1 QQ9 31329:25 31385:23 3138:22 31374:2,10 recollect 31373:15 31447:1 3130:2,3,10 31389:2 3138:25 31373:7 31374:2,10 recollect 31373:15 31447:1 31229:2,5 31401:22 3140:22 31374:7 31377:13 recollect 31373:15 3141:12 qualifications 31234:19 314312:19 31333:20 3134:25 recommend 3141:26 3125:23 quarter 3136:5 quote 3126:24 3140:12 31338:1373:15 3126:43 31270:2,3 31441:22 31336:3 quarter 3136:4:3 3127:28 31329:11 3138:8: 31370:15 3126:418 31270:2.4,6 refected 3133:13 31270:23 31441:12 3138:16 3140:17 R realise 3134:19 31272:21 3128:15 refrained realise 3134:19 3129:23 3144:12 3138:16 3140:17 raiwa 3129:02:13 raiwa 31329:13 31324:23 3127:23 3126:13 3129:21 3134:12 3138:16 3124:23 3142:19 3	4 31389:20 18 31414:9 18 31418:5 20 g 31228:21 3 31271:7 13 31332:17 4 31349:14 18 31363:23 3,7 31393:16 282:7 31296:9 10 31378:25 131289:1 n 31241:18 d 31305:5
31270:16 31305:23 31300:1 3137:19 31350:12,25 31372:33188:25 31373:4 QQ9 31329:25 31375:5 3138:18 31368:16,20,21 recollect 31373:15 31447:1 QQ9 31329:25 31385:23 3138:22 31374:2,10 recollect 31373:15 31447:1 3130:2,3,10 31389:2 3138:25 31373:7 31374:2,10 recollect 31373:15 31447:1 31229:2,5 31401:22 3140:22 31374:7 31377:13 recollect 31373:15 3141:12 qualifications 31234:19 314312:19 31333:20 3134:25 recommend 3141:26 3125:23 quarter 3136:5 quote 3126:24 3140:12 31338:1373:15 3126:43 31270:2,3 31441:22 31336:3 quarter 3136:4:3 3127:28 31329:11 3138:8: 31370:15 3126:418 31270:2.4,6 refected 3133:13 31270:23 31441:12 3138:16 3140:17 R realise 3134:19 31272:21 3128:15 refrained realise 3134:19 3129:23 3144:12 3138:16 3140:17 raiwa 3129:02:13 raiwa 31329:13 31324:23 3127:23 3126:13 3129:21 3134:12 3138:16 3124:23 3142:19 3	18 31414:9 18 31418:5 20 g 31228:21 3 31271:7 13 31332:17 4 31349:14 18 31363:23 3,7 31393:16 282:7 31296:9 10 31378:25 131289:1 n 31241:18 d 31305:5
31395:17 31406:16 31328:17 31362:15 31352:23 31366:12 recognices 31355:19 31397:13 31417:13 QQ9 31329:25 31385:25 31385:25 31385:25 31375:15 31371.15 31417:13 31302:33.10 31389:23 31387:23 31374:13 71374:21 recollection 31370:10 referring 3129:2.5 31385:23 31387:14 31374:13 31374:13 71374:21 recollection 31370:10 71322:33 qualifications 3123:19 31437:14 31430:12 31332:31 31342:17 31392:11 realing 3129:13 3129:123 31411:12 31336:3 quarter 3136:3 quoting 31228:16 real 31409:25 71274:21 31277:8 31236:3.21 refer 312 quersi 3136:12 ratio 31306:9 31332:1 31332:1 31332:1 31234:19 3127:23 31283:14 31252:17 ratio 31306:9 3138:17 31332:1 31332:1 31332:1 3128:16 31294:13 3127:18 3127:18 31294:13 3127:18 31294:13	18 31414:9 18 31418:5 20 g 31228:21 3 31271:7 13 31332:17 4 31349:14 18 31363:23 3,7 31393:16 282:7 31296:9 10 31378:25 131289:1 n 31241:18 d 31305:5
O 31370:8:10 31372:21 31359:1 3136:22 recoilection 31370:13 31417:1 QQ9 31329:25 31335:5 31384:18 31368:16,20,21 recoilection 31370:14 31424:2 guadrupic 31228:24 31401:22 3140:22 31373:15 recoilections 31370:10 referring guadrupic 31228:24 31401:22 3140:22 31373:15 3129:23 31411:22 31334:4 gualifications 31234:19 31413:14 31430:2,3 31332:0 31332:5 recommendations 31334:1 gualified 3136:6 guote 3126:2:24 31335:0 31348:18 3129:123 3141:22 31336:3 guarret 31364:3 guoting 3128:16 realse 3134:13 31270:24, 6 7effection guarret 31364:3 radio 31306:9 31318:7 realise 3134:19 31249:13 31270:24, 6 7effection guery 31286:12 radio 31306:9 31318:7 radia 3149:13 31278:12 3129:13 31249:13 31270:23 3138:83 31270:10 3128:15 7178 guery 31286:12 radio 31306:9 31318:7 realise 31349:13 31278:15 31328:13 31278:15 31328:13 31278:13 31278:13 312	18 31418:5 20 g 31228:21 3 31271:7 13 31332:17 4 31349:14 18 31363:23 3,7 31393:16 282:7 31296:9 10 31378:25 131289:1 n 31241:18 d 31305:5
Q 31375:5 31384:18 31368:16,20,21 recollection 31370:14 31424:2 QQ9 31329.25 31385:25 31388:25 313737; 71374:2,10 recollections 31370:10 referring guadruple 31228:24 31401:22 3140:22 31387; 731397:21 recommend 3141:26 31252:3 gualified 31346:6 31407:14 31412:19 reading 31296:56 31291:23 31411:22 31334:4 gualified 31346:6 guoting 31238:10 13348:18 31373:15 31239:24 31335:23 gualified 3136:3 guoting 31238:16 ready 31355:6 31242:23 3124:67 31296:13 guarter 31364:3 guoting 31238:16 real 31409:15 3127:82 3147:78 reflection guarter 31364:3 guoting 3128:16 realise 31349:13 3127:82 3127:8 reflection 31419:17 radio 31306:9 31318:7 realised 3131:419 31228:13 1322:13 31228:13 1322:13 31228:13 1322:13 31228:13 1322:13 31228:13 1322:13 31228:13 1322:13 31228:13 1322:13 3124:5 3137:10 31283:13 31409:17 radio 31306:13 realise 31340:13 3127:13 3137:16 31283:13 3124:13 3132:20	20 g 31228:21 3 31271:7 13 31332:17 4 31349:14 18 31363:23 3,7 31393:16 282:7 31296:9 10 31378:25 131289:1 n 31241:18 d 31305:5
QQQ9 31329:25 31385:25 31388:25 31373:7 31374:2,10 recollections 31370:10 referring quadrupic 3128:24 31301:1 31374:18,20,23 recommend 31412:6 31252:3 quadrupic 3128:24 31401:22 31402:22 31337:7 31372:7 31332:0 3134:25 recommend 31412:6 31252:3 qualified 3136:6 quote 3126:2:24 31338:2 31332:0 3134:25 record 31235:11 referring quarer 3136:3 quote 3126:2:24 31388:2 31406:19 record 31235:11 reffection quarer 3136:3 quote 3128:16 3128:15 reals 3134:13 3127:2:3 3141:22 3136:3 querr 3136:4: quote 3128:16 reals 3134:13 3127:2:3 3124:7 3129:21 31232:1 31226:12 radio 3136:9 31318:7 realise 3134:19 3127:2:1 3128:15 reffection 31226:12 radio 3130:1 realise 3134:19 3127:2:1 3128:12 31328:1 3132:2:1 3128:2:1 3128:12 3128:2:1 3128:2:1 3128:12 3128:2:1 3128:12 3129:2:3 313:12 31328:1 313:1:1 3132:1 3132:1 3132:1 3132:1 3132:1 3132:1 3132:1 31332:1 3133:1 3132:1 3133:1 3132:1 3133:1 3133:1 3133:1 3133:1 3132:1 3133:1 3133:1 3132:1 3133:1 3133:1 3133:1 3133:1 3132:1 3132:1 3133:1 3133:1 3133:1 3132:1 3133:	g 31228:21 3 31271:7 13 31332:17 4 31349:14 18 31363:23 3,7 31393:16 282:7 31296:9 10 31378:25 131289:1 n 31241:18 d 31305:5
3130:2,3,10 3139:2,31391:11 31374:18,20,23 recommend 31412:6 31225:2 quadruple 31228:24 31401:22 31402:22 31387:7 31397:21 recommend 31412:6 31334:4 qualifications 31234:19 31407:14 31420:23 31332:0 31343:25 recommend 31412:6 31334:4 quality 3135:23 3127:28 31329:11 31338:2 31406:19 record 31235:11 refers 312 quarrel 3131:4 quote 3126:2:24 31381:6 realise 3134:19 31270:2:4,6 reflected1 quarrel 3131:4 quoter 3128:16 3129:13 31270:2:4,6 reflected1 regard 31 query 31286:12 radio 31306:9 31318:7 radio 31306:9 31318:7 31322:3 31328:19 31331:20 31287:3 312521:13 3128:14 31324:5 31347:14 31322:3 31328:19 31331:20 31287:3 31273:15 3128:17 raise 3123:19 3129:41 31371:17 31374:6 31371:17 31332:8 31371:5 31273:15 3128:17 raise 3123:19 31294:16 raise 31270:1 31328:1333:20 31287:13 312273:15 3128:17 7128:48 31307:15 <t< td=""><td>3 31271:7 13 31332:17 4 31349:14 18 31363:23 3,7 31393:16 282:7 31296:9 10 31378:25 131289:1 n 31241:18 d 31305:5</td></t<>	3 31271:7 13 31332:17 4 31349:14 18 31363:23 3,7 31393:16 282:7 31296:9 10 31378:25 131289:1 n 31241:18 d 31305:5
quadruple 31228:24 31401:22 31402:22 31387:7 31397:21 recommendations 31310:1 31229:2,5 31407:14 31412:19 31432:01 31291:23 31411:22 31334:4 qualifications 3123:19 31413:14 31430:22 31332:013143:25 31291:23 31411:22 31335:3 qualify 31335:23 31272:8 31329:11 31388:2 31406:19 recomfiguration 31335:1 guarter 31364:3 31332:17 31388:2 31406:19 relex 31235:6 31242:23 31246:7 relex 31335:6 quarter 31364:3 3132:17 31398:16 31267:23 31246:7 relex 31349:13 31278:21 3128:15 refected 31314:19 quertor 3124:12.124 31318:8 31327:10 31328:19 3138:7 realised 31314:19 3129:19 3138:7 relistically 31405:13 recorded 31270:1 31335:1 31250:10 31251:14 rais 3130:1 realistically 31405:13 recorded 31270:1 31335:1 31278:19 31288:14 31325:23 3137:14 3125:20 31264:24 recorded 31270:1 31335:1 31300:21311:12 31348:8 31300:22 31311:17 31348:3 31305:2 31352:3 3128:19 3128:11 3134:1 <td>13 31332:17 4 31349:14 18 31363:23 3,7 31393:16 282:7 31296:9 10 31378:25 131289:1 n 31241:18 d 31305:5</td>	13 31332:17 4 31349:14 18 31363:23 3,7 31393:16 282:7 31296:9 10 31378:25 131289:1 n 31241:18 d 31305:5
3129:2.5 31407:14 31412:19 reading 31296:5.6 31291:23 31411:22 3133:4:3 qualifications 31234:19 31413:14 31430:2.3 quote 31262:24 3133:20 3134:25 reconfiguration 31358:1 quality 31335:23 31272:8 31329:11 31388:2 31406:19 record 31235:11 refers 312 quarter 31361:3 quote 31288:16 ready 31355:6 3124:2:3 31246:7 31296:1 quarter 31364:3 attass 3130:19 realise 3134:19 7 reflection query 31286:12 radio 31306:9 31318:7 realise 3134:19 31298:13 1326:3.21 regard 31 question 31241:21,24 31318:8 31327:10 31323:1 31324:23 31328:19 31331:20 31283:1 31253:17 31268:15 31303:1 realisca1314:19 31420:10 312927:8 31273:15 31274:7 raise 31231:9 31294:16 realise 3134:19 31370:6 3134:20 31332:9 31300:2 31311:12 raised 31300:18 31317:15 31367:18 recording 31270:3 31388:4 31330:2 3131:12 raise 31400:6 reason 31238:15 reduce 31289:4 31308:2 31332:9, 31349:9 </td <td>4 31349:14 18 31363:23 3,7 31393:16 282:7 31296:9 10 31378:25 131289:1 n 31241:18 d 31305:5</td>	4 31349:14 18 31363:23 3,7 31393:16 282:7 31296:9 10 31378:25 131289:1 n 31241:18 d 31305:5
3129:2,5 31407:14 31412:19 reading 31296:5,6 31291:23 31411:22 3133:4:3 qualifications 31234:19 31413:14 31430:2,3 quote 31262:24 3133:20 3134:25 reconfiguration 31358:1 quality 31336:3 quote 31262:24 31388:18 31373:15 3129:23 3124:12 31385:1 quartel 31311:4 quote 31286:16 31264:18 31373:15 3129:23 3124:27 31296:1 quartel 31311:4 31332:17 ready 31355:6 31278:21 31283:15 reflection query 31286:12 radio 31306:9 31318:7 realise 3134:13 3129:21 3126:315 regard 31 question 31241:21,24 3138:8 31327:10 31323:1 31324:23 31328:19 31331:20 31283:1 31253:17 31268:15 31303:1 realise 3134:19 31420:10 31292:13 31273:15 31274:7 raise 31231:9 31294:16 raise 31231:9 31294:13 recorde 31270:1 31335:3 31300:2 31311:12 raise 31300:18 31317:15 31367:18 recorde 31297:2 31348:8 31330:2 9,31340:17 raise 31400:6 reason 31238:15 reduce 31289:4 31308:2 31332:9,13,19,21,23	4 31349:14 18 31363:23 3,7 31393:16 282:7 31296:9 10 31378:25 131289:1 n 31241:18 d 31305:5
qualifications 31234:19 31413:14 31430:2,3 31333:20 31343:25 reconfiguration 31358:1 quality 3135:23 31272:28 3129:11 31388:2 31406:19 record 31235:11 refers 312 quarter 3131:4 3132:17 31382:23 31242:23 31246:7 3129:14 quarter 3136:3 quoting 31238:16 ready 31355:6 31242:23 31246:7 3129:15 quarter 3136:4:3 31332:17 realise 31349:13 31278:21 31283:15 reflection quertion 31241:21,24 ratio 31306:9 31318:7 realise 31349:13 31278:21 31283:15 reflection question 31241:21,24 ratio 31306:9 31318:7 realise 31349:13 31278:21 31283:15 reflection 31250:10 31251:14 ratiway 31298:23 ratio 31300:69 31318:7 realistically 31405:13 recorde 31270:1 31335:2 31278:19 31283:14 31302:19 31300:18 ratiscally 31405:13 recorde 31270:1 31352:2 31300:2 3131:12 raises 31400:6 reason 31238:15 recorde 31289:4 regards 31349:13 31332:9, 9, 31340:9, 12 31406:10, 10 reason 31238:15 reduce 31289:4 regards 31360:2	18 31363:23 3,7 31393:16 282:7 31296:9 10 31378:25 131289:1 n 31241:18 d 31305:5
qualified 31346:6 quote 31262:24 31348:18 31373:15 31239:24 31365:3 quairel 31311:4 quoting 31238:16 31388:2 31406:19 record 31235:11 refers 312 quarrel 31311:4 31332:17 real 31409:125 31272:8 31329:11 31296:12 31264:18 31270:2,4,6 refers 312 real 31409:125 31272:13 1283:15 refers 312 refers 313 refers 312 refers 312 refers 313 refers 313 refer 312 refer 312 refer 312 refe	3,7 31393:16 282:7 31296:9 10 31378:25 131289:1 n 31241:18 d 31305:5
quality 31335:23 31336:3 31272:8 31329:11 quoting 31238:16 31382:17 31388:2 31406:19 ready 31355:6 record 31235:11 31242:23 31246:7 refers 312 31242:3 31242:3 quarter 31361:4 query 31286:12 query 31286:12 31250:10 31241:21,24 31308:16 radio 31306:9 31318:7 31250:10 31241:21,24 31308:16 radio 31306:9 31318:7 31250:10 31251:14 312321:3 31242:3 31272:21 31283:15 realise 31349:13 refer and 31278:19 31283:15 realise 31349:13 31278:19 3131:20 31278:19 31313:20 31283:1 31283:1 312321:9 31294:16 31298:23 realistically 31405:13 realistically 31405:13 recordd 31270:1 realise 31340:23 31288:19 31331:20 31283:1 31278:19 31283:14 31292:23 31370:6 31342:23 31348:3,5 31297:8 31322:3 31286:6 31291:2 31278:19 31283:14 31324:5 31347:14 31300:12 31348:8 31300:12 31311:17 31300:2 31311:17 31348:3,5 31352:2 31360:13 31302:19 31306:18 31371:2 31371:3 31301:23 31293:311:17 31342:10,14 31302:19 31306:18 31371:2 31371:3 31301:17 raises 31392:8 31339:9, 31340:9,12 31346:10 31341:17 realm 31353:10 reduce 31289:4 realm 31353:10 regard 31 31252:4,58 31361:8 31342:10,14 31342:10,14 raises 31400:6 raises 31400:6 raises 31400:6 raises 31400:6 raises 31400:17 realm 31353:10 realm 31353:10 31352:4 31362:10 31361:9 31362:10 31361:9 31362:10 31342:10,14 31332:11 31354:6;14 31322:13 31224:23 31366:9 31322:2 31362:10	282:7 31296:9 10 31378:25 1 31289:1 n 31241:18 d 31305:5
31336:3 quarter 31311:4 quarter 31311:4 quoting 31238:16 3132:17 ready 31355:6 31242:23 31246:7 31298:16 31242:23 31246:7 31298:16 31242:23 31246:7 31298:16 31242:23 31246:7 31298:16 31242:23 31246:7 31298:16 31242:23 31246:7 31298:16 31242:23 31246:7 31298:12 31298:16 reflection reflection query 31286:12 question 31241:2124 radio 31306:9 31318:7 31253:17 31268:15 radio 31306:9 31318:7 raise 31231:9 31292:13 31232:1 31324:23 31370:6 312294:1 31326:3.21 realised 31314:19 312294:1 313226:3.21 realised 31314:19 312294:1 31326:3.21 realised 31314:19 312294:1 313226:3.21 realised 31314:19 312294:1 313226:3.21 realised 31314:19 312294:1 313226:3.21 realised 31314:19 31232:1 31322:1 31322:1 313324:5 31347:14 31255:20 31264:24 recording 31272:3 recording 31272:3 31388:4 31300:2 31311:17 313071:7 31374:6 31367:3 31377:1 31374:6 31367:3 31377:1 31374:6 31367:3 31377:1 31374:6 31367:3 31377:1 31374:6 31367:3 31377:1 31374:6 31367:3 31377:2 31393:8 31307:1 31374:6 31367:3 31372:1 31384:21 31342:1 31393:10 31393:8 31307:1 31374:6 31367:3 31372:1 31384:1 31307:1 31374:6 31367:3 31377:1 31374:6 31367:3 31377:1 31374:6 31367:3 31377:1 3	10 31378:25 1 31289:1 n 31241:18 d 31305:5
quarrel 31311:4 querret 31364:3 31419:17 31332:17 31398:16 real 31409:25 realised 3134:19 31264:18 31270:2,4,6 31274:21 31277:8 realised 31349:13 reflected 1 reflection 31274:21 31277.8 query 31286:12 query 3126:114 31250:10 31251:14 31250:10 31251:14 radio 31306:9 31318:7 31303:1 31323:1 31324:23 31370:6 31294:1 31326:3,21 31294:1 31326:3,21 31294:1 31326:3,21 31294:1 31326:3,21 31207:1 regard 31 31294:1 31326:3,21 31297:1 31303:1 31273:15 31274:7 31278:19 31283:14 31324:1 31371:4 31255:20 31264:24 31348:8 recording 31272:3 31348:3,5 31352:2 31377:17 31332:9,13192:12 31300:12 31311:12 raise 31231:9 31294:16 31300:12 31311:17 raise 31300:18 31317:15 31367:18 record 31297:13 31377:17 31377:17 31339:9,9 31340:9,12 31300:19 31306:18 31337:22 31375:10 red 31289:4 regard 3 31399:9,9 31340:9,12 31302:19 31306:18 31371:23 31275:10 red 31289:4 regard 3 31389:9,9 31340:9,12 31342:10,14 raises 31400:6 reasen 31238:15 reduce 31289:4 regard 3 3139:9,25 31224:1 31245:1 31346:131356:13366:121 31346:124 31330:25 3139:6 31294:2 31292:1 31346:17.17 raises 31400:6 reasen 31238:15 reduce 31289:4 regard 3 31339:9 31346:17.19<	l 31289:1 n 31241:18 d 31305:5
quarter 31364:3 31419:17 real 31409:25 realise 31349:13 31274:21 31277:8 31278:21 31283:15 reflection refrained realise 31349:13 query 31286:12 question 31241:21,24 31318:8 31327:10 31250:10 31251:14 31318:8 31327:10 31323:1 31324:23 31328:19 31326:3,21 regard 31 regard 31 31250:10 31251:14 railway 31298:23 31370:6 31420:10 31297:8 31278:19 31283:14 31324:5 31347:14 31255:20 31264:24 recording 31272:3 31388:3,5 31300:2 31311:12 raise 31300:18 31371:25 31371:17 31371:17 31374:6 31367:3 31300:2 31311:12 raise 31300:18 31371:25 31375:10 red 31284:21 31428:3 31332:9,13,19,21.23 31306:18 31371:25 31375:10 red 31284:21 31428:3 31339:9,9 31340:9,12 31401:17 realm 31353:10 31356:10 31292:4 31308:2 31339:9,9 31340:9,12 31401:17 raise 31400:6 reason 31238:15 reduce 31289:4 regard 33 31339:9,9 31340:9,12 31421:16 31269:25 31330:25 31339:6 31294:2 31292:19 31318:1 31342:10,14 raise 31400:6 reason 31238:15	n 31241:18 d 31305:5
quarter 31364:3 31419:17 real 31409:25 realise 31349:13 31274:21 31277:8 31278:12 31283:15 reflection refrained regard 31 query 31286:12 query 31286:12 question 31241:21,24 31318:8 31327:10 31325:131324:23 31328:19 31331:20 31323:131324:23 31328:19 31331:20 31228:19 31331:20 31294:131326:3,21 regard 31 question 31241:21,24 31250:10 31251:14 31250:10 31251:14 railway 31298:23 railway 31298:23 31370:6 31420:10 31297:8 31348:3,5 31278:19 31283:14 31324:5 31347:14 31255:20 31264:24 recording 31272:3 31388:8 31300:22 31311:17 31371:17 31374:6 31367:3 31300:2 31311:12 31300:18 31317:15 31367:18 records 31393:8 31377:1 31371:17 31374:6 31367:3 31330:21 31300:18 31317:12 31375:10 red 31284:21 1428:1 31339:9,9,31340:9,12 31400:17 reason 31238:15 reduce 31289:4 regards 3 31339:9,9 31340:9,12 31400:6 regard 31 31292:4 31308:2 31339:9,9,31340:9,12 31401:17 reason 31238:15 reduce 31289:4 regard 31 31292:4 31308:2 31339:9,9,31340:9,12 31401:17 reason 31238:15 reduce 31289:4 regard 31 3129:4 31308:2 31339:9,9,31340:9,12 31401:17	d 31305:5
31419:17Rrealise 31349:1331278:21 31283:15refrainedquery 31286:12radio 31306:9 31318:7realised 31314:1931294:1 31326:3,21regard 31question 31241:21,2431318:3 31327:1031323:1 31324:2331328:19 31331:2031283:131253:17 31268:1531303:1realistically 31405:13recorded 31270:131335:131273:15 31274:7rais 31231:9 31294:16really 31237:2331348:3,531352:231286:6 31291:231342:5 31347:1431255:20 31264:24recording 31272:331358:331300:2 31311:12raised 31300:1831371:15 31367:18records 31393:831377:131332:9,13,19,21,2331332:8 31371:331405:10,10red 31284:2171428:131339:9,9 31340:9,1231401:17realm 31353:10red 31282:47129:531342:10,14raises 31400:6reason 31238:15refore 31239:471329:531359:6 31360:1231241:16 31269:2531330:25 31339:631294:8 3129:931329:231362:16 31364:9,10range 31272:1931342:10,1131352:4,5,8 31361:831317:17 3132:731354:631366:131367:21rank 3123:10,10,1131352:4,5,8 31361:831317:17 3132:731354:931379:331388:8 31389:6,1131258:1031352:13 3134:13 3134:531335:11 31336:931379:331388:8 31389:6,1131258:20 31259:1531426:23 3143:193137:23 31351:831414:123139:19 3140:2531267:14 31292:12reasonabl 3142:231389:9131499:11reguna 3134:53139:19 31409:25 <td>d 31305:5</td>	d 31305:5
and query 31286:12radio 31306:9 31318:7 radio 31306:9 31318:7realised 31314:19 31294:131326:3,2131294:131326:3,21 regard 3131250:10 31251:14railway 31298:23 s1253:17 31268:1531302:1 31324:23 31370:631328:19 31331:20 31328:19 31326:3,2131297:1 31328:19 31326:3,2131253:17 31268:1531303:1 realistically 31405:13 realistically 31405:13 realistically 31405:13recorded 31270:1 31348:3,531352:2 31352:231278:19 31283:1431324:5 31347:14 31324:5 31347:1431255:20 31264:24 31300:2 31311:17recorded 31270:1 31371:17 31374:631352:2 31358:431300:3 1311:12raised 31300:18 31302:19 31306:1831317:15 31367:18 31300:2 31311:17records 31393.8 31377:13 31371:17 31374:631367:1 31377:17 31374:631332:9, 13, 19, 21, 23 31302:19 31306:1831317:12 31375:10 31326:10 31338:21 31332:8 31371:331405:10,10 31255:10reduce 31289:4 31258:15regards 3 31258:1531342:10,14 31342:10,14raises 31400:6 31256:10reason 31238:15 31239:3, 10 31274:7refure 31239:5 31247:19 31302:13 3132:431302:2 31331:2 31302:3 3133:1231350:11 31354:6,14 31366:1 31367:21range 31232:14 31232:13 31228:113130:25 31396:6 31337:23 3135:123136:431370:1 31371:1 31398:19 31409:25 31426:121ranks 31232:10,10,11 31239:23 31260:13 31446:31366:031337:23 3136:9 31337:23 3135:11 31336:931336:9 31337:23 3135:11 31336:931336:9 31337:23 3135:11 31336:931388:8 3189:6,11 31398:19 31409:25 31426:13 31442:13 31442:24ranks 31232:12 ranks	
question 31241:21,2431318:8 31327:1031323:1 31324:2331328:19 31331:2031283:131250:10 31251:14railway 31298:2331370:631420:1031297:831253:17 31268:1531303:1realistically 31405:13recorded 31270:131335:231273:15 31274:7raise 31231:9 31294:16really 31237:2331348:3,531352:231278:19 31283:1431324:5 31347:1431255:20 31264:24recording 31272:331358:431300:2 31311:12raised 31300:1831371:15 31367:18recording 31272:331378:431332:9,13,19,21,2331302:19 31306:1831371:22 3175:10red 31284:2131428:131332:9,31340:9,1231401:17realm 31353:1031356:1031255:131342:10,14raises 31400:6reason 31238:15reduce 31322:431308:231330:11 31354:6,14raige 31269:1931293:3,10 31274:7refer 31239:5 31247:1931369:231362:16 31364:9,10raige 31272:1931343:11 31348:831309:2 3131:123136:431388: 31389:6,1131259:23 31220:1,10,1131352:45,8 31361:831371:7 3123:731354:131391:4 31396:1031259:23 31260:1331446:203137:23 3135:1331436:93137:23 3135:1331388: 31389:6,1131259:23 31260:1331436:203137:23 3135:331412:131391:4 31490:1031259:23 31260:1331436:203137:23 3135:331412:131398:19 31409:2531267:14 31292:12reasonable 31240:2231388:19 31499:11regular331398:19 31409:2531267:14 31292:12 <td>17.1.1.10</td>	17.1.1.10
31250:10 31251:14railway 31298:2331370:631420:1031297:831253:17 31268:1531303:1realistically 31405:13recorded 31270:131335:131273:15 31274:7raise 31231:9 31294:16realistically 31405:13recorded 31270:131352:231278:19 31283:1431324:5 31347:1431255:20 31264:24recording 31272:331368:3,531300:2 31311:12raised 31300:1831317:15 31367:18records 31393:831377:131332:9,13,19,21,2331302:19 31306:1831371:22 31375:10red 31284:2131428:131339:9,9,31340:9,1231401:17realm 31353:1031356:1031255:131342:10,14raises 31400:6reason 31238:15reduces 31322:431308:231350:11 31354:6,14ranges 31269:1931239:3,10 31274:7refer 31239:5 31247:1931315:231362:16 31364:9,10ranges 31272:1931343:11 31348:831309:2 3131:1231336:431336:13 3137:131245:13 31258:1131375:1 31384:531335:13 3133:63137:17 31323.731388: 8) 3189:6,1131259:23 31260:133146:203137:23 31353:831412:131398:19 31409:2531267:14 31292:12reasonable 31240:2231398:19 31399:11regina 3131398:19 31409:2531267:14 31292:12reasonable 31240:2231398:19 31399:11regina 3131416:7,19 31423:731259:23 31260:1331436:203137:23 31353:831412:1331398:19 31409:2531267:14 31292:12reasonable 31240:2231398:19 31399:11regina 3131416:7,19 31423:7<	
31253:17 31268:1531303:1realistically 31405:13recorded 31270:131335:131273:15 31274:7raise 31231:9 31294:16really 31237:2331348:3,531352:231278:19 31283:1431324:5 31347:1431255:20 31264:24recording 31272:331358:431286:6 31291:231348:831300:22 31311:1731371:17 31374:631367:331300:2 31311:12raised 31300:18313171:5 31367:18records 31393:831377:131332:9,13,19,21,2331302:19 31306:1831371:22 31375:10reduce 31289:4regards 331339:9,9 31340:9,1231401:17realm 31353:1031356:1031256:131342:10,14raises 31400:6reason 31238:15reduce 31289:4regards 331350:11 31354:6,14range 31234:1,431303:8,10 31308:231249:2 31292:1931318:131362:16 31364:9,10range 31272:1931343:11 31348:831309:2 31313:1231336:931366:13 1367:21range 31272:1931343:11 31348:831309:2 31313:1231336:931388: 8 31389:6,1131259:23 31260:1331426:23 31432:1931337:23 3135:831412:131391:4 31396:1031259:23 31260:1331426:23 31432:1931337:23 3135:831412:131398:19 31409:2531267:14 31292:12reasonable 31240:2231398:19 31399:11region 31431398:19 31409:24ranks 31232:24reasonable 31240:2231398:19 31399:11region 3141:2331342:13 3142:12ranks 31232:4reasonable 31240:2231398:19 31399:11region 3142:1331391:4 31396:10 <t< td=""><td>17 31295:21</td></t<>	17 31295:21
31273:15 31274:7raise 31231:9 31294:16really 31237:2331348:3,531352:231278:19 31283:1431324:5 31347:1431255:20 31264:24recording 31272:331358:431286:6 31291:231348:831300:22 31311:1731371:17 31374:631367:331300:2 31311:12raised 31300:1831317:15 31367:18recording 31272:331368:331300:2 31311:12raised 31300:1831317:12 31375:10red 31284:2131428:131332:9,13,19,21,2331302:19 31306:1831371:22 31375:10red 31284:2131428:131339:9,9 31340:9,1231401:17realm 31353:1031356:1031255:131342:10,14raises 31400:6reason 31238:15reduces 31322:431308:231345:11,17raise 31229:1931249:3,10 31274:7refor 31239:5 31247:1931315:931350:11 31354:6,14range 31234:1,431303:8,10 31308:231249:2 31292:1931315:931362:16 31360:1231241:16 31269:2531330:25 31339:631294:8 31296:931329:231362:16 31364:9,10range 31272:1931343:11 31348:831317:17 31323:731354:131371:1 3132:13 11258:1131375:1 31384:531337:23 31351:131354:13137:23 31351:13138:8 31389:6,1131259:23 31260:133146:203137:23 31353:831412:131391:4 31396:1031259:23 31260:1331436:203137:23 31351:131342:131391:4 31396:1031259:23 31260:1331446:2231337:23 31351:131426:331416:7,19 3142:731359:17 31357:18reasonably 31315:1 <td>8 31321:18</td>	8 31321:18
31273:15 31274:7raise 31231:9 31294:16really 31237:2331348:3,531352:231278:19 31283:1431324:5 31347:1431255:20 31264:24recording 31272:331358:431286:6 31291:231348:831300:22 31311:1731371:17 31374:631367:331300:2 31311:12raised 31300:1831317:15 31367:18recording 31272:331368:331300:2 31311:12raised 31300:1831317:12 31375:10red 31284:2131428:131332:9,13,19,21,2331302:19 31306:1831371:22 31375:10red 31284:2131428:131339:9,9 31340:9,1231401:17realm 31353:1031356:1031255:131342:10,14raises 31400:6reason 31238:15reduces 31322:431308:231345:11,17raise 31229:1931249:3,10 31274:7refor 31239:5 31247:1931315:931350:11 31354:6,14range 31234:1,431303:8,10 31308:231249:2 31292:1931315:931362:16 31360:1231241:16 31269:2531330:25 31339:631294:8 31296:931329:231362:16 31364:9,10range 31272:1931343:11 31348:831317:17 31323:731354:131371:1 3132:13 11258:1131375:1 31384:531337:23 31351:131354:13137:23 31351:13138:8 31389:6,1131259:23 31260:133146:203137:23 31353:831412:131391:4 31396:1031259:23 31260:1331436:203137:23 31351:131342:131391:4 31396:1031259:23 31260:1331446:2231337:23 31351:131426:331416:7,19 3142:731359:17 31357:18reasonably 31315:1 <td>17 31343:8</td>	17 31343:8
31278:19 31283:1431324:5 31347:1431255:20 31264:24recording 31272:331358:431286:6 31291:231348:831300:2 31311:1731371:17 31374:631367:331300:2 31311:12raised 31300:1831317:15 31367:18records 31393:831377:131332:9,13,19,21,2331302:19 31306:1831371:22 31375:10reduce 31289:4regards 331339:9,9 31340:9,1231401:17realm 31353:1031356:1031255:131342:10,14raises 31400:6reason 31238:15reduce 31322:431308:231359:6 31360:1231241:16 31269:1931239:3,10 31274:7refer 31239:5 31247:1931315:931350:11 31354:6,14range 31234:1,431303:8,10 31308:231294:8 31296:931329:231362:16 31360:1231241:16 31269:2531330:25 31339:631294:8 31296:931329:231362:16 31366:49,10range 31232:10,10,1131352:4,5,8 31361:831317:17 31323:731354:131398:19 31409:2531267:14 31292:1531426:23 31432:1931337:23 31353:831412:131398:19 31409:2531267:14 31292:12reasonable 31240:2231398:19 31399:11regurd 3131416:7,19 31423:731260:1131321:23 31416:12reference 31283:16,2231350:231436:22rank 31232:24reasonably 31315:131412:13 31435:531263731442:13 3142:12ranked 31260:1131321:23 31416:12reference 31283:16,2231350:231436:22ranked 31230:2,231267:431222:2 31320:331350:231436:24ranked 31270:2,2312	20 31355:23
31286:6 31291:231348:831300:22 31311:1731371:17 31374:631367:331300:2 31311:12raised 31300:1831317:15 31367:18records 31393:831377:131332:9,13,19,21,2331302:19 31306:1831371:22 31375:10red 31284:2131428:1131335:10 3138:2131332:8 31371:331405:10,0reduce 31289:4regards 331339:9,9 31340:9,1231401:17realm 31353:1031356:1031255:131342:10,14raises 31400:6reason 31238:15reduce 31222:431308:231350:11 31354:6,14range 31234:1,431303:8,10 31308:23129:23 3129:5 31247:1931315:931362:16 31360:1231241:16 31269:2531330:25 3139:631294:8 31296:931329:231362:16 31364:9,10ranges 31272:1931343:11 31348:831309:2 3131:1231336:43139:6,11 31371:131232:13 31258:1131375:1 3136:831377:7 31337:331354:13139:6,1331259:23 31260:1331426:23 31432:1931337:20 31397:16region 31431398:19 31409:2531267:14 31292:12reasonable 31240:2231398:19 31399:11reguar 3131416:7,19 31423:731359:17 31387:18reasonable 31240:2231398:19 31399:11reguar 3131431:13 31432:12ranket 31220:2,231260:1331426:2331341:2331350:2314416:7,19 31423:731359:17 31387:18reasonable 31240:2231398:19 31399:11regular 313142:13 31427:24ranket 31220:2,231292:17 3124:731292:23 21295:331250:231432:17,20rark 31225	4 31363:13
31300:2 31311:12 31302:19 31300:1831317:15 31367:18 31332:9,13,19,21,23raised 31300:18 31302:19 31306:1831317:12 31367:18 31371:22 31375:10records 31393:8 red 31284:21313428:1 31428:131335:10 31338:2131332:8 31371:331405:10,10reduce 31289:4regards 331339:9,9 31340:9,1231401:17 raises 31400:6reason 31238:15reduce 31322:431308:231342:10,14raising 31269:1931239:3,10 31274:7refore 31239:5 31321:431303:8,10 31308:231350:11 31354:6,14raising 31269:1531239:3,10 31274:7refore 31239:5 31247:1931315:931350:1231241:16 31269:2531330:25 3139:631294:8 31296:931329:231362:16 31364:9,10ranges 31272:1931343:11 31348:831309:2 3131:1231366:431366:1 31367:21rank 31232:10,10,1131352:4,5,8 31361:831317:17 31323:731354:131370:1 31371:131258:20 31259:1531426:23 31432:1931337:20 31397:16region 31431398:19 31409:2531267:14 31292:12reasonable 31240:2231398:19 31399:11region 31431391:4 31396:1031259:23 31260:1331426:2031377:20 31397:16region 31431391:13 31432:12ranked 31260:1131321:23 31416:12reference 31283:16,2231350:231431:13 31432:12ranked 31260:1131321:23 31416:12reference 31283:16,2231350:231432:17,20rark 31232:24reasons 31244:431284:2 31288:21regulary31432:17,20rark 31236:1731292:17 31324:731292:22 31295:3<	
31332:9,13,19,21,2331302:19 31306:1831371:22 31375:10red 31284:2131428:131335:10 31338:2131332:8 31371:331405:10,10reduce 31289:4regards 331399:9, 9 31340:9,1231401:17raises 31400:6reason 31238:15s1356:1031255:131342:10,14raises 31400:6reason 31238:15reduce 31229:2431308:231350:11 3154:6,14range 31234:1,431303:25 3139:631249:2 31292:1931318:131359:6 31360:1231241:16 31269:2531330:25 3139:631294:8 31296:931292:231362:16 31364:9,10range 31272:1931343:11 31348:831309:2 31313:1231336:431366:1 31367:21rank 31232:10,10,1131352:45,8 31361:831317:17 31323:731354:131370:1 31371:131225:23 31259:1531426:23 31432:1931337:23 31353:831412:13139:14 31396:1031259:23 31260:1331436:203137:20 31397:16region 3143139:19 31409:2531267:14 31292:12reasonable 31240:2231398:19 31399:11regular 3131416:7,19 31423:731359:17 31387:18reasonable 31240:2231398:19 31399:11regular 3131431:13 31432:12ranked 31260:1131321:23 31416:12reference 31283:16,2231350:231432:17,20rare 31253:1731292:17 31324:731292:23 31260:1331424:2 31288:21regularly31432:17,20rare 31253:1731292:22 31295:331350:231350:231432:17,20rare 31253:1731292:17 31324:731292:22 31295:331350:231345:22 <td></td>	
31335:10 31338:2131332:8 31371:331405:10,10reduce 31289:4regards 331339:9,9 31340:9,1231401:17raises 31400:6reason 31238:1531356:1031255:131342:10,14raises 31400:6reason 31238:15reduce 31322:431308:231350:11 31354:6,14range 31234:1,431303:8,10 31308:231249:2 31292:1931318:131350:16 31360:1231241:16 31269:2531330:25 31339:631294:8 31296:931239:231362:16 31364:9,10range 31272:1931343:11 31348:831309:2 31313:1231336:431366:1 31367:21rank 31232:10,10,1131352:4,5,8 31361:831317:17 31323:731354:131370:1 31371:131228:20 31259:1531426:23 31432:1931337:23 31353:831412:131398:19 31409:2531267:14 31292:12reasonable 31240:2231398:19 31399:11region 31431398:19 31409:2531267:14 31292:12reasonable 31240:2231398:19 31399:11region 31431416:7,19 31423:731359:17 31387:18reasonable 31240:2231398:19 31399:11regular 313143:113 31432:12ranks 31232:24reasonable 31240:2231284:2 31288:21regular 3131436:203137:20 31397:16regular 3131250:23 31260:1331426:23 31416:12reference 31283:16,2231350:231424:13 31422:12ranks 31232:24rasonable 31240:2231398:19 31399:11regular 3131260:231342:2ranks 31232:44rason 31244:431297:6 31313:14regularly31342:2rationale 31270:2,231326:213	
31339:9,9 31340:9,1231401:17realm 31353:1031356:1031255:131342:10,14raises 31400:6reason 31238:15reduces 31322:431308:231343:11,17raising 31269:1931239:3,10 31274:7refer 31239:5 31247:1931315:931350:11 31354:6,14range 31234:1,431303:8,10 31308:231249:2 31292:1931318:131359:6 31360:1231241:16 31269:2531330:25 31339:631294:8 31296:931329:231362:16 31364:9,10ranges 31272:1931343:11 31348:831309:2 31313:1231336:431370:1 31371:131232:13 31258:1131375:1 31384:531335:11 31336:931379:331388:8 31389:6,1131258:20 31259:1531426:23 31432:1931377:23 31357:831416:1231391:4 31396:1031259:23 31260:1331436:2031377:20 31397:16region 31431398:19 31409:2531267:14 31292:12reasonable 31240:2231398:19 31399:11regular 3131416:7,19 31423:731359:17 31387:18reasonable 31240:2231398:19 31399:11regular 3131431:13 31432:12ranks 31232:24reasonable 31240:2231398:19 3139:1531350:231436:20ratk 31260:1131227:05.6 31278:1731292:22 31295:331350:231436:22ratk 31260:1131321:23 31416:12reference 31283:16,2231350:231436:22ratk 31232:24reasonably 31315:131412:13 313:4regular 313142:231338:10 31346:1431325:4 31326:213131:12 3135:4reiterate 3331342:231338:10 31346:1431325:4	17 31433:18
31342:10,14raises 31400:6reason 31238:15reduces 31322:431308:231343:11,17raising 31269:1931239:3,10 31274:7refer 31239:5 31247:1931315:931350:11 31354:6,14range 31234:1,431303:8,10 31308:231249:2 31292:1931318:131359:6 31360:1231241:16 31269:2531330:25 31339:631294:8 31296:931329:231362:16 31364:9,10ranges 31272:1931343:11 31348:831309:2 31313:1231336:431366:1 31367:21rank 31232:10,10,1131352:4,5,8 31361:831317:17 31323:731354:131370:1 31371:131232:13 31258:1131375:1 31384:531335:11 31336:931379:331388:8 31389:6,1131259:23 31260:1331426:23 31432:1931337:23 31353:831412:131391:4 31396:1031259:23 31260:1331436:2031377:20 31397:16region 31431398:19 31409:2531267:14 31292:12reasonable 31240:2231398:19 31399:11regular 3131416:7,19 31423:731359:17 31387:18reasonably 31315:131412:13 31435:531263:731431:13 31432:12ranked 31260:1131321:23 31416:12reference 31283:16,2231350:231436:22ranked 31260:1131327:05,6 31278:1731292:22 31295:331350:231436:22rationale 31270:2,231292:17 31324:731292:22 31295:331350:231436:22rationale 31270:2,231292:17 31324:731292:6,6 31313:14regulario31342:231368:9 31389:631331:22 3139:1731292:5,22 3130:8rejected 331342:231368:	31241:2
31342:10,14raises 31400:6reason 31238:15reduces 31322:431308:231343:11,17raising 31269:1931239:3,10 31274:7refer 31239:5 31247:1931315:931350:11 31354:6,14range 31234:1,431303:8,10 31308:231249:2 31292:1931318:131359:6 31360:1231241:16 31269:2531330:25 31339:631294:8 31296:931329:231362:16 31364:9,10ranges 31272:1931343:11 31348:831309:2 31313:1231336:431366:1 31367:21rank 31232:10,10,1131352:4,5,8 31361:831317:17 31323:731354:131370:1 31371:131232:13 31258:1131375:1 31384:531335:11 31336:931379:331388:8 31389:6,1131259:23 31260:1331426:23 31432:1931337:23 31353:831412:131391:4 31396:1031259:23 31260:1331436:2031373:20 31397:16regular 3131416:7,19 31423:731359:17 31387:18reasonably 31315:131412:13 31435:531263:731424:13 31427:24ranked 31260:1131321:23 31416:12reference 31283:16,2231350:231436:20ranked 31260:1131321:23 31416:12reference 31283:16,2231350:231431:13 31432:12ranked 31260:1131321:23 31416:12reference 31283:16,2231350:231436:22ranked 31260:1131327:25,6 31278:1731292:22 31295:3regular 3131436:22rationale 31270:2,231292:17 31324:731297:6 31313:14regular 3131342:231338:10 31346:1431325:4 31326:2131314:12 31315:4reiterate 3331342:231	12 31277:22
31343:11,17raising 31269:1931239:3,10 31274:7refer 31239:5 31247:1931315:931350:11 31354:6,14range 31234:1,431303:8,10 31308:231249:2 31292:1931318:131359:6 31360:1231241:16 31269:2531330:25 31339:631294:8 31296:931329:231362:16 31364:9,10ranges 31272:1931343:11 31348:831309:2 31313:1231336:431366:1 31367:21rank 31232:10,10,1131352:4,5,8 31361:831317:17 31323:731354:131370:1 31371:131232:13 31258:1131375:1 31384:531335:11 31336:931379:331388:8 31389:6,1131259:23 31260:1331426:23 31432:1931337:23 31353:831412:131391:4 31396:1031259:23 31260:1331436:2031373:20 31397:16region 31431398:19 31409:2531267:14 31292:12reasonable 31240:2231398:19 31399:11regular 3131416:7,19 31423:731359:17 31387:18reasonably 31315:131412:13 31435:531263:731424:13 31427:24ranked 31260:1131321:23 31416:12reference 31283:16,2231350:231436:22ranks 31232:24reasons 31244:431284:2 31288:21regularly31436:22rationale 31270:2,231292:17 31324:731297:6 31313:14regularly31342:231338:10 31346:1431325:4 31326:2131314:12 31315:4reiterate 3231342:231368:9 31389:631331:2 3139:1731329:5,22 3130:8rejected 3331342:231368:9 31389:631331:2 3139:1731329:5,22 3130:8rejected 3331342:231368:	2 31313:17
31350:11 31354:6,14 31359:6 31360:12range 31234:1,4 31241:16 31269:2531303:8,10 31308:2 31330:25 31339:631249:2 31292:19 31292:1931318:1 31329:231362:16 31364:9,10 31366:1 31367:21 31366:1 31367:21 31370:1 31371:1ranges 31272:19 rank 31232:10,10,1131352:4,5,8 31361:8 31352:4,5,8 31361:831309:2 31313:12 31335:11 31336:931336:4 31351:1 31336:931388:8 31389:6,11 31258:20 31259:1531426:23 31432:19 31426:23 31432:1931377:23 31353:8 31377:23 31353:831412:1 31377:23 31353:831398:19 31409:25 31409:2531267:14 31292:12 31267:14 31292:12reasonable 31240:22 reasonable 31240:2231398:19 31399:11 31398:19 31399:11regular 31 regular 31 31436:2031416:7,19 31423:7 31424:13 31427:24 31432:17,20 31436:22ranke 31260:11 ranke 3122:24 ranke 31260:1131321:23 31416:12 31221:23 31416:12reference 31283:16,22 31283:16,2231350:2 31350:231436:22 questionable 31341:2331338:10 31346:14 31338:10 31346:1431325:4 31326:21 31331:22 3139:1731292:22 31295:3 31339:1331350:2 31339:11 31334:25questionable 31341:3razor 31238:1431331:2 3139:17 31339:11 31334:25rejected 3 31339:12 3139:17	9,15 31317:16
31359:6 31360:1231241:16 31269:2531330:25 31339:631294:8 31296:931329:231360:1 31367:21ranges 31272:1931343:11 31348:831309:2 31313:1231336:431366:1 31367:21rank 31232:10,10,1131352:4,5,8 31361:831317:17 31323:731354:131370:1 31371:131232:13 31258:1131375:1 31384:531335:11 31336:931379:331388:8 31389:6,1131258:20 31259:1531426:23 31432:1931337:23 31353:831412:131391:4 31396:1031259:23 31260:1331436:2031377:20 31397:16region 31431398:19 31409:2531267:14 31292:12reasonable 31240:2231398:19 31399:11regular 3131416:7,19 31423:731359:17 31387:18reasonable 31240:2231398:19 31399:11regular 3131431:13 31432:12ranked 31260:1131321:23 31416:12reference 31283:16,2231350:231436:22ranked 31260:1131270:5,6 31278:1731292:22 31295:331350:231436:22rationale 31270:2,231292:17 31324:731297:6 31313:14regularly31342:231368:9 31389:631331:22 3139:1731329:5,22 3130:8rejected 331342:231368:9 31389:631331:22 3139:1731329:5,22 3130:8rejected 3questioned 31341:3razor 31238:1431351:11 31353:331331:1 31334:25relat 313	
31362:16 31364:9,10 31366:1 31367:21 31366:1 31367:21ranges 31272:19 rank 31232:10,10,11 31232:13 31258:11 31232:13 31258:11 31232:13 31258:11 31388:8 31389:6,11 31259:23 31260:13 31259:23 31260:13 31259:23 31260:1331343:11 31348:8 31375:1 31384:5 31436:2031309:2 31313:12 31337:23 31353:8 31337:20 31397:16 31398:19 31409:25313258:10 31259:23 31260:13 31426:2031426:23 31432:19 31436:2031337:20 31397:16 31436:20region 314 regular 31 31436:2031416:7,19 31423:7 31424:13 31427:2431267:14 31292:12 31359:17 31387:18reasonable 31240:22 reasonable 31240:2231398:19 31399:11 31416:12regular 31 31412:13 31435:531424:13 31427:24 31432:17,20 31436:22ranks 31232:24 rare 31253:17 31323:17reasons 31244:4 31270:5,6 31278:17 31292:22 31295:331350:2 31309:1231436:22 questionable 31341:23 31338:10 31346:14 31324:2231338:10 31346:14 31325:4 31326:2131314:12 31315:4 31331:22 31339:17regular 31 31322:23 3130:8 31331:22 31339:17questioned 31341:3razor 31238:1431351:11 31353:331331:1 31334:25relate 313	
31366:1 31367:21 31370:1 31371:1rank 31232:10,10,11 31232:13 31258:1131352:4,5,8 31361:8 31375:1 31384:531317:17 31323:7 31351:1 31336:931354:1 31379:33138:8 31389:6,11 31391:4 31396:1031258:20 31259:15 31259:23 31260:1331426:23 31432:19 31426:23 31432:1931337:23 31353:8 31373:20 31397:1631412:1 region 31431398:19 31409:25 31416:7,19 31423:7 31424:13 31427:2431267:14 31292:12 ranked 31260:11reasonable 31240:22 31321:23 31416:1231398:19 31399:11 regular 31 31321:23 31416:12region 314 regular 31 31321:23 31416:1231431:13 31432:12 31432:17,20 31436:22ranked 31260:11 ranks 31232:2431321:23 31416:12 reasons 31244:4reference 31283:16,22 31288:2131350:2 regularly 31350:231436:20 31432:17,20rationale 31270:2,2 rationale 31270:2,231292:17 31324:7 31325:4 31326:2131314:12 31315:4 31314:12 31315:4regularly regularly 31325:2 31398:10 31346:14 31325:4 31326:2131342:2 questioned 31341:331368:9 31389:6 razor 31238:1431351:11 31353:331331:1 31334:25relate 313	2 31334:23
31370:1 31371:131232:13 31258:1131375:1 31384:531335:11 31336:931379:33138:8 31389:6,1131258:20 31259:1531426:23 31432:1931337:23 31353:831412:131391:4 31396:1031259:23 31260:1331436:2031373:20 31397:16region 31431398:19 31409:2531267:14 31292:12reasonable 31240:2231398:19 31399:11regular 3131416:7,19 31423:731359:17 31387:18reasonable 31240:2231398:19 31399:11regular 3131424:13 31427:24ranked 31260:1131321:23 31416:12reference 31283:16,2231350:231431:13 31432:12ranks 31232:24reasons 31244:431284:2 31288:21regularly31436:20rafe 31270:2,231292:17 31324:731292:22 31295:331350:231436:22rationale 31270:2,231292:17 31324:731297:6 31313:14regulard 3131342:231368:9 31389:631331:22 3139:1731329:5,22 3130:8rejected 331342:3razor 31238:1431351:11 31353:331331:1 31334:25relate 313	4,20 31344:8
31370:1 31371:131232:13 31258:1131375:1 31384:531335:11 31336:931379:33138:8 31389:6,1131258:20 31259:1531426:23 31432:1931337:23 31353:831412:131391:4 31396:1031259:23 31260:1331436:2031373:20 31397:16region 31431398:19 31409:2531267:14 31292:12reasonable 31240:2231398:19 31399:11regular 3131416:7,19 31423:731359:17 31387:18reasonable 31240:2231398:19 31399:11regular 3131424:13 31427:24ranked 31260:1131321:23 31416:12reference 31283:16,2231350:231431:13 31432:12ranks 31232:24reasons 31244:431284:2 31288:21regularly31436:20rare 31253:1731270:5,6 31278:1731292:22 31295:331350:231436:22rationale 31270:2,231292:17 31324:731297:6 31313:14regulator31342:231338:10 31346:1431325:4 31326:2131314:12 31315:4reiterate 3231342:231368:9 31389:631331:22 3139:1731329:5,22 3130:8rejected 331341:3razor 31238:1431351:11 31353:331331:1 31334:25relate 313	16 31358:9
31388:8 31389:6,1131258:20 31259:1531426:23 31432:1931337:23 31353:831412:131391:4 31396:1031259:23 31260:1331426:23 31432:1931337:20 31397:16region 31431398:19 31409:2531267:14 31292:12reasonable 31240:2231398:19 31399:11regular 3131416:7,19 31423:731359:17 31387:18reasonable 31240:2231398:19 31399:11regular 3131424:13 31427:24ranked 31260:1131321:23 31416:12reference 31283:16,2231350:231431:13 31432:12ranks 31232:24reasons 31244:431284:2 31288:21regularly31436:22rationale 31270:2,231292:17 31324:731292:22 31295:331350:231436:22rationale 31270:2,231338:10 31346:1431325:4 31326:2131314:12 31315:4reiterate 3231342:231368:9 31389:631331:22 3139:1731329:5,22 3130:8rejected 331341:3razor 31238:1431351:11 31353:331331:1 31334:25relate 313	3 31402:24
31391:4 31396:1031259:23 31260:1331436:2031373:20 31397:16region 31431398:19 31409:2531267:14 31292:12reasonable 31240:2231398:19 31399:11regular 3131416:7,19 31423:731359:17 31387:18reasonably 31315:131412:13 31435:531263:731424:13 31427:24ranked 31260:1131321:23 31416:12reference 31283:16,2231350:231431:13 31432:12ranks 31232:24reasons 31244:431284:2 31288:21regularly31436:22rare 31253:1731270:5,6 31278:1731292:22 31295:331350:231436:22rationale 31270:2,231292:17 31324:731297:6 31313:14regulationquestionable 31341:2331338:10 31346:1431325:4 31326:2131314:12 31315:4reiterate 3331342:231368:9 31389:631331:22 3139:1731329:5,22 3130:8rejected 33questioned 31341:3razor 31238:1431351:11 31353:331331:1 31334:25relate 313	
31398:19 31409:2531267:14 31292:12reasonable 31240:2231398:19 31399:11regular 3131416:7,19 31423:731359:17 31387:18reasonably 31315:131412:13 31435:531263:731424:13 31427:24ranked 31260:1131321:23 31416:12reference 31283:16,2231350:231431:13 31432:12ranks 31232:24reasons 31244:431284:2 31288:21regularly31432:17,20rare 31253:1731270:5,6 31278:1731292:22 31295:331350:231436:22rationale 31270:2,231292:17 31324:731297:6 31313:14regularly31342:231338:10 31346:1431325:4 31326:2131314:12 31315:4reiterate 3231342:231368:9 31389:631331:22 3139:1731329:5,22 3130:8rejected 3questioned 31341:3razor 31238:1431351:11 31353:331331:1 31334:25relate 313	
31416:7,19 31423:7 31424:13 31427:24 31431:13 31432:1231359:17 31387:18 ranked 31260:11 ranks 31232:24reasonably 31315:1 31321:23 31416:12 reasons 31244:431412:13 31435:5 reference 31283:16,2231263:7 31336:1231431:13 31432:12 31432:17,20ranks 31232:24 rare 31253:17reasons 31244:4 31270:5,6 31278:1731284:2 31288:21 31292:22 31295:3regularly 31350:231436:22 questionable 31341:23 31342:2rationale 31270:2,2 31388:10 31346:14 31325:4 31326:2131292:17 31324:7 31329:217 31324:731297:6 31313:14 31314:12 31315:4regularly regularly 31329:5,22 3130:8 31331:1 31334:25questioned 31341:3razor 31238:1431351:11 31353:331331:1 31334:25relate 313	
31424:13 31427:24 31431:13 31427:24ranked 31260:11 ranks 31232:2431321:23 31416:12 reasons 31244:4reference 31283:16,22 31284:2 31288:2131350:2 regularly 31292:22 31295:331432:17,20 31436:22rare 31253:17 rationale 31270:2,231270:5,6 31278:17 31292:17 31324:731292:22 31295:3 31297:6 31313:1431350:2 regularly 31297:6 31313:14questionable 31341:23 31342:231338:10 31346:14 31328:10 31346:1431325:4 31326:21 31331:22 3139:1731329:5,22 3130:8 31329:5,22 3130:8rejected 3 rejected 3 rejected 3questioned 31341:3razor 31238:1431351:11 31353:331331:1 31334:25relate 313	
31431:13 31432:12 31432:17,20ranks 31232:24 rare 31253:17reasons 31244:431284:2 31288:21 31270:5,6 31278:17regularly 31292:22 31295:331436:22 questionable 31341:23 31342:2rationale 31270:2,2 31338:10 31346:14 31345:431292:17 31324:7 31325:4 31326:2131297:6 31313:14 31314:12 31315:4regularior regulation reiterate 3 31331:22 31339:17questioned 31341:3razor 31238:1431351:11 31353:331331:1 31334:25relate 313 relate 313	7 31265:1,7,9
31432:17,20 31436:22rare 31253:17 rationale 31270:2,231270:5,6 31278:17 31292:17 31324:731292:22 31295:3 31297:6 31313:1431350:2 regulationquestionable 31341:23 31342:231338:10 31346:14 31368:9 31389:631325:4 31326:21 31331:22 31339:1731314:12 31315:4 31329:5,22 3130:8 31331:1 31334:25regulation rejected 3 rejected 3questioned 31341:3razor 31238:1431351:11 31353:331331:1 31334:25relate 313	24
31432:17,20 31436:22rare 31253:17 rationale 31270:2,231270:5,6 31278:17 31292:17 31324:731292:22 31295:3 31297:6 31313:1431350:2 regulationquestionable 31341:23 31342:231338:10 31346:14 31368:9 31389:631325:4 31326:21 31331:22 31339:1731314:12 31315:4 31329:5,22 3130:8 31331:1 31334:25regulation rejected 3 rejected 3questioned 31341:3razor 31238:1431351:11 31353:331331:1 31334:25relate 313	y 31254:7
31436:22 questionable 31341:23 31342:2rationale 31270:2,2 31338:10 31346:14 31368:9 31389:631292:17 31324:7 31325:4 31326:21 31331:22 31339:1731297:6 31313:14 31314:12 31315:4 31329:5,22 31330:8 31331:1 31334:25regulation reiterate 3 rejected 3 relate 313questioned 31341:3razor 31238:1431292:17 31324:7 31325:4 31326:21 31331:22 31339:1731297:6 31313:14 31314:12 31315:4 31329:5,22 31330:8 31331:1 31334:25regulation reiterate 3 rejected 3 relate 313	24 31361:25
questionable 31341:2331338:10 31346:1431325:4 31326:2131314:12 31315:4reiterate 331342:231368:9 31389:631331:22 31339:1731329:5,22 31330:8rejected 3questioned 31341:3razor 31238:1431351:11 31353:331331:1 31334:25relate 313	
31342:2 31368:9 31389:6 31331:22 31339:17 31329:5,22 31330:8 rejected 3 questioned 31341:3 razor 31238:14 31351:11 31353:3 31331:1 31334:25 relate 313	
questioned 31341:3 razor 31238:14 31351:11 31353:3 31331:1 31334:25 relate 313	
auestioning 31361·12 31252·22 25 31383·6 31379·16 31388·8 31355·6 31363·15 10 related 31	
Anonoming 21201.12 21202.22, 22 21202.0 21217.10 21200.0 21202.0 21202.12, 17 Itiated 21	1249:18
	11,11,20,20
31281:23 31282:1 reached 31278:24 31422:6,16 31435:18 31373:21 31386:12 31260:1	
	20 31410:23
31338:12 31395:14 react 31397:8 31374:16 31379:19 31394:1 31399:24 relates 31374:16	
	25 31335:22
	31234:6,13
	18 31299:15
	14 31366:10
	ship 31285:7
	y 31246:13
	y 31246:13 23 31250:17
quilt 31251:6 31304:19 31310:22 received 31268:25 31264:4 31271:17,19 31314:1	y 31246:13 23 31250:17 17 31284:15
	y 31246:13 23 31250:17
ARCHIVE FOR LUSTICE	y 31246:13 23 31250:17 17 31284:15

Marikana Commission of Inquiry

Pretoria

31402:18 31417:7 relayed 31374:24 relevance 31338:7 relevant 31234:22Republican 31251:8 request 31235:18,19 31251:2 31356:1431345:12 31347:3,4 31359:19 31377:5,10 31385:2,4 31389:21 31390:4 31392:23 31325:11 3136 31355:17 31357:12 31358:4 31360:15 31358:4 31360:15 31372:6 31392:7 reliance 31289:8 relied 31366:25 reluctant 31334:15 31373:8 rely 31236:12 31267:9Republican 31251:8 required 31262:17 31285:11 31291:12 31355:5 31378:13,15 31382:14 31418:18 31372:6 31292:731306:13 3130 required 31267:11 31285:11 31291:12 31286:11 31291:12 31373:8 rely 31236:12 31267:931306:13 3120 31379:4 31391:6 31379:4 31391:6313445:12 31347:3,4 31342:22 31391:6 31382:14 31418:18 31326:23 313531267:20 31283:17 31302:531283:17 31302:531312:2431265:2,5,7,11 31312:24	22:24round $31425:17$ 24:16 $31426:17,20 \ 31427:6$ 55:25 $31427:12,13$ 79:3 $31436:12,17,24$ 87:10rounding $31363:14$ 89:8rounds $31342:15$ 5:22 $31404:21 \ 3142:15$ 5:20 $31422:14 \ 31422:5$ 30:18 $31426:9 \ 31428:21,22$ 5 $31426:9 \ 31428:21,22$ 5 $31426:9 \ 31428:21,22$ 5 $31426:7 \ 31434:12,15$ 5:11 $31434:12,15$ $31436:17,23$ 1route $31252:7,8,8$
relevance 31338:7 relevant 31234:22request 31235:18,19 31251:2 31356:1431385:2,4 31389:21 31390:4 31392:2331323:16 3132 31325:11 313631330:14 31331:3 31355:17 31357:12 31355:17 31357:1231358:9,10 31363:17 requested 31260:631414:2 31416:10 31419:10 31421:1531386:12 3136 313414:2 31416:1031358:4 31360:15 31372:6 31392:7 reliance 31289:8 31366:25required 31252:17 31286:11 31291:1231419:10 31421:15 31387:23 313831387:23 3138 31325:1 31392:5relied 31366:25 reluctant 31334:15 31373:831355:5 31378:13,15 31375:4 31391:631382:14 31418:18 31418:2431326:23 3135 31326:12 31267:931267:20 relying 31241:6 31330:931283:17 31302:531311:23 31312:2431265:2,5,7,11 31312:24	24:1631426:17,20 31427:655:2531427:12,1379:331436:12,17,2487:10rounding 31363:1489:8rounds 31342:1551:2231404:21 31411:1498:1131422:14 31423:551:2031424:19 31425:3,2230:1831426:9 31428:21,2251:1131429:3,5 31431:1053:1131434:12,1531436:17,2311route 31252:7,8,8
relevance 31338:7 relevant 31234:22request 31235:18,19 31251:2 31356:1431385:2,4 31389:21 31390:4 31392:2331323:16 3132 31390:4 31392:2331330:14 31331:3 31355:17 31357:12 31355:17 31357:1231358:9,10 31363:17 requested 31260:631414:2 31416:10 31414:2 31416:1031386:12 3136 31394:6 31395:131358:4 31360:15 31372:6 31392:7require 31267:11 required 31252:1731414:2 31416:10 31419:10 31421:1531387:23 3138 31387:23 313831372:6 31392:7 reliance 31289:8 31286:11 31291:12s1412:20 31424:22 s1286:11 31291:1231387:23 3139 s1393:5 31395relied 31366:25 31366:2531369:16 31385:21 31369:16 31385:21s1283:12 31402:2 s1283:12 31402:231399:7 31415 s1382:14 31418:18 s131324:1931373:8 31267:2031379:4 31391:6 31426:431382:14 31418:18 s1418:24s1326:23 3135 s1326:12 31267:9 s1283:17 31302:531283:17 31302:531283:17 31302:531311:23 31312:2431265:2,5,7,11	24:1631426:17,20 31427:655:2531427:12,1379:331436:12,17,2487:10rounding 31363:1489:8rounds 31342:1551:2231404:21 31411:1498:1131422:14 31423:551:2031424:19 31425:3,2230:1831426:9 31428:21,2251:1131429:3,5 31431:1053:1131434:12,1531436:17,2311route 31252:7,8,8
relevant 31234:22 $31251:2 31356:14$ $31390:4 31392:23$ $31325:11 3136$ $31330:14 31331:3$ $31358:9,10 31363:17$ $31394:6 31395:1$ $31370:12 3137$ $31355:17 31357:12$ requested $31260:6$ $31414:2 31416:10$ $31386:12 3138$ $31358:4 31360:15$ require $31267:11$ $31419:10 31421:15$ $31387:23 3138$ $31372:6 31392:7$ required $31252:17$ $31421:20 31424:22$ $31393:5 31395$ reliance $31289:8$ $31286:11 31291:12$ responses $31242:25$ $31397:21 3139$ relied $31366:25$ $31369:16 31385:21$ $31283:12 31402:2$ $31399:7 31415$ reluctant $31334:15$ requirement $31324:19$ $31377:8$ $31355:5 31378:13,15$ $31382:14 31418:18$ $31267:20$ $31426:4$ responsibility $31233:1$ right $31264:23$ $31207:20$ $31426:4$ $31233:5,7 31263:18$ $31265:2,5,7,11$ $31330:9$ $31283:17 31302:5$ $31311:23 31312:24$ $31272:24 3129$	55:25 31427:12,13 79:3 31436:12,17,24 87:10 rounding 31363:14 89:8 rounds 31342:15 55:22 31404:21 31411:14 98:11 31422:14 31423:5 55:20 31424:19 31425:3,22 30:18 31426:9 31428:21,22 31429:3,5 31431:10 31434:12,15 55:11 31436:17,23 1 route 31252:7,8,8
31330:14 31331:331358:9,10 31363:1731394:6 31395:131370:12 313731355:17 31357:12requested 31260:631414:2 31416:1031386:12 313831358:4 31360:15require 31267:1131419:10 31421:1531387:23 313831372:6 31392:7required 31252:1731421:20 31424:2231393:5 31395reliance 31289:831286:11 31291:12responses 31242:2531397:21 3139relied 31366:2531369:16 31385:2131283:12 31402:231399:7 31415reluctant 31334:15requirement 31324:19s1382:14 31418:1831418:11 314331373:831355:5 31378:13,1531382:14 31418:18s1326:23 313531267:2031426:4responsibility 31233:1righty 31272:1631330:931283:17 31302:531311:23 31312:2431272:24 3129	79:3 31436:12,17,24 87:10 rounding 31363:14 89:8 rounds 31342:15 5:22 31404:21 31411:14 98:11 31422:14 31423:5 5:20 31424:19 31425:3,22 30:18 31426:9 31428:21,22 5:21 31426:9 31428:21,22 5:20 31426:9 31428:21,22 5:311 31434:12,15 5:311 31436:17,23 1 route 31252:7,8,8
31355:17 31357:12requested 31260:631414:2 31416:1031386:12 313831358:4 31360:15require 31267:1131419:10 31421:1531387:23 313831372:6 31392:7required 31252:1731421:20 31424:2231393:5 31395reliance 31289:831286:11 31291:12responses 31242:2531397:21 3139relied 31366:2531369:16 31385:2131283:12 31402:231399:7 31415reluctant 31334:15requirement 31324:19responsibilities31418:11 314331373:831355:5 31378:13,1531382:14 31418:18rightly 31272:1631267:2031426:4responsibility 31233:1rights 31264:233130:931283:17 31302:531311:23 31312:2431272:24 3129	37:10 rounding 31363:14 89:8 rounds 31342:15 5:22 31404:21 31411:14 98:11 31422:14 31423:5 5:20 31424:19 31425:3,22 30:18 31426:9 31428:21,22 5:11 31426:9 31428:21,22 5:21 31426:9 31428:21,22 5:21 31429:3,5 31431:10 5:311 31434:12,15 31436:17,23 1 1 route 31252:7,8,8
31358:4 31360:15require 31267:1131419:10 31421:1531387:23 313831372:6 31392:7required 31252:1731421:20 31424:2231393:5 31395reliance 31289:831286:11 31291:12responses 31242:2531397:21 3139relied 31366:2531369:16 31385:2131283:12 31402:231399:7 31415reluctant 31334:15requirement 31324:1931373:831355:5 31378:13,1531382:14 31418:1831373:831355:5 31378:13,1531382:14 31418:1831326:23 313531267:2031426:4responsibility 31233:1rights 31264:2331330:931283:17 31302:531311:23 31312:2431272:24 3129	39:8 rounds 31342:15 5:22 31404:21 31411:14 98:11 31422:14 31423:5 5:20 31424:19 31425:3,22 30:18 31426:9 31428:21,22 5 31429:3,5 31431:10 53:11 31434:12,15 31436:17,23 1 1 route 31252:7,8,8
31372:6 31392:7required 31252:1731421:20 31424:2231393:5 31395reliance 31289:831286:11 31291:12responses 31242:2531397:21 3139relied 31366:2531369:16 31385:2131283:12 31402:231399:7 31415reluctant 31334:15requirement 31324:1931355:5 31378:13,1531382:14 31418:1831418:11 314331373:831355:5 31378:13,1531382:14 31418:18rightly 31272:16rely 31236:12 31267:931379:4 31391:631418:2431326:23 313531267:2031426:4responsibility 31233:1rights 31264:23relying 31241:6requires 31262:2231233:5,7 31263:1831265:2,5,7,1131330:931283:17 31302:531311:23 31312:2431272:24 3125	5:22 31404:21 31411:14 98:11 31422:14 31423:5 5:20 31424:19 31425:3,22 30:18 31426:9 31428:21,22 5 31429:3,5 31431:10 53:11 31434:12,15 31436:17,23 1 1 route 31252:7,8,8
reliance 31289:8 $31286:11 31291:12$ responses $31242:25$ $31397:21 3139$ relied 31366:25 $31369:16 31385:21$ $31283:12 31402:2$ $31399:7 31415$ reluctant 31334:15requirement $31324:19$ responsibilities $31418:11 3143$ $31373:8$ $31355:5 31378:13,15$ $31382:14 31418:18$ $31418:11 3143$ $31236:12 31267:9$ $31379:4 31391:6$ $31418:24$ $31326:23 3135$ $31267:20$ $31426:4$ responsibility $31233:1$ rights $31264:23$ relying $31241:6$ requires $31262:22$ $31233:5,7 31263:18$ $31265:2,5,7,112333231330:931283:17 31302:531311:23 31312:2431272:24 3129$	98:11 31422:14 31423:5 5:20 31424:19 31425:3,22 30:18 31426:9 31428:21,22 5 31429:3,5 31431:10 53:11 31434:12,15 31436:17,23 1 1 route 31252:7,8,8
relied 31366:2531369:16 31385:2131283:12 31402:231399:7 31415reluctant 31334:15requirement 31324:19responsibilities31418:11 314331373:831355:5 31378:13,1531382:14 31418:1831418:11 3143rely 31236:12 31267:931379:4 31391:631418:2431326:23 313531267:2031426:4responsibility 31233:1rights 31264:23relying 31241:6requires 31262:2231233:5,7 31263:1831265:2,5,7,1131330:931283:17 31302:531311:23 31312:2431272:24 3129	5:20 31424:19 31425:3,22 30:18 31426:9 31428:21,22 5 31429:3,5 31431:10 53:11 31434:12,15 31436:17,23 1 1 route 31252:7,8,8
reluctant 31334:15requirement 31324:19responsibilities31418:11 314331373:831355:5 31378:13,1531382:14 31418:18rightly 31272:16rely 31236:12 31267:931379:4 31391:631418:2431326:23 313531267:2031426:4responsibility 31233:1rights 31264:23relying 31241:6requires 31262:2231233:5,7 31263:1831265:2,5,7,1131330:931283:17 31302:531311:23 31312:2431272:24 3129	30:18 31426:9 31428:21,22 5 31429:3,5 31431:10 53:11 31434:12,15 31436:17,23 31436:17,23 1 route 31252:7,8,8
31373:8 $31355:5\ 31378:13,15$ $31382:14\ 31418:18$ rightly $31272:16$ rely $31236:12\ 31267:9$ $31379:4\ 31391:6$ $31418:24$ $31326:23\ 3135$ $31267:20$ $31426:4$ responsibility $31233:1$ rights $31264:23$ relying $31241:6$ requires $31262:22$ $31233:5,7\ 31263:18$ $31265:2,5,7,112$ $31330:9$ $31283:17\ 31302:5$ $31311:23\ 31312:24$ $31272:24\ 31292$	5 31429:3,5 31431:10 53:11 31434:12,15 31436:17,23 31436:17,23 1 route 31252:7,8,8
rely 31236:12 31267:931379:4 31391:631418:2431326:23 313531267:2031426:4responsibility 31233:1rights 31264:23relying 31241:6requires 31262:2231233:5,7 31263:1831265:2,5,7,1131330:931283:17 31302:531311:23 31312:2431272:24 3129	53:11 31434:12,15 31436:17,23 1 route 31252:7,8,8
31267:2031426:4responsibility31233:1rights31264:23relying31241:6requires31262:2231233:5,731263:1831265:2,5,7,1131330:931283:1731302:531311:2331312:2431272:243129	31436:17,23 route 31252:7,8,8
relying 31241:6requires 31262:2231233:5,7 31263:1831265:2,5,7,1131330:931283:17 31302:531311:23 31312:2431272:24 3129	1 route 31252:7,8,8
31330:9 31283:17 31302:5 31311:23 31312:24 31272:24 3129	
	92:2 routes 31251:10
remainder 31393:10 research 31384:10 31344:7,25 31381:8 31342:19,23	routinely 31264:4
remains 31400:17 resist 31361:4 31382:6 31381:13 riots 31283:19	Roux's 31436:22
	rover 31243:9
31428:19 31306:23 31346:6 31340:1 31372:15 31323:2 31346 remember 21230:2 received 21250:18 21300:23 21401:18 21247:2 21402	
remember 31230:8 resolved 31250:18 31399:23 31401:18 31347:2 31403 21262:25 21281:12 21208:22 21222:16 rest 21275:5 5 rest 21275:5 5	
31262:25 31281:12 31308:23 31333:16 rest 31275:5,5 road 31268:15	RPG7 31248:21,25
31333:17 31336:10 resort 31423:12 31322:15 31305:12	RPG7s 31248:14
31343:25 31351:21 31427:10,19 result 31250:20 robbery 31414:5	
31356:5 31359:17 resource 31257:21 31266:12 31268:18 31421:23	rubber 31404:21
31361:20 31370:2,17 31383:8 31271:9,22 31274:1 robust 31280:24	
31370:24 31371:22 resources 31250:19 31284:22 31291:17 rock 31271:20	ruled 31301:3
31374:1,6,10,12,17 31252:17 31258:8 31291:22 31327:21 31390:14	rules 31378:2 31426:6
31374:21 31401:10 31261:23 31295:17 31354:6 31358:3 role 31233:2,5	run 31271:24 31430:25
31402:5 31408:17 31369:15 31383:14 31368:11 31372:8 31234:23 3124	
31434:5 31403:22 31382:10 31419:21 31243:20 3125	e
remembered 31370:4 respect 31236:16 resulted 31271:15 31257:20 3125	
remind 31290:23 31237:4 31243:6 resume 31420:6 31258:20 3125	
31351:18 31244:9 31247:11 resumes 31228:2 31259:13,14,1	
reminded 31231:15 31257:4 31261:17 31290:17,18 31260:9,13 31	
31351:18 31265:17 31272:2 31329:15,16 31364:6 31261:3,16 31364	
removed 31256:24 31288:12 31293:11 31364:7 31419:18,19 31268:1,18 31	
31257:19 31298:17 31307:18 retaliation 31427:22 31291:3 31293	
repeat 31245:10 31335:15 31336:17 retired 31271:5 31297:21 3134	
31347:18 31406:25 31337:6,8,11 retirement 31259:21 31350:8 31351	· · · · · · · · · · · · · · · · · · ·
repeated 31330:19 31347:11 31363:16 retiring 31232:8 31379:21,21 3	1380:4 31406:6 31413:7
repeatedly 31417:9 31372:16 31380:3 retreat 31242:17 31380:15 3139	
31418:3 31385:21 31410:25 31404:7 31407:12 3141	R5s 31411:24 31412:2
rephrase 31427:24 31411:3 31425:22 retreated 31241:3 31422:7 31436	~
replaced 31283:19 31428:8 return 31252:8 roles 31232:15,1	
31369:21 respectfully 31408:7 returned 31271:20 31234:12 3125	
reply 31234:22 respond 31250:17 Reuters 31428:10 31257:6,13 31	258:3,9 Saferworld 31233:24
report 31283:16,18 31251:13 31254:15 reveals 31432:7 31258:10 3126	51:20 safest 31327:4
31291:20 31329:11 31270:13 31272:21 revert 31390:1 31325:6	safety 31273:1
31339:20 31349:5,15 31287:11 31295:15 review 31235:23 roll 31358:23 31	387:3 31418:20 31419:1,2
31350:1,12 31362:5 31316:18 31358:23 31244:18 31291:21 31387:22 3138	salient 31244:22
31372:5,18 31375:3 31377:4 31380:20 31298:7 rolled 31383:22	SAPS 31230:2
31391:8 31412:7 31384:12 31401:6 reviewed 31278:20,23 31392:25 3139	
31420:15,15 31414:4 31430:21 31326:8 31433:4 31396:3,16	31283:13,14
reported 31419:20 responded 31254:23 revision 31234:25 rolling 31346:22	
reports 31292:5,8 31261:11 31389:25 revisited 31385:24 31384:24	31298:8 31300:3
3 1304:15 31350:25 31393:1 rifle 31356:23 rollout 31383:6,	
31351:11 31371:24 responding 31236:10 rifles 31361:16 31386:5,16,18	
31372:3 31434:18 31276:4 31300:3,5 31405:14,20 31406:6 31387:7,19 31	
representation 31346:2 31320:18 31326:24 31416:18 rooftops 31257:	
representatives responds 31391:23 right 31230:14 31231:9 room 31257:19	31375:5 31377:5,6,10
31267:3 response 31233:6 31232:12 31247:17 31265:13 3132	
represented 31400:12 31241:5 31243:7 31257:12 31260:23 rooms 31254:20	
represents 31287:16 31284:21 31286:5 31264:1 31277:9 Roots 31310:23	SAS 31342:20
31359:22 31308:9 31310:19 31296:23 31303:18 31313:14 3137	
ARCHIVE FOR LUSTICE	

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RealTime Transcriptions

				Page 2
sat 31418:21	31266:14 31303:20	sectarian 31250:22	31230:5,12 31361:13	31355:15 31357:2
satisfied 31288:18,23	31308:21 31312:10	31251:5 31273:21	31411:19	set's 31261:22
31395:12,20	31319:6,8 31320:8,10	31274:15 31352:14	sensitive 31238:19	seven 31252:15
satisfies 31327:10	31320:19 31327:3	section 31279:15	sent 31244:15 31250:19	shaft 31351:22
satisfy 31287:13	31335:14 31343:14	31305:1,9 31307:2	31305:12 31334:18	shambolic 31386:17,18
31288:19	31343:14 31344:22	31311:15 31345:4	31344:10	31387:1
Saturday 31263:9	31345:9 31346:6,9	31376:6,14	sentence 31245:11	sharpened 31256:14
31264:7 31271:21	31388:20 31389:18	securest 31252:7	31330:13	sharper 31289:5
31295:7	31394:19 31420:12	security 31234:8	separate 31404:12	sharp-edged 31255:16
save 31307:19	31425:23,25 31428:9	31256:16,17,25	sergeant 31267:14	31255:19 31256:14
saw 31252:24 31374:7	31431:25 31433:5,7	31313:8 31321:22	sergeants 31264:2	shavings 31248:6
31395:6	31437:1	31354:10 31412:18	31313:1	sheet 31264:4
saying 31239:19,20,23	scenes 31245:8,18	31418:20 31419:1,3	series 31229:22,25	she's 31318:22 31381:2
31239:25 31240:10	31294:5	see 31231:21 31285:2	31230:1,1,17 31243:7	31393:16
31241:21 31285:25	scheme 31383:2	31286:25 31299:8	31243:18 31256:21	shield 31248:15
31301:20 31302:7	school 31254:5	31300:11 31304:9	serious 31247:7	31249:3,4 31255:9
31312:19 31316:2,19	31431:16	31305:18 31329:4	31253:22 31254:5,22	31257:12 31405:3
31316:22 31318:23	schoolchildren	31332:15 31335:24	31258:22,24 31260:1	31414:10 31416:14
31320:20 31321:11	31431:15	31336:6,9,23 31360:2	31262:4 31264:14	shields 31249:8
31321:14 31325:6	scope 31293:9	31363:24 31375:10	31271:20 31295:13	31404:22,23 31414:8
31332:21 31334:9	Scott 31238:17	31380:17,18 31381:7	31323:2 31421:22	31421:13
31340:6 31341:22	31242:12 31297:18	31387:6 31399:1,25	seriously 31327:23	shocked 31297:22
31346:2 31351:11	31348:15 31355:1,19	31403:19 31406:17	31328:17 31336:20	31406:19
31352:18 31357:16	31358:17,19	31412:22 31414:22	served 31232:11,23	shoot 31282:8,18
31361:6 31372:19	31366:22,23 31367:2	31422:18,18,22	serves 31233:21	31330:18,19 31331:8
31373:24 31374:5	31368:1,22 31370:1	31425:15 31428:4,6	31292:13 31295:6	31395:18 31405:21
31377:5 31387:8,12	31372:7,22 31373:24	31429:4,6,11,12,22	31314:16,25	31411:12 31414:23
31390:11 31396:12	31377:20 31381:11	31429:23 31430:10	31400:11	31415:3 31423:15,19
31400:19 31406:11	31383:7,21 31384:7	31430:16 31431:20	service 31232:5,12	31424:1,7 31426:14
31407:1 31410:6	31385:5,20 31386:14	31432:4,6,17 31433:6	31233:3,18 31251:24	31427:25 31428:2
31418:1 31419:23	31387:8 31388:1,13	31434:23 31435:13	31252:6 31254:14,14	31432:13 31433:15
31422:20 31429:19	31394:21 31397:5,12	31436:6	31259:5,20 31265:6	shooting 31420:11
31430:12	31399:5 31400:1,3,17	seeing 31355:15	31267:13 31269:16	31427:2,3,6,11
says 31242:8,12	31401:6 31402:16	31429:18,19	31272:17,18,18,20	31428:11 31431:20
31258:2 31297:9	31404:4 31405:25	seek 31303:2	31285:15 31292:23	31431:21 31433:10
31304:7,20 31305:21	31407:25 31409:10	seeking 31305:5	31293:20 31295:5	shop 31351:21
31305:22 31308:20	Scott's 31242:16	31347:14 31430:13	31300:20 31307:4	short 31251:13 31268:7
31308:24 31309:4	31358:10 31363:16	seen 31235:20 31236:9	31338:24 31343:5	31271:25 31289:5,11
31315:17 31324:7,12	31367:9,12 31373:6	31256:15 31315:10	31369:16	31422:14 31436:4,21
31330:4,17 31331:7	31387:2,8 31388:5	31315:12 31348:17	services 31272:10,13	shorten 31376:17
31331:10 31333:15	31389:5 31400:9	31364:20,23 31372:5	31375:21	shorter 31437:5
31343:6 31351:23	31402:21 31403:13	31373:21 31389:24	Service's 31379:6	shortly 31294:10
31354:11 31355:5	31407:7,16 31410:8	31397:22 31422:19	set 31234:20 31235:11	shot 31240:24 31241:3
31356:21 31362:12	screen 31276:10,18	segregated 31250:23	31237:8,16 31240:2	31241:23 31327:24
31380:25 31387:21	31288:3 31290:22	seize 31356:9	31242:2,7 31244:3	31327:25 31339:2
31391:25 31393:18	31371:9 31407:8	selected 31259:14	31246:7 31257:21,21	31342:20,23
31399:7,13 31400:2,3	search 31356:6,8	self 31338:6,13 31340:1	31257:22 31265:4	31424:15 31426:22
31403:3,10 31404:5	31357:8,20,23	self-defence 31347:2	31269:5 31281:18	31427:16 31429:9
31406:3 31409:6,10	31416:4	semantic 31392:5	31283:23 31293:25	31431:9,17 31432:8,9
31428:15 31434:12	season 31249:19	send 31268:21 31302:2	31296:11 31312:16	31433:5,7,20,24,25
31434:25	seated 31231:11	31346:25	31331:22 31337:6	31435:4 31436:5
SC 31328:5	second 31242:13	sending 31301:10,16	31340:24 31345:4	shots 31338:6 31426:1
scaffolding 31247:18	31253:21 31267:23	31303:6 31320:24	31364:24 31423:20	31427:5,8 31429:9,24
scale 31246:14,17	31278:1 31306:4	31405:4	31433:6 31436:4	31431:12 31434:23
31247:5,14 31248:11	31326:9 31336:5	senior 31254:19	sets 31244:4 31245:7	31434:25
31248:17 31258:12	31353:21 31359:9	31291:7 31296:12	31261:22,22	shouldn't 31412:6
31271:9 31321:18	31376:23 31392:13	31304:12 31314:14	31398:23	show 31270:4 31326:15
31322:4 31421:10	31396:6 31409:1	31315:1 31329:23	setting 31250:11	31394:21 31399:13
scan 31245:16	31434:12 31435:14	31331:4 31344:16	31252:20 31382:2	showed 31425:9
scanning 31414:16	secondary 31411:8	31363:8 31380:23	31401:23	shows 31241:7
		31399:3 31402:9,11	settlement 31238:15	shrapnel 31248:2,5,5
	31435:8			······································
scenario 31307:16	31435:8 secondly 31280:16			side 31249:19 31266:17
scenario 31307:16 31430:20	secondly 31280:16	31404:4 31415:12	31239:9 31240:6	
scenario 31307:16 31430:20 scene 31239:21	secondly 31280:16 31298:14 31332:5,7	31404:4 31415:12 sense 31272:4 31353:12	31239:9 31240:6 31305:11,13,14,16,20	side 31249:19 31266:17 31266:18 31327:19 31331:2 31371:15
scenario 31307:16 31430:20 scene 31239:21 31250:11,19 31252:2	secondly 31280:16 31298:14 31332:5,7 seconds 31317:21	31404:4 31415:12	31239:9 31240:6 31305:11,13,14,16,20 31305:25 31314:20	31266:18 31327:19 31331:2 31371:15
scenario 31307:16 31430:20 scene 31239:21	secondly 31280:16 31298:14 31332:5,7	31404:4 31415:12 sense 31272:4 31353:12 31355:14 31368:6	31239:9 31240:6 31305:11,13,14,16,20	31266:18 31327:19

RealTime Transcriptions

				Page
sides 31275:14 31346:7	31252:12 31253:18	31385:6 31432:5	31301:19 31314:4	stability 31297:21
sight 31392:11	31258:12 31260:2	somewhat 31236:8	31328:15 31334:17	stage 31265:10
signed 31415:1	31266:19 31268:10	soon 31401:22	31375:20 31378:8	31268:16 31272:16
significant 31292:16,25	31270:13 31271:23	sophisticated 31248:3	31379:1,6,14	31279:11 31295:4
31297:4 31365:10	31275:1,25 31282:11	31263:6 31269:3	31412:22 31413:22	31296:21 31304:8
significantly 31291:13	31282:16,25 31284:3	31304:11 31321:18	31417:4,6 31418:25	31310:19 31316:7,13
31372:16	31300:20 31302:8	sorry 31231:15	31426:8	31323:3 31329:13
signs 31390:24	31305:23 31308:8	31236:18 31241:13	space 31278:10	31335:20 31343:22
silver 31257:15,16,23	31311:4,18 31312:17	31246:19,21	spare 31420:15	31344:10 31345:24
31258:15,19,23	31316:15 31317:11	31260:15 31276:6	spark 31307:10	31346:12,15,16,20
31259:3,4 31260:2,10	31319:20 31325:25	31285:23,24 31286:1	31310:15	31348:18 31391:9
31260:14 31261:2,20	31336:22 31341:10	31289:17 31299:20	speak 31303:9	31394:21 31396:22
31261:24 31262:6,14	31343:13 31344:17	31328:5,9 31330:1	speaking 31284:18	31400:5 31410:19
31262:16 31344:24	31350:22 31370:19	31340:22 31345:14	31309:8 31356:16	31400.5 51410.19
31398:22,24 31399:6	31383:18 31384:13	31349:3,6,16	speaks 31303:16	stages 31358:17
31399:10,12	31394:18 31405:5	31361:22 31363:3,21	31365:12	stand 31231:3
Sim 31291:9 31292:11	31411:18 31412:3,21	31367:19,20 31368:8	spear 31255:22	31326:16 31331:24
similar 31252:22	31413:1,18,25	31373:25 31380:6,18	31405:1 31427:1	31334:13 31336:6
similarly 31254:23	31414:6 31416:22,23	31406:25 31409:1	spears 31320:25	31430:17,23
31271:4	31417:4,10,13,14	31410:15 31411:21	special 31355:24	standards 31423:8
simple 31237:13	31418:2,4,19 31419:5	31420:14	specialist 31232:18	standing 31254:1
31302:25 31338:14	31421:24 31424:4,5	sort 31238:5 31239:16	31233:5,25 31263:18	31279:9 31280:11
31340:4 31430:2,3	31426:3 31432:22	31253:8 31255:8	31265:5 31267:16	31281:5,6,9,24,25
simply 31239:5,23	31436:20	31256:19 31257:19	31291:8 31414:4,7,7	31282:14,15
31241:24 31270:9	situational 31306:24	31259:12 31266:8	31421:5,14,16	31289:15,18,24
31275:9 31293:16	31308:13 31324:13	31267:8,19 31269:20	31424:4	31290:11,12 31306:5
31295:10 31301:25	situationally 31278:8	31273:24 31274:21	specially 31421:21	31404:25 31429:8
31302:11 31318:6	situations 31248:11,12	31275:12 31277:18	specific 31253:4	31430:5,8,9 31433:22
31321:24 31324:2,15	31249:16 31251:18	31278:10 31279:6	31258:5 31278:8	31433:23
31324:18 31328:14	31251:20 31254:17	31280:23 31284:24	31292:22 31299:8	Starmer 31265:15
31338:21 31341:1,11	31255:13,18 31266:2	31289:4 31292:16	31330:7 31336:10	31292:3
31342:5,8 31343:14	31412:20 31420:22	31293:2,20 31298:7	31338:2 31347:17	start 31228:5 31231:14
31379:25 31406:7	31434:6	31300:9 31302:19	31379:3 31394:22	31293:9 31327:16
31407:14 31410:6	six 31252:15 31364:17	31314:10 31318:25	31413:5	31341:5 31347:7,10
31418:2,21 31419:4	size 31257:2 31378:18	31319:13 31321:6	specifically 31238:13	31358:23 31366:11
31428:19 31429:3	31379:25	31323:20,22	31255:15 31257:12	31410:5 31430:11
31428.19 31429.3		31324:11 31325:7	31260:6 31294:8,16	started 31277:17
	skilfully 31389:25			
31436:22	skilled 31384:8	31326:8,12 31336:2,7	31298:20,21	31284:4 31305:16
simultaneous 31386:13	skirmish 31274:22	31336:11,16 31340:8	31315:12 31333:13	31307:14 31367:14
31397:10 31414:13	skirmishes 31250:18	31340:24 31345:12	31333:16,17	31372:19 31392:22
31437:9	31274:25	31348:23 31352:21	31334:19 31347:17	31392:25
simultaneously	Skype 31243:13	31353:5 31358:15,17	31347:24,25 31361:6	starting 31290:16
31383:22 31385:14	slick 31386:19	31367:1 31381:24	31377:10 31400:16	starts 31302:25
31385:15,19	slide 31241:6	31383:10 31384:5,10	speed 31437:9	31391:22 31396:16
31386:20 31387:22	slides 31367:13	31385:1 31386:8	spell 31229:15	31403:1
31420:1	sliding 31322:4	31388:24 31394:14	spelt 31365:23	state 31239:5 31251:4
Sinclair 31358:11	slightly 31280:20	31404:20 31406:12	spending 31386:11	31274:20 31375:5
single 31247:20	31288:4 31314:3	31409:24 31411:14	spent 31232:19,21,24	stated 31307:17
31251:23 31257:11	31379:7,10	31412:10,11,13,25	31233:1,9 31279:5	statements 31235:9
31262:21 31263:13	slow 31420:2	31416:8 31424:15	spikes 31256:19,20,22	31245:21,24 31314:4
31271:13 31273:25	small 31233:20	31425:16 31430:7	spins 31256:23	31316:4,9,20 31325::
31275:16 31311:24	31248:7 31250:19	31434:17 31435:11	spirit 31316:10	31328:25 31332:14
31313:5,6 31403:13	31251:6,23 31252:2,5	sorted 31290:19	splutter 31269:9	31332:17,23 31333:1
31420:23 31426:17	31253:25 31258:17	sorts 31385:16	spoke 31234:23	31333:3,7 31334:2,7
31436:24	31261:6,6 31268:11	sought 31381:23	31371:20 31392:18	31334:11,25 31335:3
sir 31257:8 31270:14	31269:14 31410:8	source 31262:25	spontaneous 31249:15	31335:23,25 31336:3
31294:4 31399:13	smoke 31430:6,7,12,16	31267:8	31250:11,16	31348:18 31352:23
31410:17	31430:22 31431:3,4	sources 31353:5	31250:11,10	31355:2 31366:23
sister 31272:23	31430.22 31431.3,4	south 31235:25	31265:18 31266:1,12	31397:17 31400:8
	SMS 31365:11		31300:2,5,15,16	
	01VIO 01000.11	31238:21 31243:16		31405:11 31417:1
sit 31267:23 31268:13	minora 21/12.4		31308:9,9 31377:15	31422:19,21 31433:5
sit 31267:23 31268:13 31268:14,20 31269:7	snipers 31413:4	31256:16 31261:13		21422 6 10 12
sit 31267:23 31268:13 31268:14,20 31269:7 31301:2 31373:12	31414:1	31272:23 31273:12	spontaneously 31300:6	31433:6,10,12
sit 31267:23 31268:13 31268:14,20 31269:7 31301:2 31373:12 site 31417:18	31414:1 soldiers 31342:23	31272:23 31273:12 31277:5,11,20	spontaneously 31300:6 31424:24	31434:4,11,14
sit 31267:23 31268:13 31268:14,20 31269:7 31301:2 31373:12 site 31417:18 sits 31287:17	31414:1 soldiers 31342:23 solve 31276:19	31272:23 31273:12 31277:5,11,20 31278:11 31280:13	spontaneously 31300:6 31424:24 stab 31328:7	31434:4,11,14 31435:1,6,8,11,16,20
sit 31267:23 31268:13 31268:14,20 31269:7 31301:2 31373:12 site 31417:18	31414:1 soldiers 31342:23	31272:23 31273:12 31277:5,11,20	spontaneously 31300:6 31424:24	

Marikana Commission of Inquiry

Pretoria

				Page 2
states 31238:13	studies 31292:7	31345:11 31350:7	31312:24 31317:5	31399:8,9,20,21
stating 31396:4	study 31281:6 31282:3	31377:2,8 31382:23	31327:8 31334:20	31410:13 31420:24
station 31414:5	studying 31286:19	31398:14 31403:23	31335:19 31336:22	31421:17,20
stationary 31317:20,24	stuff 31373:7 31402:23	31406:22 31407:4	31350:13 31351:6,9	31430:24
status 31235:11,15	31409:11	31411:2	31351:10 31353:1,9	tactics 31266:8
31242:23 31245:21	stun 31305:3 31307:11	summarised 31307:21	31359:2,9 31370:10	31267:17,19,25
31283:24 31290:11	31310:9 31325:21,22	summarises 31337:5	31379:2 31384:7	31268:1 31294:17
stay 31322:7	31330:20	summarises 51557.5 summary 31233:12	31385:25 31387:23	31338:2 31382:13
step 31331:22,23				
	style 31257:22	31240:14 31294:3	31388:7 31390:15,22	31408:25 31416:8
stepped 31425:16	31261:23	31306:18 31340:2	31391:11 31396:24	take 31231:3,5
steps 31306:16	subject 31323:4	31373:6	31397:2 31400:20,20	31233:11 31245:20
31310:16 31365:1	submission 31244:21	summation 31373:19	31418:13,25 31434:8	31246:20 31253:14
steward 31351:22,22	submit 31379:5	summed 31240:15	surely 31323:5,16	31273:21 31276:13
STF 31405:16	submitted 31244:20,25	31391:18	31395:22 31416:25	31276:14,15
stole 31417:25	31285:20 31397:23	sun 31401:23	31418:24 31430:18	31279:20 31283:8
stones 31247:16	31434:18	Sunday 31295:7	31433:20,25	31289:11 31290:16
31414:17	subscribing 31284:13	sun's 31409:22	surprise 31383:24	31294:4 31299:15
stood 31235:19	subsequent 31297:6	super 31350:25	31387:9,12 31389:10	31308:22 31317:12
31317:13 31371:18	31434:16	superintendant	surprised 31336:23	31320:5 31321:25
31389:16 31434:13	subsequently 31265:15	31258:16 31259:1,6,8	31405:10	31322:8 31329:13
31434:25	31291:17 31297:18		surprises 31389:2	
		31259:19 31260:11		31337:10 31339:20
stop 31279:16,20	31302:10 31303:15	superintendent	surprising 31353:20,23	31339:21,24
31280:2 31305:24	31344:4 31353:8	31233:4	surrender 31309:9	31341:12,19 31342:6
31387:15 31426:23	31365:14 31370:5	superseded 31236:15	31382:7	31354:3,4 31356:21
31430:14 31435:12	31392:21	supervisor 31344:22	survived 31427:8	31356:22 31358:1
stopped 31271:8,11,14	substantial 31293:4	supplementary	suspect 31301:24	31364:10 31373:7,11
31309:17	31317:16	31228:16 31229:10	31321:13 31355:11	31385:13,24 31398:8
stories 31247:2	substantially 31356:10	31229:13 31244:2,5,6	31432:14	31404:17 31410:19
story 31246:18	sub-plans 31379:24	31244:10,12 31245:3	suspects 31435:21	31412:5 31416:19
31372:17	sub-unit 31313:1	31245:7,17,19	swear 31231:6,9,10	31419:14,16 31427:9
strategic 31257:16	succeed 31311:6	31341:25 31345:3,15	swearing 31228:5	31427:18 31432:25
31261:22,25 31381:7	successful 31234:5	31368:5 31376:6,13	swinging 31405:1	31437:5
31398:23,23	31246:13	31376:21 31377:3	swinging 51405.1 sword 31256:9	taken 31279:19
,				
strategy 31257:21	successors 31352:16	31381:4 31398:5	swords 31256:8,10	31299:7 31333:15
31261:22 31263:2,2	succinct 31373:19	31403:20 31417:2	sympathy 31402:14	31334:21 31335:9
31313:3,4	sudden 31259:21	31434:24	31403:11 31408:1	31339:21,24 31362:6
stray 31241:15	Sue 31291:9 31292:11	supplemented	system 31229:4	31362:9,25 31365:1
stress 31236:5	suffice 31287:10	31421:14	31257:14,15	31369:6,17,19
31248:22 31251:2	31299:20	supplied 31235:23,24	31419:11 31420:2	31371:6 31381:16
31260:13 31263:12	sufficient 31343:14	31279:3	31423:24	31435:21
31308:4 31323:21	31375:18	supply 31350:24,24	s.u.o 31290:25 31420:7	takes 31230:15 31252:8
31336:17 31396:21	suggest 31239:14	support 31264:3		31256:1 31264:13
31428:25	31305:21 31314:21	31420:24	Т	31300:14 31386:23
stretch 31402:17	31314:22 31353:21	supporters 31274:3	table 31414:25	31391:20 31396:25
strike 31255:6	31361:23 31368:7	supporting 31274:16	tact 31267:12,12	31421:24
31274:10 31276:2		supportive 31259:17		talk 31229:1 31254:21
	31380:2 31382:12		31270:14	
striker 31352:9	31386:3 31414:13	suppose 31246:22	tactic 31249:5 31268:5	31255:1,2 31258:10
strikers 31240:12	31418:17 31429:20	31247:2 31251:13	31269:11 31406:5	31268:3 31272:14
31274:16 31309:13	31437:3	31277:1 31278:1	31414:24	31278:13 31294:10
31309:15 31318:13	suggested 31239:18	31286:15 31292:9	tactical 31257:16,22	31294:15 31297:19
31330:21 31346:5,8	31270:5 31286:25	31294:20 31366:16	31261:25 31262:7,16	31301:5 31302:18
31346:11 31347:1	31301:12	31420:25 31422:13	31264:3 31267:10,16	31308:12 31319:18
31370:20 31392:11	suggesting 31239:8	supposed 31252:6	31267:20 31268:25	31321:15 31335:1
31395:6 31396:1,7	31240:8,10 31253:9	31317:24 31323:13	31269:17,17,22	31352:25 31353:11
strikes 31353:23	31300:9 31302:20	31325:13 31383:24	31270:4,7,9 31312:13	31377:16 31389:2
31354:24	suggestion 31348:10	31389:10 31407:23	31318:25 31320:5	31397:15 31399:15
strongly 31339:19	31352:2,3	31407:24	31338:9 31339:17,20	31412:10,14 31415:1
31340:13 31362:15	suggestions 31267:25	supposedly 31372:24	31340:11,21	talked 31238:12
	31371:3 31410:8	supposedly 31372.24 sure 31228:5,21	-	
struck 31277:19,25		· · · · · · · · · · · · · · · · · · ·	31341:13,19	31281:5 31291:25
31280:25 31294:24	suggests 31300:13	31230:3 31238:20,24	31356:17 31357:10	31331:2 31349:18
31295:12,23	suicide 31423:21	31246:25 31247:15	31357:18 31360:19	31383:16 31402:20
31335:23 31336:5	suit 31256:6	31249:11 31256:15	31362:7,12 31368:10	31405:11 31408:18
31353:20	suitable 31329:13	31272:12 31276:12	31369:5,13 31379:11	31412:19 31421:15
		21270 24 21202 10	31381:1 31386:10	31426:5 31430:9
structure 31300:10,11	31410:19	31279:24 31282:19	51561.1 51560.10	
structure 31300:10,11 struggle 31426:8	31410:19 summarise 31232:3	31279:24 31282:19 31286:13 31290:4,5	31387:6,14 31388:9	31420.5 51450.9

				Page 24
31248:23 31253:7,10	31310:25 31316:10	31364:5 31366:2	31372:6 31389:8	31424:10,23
31254:11 31255:24	31318:7 31325:4	31420:17 31422:2	31395:2 31409:24	31425:20 31426:15
31263:6 31278:5	31331:7,14,15	thawed 31308:3	31431:1 31434:3	31426:24,25,25
31287:20 31302:12	31359:24 31376:17	thematic 31291:21	things 31237:24	31427:3,14,17,22
31304:10,12	tells 31304:12 31313:1	thereabouts 31367:17	31255:3 31263:16	31428:1,4,5 31431:11
31335:20,22	31318:6 31405:7	31410:17	31265:23 31266:7	31432:15
31355:13 31364:22	31408:8	thereof 31358:6	31269:16,25	threaten 31253:14
31372:20 31377:20 31400:14 31405:20	temporarily 31232:13 31259:22	there'd 31424:14 there's 31236:25	31270:12 31277:18 31278:5,5 31285:12	threatened 31253:18 threatening 31253:8
31408:20,21	ten 31276:16 31365:4	31237:2 31243:17	31288:3 31294:11,18	threats 31253:5,8,10,13
31430:13 31432:25	tend 31250:20	31252:13 31254:5,15	31296:11 31309:22	31254:6,7,15
31433:16	tended 31370:13	31256:9 31292:21,22	31319:18 31329:11	three 31233:3 31235:9
talks 31296:25	tendency 31288:25	31296:19 31301:22	31331:17 31335:19	31235:12 31237:16
31303:21 31314:17	tends 31384:11	31304:14 31305:15	31336:22 31355:22	31258:9 31259:5
31315:8,15 31318:21	tension 31249:21	31305:18 31307:12	31357:12 31359:18	31296:8,13 31327:24
31343:10 31348:9	31320:11 31355:10	31309:7 31322:21	31360:2,5 31367:14	31328:6 31342:20
31354:2,9 31355:2,7	31358:21	31323:5 31324:19,24	31369:2 31373:15	31353:16 31365:5
31359:18 31361:24	tensions 31269:19	31326:11,12	31376:18 31377:16	31366:5,16,17
31365:8 31379:4 31387:20 31388:3	term 31246:22 31247:24,25	31327:14 31328:2 31329:10 31345:22	31383:3 31384:10 31388:15 31389:5,20	31392:7 31396:14 31418:7,9 31426:9
31405:15 31434:11	31297:15 31421:19	31346:1,4 31356:12	31395:24 31397:8	31432:8 31434:10,16
Tannoy 31396:25	31430:24	31356:22 31360:7,14	31402:25 31404:20	three-stage 31257:14
target 31248:22	termed 31404:24	31361:18 31362:4,17	31409:14 31413:2	threshold 31426:19
targets 31282:25	terminology 31238:10	31362:19 31364:22	31415:8 31419:9	throw 31330:20
task 31417:8	31238:12 31250:22	31365:22 31379:12	31421:13 31433:11	throwing 31405:1
tea 31329:13 31399:9	31261:13 31340:10	31382:5 31385:11	31433:16 31434:5	thrown 31247:22
31410:19 31416:19	31340:10 31405:19	31395:4 31398:7	31436:7 31437:9	31256:14,25 31301:1
31419:15,16	terms 31237:3 31242:7	31400:18,22 31401:4	thinking 31269:15	thrust 31328:4,11,13
team 31235:18,24	31247:7,16 31253:8	31403:7,10 31411:25 31413:12 31414:13	31312:8 31319:22 31320:19 31322:15	Thupe 31329:25 31330:23 31331:9
31243:12,16,21 31244:16 31246:3	31254:6,7 31255:12 31255:23 31256:15	31417:22 31420:3	31320.19 31322.13	Thupe's 31331:16
31262:8 31266:24	31269:1,19 31273:7	31423:13,15 31424:5	31401:13	Thursday 31263:10
31267:4 31279:2	31286:8 31287:17	31425:24 31427:19	thinks 31297:4	31271:23 31339:18
31281:17 31284:15	31293:11,15,19	they'd 31308:15	31308:11 31400:18	31339:22,24
31290:5 31296:4,21	31302:25 31306:5	31360:22	third 31328:3 31368:4	31340:12 31341:14
31299:25 31300:1	31319:3,19 31326:14	they'll 31256:4	31388:4 31434:3	31341:15,15,17,19
31332:20 31367:12	31335:24 31336:3,15	they're 31230:10	thirdly 31422:24	31356:18 31357:18
31379:3 31381:10	31341:9 31354:9	31251:2,10 31253:9	thought 31234:22	31357:21,24 31358:2
31386:7,7,12,20	31355:1,9 31362:19	31253:19 31267:16	31270:16 31304:23	31359:7 31360:20
31397:20 31400:7 31403:4 31417:5,6	31368:13,14 31373:14,22	31267:24 31272:12 31272:12 31301:6,7	31311:10 31312:2,6 31319:11,12	31362:7,11 31369:6 31369:21 31370:4,15
31403.4 31417.3,0	31375:15 31378:3,5	31301:14,16 31313:9	31320:16 31324:23	31370:16 31381:1
31434:8	31381:21 31386:6	31317:7 31322:11	31326:3,13 31327:1	31392:13 31394:20
teams 31263:24	31390:8 31394:9	31327:19 31377:7,11	31330:20 31334:8	31394:23 31409:17
31414:4	31396:12 31397:7	31378:12 31382:6	31335:6 31351:17	31410:1,5,16
teargas 31305:3	31404:20 31406:19	31388:11 31399:22	31358:2 31361:8,12	till 31310:11 31364:3
31306:2,7,11 31307:9	31413:4 31417:16	31399:23 31403:3	31374:11 31385:5	time 31233:2,10
31310:5 31314:18	31418:24 31429:25	31406:16 31407:23	31392:11 31395:17	31241:15 31244:24
31325:21,22	31433:10	31407:24 31408:14	31395:20 31396:7	31250:2 31262:5
31330:19 technical 31280:23	terrain 31387:20,21 31388:10	31411:11 31418:11 31418:12,13 31429:4	31400:4,21 31409:25 31415:6 31419:11	31265:8 31267:15 31269:23 31270:8
31399:4	territory 31263:15	31418:12,13 31429:4 31429:22,23,25	thousand 31418:7,9	31269:23 31270:8 31271:18,24 31272:8
telephone 31243:13	test 31426:19	31429.22,23,23	thousands 31247:22	31277:10 31279:6
31279:4	testified 31362:2	31432:15 31436:23	31382:4	31291:5,10,24
tell 31249:11,23	testifying 31349:4	they've 31406:12	threat 31253:22	31292:7 31293:24
31250:2 31265:23	text 31297:2	31427:13 31432:9	31254:5,22 31255:11	31303:21,24
31311:24 31322:7	thank 31228:4	thick 31425:1,13	31255:12 31262:13	31307:19 31308:5
31352:19,20 31357:1	31230:23 31231:11	thickness 31425:5	31297:14 31347:3,4	31317:15 31319:12
31364:21 31372:6	31231:13,22,24	thing 31252:22	31404:7 31412:16,18	31319:18,23
31382:17 31383:25	31233:11 31242:22	31253:19 31255:8	31412:20 31413:14	31333:23 31339:1 31341:4 31343:16 25
31389:9 31390:5 31391:9 31408:7,13	31276:6 31289:19 31291:2 31293:6,7	31267:21 31275:11 31294:24 31298:5	31413:17 31414:12 31414:14,18,22,22	31341:4 31343:16,25 31348:17 31350:12
31410:20 31413:23	31296:24,24	31309:1 31310:17	31415:13,23 31416:3	31357:6 31367:7
31425:5	31322:18 31329:9,18	31313:2 31314:9	31416:5,13 31417:23	31368:3 31372:12,20
telling 31254:3,3,4	31330:6 31335:13	31319:21 31327:4	31421:11 31423:10	31376:3 31379:12
31309:8 31310:10,12	31337:4 31345:17	31351:13 31358:9	31423:16 31424:2,6,8	31381:22 31386:11
ARCHIVE FO	R JUSTICE			

Marikana Commission of Inquiry

$\begin{array}{c c c c c c c c c c c c c c c c c c c $					
31399:17 13199:17 1319:22 31255:10 31257:13 31252:13 31399:12 13197:22 3149:12 31253:14 31255:10 31257:13 31415:22 31419:22 31419:22 31415:22 31419:25 31415:22 31419:25 31415:22 31419:25 31415:22 31419:25 31415:22 31419:25 31415:22 31419:25 31415:22 31415:22 31419:25 31415:22 31419:25 31415:22 31419:25 31256:23 31256:23 31256:23 31256:23 3126:21 31256:23 3126:21 31311:21 31339:12 31311:21 31339:12 31311:21 31339:12 31311:21 3139:12 31311:21 3139:12 31311:21 3139:12 31311:21 3139:12 31311:21 3139:12 31311:21 3139:12 31311:21 3139:12 31311:21 3139:12 31311:21 3139:12 31311:21 3139:12 31311:21 3139:12 31311:21 3139:12 31311:21 3139:12 31311:21 3139:12 31311:21 3139:12 31311:21					Page 2
31394203 31394203 31234203 31234203 3123421 3123412					1 490 2
31390223 31391:3 training 3124:19 TTTS 31353:14 31263:44 31266:8 3147:44 31266:8 31394223 130721 transcribed 31425:01 TTS 31353:14 31364:23 31378:44 31378:43 31378:43 31378:43 31378:43 31378:43 31378:44 31378:43 31378:43 3136:13 3136:12 3136:14 3136:12 3136:14 3136:12 3136:14 31378:14 31378:44 3127:13 3136:12 3136	31389:17 31390:19	trainer 31232:16	31361:2,21	31253:10 31257:13	31415:22 31419:8,9
3139/223 31267:25 313549:26 31287:20 31402:14 cmascrinel 31437:25 31402:14 cmascrinel 31437:25 31415:2 31437:25 31415:2 31437:25 31437:25 31437:25 31437:25 31437:25 31437:24 31359:22 31257:23 31437:24 31359:22 31347:24 31359:22 31347:24 31359:22 31347:24 31359:22 31347:24 31359:22 31347:16 3136:12 31339:16 31342:12 31347:16 3136:12 31339:16 31342:12 31348:24 3136:12 31348:24 3136:12 31348:24 3136:12 3137:12 3136:12 3137:12 3136:12 3137:12 3136:12 3137:12 3136:12 3136:					
3139723 3140124 transcribed 31425:9,10 3136124 31378:44 31378:44 3138:12 3140831031444 transcribed 3138:17 3135122 tpically 31277:18 31328:15 3138:12 sunderstood 3128:25 314109 3144624 3136:19 31359:12 31357:16 31357:12 31357:12 31357:12 31357:12 31357:12 31357:12 31357:12 31367:13 337:16 31367:13 337:16 31357:12 31367:13 337:16 31367:13 337:16 31367:13 337:16 31367:13 337:16 31367:13 337:16 31367:13 337:16 31367:13 337:16 31367:13 337:16 31367:13 337:16 31367:13 3348:11 31367:13 3348:11 31367:13 3348:11 31367:13 3348:11 31367:13 3348:11 31367:13 3348:11 31367:13 3348:11 31367:13 3342:12 31367:13 3342:12 31367:13 3342:12 31367:13 3342:12 31367:13 3342:12 31367:13 3342:12 31367:13 3342:12 31367:13 3342:12 31367:13 3342:12 31367:13 3342:13 3367:13 3367:13 3376:13 3377:13 33167:13 3376:13 3376:13 3376:13 3376:13 3376:13 3376:13				-	
31408/s10/31404/2 transcript 313157,11 31561/22 typical 3129/53 utaristical 3128/25 31410/9 3140/c24 31356/19/3159/2 313471/9/313374 3129/23/3126/12 31311/21/31339/15 314322/531442/9 31368/22 31359/22 313471/9/313374 31359/22 31311/21/31339/15 11432/531442/9 31368/21/3377.6 transdring 3139/5 tresdu 3172/24 313472/4 31348/24 114242/531428/18/3126 transdring 3139/5 tresdu 3138/15 tresdu 3138/15 31348/27 undertake 3128/2 112424/2 transdring 3134/21 1128/81/83/326/23 tresdu 3138/16 3136/16 3136/16 3136/16 3136/16 3136/16 3136/16 3136/16 3136/16 3136/16 3136/16 3136/16 3136/16 3137/25/23 3132/23 3132/23/23 312/23/23/23 312/23/23/23/23/23/23 312/23/23/23/23/23/23/23/23/23/23/23/23/23					
314089 31409 9140 31333 9(2) 31342(1) 31337(2) 127512333344 31297(2) 313421(2) 31347(2) 31348					
314109 31452 31452 31252 31252 31252 312572 312572 312572 312572 312572 313592 313592 313592 313592 313592 313592 313592 313592 313592 313592 313592 313592 313471 313592 3134821 313592 3134821 313592 3134821 313592 3134821 313592 3134821 313592 3134821 3135612 3134821 3135612<	31403:10 31404:2	transcript 31315:7,11	31361:22	typical 31249:5	understood 31228:25
314109 31452 31452 31252 31252 31252 312572 312572 312572 312572 312572 313592 313592 313592 313592 313592 313592 313592 313592 313592 313592 313592 313592 313471 313592 3134821 313592 3134821 313592 3134821 313592 3134821 313592 3134821 313592 3134821 3135612 3134821 3135612<	31408:9 31409:9,14	31333:9,12 31349:13	TT5 31296:1 31297:22	typically 31257:18	31235:18 31238:25
31422:16 31269:22 31267:13 3127:13 3131:12 3136:12 3146:13 3136:12 3136:12 3136:12 3136:12 3136:12 3136:12 3136:12 3136:12 3136:12 3136:12 3136:12 3136:12 3136:12 3126:13 3137:13 3124:12 1146:13 3137:12 3126:13 3137:12 3126:13 3137:12 3126:13 3137:13 3124:12 1146:13 3137:13 3124:12 1146:13 3137:13 3124:12 3126:13 3137:13 3124:13 3126:13 3126:13 3126:13 3126:13 3126:13					
31432:4.16 31437:6 1397:17 100000 100000 100000 100000 100000 100000 100000 100000 100000 100000 100000 1000000 1000000 1000000 10000000 10000000 100000000 1000000000000000000000000000000000000					
31437:6 translation 31419.23 Tueslay 31372:24 31237:13 31348:11 undertake 31234:2 112624 31352:15 traumatic 31336:13 tumble 31256:19 tumble 31256:19 undertake 31234:2 undertake 31234:2 312624 31352:15 tried 3128:18 3126:9 31276:11 3128:310 U undertake 31234:2 312624 31352:16 31287:14 3128:13 U U undertake 31234:2 11282:13157:14 31297:23 31310:24 31298:12 3126:23 undertake 31234:2 31307:10,14 31307:10,14 13176:23 3136:12 31299:12 3138:21 31266:13 3100:11 undertake 31234:2 31311:12 31376:0 31307:10,14 turned 3135:12 31311:12 3138:10:3 31300:11 undertake 31234:2 3131:12 31376:3 31300:4 31307:10,14 turned 3135:12 31399:22 3138:13 31246:13 3139:12 3132:12 5:133379:3 31307:10,14 turned 3135:12 31399:22 3138:13 3126:13 31300:11 31311:12 3139:12 31399:23 3126:13 3130:11 3132:12 5:13337:3 31320:21 turned 3135:12 31399:23 3126:13 3130:11 31399:23 3126:13 3130:11 31399:23 3126:13 3130:11 31399:23 3126:13 3130:11 31					
time/rame 31236:10 31424:13 31437:8.9 tumble 31256:19 31384:2.4 31384:2.4 31326:24 31352:13 travelling 3130:5 tumble 31256:2.63 31382:1.5 31382:1.5 31382:1.5 3126:24 31352:10 travelling 31310:5 31349:1.7 31283:1.3 1293:8.2 UK 312771:3 1225:1.2 undertook 31289:1.0 116:31327:10 triple 3128:1.5 3137:2.5 3130:2.4 312771:3 1228:1.2 31262:1.2 11007tunately 31383:1.6 31307:1.01.4 turned 31432:1.1 turned 31432:1.1 1106rar 3125:1.2 31261:3 3130:1.1 31262:2.3 31307:1.5 1.31399:4 3138:1.031347.1 turned 31432:1.1 turned 31432:1.1 turned 31432:1.1 11367:2.5 31362:3 31397:2.5 31382:1.2 31367:1.5 31379:3 31307:1.5 1.31399:4 3138:1.031347.1 turned 31432:1.1 turned 3125:2.1 turned 3142:1.3 tur					
times 312494:13 traumatic 31336:13 tumbles 31256:23 T's 3136:122 undbit 3136:13 312624 31352:15 tried 31288:18 3126:9 31276:11 31283:123 5124:14 undbit 31278:10 undbit 31288:10 179 3128:5 51349:17 tried 31288:18 3126:9 31276:11 31283:123 5124:13 undbit 31288:10 1809:16.02.02.1 triple 3129:15 31376:23 31429:12 3128:16.23 3129:12 3128:21.63 31312:14 16:00.20.21 triple 3129:15 31376:23 3142:12 3128:12.03 3129:12 3128:21.63 31322:16 21 31377:13 3129:02 31377:23 3138:13 undbit 3126:13 3126:13 3126:15 3138:0:11 1328:2 3129:02 17K 7 3142:13,19.20 turns 3129:12 3138:2:1 31377:23 3138:3:13 31311:12 31377:2 31428:13 3130:11 3132:12 3133:13:13:13:13:13:13:13:13:13:13:12 31352:1 31399:23 140:12 31377:23 3138:13 3126:15:15 31379:3 3130:12 3131:12 31352:1 31352:1 31399:23 140:12 3149:13:14:12 3126:15:15:13:12 3126:15:15:13:12 3126:13:13:14:13:13:14:13:13:14:13:13:14:13:12 3126:13:13:14:13:12 3126:13:13:12 3126:13:13:12:14:13:12 3126:13:13:12:14:13:12:14:13:12:14:13:12:14:13:12:14:13:13:	31437:6	translation 31419:23	Tuesday 31372:24	31237:13 31348:11	undertake 31234:2
times 312494:13 traumatic 31336:13 tumbles 31256:23 T's 3136:122 undbit 3136:13 312624 31352:15 tried 31288:18 3126:9 31276:11 31283:123 5124:14 undbit 31278:10 undbit 31288:10 179 3128:5 51349:17 tried 31288:18 3126:9 31276:11 31283:123 5124:13 undbit 31288:10 1809:16.02.02.1 triple 3129:15 31376:23 31429:12 3128:16.23 3129:12 3128:21.63 31312:14 16:00.20.21 triple 3129:15 31376:23 3142:12 3128:12.03 3129:12 3128:21.63 31322:16 21 31377:13 3129:02 31377:23 3138:13 undbit 3126:13 3126:13 3126:15 3138:0:11 1328:2 3129:02 17K 7 3142:13,19.20 turns 3129:12 3138:2:1 31377:23 3138:3:13 31311:12 31377:2 31428:13 3130:11 3132:12 3133:13:13:13:13:13:13:13:13:13:13:12 31352:1 31399:23 140:12 31377:23 3138:13 3126:15:15 31379:3 3130:12 3131:12 31352:1 31352:1 31399:23 140:12 3149:13:14:12 3126:15:15:13:12 3126:15:15:13:12 3126:13:13:14:13:13:14:13:13:14:13:13:14:13:12 3126:13:13:14:13:12 3126:13:13:12 3126:13:13:12:14:13:12 3126:13:13:12:14:13:12:14:13:12:14:13:12:14:13:12:14:13:13:	timeframe 31236:10	31424:13 31437:8,9	tumble 31256:19	31348:24	undertook 31259:10
31262:43 travelling 3130;5 trum 31231:25 3124:11 umduly 31288:10 31424:25 tried 31288:18 31326;9 31276:11 31283:10 unoremails87:21 tifle 3132:16 31421:20 trigger 31344:21 31287:53 3130;24 31277:13 31280:20 31246:12 31251:61 stabs:16 31457:31424:21 31377:23 3130;24 31277:13 31280:20 31246:12 31251:61 stabs:16 31307:10 tripis 3125:16.2 31377:22 uniform 31275:22.24 uniform 31275:22.24 stabs:16 31307:16 31384:13 3100:11 trums 31287:3 31311:12 31376:13 3100:11 unig 3124:33 1263:33 3100:11 stabs:22 31406:41,031477:1 TV 31409:19 TV 31409:19 31324:33 1224:33					
31424:25 tried 31288:18 313269 31276:11 31298:310 U uneven 31387:21 117 9 31385: 631421:20 trigger 31344:21 31297:25 31310:24 31277:13 31280:20 31246:12 31251:6 116 9 31350: 63140:20 triger 31344:21 31376:23 31423:23 31423:20 31422:20 3142:12 3127:22 3142:22:21 anim 3127:22;24 31291:23:329:21 anim 3127:22;24 31261:33:300:11 anim 3127:22;24 31261:33:300:11 anigue 31234:5 31377:25 31327:24 31428:23 31307:11 3128:22:31300:12 31377:25 313377:25 31324:33:26:32 31311:12 3137:12 3138:10 3138:10 31374:8;14 31409:19 31377:25 3138:10:23:26:5 31376:3140:12 3126:23:31:40:12 3127:25 3137:25:3138:10 3137:25:3138:10 3137:25:3138:10 3137:25:3138:10 3137:25:3138:10 3137:25:3138:10 3137:25:3138:10 3137:25:3138:10 3137:25:3138:10 3137:25:3138:10 3137:25:3138:10 3137:25:3138:10 3137:25:3138:10 3137:25:3138:10 3137:25:3138:10 3126:23:310:10 3126:23:310:10 3126:23:3130:11 3126:23:3120:11				1 5 5 1 5 6 1.22	
TIP 31328:5 31349:17 31288:13 31298:5 UK 31274:2 31275:5 unfortmately title 31352:16 31421:20 trigger 31344:21 31277:23 31202:4 31277:13 31282:00 31267:23 3130:24 31267:23 3130:24 31267:23 3130:24 31267:23 3132:16 31267:22 31342:12 31267:23 3134:23 31267:23 3134:23 31267:23 3134:23 31267:23 3134:23 31267:23 3134:23 31267:23 3134:23 31267:23 3134:23 3127:52 3138:21 31367:13 3127:52 3138:21 31367:13 3134:23 3127:55 31275:23 3134:23 31275:23 3134:23 31275:23 3134:23 31275:23 3134:23 31275:23 3134:23 31275:23 3134:23 31275:23 3134:23 31275:23 3134:23 31275:23 3134:23 31275:23 3134:23 31275:23 3134:23 31275:23 3134:23 31275:23 3134:23 31275:23 3134:23 31274:23 3124:33 312:24:33 3123:					÷
title 31352:16 31421:0 title 31352:16 31246:12 31251:16 title 313361:0 31415:7 31424:1 31237:29 31242:12 312251:16 title 313361:0 31415:7 31424:12 31237:29 31423:16 31291:18 22:16 31439:16 (20,20,21 trouble 31274:61 31325:16 (23,31384:23 31261:33300:11 ani/275:22:4 ani/275:22:4 ani/275:22:4 ani/275:22:4 3127:13 31384:23 ani/275:22:4 ani/275:22:4 ani/275:22:4 ani/275:22:4 ani/275:22:4 ani/275:22:4 ani/275:22:3 ani/275:22:3 ani/275:22:4 ani/275:22:3 ani/275:22:3 ani/275:22:3 ani/275:22:3 ani/275:22:3 ani/275:22:3 ani/275:22:3 ani/275:23:33:20:3 ani/275:23:33:20:3:30:20:3 ani/275:23:33:20:3:30:20:3 ani/275:23:33:20:3:30:20:3 ani/275:23:33:20:3:30:20:3:33:20:3:30:20:3 ani/275:20:3:30:20:3:3					
itiles 3136:10 iii14:57 3142:2 31337:9 31345:3 31291:822 3124:12 3120:223 idag 3137:19 itrouble 31274:6 turned 31432:11 Ulster 31352:16 3137:137:23 31291:822 3120:21 3127:16 3127:16 3127:16 3127:16 3127:16 3127:16 3127:16 3127:16 3127:16 3127:16 3127:16 3127:16 3127:16 3127:16 3127:16 3127:16 3127:12 3127:12 3127:16 3127:16 3127:16 3127:16 3127:16 3127:16 3127:12 3127:12 3127:12 3127:12 3127:12 3127:12 3127:13 3127:13 3127:12 3127:13 3127:13 3127:13 3127:13 3127:13 3127:13 3127:13 3127:13 3127:13 3127:13 3127:14	TIP 31328:5	31349:17	31283:13 31293:8,22	UK 31274:2 31275:5	unfortunately
itiles 3136:10 iii14:57 3142:2 31337:9 31345:3 31291:822 3124:12 3120:223 idag 3137:19 itrouble 31274:6 turned 31432:11 Ulster 31352:16 3137:137:23 31291:822 3120:21 3127:16 3127:16 3127:16 3127:16 3127:16 3127:16 3127:16 3127:16 3127:16 3127:16 3127:16 3127:16 3127:16 3127:16 3127:16 3127:16 3127:12 3127:12 3127:16 3127:16 3127:16 3127:16 3127:16 3127:16 3127:12 3127:12 3127:12 3127:12 3127:12 3127:12 3127:13 3127:13 3127:12 3127:13 3127:13 3127:13 3127:13 3127:13 3127:13 3127:13 3127:13 3127:13 3127:13 3127:14	title 31352:16 31421:20	trigger 31344:21	31297:25 31310:24	31277:13 31280:20	31246:12 31251:16
today triple s1289:15 s1376:23 s1432:20 uniform s1232:16 31409:16,20,20,21 s1307:10,14 turned s1432:15 ultimately s1232:16 ultimately s1232:16 ultimately s1232:16 ultimately s1232:16 ultimately s1232:12 s126:12 s126:12 s127:22,24 s126:12 s127:22,34 s126:12 s127:22,24 s126:12 s127:22 s126:12 s127:22 s126:12 s127:12 s127:12 s127:12 s127:12 s126:12,15 s126:12,15 s126:12,15 s126:12,15 s137:12 s126:12,15 s126:12,15 s137:12 s126:12 s137:12 s127:12 s137:12 s127:12 s137:12 s127:12 s137:12 s127:12					
31409:16.20.20.21 tromble 31274:6 turmed 31432:11 Unster 31352:15 union 31275:22.4 31433:16 31307:10.14 turming 31297:22 alfance 149:1239:21 alfance 149:1239:21 alfance 149:1239:21 31282:23 3129:12 31357:13 3138:20 3129:123 3130:12 31311:12 21377:22.4 alfance 123:31:11 31307:10.3136:0.23 31369:12.11,21 TV 3149:19 31377:25 31388:13 alfance 123:31:11 3129:22 31400:22 3126:13 31300:12 31399:22 31400:22 3126:13 3120:02 3129:81:51:40:11 3126:13 3139:22 31400:12 3142:12 3126:13 3120:12 3126:13 3120:12 3126:13 3120:12 3126:13 3120:12 3126:13 3120:12 3126:13 3120:12 3126:13 3120:12 3126:13 3120:12 3126:13 3120:12 3126:13 3120:12 3126:13 3120:12 3126:13 3120:12 3126:13 3120:12 3126:13 3120:12 3126:13 3120:12 3126:12 3120:12 3126:12 3120:12 3126:13 3120:12 3126:13 3120:12 3126:13 3120:12 3126:13 3120:12 3126:12 31320:12 3126:12 31320:12 3126:12 31320:12 3126:12 3126:12 3126:12 3126:12 3126:12 3126:12 3126:12 3126:12 3126:12 3126:12 3126:12 3126:12				-	
31433:16 31307:10.14 turning 31297:22 ulimately 3129:21 31276:13 3138:23 31282:2 31290:21 TRT 31242:13,19.20 31267:13 3138:21 31276:13 3139:21 31276:13 3138:23 31311:14.16 3137:5 3138:21 31377:25 31388:12 31407:17 31415:6 31372:25 31380:12 31331:14.16 3137:5 31405:49 124:39 TW 31378:53 14049 TW 31378:13 31407:17 31415:6 31379:25 31380:12 31302:11,18,19 31405:49 13405:2 31352:1 31407:17 31415:6 31379:35,15 31409:13 31400:131402:4 3140:13 141:2 two 31242:18 31247:8 umbrelia 3123:21:1 31266:15,15 3179:3136:6:1 31400:13147:41 31266:31 31270:16 umaxer 3132:19 3126:16 3138:20 31277:1326:2:4 31420:53147:410 31266:13 31270:16 umaxer 3132:19 3126:16 3138:14 3126:16 3138:12 31420:53147:410 3126:63.13 31270:16 umaxer 3132:12 3126:16 3138:14 3124:24 3128:16 3126:123 3131:17,3318:14,15 3129:123 3126:123 3126:123 3126:123 3120:123 3131:17,3318:14,15 3129:121:133127:123 3129:123 3129		-			
told 31264:19 31276:11 31325:16.23 31299:12 31382:21 31261:3 31300:11 unique 31234:5 31307:15 31309:4 31338:10 31347:1 TV 31409:19 31377:25 31388:13 31425:9 31311:14.16 3137.6 31378:5 31404.9 Twala 31351:20 31399:22 31400:22 31399:23 31400:22 31399:23 31400:22 31399:23 31400:22 31399:23 31400:22 31399:23 31400:22 31399:23 31400:22 31399:23 31400:22 31399:23 31400:22 31397:61 31399:23 31400:22 31397:81,53 31399:23 31400:22 31397:81,53 31400:12 31399:23 31400:22 31399:23 31400:12 3129:14 31266:13,13 3127:14 31240:13 3122:19 unite 31232:9 unite 31232:9 unite 31232:9 unite 31232:9 unite 31232:9 3126:63 3126:17 3126:63 3126:17 3126:63 3126:17 3126:63 3126:17 3126:63 3126:17 3126:63 3126:12 3126:61 3126:13 31227:17 3126:63 3126:12 3126:163 3126:11 3126:163 3126:12 3126:163 3126:12 3126:163 3126:12 3126:163 3126:12 3126:163 3126:12 3126:163 3126:12 3126:163 3126:12 3126:163 3126:12 3126:12 3126:12 3126:163 3126:12 3126:12 3126:163 3126:12 3126:12 3126:12 3126:12					
told 31264:19 31276:11 31325:16.23 31299:12 31382:21 31261:3 31300:11 unique 31234:5 31307:15 31309:4 31338:10 31347:1 TV 31409:19 31377:25 31388:13 31425:9 31311:14.16 3137.6 31378:5 31404.9 Twala 31351:20 31399:22 31400:22 31399:23 31400:22 31399:23 31400:22 31399:23 31400:22 31399:23 31400:22 31399:23 31400:22 31399:23 31400:22 31399:23 31400:22 31399:23 31400:22 31397:61 31399:23 31400:22 31397:81,53 31399:23 31400:22 31397:81,53 31400:12 31399:23 31400:22 31399:23 31400:12 3129:14 31266:13,13 3127:14 31240:13 3122:19 unite 31232:9 unite 31232:9 unite 31232:9 unite 31232:9 unite 31232:9 3126:63 3126:17 3126:63 3126:17 3126:63 3126:17 3126:63 3126:17 3126:63 3126:17 3126:63 3126:12 3126:61 3126:13 31227:17 3126:63 3126:12 3126:163 3126:11 3126:163 3126:12 3126:163 3126:12 3126:163 3126:12 3126:163 3126:12 3126:163 3126:12 3126:163 3126:12 3126:163 3126:12 3126:163 3126:12 3126:12 3126:12 3126:163 3126:12 3126:12 3126:163 3126:12 3126:12 3126:12 3126:12	31433:16	31307:10,14	turning 31297:22	ultimately 31239:21	31276:1,3 31384:23
31282:2 31290:21 TRT 31242:13,19,20 turns 31287:3 31311:12 3177:24 31428:9 31307:15 31309:4 31381:0 31378:5 31404:9 Twata 31351:20 31399:22 31400:21 31263:21,81323:31399:22 31400:22 31266:15,15 31379:313399:22 31400:21 31262:31,8149 31406:4,10 31447:17 31406:1,31411:2 31352:1 31407:17 31415:6 31262:32,81249:20 31409:1,31241:20 31261:13,1141:3 31241:20 31262:31,31241:20 0146143 3123:29 0141415:6 31262:32,91249:19 31250:20 UN 3124:12,13,16 014324:12,13,16 014324:12,13,16 014324:12,13,16 014324:12,13,16 014324:12,13,16 014324:12,13,16 01426:31332:19 31267:13 3126:24 31257:7 31263:24 01424:12,013 01426:13 3126:24 01424:12,013 01424:12,013 01426:13 3126:13 01296:13 3176:13 3126:13 01296:13 3176:13 3126:13 01296:12 3129:120 01424:12,013 01424:120:13 01424:120:13 01424:120:13 01424:120:13 01424:120:13 01424:120:13 01424:120:13 01424:120:13 01424:120:13 01424:120:13 01424:120:13 01424:120:13 01424:120:13 01424:120:13 01424:120:13 01424:120:13 01424:120:13 01424:120:13	told 31264:19 31276:11	31325:16.23			unique 31234:5
31307:15 31309:4 31338:10 31347:1 TV 31409:19 31377:25 313488:13 unit 31234:3 31234:3 31234:3 31311:14,16 31317:6 31378:5 31404:9 Tvala 31351:20 31392:2 31400:22 31266:15,15 31379: 31335:7 31359:22 31405:9,12,13,15 31352:1 31407:17 31415:6 31379:5 31400:1 31372:6 31388:20 31409:1 31411:2 tvo 31242:18 31247:8 31447:17 31415:6 31379:5 31400:1 31372:5 31420:4 31409:1 31411:2 tvo 1225:1.1/2 31254:2 uncertain 3146:23 31266:3.13 3127:16 31283:3 31287:25 31424:11 31266:3.13 3127:16 uncertain 3146:23 3126:4:6 3126:17 31283:3 31287:22 31310:12 3131:1 31296:13 3127:16 understand 3125:54 ungrecedented 3130:12 3130:12 3130:12 3130:11 31296:13 3126:11 3129:10 3124:24:3128:24 3128:153 3132:43 3140:21 3126:23 14331:7 3130:22 3130:12 3123:24:33 3127:43 3128:16 3128:24:3128:24 3142:22 3130:14:13 3126:3136:14 3129:05:12 3128:24 3128:16 3138:124:33 3129:16 3128:124 3142:23 3130:13 313:11:1 31296:13 3126:13 3126:13 3129:124 <					
31311:14,16 3137:6 3137:6 31351:20 3139:22 31266:15,15 31379:3130:13140:1 31379:4136:15 31379:41374:10 31379:41337:10 31379:41337:10 31379:31379:31379:31379:3131:18,21 true 31331:18,21 true 31331:18,21 true 31331:18,21 staracceptable 3134:20 31267:633:24 1283:331287:5 31351:24 31252:6 31266:31331270:16 umacceptable 3134:20 31257:63126:32 131425:13131:1 31299:123 3127:633128:22 understant 31252:64 31227:16 31239:10 31239:10 31239:10 31239:10 31239:10 31239:10 31242:33 31242:43 31260:17 31236:18 31239:10 31239:10 31239:10 31239:10 31239:10 31239:10 31239:10 31239:12					
31352:7 31359:22 31405:9,12,13,15 31352:1 31407:17 31415:6 31379:8,15 31400:1 31362:3,18,19 31406:4,10 31407:17 two 31242:18 31247:8 11407:1 31400:1 31419:2 31400:1 31420:4 31416:18 31433:14 31251:1,12 31254:2 UN 31234:12,13,16 units 31233:6,6 170mlinson 31282:5 31357:21 3125:4 31251:1,12 31254:2 unacceptable 31434:20 31266:6,17 31283:3 31287:52 31424:11 31266:3,13 31274:15 unacrest an 3132:19 31264:6 31266:17 3130:23 3130:12 3130:22 3130:10 31271:8 31274:15 understand 31255:8 31242:22 3144:7 31316:11 3129:19 3126:13 3126:17 31239:10 31240:7 31259:8,15,23 3126:123 3131:47 31316:11 3129:10 3124:7 31230:10 3127:53 3120:17 31402:13 3132:23 3126:23,24 3133:17 31308:23 3120:17 31239:10 3124:24 3126:13 3126:17 3140:3133:23 3136:23 3132:17 3130:22 31320:17 3126:13 3126:17 3127:25 3126:16 3137:27 3133:126:17 3140:3133:24 31324:24 31387:5 31327:23 31320:17 3126:13 3126:17 3126:13 3126:17					
31362:31.8.19 31406:4.10 31407:1 tventy 31374:8.14 31419:7 31400:12 31421:20 31400:13 1420:4 31409:13 1411:2:1 tvo 31242:18 31247:8 tumbella 31233:2:1 united 31232:9 31400:13 1420:4 31249:19 31250:25 UN 31234:12,13,16 united 31233:2:9 31237:33 31287:25 31351:24 3135:6 31263:14 31265:10 unacceptable 31434:20 31257:6 31364:23 31420:53 1437:4,10 31239:23 31270:16 understand 31257:6 understand 31257:6 31240:23 31261:23 31316:11 31296:12 3129:13 31239:10 31240:7 31239:10 31240:7 31239:10 31240:7 31261:23 31316:11 31296:12 3129:23 31230:14 31230:10 31257:6 3128:22 understand 31257:4 unprecedented 3131:13 15:11 31296:12 3129:10 31239:10 31240:7 31239:10 3129:10 31259:17 3126:13 3126:11 31296:13 3129:10 3129:10 31259:17 3126:13 3126:11 3129:17 3126:12 3128:14 3129:12 3139:10 31359:12 unoretid 31274:10 3136:24 3138:125 3127:20 3130:14 31329:12 3130:14 3129:12 3130:14 3129:12 3129:10 3129:12 3129:10					-
31362:31.819 31400:13407:1 twenty 31374:8,14 31419:7 31400:1231421:20 31372:16 31388:20 31409:131411:2 two 31242:18 31247:8 tmmsella 31233:21 tmitel 31233:21 31302:131420:4 3131:8,21 31251:24 3135:26 31263:14 31265:10 unacceptable 31434:20 31257:7 31263:24 31357:24 3135:25 31424:11 31263:14 31265:10 unacceptable 3134:23 31270:16 31378:1.4 31420:5 31437:4,10 31239:22 31310:10 31275:6 3128:22 understand 31235:24 unjurecednetd 31261:23 31314:7 31316:11 31296:12 3129:10 31234:23 3134:23 31326:12 3131:1 31296:12 3129:10 312329:10 31240:7 31238:14 31314:7 31316:11 31296:12 3129:12 understand 31225:7 31351:24 3138:7.5 3130:223 3130:14 3126:123 3120:17 3126:123 3120:14 3129:10 3124:24 3129:10 3129:10 3140:21 3128:23 3130:22 3130:14 3129:10 3134:16 3133:229:10 3129:10 unrotting 3139:22:2 3137:20 31308:14 31329:10 3133:16 31329:10 3133:16 3133:10 313:16 unrotting 3129:22:10 3129:17 3130:14 3130:13 313:10 31329:16 31	31335:7 31359:22	31405:9,12,13,15	31352:1	31407:17 31415:6	31379:8,15 31400:11
31372:16 31388:20 31409:1 31411:2 two 31242:18 31247:8 umbrella 31233:21 United 31232:9 31400:1 31420:4 Tueu 31331:18,21 31249:19 31250:25 UN 31234:12,13,16 unacceptable 31434:20 31257:7 31263:24 31283:3 31287:25 31351:24 31352:6 31263:14 31265:10 unacceptable 3136:23 31267:15 31262:34 31283:3 31287:25 31341:10 31265:31 31270:16 unacceptable 3136:23 31271:18 31277:15 unacceptable 3136:23 31264:63 31266:17 31265:123 31311:13 31295:13 31270:16 31275:6 31282:20 understand 31235:24 unjustified 31420:13 ung 31247:14 31256:18 31331:14,15 31202:13 21295:18 31236:18,19 31236:18,19 31239:18,15,23 ung 3128:24 31387:24 31387:7 31202:81 3130:43 31243:24 31280:19 31259:73 31259:13 3129:19 31402:21 31387:24 31387:6 31330:13 3131:14,15 31308:22 31320:16 31282:14 3132:14 unprotected 31274:10 31402:25 313212:25 31282:6 31321:23 3136:1,19 31303:12,3131:16 31339:129 3139:129 3129:124 unpdate 3129:129 3129:124	31362:3.18.19	31406:4.10 31407:17	twenty 31374:8.14	31419:7	31400:12 31421:20
31400:1 31420:4 31416:18 3143:14 3129:19 31250:25 UN 3128:12,13 16 units 31233:6,6 Tomlinson 31291:16 true 31331:18,21 31251:1,12 31254:2 unaware 31332:19 31264:6 31266:17 31283:3 31287:25 31424:11 31266:3,13 31270:16 uncertan 3134:6:23 31270:16 31378:1,4 31420:5 31437:4,10 3129:22 3130:10 31275:6 3128:22 understand 31235:8 3124:23 31261:23 31314:7 31316:11 31292:1 31297:18 3123:29:10 31240:7 31259:8,15,23 31326:23,24 31331:7 3130:28 3130:17 31302:8 3130:17 31243:24 31280:19 31351:3,4 s1378:24 31387:5 31324:53 31327:22 31274:16 3129:8,15,23 31351:3,2 31402:21 31285:5 31289:3 31327:25 31328:16 3128:23 3129:10 31264:24 3129:124 31402:25 31321:29 3138:14 31337:20 3134:16 31337:20 3134:16 31337:20 3132:43 3129:12 11001118 3139:12 31402:25 31321:23 3136:16 31348:15 31353:15 31322:20 31324:12 31264:51 29:19 31337:12 31402:23 31324:24 31285:12 31326:13 3136:12 <t< td=""><td></td><td></td><td></td><td></td><td></td></t<>					
Tomiinson 31291:16 true 31331:18,21 31251:1,12 31254:22 umacceptable 31434:20 31257:7 31263:24 13183:3 31287:25 31351:24 31352:6 31263:14 31265:10 31267:7 3136:12 31267:7 31263:24 31383:3 31287:25 31424:11 31266:31,3 31270:16 31267:6 31282:22 umacrain 3136:19 31267:6 31282:22 31420:5 31437:4,10 31239:22 31310:10 31275:6 31282:22 umderstand 31255:4 umprecedented 31261:23 31314:7 31316:11 31296:12 31297:23 31232:13 3126:19 31259:81,5,23 1300:21 3138:24 31331:4,15 31308:23 31320:17 31266:12 31297:23 31243:24 31260:19 31351:34 3140:21 3138:24 31285:5 31289:3 31329:19 31330:14 31296:23 3129:10 31299:12 31260:9 31300:25 31319:16 31340:16 31340:16 31331:0 3135.2 31329:10 3135.4 3129:12,3 3120:22,4 31406:2,5 31329:17 31336:15 31329:12 31326:15 31229:12,3 3129:12,3 3120:22,3 31319:13 31355:2 31341:6 31341:5 3129:12,3 3126:12,3 3126:12,3 3126:12,3					
tomorrow 31282:5 31351:24 31352:6 31263:14 31265:10 umaware 31332:19 31264:6 31266:17 31283:3 31287:25 31424:11 31266:3,1 31270:16 uncertain 3136:23 31270:16 31378:1,4 31357:9 31369:1 31230:22 31301:10 31275:6 31282:22 underneuth 31255:8 31424:22 attribution 31257:22 31310:12 31311:1 31292:13 1295:18 31236:18,19 unprecedented 31261:23 3131:12 3131:1 31292:13 1297:23 31232:10 3124:07 31351:24 unprecedented 31261:13 31252:1 31262:12 3129:22 31272:5 3128:13 31261:13 31262:19 unprotected 31274:10 3137:22 3132:1 3130:12 3131:1 3130:28 3130:13 31292:10 3128:24 unrotling 31392:22 3140:2:1 3126:13 3129:17 3130:28 31329:13 3130:12 3135:5 unrotling 31392:22 3140:2:1 3128:16 3128:17 3131:0 3135:5 unrotling 31392:12 unrotling 31392:12 3120:2:1 3128:17 3130:12 3135:1 3132:22 3130:17 3130:12 313:15:15 31292:10 3128:12 3120:2:1 3128:13 313:1:1 3137:22 31328:1 3137:12 3135:3 3133:10 3					-
31283:3 31287:25 31424:11 31266:3.13 31270:16 uncertain 31340:25 31270:16 31271:18 31271:13 3128:11 31371:13 3128:12 31371:13 31371:13 31271:13 3128:11 31371:13 31271:13 3128:11 31371:13 31271:13 3128:11 3129:12 <td< td=""><td></td><td></td><td>-</td><td></td><td></td></td<>			-		
31357:9 31357:9 31357:9 31367:9 31367:9 31424:22 31424:22 31420:5 31437:4,10 31239:22 31310:10 31275:6 31282:22 understand 31235:18,19 unjstified 31420:13 31261:23 31314:7 31302:8 31236:18,19 31235:13,4 unprecedented 31378:24 31331:1,41,5 31326:22,24 31326:22,24 31327:22 31232:13 3126:21 unprecedented 31351:3,4 031378:24 31387:5 try 31256:20,20 31324:23 31327:22 31271:48,31282:4 31282:10 unrolling 31321:29:72 31402:21 31266:23 3128:25 31329:19 31335:14 31269:7 unsul 31259:7 unsul 31259:7 unsul 31259:7 unsul 31259:7 unsul 31259:7 31300:25 31301:9 31337:23 31340:16 3137:20 31340:16 3137:20 3128:17 3136:21 3136:13 3122:20 undertad 3124:23 31201:12 31260:13 3122:21 3122:10 3122:10 3122:10 3122:12 3122:12 3122:12 <td>tomorrow 31282:5</td> <td>31351:24 31352:6</td> <td>31263:14 31265:10</td> <td>unaware 31332:19</td> <td>31264:6 31266:17</td>	tomorrow 31282:5	31351:24 31352:6	31263:14 31265:10	unaware 31332:19	31264:6 31266:17
31357:9 31357:9 31357:9 31367:9 31367:9 31424:22 31424:22 31420:5 31437:4,10 31239:22 31310:10 31275:6 31282:22 understand 31235:18,19 unjstified 31420:13 31261:23 31314:7 31302:8 31236:18,19 31235:13,4 unprecedented 31378:24 31331:1,41,5 31326:22,24 31326:22,24 31327:22 31232:13 3126:21 unprecedented 31351:3,4 031378:24 31387:5 try 31256:20,20 31324:23 31327:22 31271:48,31282:4 31282:10 unrolling 31321:29:72 31402:21 31266:23 3128:25 31329:19 31335:14 31269:7 unsul 31259:7 unsul 31259:7 unsul 31259:7 unsul 31259:7 unsul 31259:7 31300:25 31301:9 31337:23 31340:16 3137:20 31340:16 3137:20 3128:17 3136:21 3136:13 3122:20 undertad 3124:23 31201:12 31260:13 3122:21 3122:10 3122:10 3122:10 3122:12 3122:12 3122:12 <td>31283:3 31287:25</td> <td>31424:11</td> <td>31266:3.13 31270:16</td> <td>uncertain 31346:23</td> <td>31270:16 31378:1.4.6</td>	31283:3 31287:25	31424:11	31266:3.13 31270:16	uncertain 31346:23	31270:16 31378:1.4.6
31420:5 31437:4,10 31239:22 31310:10 31275:6 31282:22 understand 31235:24 unjustified 31420:13 tone 31257:22 31310:12 31311:1 31292:1 31295:18 31236:18,19 unprecedented 31261:23 31331:47 31306:2 31297:23 31239:10 31240;7 31259:8,15,23 tonght 31333:23 31326:23,24 31331;7 31308:22 31320:17 31261:13 31262:19 unprecedented 31378:24 31387:5 31326:20,20 31324:33 3127:23 31276:6,8 31282:10 unrest 31351:2 31400:21 31268:21 31282:6 31327:25 31328:16 31289:24 31289:10 unrest 31351:2 31400:25 31311:9 31319:16 31337:20 3130:14 313317:2,2 3139:14 3129:2:0 31402:25 31321:25 31322:8 31341:5 31353:15 31322:20 31324:12 update 31291:12,1 3331:22 31402:25 31321:25 31326:16 31337:20 31346:16 31331:12,2 31346:13 31342:5 31329:16 31420:218:41 31407:2 3146:2,5 31351:12 31358:13 31322:10 31324:1 update 31291:12,13 3140:22 3164:4 31341:6 31342:5 31291:24 update 31291:12,13 313291:21 31420:13			-		
tone 31257:22 3130:12 3131:1 31292:1 31295:18 31236:18,19 unprecedented 31261:23 31314:7 3130:12 3131:14,15 31239:1297:23 31239:10 31240:7 31259:8,15,23 top 31247:14 31256:18 31331:14,15 31302:8 31302:12 31242:324 31261:13 31262:19 unprecedented 31402:21 31285:5 31282:6 31327:25 31282:16 31283:24 31289:22 unrest 31261:13 31262:19 unrest 31260:9 31300:25 3131:1293189:16 31337:20 31340:16 31337:20 31340:16 31311:10 3125:16 unusual 3129:19:12 31400:25 31321:25 3132:12 31330:16 3134:16 31331:10 31315.25 3120:22,4 31404:17 31406:2 31357:12 31358:13 31331:5,25 31329:19 1329:10 129:12,13 3120:21,13,14,14 3140:17 31406:2 31357:12 31358:13 31329:16 31281:14 3129:12.13 3129:12.13					
31261:23 31314:7 31316:11 31296:12 31297:23 31239:10 31240:7 31259:8,15,23 tonight 31333:23 31326:23,24 31331:7 31302:8 31304:3 31243:24 31260:19 31351:3,4 top 31247:14 31256:18 31331:4,15 31302:23 3120:17 31268:22 11320:17 31268:21 31282:6 31327:25 31328:16 31283:24 31289:10 umprotected 3127:10 topic 3163:24 31268:21 31282:6 31327:25 31328:16 31283:24 31289:10 umcst 3135:2 umusual 31259:7 totally 31242:6 31297:20 31308:14 31335:21 31356:1,19 3130:130:313.16 3131:10 31315:6 31292:10 31295:12 31400:25 31311:9 31319:16 31337:20 31340:16 31313:10 31315:6 31292:10 31295:12 trace 31252:2,4 31404:17 31406:2 31353:15 31322:20 31339:16 update 31244:9 3126:2:2,3 31291:2,12 31335:15 31322:20 31339:16 update 31245:9,19 31376:14 3140:2:10 3144:17 31406:2 31357:12 31358:15 31322:10 3135:14 update 31245:9,19 31376:14 3140:22 314417:12 31391:17 31318:2 31391:17 3138:15 3138:11 31373:5 updating 31295:20 <	,				
tonight 31333:2331326:23,24 31331:731302:8 31304:331243:24 31260:1931351:3,4top 31247:14 31256:1831331:14.1531308:22 31320:1731261:13 31262:19unprotected 31274:1031378:24 31387:531326:20,0031322:23 31327:2231224:32 31282:21unprotected 31274:103140:2131268:21 31282:631327:25 31328:1631283:24 31282:01unrest 31351:2topic 31363:2431297:20 31308:1431335:21 31336:1,1931305:14 31304:2131260:931300:2531311:9 31319:1631337:20 31340:1631313:10 31315:6update 31244:23stown 31362:431321:25 31322:831340:19 31348:1331317:2,22 3139:1431290:10 31295:123140:2531323:1,22 3136:1631345:13 3135:5231328:17 31331:5,2531291:12,1331269:13,14,1431407:2 31416:2,531357:12 31358:331334:5 31339:16update 31245:9,19strack 31381:631437:531365:5 31370:1031350:21 31354:13update 31245:9,19strack 31381:631437:531365:5 31370:1031358:11 31373:5uper 31248:11strack 31381:631437:531391:17 31393:1431378:14,15upset 31280:4strack 31380:1031325:213140:931408:2531382:16 31388:30usge 31238:22.231300:23 3130:2031244:233140:5131379:16 31390:17usge 31234:16 31238:231255:22:2331242:213140:3131379:20 31381:14upset 31276:431255:22:31256:331311:7 31318:23140:21 31448:2531382:16 31388:910usge 3130:203132				31236:18,19	
tonight 31333:2331326:23,24 31331:731302:8 31304:331243:24 31260:1931351:3,4top 31247:14 31256:1831331:14,1531308:22 31320:1731261:13 31262:19unprotected 31274:1031378:24 31387:531268:21 31282:631327:223127:25 31328:1631283:24 31282:21unrest 31351:23140:2131268:21 31282:631327:25 31328:1631283:24 31282:01unrest 31351:2unrest 31351:2totally 31242:631297:20 31308:1431335:21 31336:1,1931305:5,14 31304:2131260:931300:2531311:9 31319:1631337:20 31340:16313131:0 31315:6update 31244:233140:2531322:12 31322:831340:19 31345:1531322:20 31324:12undate 31244:233140:2531323:12 31336:1631345:13 3155:1531322:20 31324:21update 31291:2,1331269:13,14,1431407:2 31416:2,531357:12 31358:331334:5 31339:16update 31245:9,19s1269:13,14,1431407:2 31416:2,531357:12 31358:331334:5 31339:16update 31245:9,19s1269:13,14,1431407:2 31416:2,531357:12 31368:331334:5 31339:16update 31245:9,19s1269:13,14,1431407:2 31416:2,531357:12 31358:331334:5 31339:16update 31245:9,19s1269:20s1234:14 328:1731361:22 31364:431390:17suges 31286:14s1255:22,2331225:21 31256:331391:17 31393:1431379:20 31381:14upset 31276:4s1255:22,2331225:21 31256:331391:17 31393:1431382:16 31384:3upset 31280:4s1255:22 31256:431424:31390:17<	31261:23	31314:7 31316:11	31296:12 31297:23	31239:10 31240:7	31259:8,15,23
top31247:1431331:14,1531308:223120:1731261:1331262:19unprotected3127:1031402:2131268:2131282:631324:2331327:2231274:6831282:21unrest31351:2topic31363:2431285:531282:631327:2531283:2431282:24unrest31352:22topic31363:2431285:531289:331329:193130:1431296:231296:2unrest31302:2531300:2531311:931311:1931337:2031340:19313340:1231292:1031292:103140:2531321:2531322:831340:1931348:1331317:03137:223139:1431292:103140:2531323:1,2231336:1631348:1531355:1531322:031291:24update31291:2431269:13,14,1431407:23146:231357:1231365:2331334:531339:16updates3124:9131292:631437:531365:531365:531350:2131356:2131356:2131376:14updates3124:91track31381:631437:531365:531365:1331379:1031359:2131359:1431379:203138:14.15updates3124:2331255:22,233125:1331245:2331391:1731393:1431379:203138:14Upsets3128:2431255:22,3331311:731345:1331379:1031382:1631382:163128:243128:2431255:22,3331311:731345:1331379:1031382:16	tonight 31333:23	31326:23.24 31331:7	31302:8 31304:3	31243:24 31260:19	31351:3.4
31378:24 31387:5try 31256:20,2031324:23 31327:2231274:6,8 31282:1unrest 31351:231402:2131268:21 31282:631327:22 31328:1631283:24 31289:331282:21 3128:24 31289:331329:19 3130:1431285:2 31298:2431289:22unrest 31351:2topic 31363:2431297:20 31308:1431335:21 3135:1,1931303:5,14 31304:2131303:5,14 31304:2131260:9unusual 31259:73130:2531311:9 31319:1631337:20 31340:1631317:0 31315:6undusul 3124:2331292:10 31295:123140:2531322:23 3136:1631348:15 31353:1531322:20 31324:21update 31292:10 31295:1231269:13,14,1431404:17 31406:231357:12 31358:331334:5 31339:1631292:10 31295:1231269:13,14,1431407:2 31416:2,531357:12 31364:431341:6 31342:531291:24a1269:13,14,1431407:2 31416:2,531379:16 31390:1931350:21 31354:13update 31245:9,19a1252:2,2331225:21 31256:331317:7 31253:2331391:17 3139:1431370:20 31381:14update 31245:9,19a1255:22,2331254:2 31266:6,731394:1 31396:1331379:20 31381:14upset 31276:4a1255:22,2331301:203128:9 31340:5,183142:21 9 31434:1631382:16 31388:9,10usage 31238:21,2231300:23 31301:2031328:9 31340:5,183142:21 9 31434:1631396:14 31406:631238:24 31287:731255:21 31256:331311:7 31318:231416:22 31477:1231261:4 31266:431238:24 31287:731320:29 31404:1631344:6 31343:1031436:631399:14 31406:631238:24 3128					-
31402:2131268:21 31282:631327:25 31328:1631283:24 31289:10unrolling 31392:22topic 31363:2431285:5 31289:331335:21 31336:1,1931296:2 31298:24unrolling 31392:22totally 31242:631297:20 31308:1431335:21 31336:1,1931301:5,14 31304:2131260:931300:2531311:9 31319:1631337:20 31340:163131:10 31315:6undate 3124:23touch 31362:431321:25 31322:831340:19 31348:1331317:2,22 3139:1431292:10 31295:1231402:2531323:1,22 31336:1631348:15 3135:2231322:0 31324:21undate 31291:12,13town 31252:2,43140:231406:231355:1231335:2231331:5,2531291:2431269:13,14,1431407:2 31416:2,531367:12 31368:331334:5 31397:16undate 31245:9,19trace 31292:631429:21 31435:1731361:22 31364:431341:6 31342:531376:14trade 31270:11trying 31238:1831379:16 31390:1931358:11 31373:5update 31245:9,19tradition 31249:2031225:2,13 2126:331217:7 31253:2331391:17 31393:1431379:20 31381:14upset 31286:4traditional 31248:203124:31 31265:213140:23 3140:1331379:16 31388:9,10usage 31238:14usage 31238:14traditional 31248:2031381:7 3138:23140:23 31417:12031382:16 31384:3usage 31238:24 3129:17usage 31238:14traditional 31248:2031321:7 3138:1531422:19 31434:1631389:1631238:24 3129:17s1225:21 31256:331311:7 31383:1531422:19 31436:631296:14 3128:1831					-
topic 31363:24 totally 31242:631285:5 31289:3 31297:20 31308:1431330:14 31335:21 3136:1,1931296:2 31298:24 31303:5,14 31304:21unusual 31259:7 31304:2131300:25 subork 31362:431297:20 31308:14 31321:25 31322:831337:20 31340:16 31337:20 31340:1631313:10 31315:6 31313:10 31315:6undata 31244:23 31292:10 31295:1231402:25 s1292:631323:1,22 3136:16 31429:21 3146:2,531348:15 31353:15 31325:2231322:20 31324:21 31328:17 313315:25undata 31292:10 31295:12 31292:10 31295:1731269:13,14,14 tarce 31292:631404:17 31406:2 31475:531357:12 31358:3 31365:5 31370:1031336:5 31391:6 31356:14update 31292:10 31295:17 31367:14atrack 31281:6 tarack 31270:111trying 31238:18 31255:22,3331391:17 31393:14 31379:16 31390:1931358:11 31373:5 31329:17 31293:2,17 31396:13 3196:13update 31295:20 upger 31248:11 upset 31276:4atradition 31249:20 31255:21 31256:3 31301:2031228:21 31326:513 31285:21 31300:23 31301:2031328:9 31340:5,18 31436:631396:13 31396:13 31436:631398:14 31384:4 31396:14 31406:6 31398:14 31398:14usge 31238:24 31290:17 use 31234:16 31238:12 31252:21,2231200:23 31301:19 31355:14 31383:15 31220:23 31304:1031426:21 31426:4,6 31236:24 31247:24 31247:24 31269:12 31256:4 31296:14 31328:1431406:1 31407:12 31252:21,2231410:7 31411:15 31250:22 31256:4 31426:21 31422:19 31266:12 3126:12 31266:2 31246:4,631247:24 31248:20 31296:14 31228:14 31269:12 31266:2 31246:43 31246:443144:89 31427:12 31269:12 31266:2 31246:4331269:12 31277.72 31248:					
totally 31242:631297:20 31308:1431335:21 31336:1,1931303:5,14 31304:2131260:931300:2531311:9 31319:1631337:20 31340:1631313:10 31315:6update 31244:23touch 31362:431323:1,22 31336:1631340:19 31348:1331317:2,22 31319:1431292:10 31295:1231402:2531323:1,22 31336:1631348:15 31353:1531322:20 31324:21update 31291:12,13town 31252:2,431404:17 31406:231357:12 31358:331334:5 31339:16update 31291:12,1331269:13,14,1431407:2 31416:2,531357:12 31358:331334:5 31339:16updates 31245:9,19trace 31292:631429:21 31435:1731361:22 31364:431341:6 31342:531376:14track 31381:631437:531365:5 31370:1031350:21 31354:13updates 31295:20track 31249:2031239:5,17 31253:2331391:17 31393:1431379:20 31381:14upset 31276:431255:22,31300:20312275:13 31285:2131400:23 31401:331379:20 31381:14upset 31276:431255:21 31256:331311:7 31318:231410:22 31417:1,2031387:16 31388:9,10useg 31238:21,2231300:23 31301:2031328:9 31340:5,1831422:19 31434:1631388:24 31390:17use 31234:16 31238:1231296:14 31328:1231402:16 31442:1031235:14 31383:1531402:13 3125:22 31256:431423:49 3147:24 31248:2031296:14 31328:1831402:16 31440:1231245:2431400:7 31411:1531226:22 31262:22 3126:4231296:14 31328:1431402:1231255:22 31256:431442:38,9 31426:4,631261:14 31264:2331296:14 31		31268:21 31282:6	31327:25 31328:16	31283:24 31289:10	
31300:2531311:9 31319:1631337:20 31340:1631313:10 31315:6update 31244:2331402:2531321:25 31322:831340:19 31348:1331317:2,22 31319:1431292:10 31295:1231402:2531323:1,22 31336:1631348:15 31353:1531322:20 31324:21updated 31291:12,13stown 31252:2,431404:17 31406:231337:12 31358:1531322:20 31324:21updated 31291:12,1331269:13,14,1431407:2 31416:2,531357:12 31358:1331334:5 31331:5,2531291:2431292:631429:21 31435:1731361:22 31364:431341:6 31342:531376:14strace 31292:631429:21 31435:1731365:5 31370:1031350:21 31354:13updateg 31295:20trades 31270:11trying 31238:1831379:16 31390:1931378:14,15upset 31276:431225:2,2331225:21 31266:6,731391:17 31393:1431379:20 31381:14upset 31280:4tradition 31249:2031239:5,17 31285:2131403:9 31408:2531382:16 31384:3URL 31287:2331255:21 31256:331311:7 31318:231402:21 91434:1631382:16 31384:3usage 31238:21,2231300:23 31301:2031328:9 31340:5,1831422:19 31434:1631396:14 31406:631238:24 31290:17traditions 31301:1931355:14 31383:15type 31233:17 31248:431407:4,13,2331247:24 31248:2031296:14 31328:1431402:16 31403:1331255:22 31256:431423:89 31426:4,631266:12 31432:1931296:14 31328:1431402:16 31403:1331255:22 31256:431423:49 31426:4,631266:9.9 31268:231290:14 41328:1431418:9 31427:	topic 31363:24	31285:5 31289:3	31329:19 31330:14	31296:2 31298:24	unusual 31259:7
31300:2531311:9 31319:1631337:20 31340:1631313:10 31315:6update 31244:2331402:2531321:25 31322:831340:19 31348:1331317:2,22 31319:1431292:10 31295:1231402:2531323:1,22 31336:1631348:15 31353:1531322:20 31324:21updated 31291:12,13stown 31252:2,431404:17 31406:231337:12 31358:1531322:20 31324:21updated 31291:12,1331269:13,14,1431407:2 31416:2,531357:12 31358:1331334:5 31331:5,2531291:2431292:631429:21 31435:1731361:22 31364:431341:6 31342:531376:14strace 31292:631429:21 31435:1731365:5 31370:1031350:21 31354:13updateg 31295:20trades 31270:11trying 31238:1831379:16 31390:1931378:14,15upset 31276:431225:2,2331225:21 31266:6,731391:17 31393:1431379:20 31381:14upset 31280:4tradition 31249:2031239:5,17 31285:2131403:9 31408:2531382:16 31384:3URL 31287:2331255:21 31256:331311:7 31318:231402:21 91434:1631382:16 31384:3usage 31238:21,2231300:23 31301:2031328:9 31340:5,1831422:19 31434:1631396:14 31406:631238:24 31290:17traditions 31301:1931355:14 31383:15type 31233:17 31248:431407:4,13,2331247:24 31248:2031296:14 31328:1431402:16 31403:1331255:22 31256:431423:89 31426:4,631266:12 31432:1931296:14 31328:1431402:16 31403:1331255:22 31256:431423:49 31426:4,631266:9.9 31268:231290:14 41328:1431418:9 31427:			31335.21 31336.1 19		31260.9
touch 31362:431321:25 31322:831340:19 31348:1331317:2,22 31319:1431292:10 31295:1231402:2531323:1,22 31336:1631348:15 31353:1531322:20 31324:21updated 31291:12,1331269:13,14,1431407:2 31416:2,531355:12 31355:2231332:5,2531328:17 31331:5,2531291:2431269:13,14,1431407:2 31416:2,531357:12 31358:331334:5 31339:16updated 31291:12,13trace 31292:631429:21 31435:1731365:5 31370:1031350:21 31354:13updateg 31295:20trace 31270:11trying 31238:1831379:16 31390:1931358:11 31373:5updating 31295:20tradition 31249:2031239:5,17 31253:2331391:17 31393:1431379:10 31378:14,15upset 31276:431255:22,2,2331254:2 31266:6,731394:1 31396:1331379:20 31381:14upset 31276:431255:21 31256:331311:7 31318:231400:22 31417:1,2031387:16 31388:9,10usage 31238:21,2231300:23 31301:2031328:9 31340:5,1831422:19 31434:1631388:24 31390:17usage 31238:12,3231255:21 31256:331311:7 3138:15type 31233:17 31248:431407:4,13,2331247:24 31248:2031322:9 31404:1631341:6 31343:1031436:631396:14 31406:631238:24 31247:1231260:2031384:4 31391:431252:21,2231410:7 31411:1531260:22 31252:2231296:14 31328:1431406:1 31407:1231262:12,13 31266:231426:4,631261:14 31264:2331296:14 31328:1431406:1 31407:1231262:12,13 31266:231426:21 31422:1931266:9,9 31268:22312	v		,		
31402:2531323:1,22 31336:1631348:15 31353:1531322:20 31324:21updated 31291:12,13town 31252:2,431404:17 31406:231353:19 31355:2231328:17 31331:5,2531291:2431269:13,14,1431407:2 31416:2,531357:12 31358:331334:5 31339:16updated 31291:12,13trace 31292:631429:21 31435:1731361:22 31364:431341:6 31342:5updates 31245:9,19track 31381:631437:531361:22 31364:431341:6 31342:5updates 31245:9,19track 31292:031239:5,17 31253:2331397:16 31390:1931358:11 31373:5updates 31276:4tradition 31249:2031254:2 31266:6,731394:1 31396:1331379:16 31390:1931378:14,15upset 31276:4s1255:22,2331254:2 31266:6,731394:1 31396:1331379:20 31381:14upset 31280:4upset 31280:4traditional 31248:2031275:13 31285:2131403:9 31408:2531382:16 31384:3usag 31238:21,2231300:23 31301:2031328:9 31340:5,1831422:19 3143:1631386:16 31388:9,10usag 31238:12,2231302:29 31404:1631341:6 31343:1031436:631396:14 31406:631238:24 31247:1231255:22 31256:331407:14 31383:1531252:22 31256:431426:21 31426:4,631261:21 3126:2231269:14 31328:1431406:1 31407:1231252:22 31256:431426:21 31432:1931266:9.9 31268:231296:14 31328:1431406:1 31407:1231262:12,13 31266:231426:21 31432:1931269:12 31277:7,231296:14 31328:1431406:1 31407:1231262:12,31 31266:231426:21 31432:1931269:12 31					
town 31252:2,4 31269:13,14,1431404:17 31406:2 31407:2 31416:2,531353:19 31355:22 31357:12 31358:331328:17 31331:5,25 31334:5 31339:16 31341:6 31342:531291:24 updates 31245:9,19 31376:14trace 31292:631429:21 31435:17 31437:531361:22 31364:4 31437:531341:6 31342:5 31357:1031334:5 31339:16 31341:6 31342:531376:14 updates 31245:9,19trades 31270:11trying 31238:18 31235:22,2331239:17 31253:23 31235:17 31253:2331391:17 31390:19 31379:16 31390:1931358:11 31373:5 31379:20 31381:14 31377:20 31381:14upset 31246:4 upset 31276:4traditional 31248:2031275:13 31285:21 31235:21 31256:331311:7 31318:2 31301:2031328:9 31340:5,18 31328:9 31340:5,183140:22 31417:1,20 31422:19 31434:1631387:16 31388:9,10 31387:16 31388:9,10usage 31238:21,22 use 31238:12 31286:21 31236:14 31383:15traditions 31301:1931355:14 31383:15 31355:14 31383:15type 31238:17 31248:4 31425:22 31256:431407:4,13,23 31247:42 31247:1231236:22 31252:22 31402:16 31403:13 31255:22 31256:431407:4,13,23 31247:43 31247:1231262:12,13 31266:2 31426:21 31422:1931266:9,9 31268:2 31266:9,9 31268:231296:14 31228:1431406:1 31407:12 31425:2031255:22 31256:4 31426:21 31432:1931266:9,9 31268:2 31266:9,9 31268:231296:14 31328:1431406:1 31407:12 31425:2031262:12,13 31266:2 31304:1031434:6 31435:24 31226:12 31277:7.231296:14 31328:1431406:1 31407:12 31425:2031262:12,13 31266:2 31426:21 31432:1931266:9,9 31268:2 31266:9,9 31268:231292:17T					
31269:13,14,1431407:2 31416:2,531357:12 31358:331334:5 31339:16updates 31245:9,19trace 31292:631429:21 31435:1731361:22 31364:431341:6 31342:531376:14track 31381:631437:531365:5 31370:1031350:21 31354:13updates 31295:20trades 31270:11trying 31238:1831379:16 31390:1931358:11 31373:5upper 31248:11tradition 31249:2031239:5,17 31253:2331391:17 31393:1431378:14,15upper 31248:11s1255:22,2331254:2 31266:6,731394:1 31396:1331379:20 31381:14upset 31280:4traditional 31248:2031275:13 31285:2131403:9 31408:2531382:16 31384:3URL 31287:2331300:23 31301:2031328:9 31340:5,1831422:19 31434:1631388:24 31390:17use 31234:16 31238:1231400:23 31301:2031355:14 31383:15type 31233:17 31248:431406:631238:24 31247:1231322:9 31404:1631341:6 31343:1031436:631396:14 31406:631238:24 31247:12traditions 31301:1931355:14 31383:15type 31233:17 31248:431407:4,13,2331247:24 31248:2031296:14 31328:1831406:1 31407:1231262:22 31256:431426:21 31432:1931266:9,9 31268:231296:14 31328:1431406:1 31407:1231262:12,13 31266:231426:21 31432:1931266:9,9 31268:231296:14 31328:1431406:1 31407:1231293:3 31304:1031434:6 31435:2431299:12 31277:7,2231296:14 31328:1431406:1 31407:1231293:3 31304:1031434:6 31435:2431269:12 31277:7,2231296:14 31322:17 <td< td=""><td></td><td>31323:1,22 31336:16</td><td>31348:15 31353:15</td><td></td><td>•</td></td<>		31323:1,22 31336:16	31348:15 31353:15		•
31269:13,14,1431407:2 31416:2,531357:12 31358:331334:5 31339:16updates 31245:9,19trace 31292:631429:21 31435:1731361:22 31364:431341:6 31342:531376:14track 31381:631437:531365:5 31370:1031350:21 31354:13updates 31295:20trades 31270:11trying 31238:1831379:16 31390:1931358:11 31373:5upper 31248:11tradition 31249:2031239:5,17 31253:2331391:17 31393:1431378:14,15upper 31248:11s1255:22,2331254:2 31266:6,731394:1 31396:1331379:20 31381:14upset 31280:4traditional 31248:2031275:13 31285:2131403:9 31408:2531382:16 31384:3URL 31287:2331300:23 31301:2031328:9 31340:5,1831422:19 31434:1631388:24 31390:17use 31234:16 31238:1231400:23 31301:2031355:14 31383:15type 31233:17 31248:431406:631238:24 31247:1231322:9 31404:1631341:6 31343:1031436:631396:14 31406:631238:24 31247:12traditions 31301:1931355:14 31383:15type 31233:17 31248:431407:4,13,2331247:24 31248:2031296:14 31328:1831406:1 31407:1231262:22 31256:431426:21 31432:1931266:9,9 31268:231296:14 31328:1431406:1 31407:1231262:12,13 31266:231426:21 31432:1931266:9,9 31268:231296:14 31328:1431406:1 31407:1231293:3 31304:1031434:6 31435:2431299:12 31277:7,2231296:14 31328:1431406:1 31407:1231293:3 31304:1031434:6 31435:2431269:12 31277:7,2231296:14 31322:17 <td< td=""><td>town 31252:2,4</td><td>31404:17 31406:2</td><td>31353:19 31355:22</td><td>31328:17 31331:5,25</td><td>31291:24</td></td<>	town 31252:2,4	31404:17 31406:2	31353:19 31355:22	31328:17 31331:5,25	31291:24
trace 31292:631429:21 31435:1731361:22 31364:431341:6 31342:531376:14track 31381:631437:531365:5 31370:1031350:21 31354:1331376:14updating 31295:20tradition 31249:2031239:5,17 31253:2331391:17 31393:1431378:14,15upper 31248:11stradition 31249:2031255:22,2331255:21 31266:6,731394:1 31396:1331379:20 31381:14upper 31248:11traditional 31248:2031275:13 31285:2131403:29 31408:2531382:16 31384:3upset 31280:4statistic 31301:2031328:9 31340:5,1831422:19 31443:1631388:24 31390:17usage 31238:21,22statistic 31301:1931355:14 31383:15type 31233:17 31248:431407:4,13,2331247:24 31248:20statistic 31263:2031340:13 1407:1231255:22 31256:431426:4,631238:24 31247:12stage 31280:1831406:1 31407:1231262:12,13 31266:231426:21 31432:1931266:9,9 31268:2stage 31280:1831406:1 31407:1231262:12,313166:231426:21 31432:1931266:9,9 31268:2stage 31292:9,10,16TST 31421:9 31427:2131293:31311:631392:1731392:1531392:15stalies 31392:173142:183141:21,9 31424:213141:21,9 3141:2431394:13 3137:22statistic 31392:1731425:18TST 31421:9 31424:2131432:20313177:7statistic 31392:1731392:1731392:1731392:13 31342:2231304:19 31307:21statistic 31392:1731425:18TST 31421:9 31424:2131412:12,3 3141:2431304:19 31307:21statistic 31392				-	
track 31381:631437:531365:5 31370:1031350:21 31354:13updating 31295:20trades 31270:11trying 31238:1831379:16 31390:1931358:11 31373:5upper 31248:11tradition 31249:2031239:5,17 31253:2331391:17 31393:1431378:14,15upset 31276:431255:22,2331254:2 31266:6,731394:1 31396:1331379:20 31381:14upset 31276:4traditional 31248:2031275:13 31285:2131403:9 31408:2531382:16 31384:3uset 31280:431300:23 31301:2031328:9 31340:5,1831422:19 31434:1631388:24 31390:17use 31234:16 31238:1231322:9 31404:1631341:6 31343:1031436:631396:14 31406:631238:24 31247:12traditions 31301:1931355:14 31383:15type 31233:17 31248:431407:4,13,2331247:24 31248:2031296:14 31328:1431406:1 31407:1231255:22 31256:431423:89 31426:4,631261:14 31264:2331296:14 31328:1431406:1 31407:1231262:12,13 31266:231426:21 31432:1931266:9,9 31268:231296:14 31328:1431406:1 31407:1231262:12,13 31266:231426:21 31432:1931269:12 31277:7,2231296:14 31328:1431421:9 31424:2131375:22 31411:631286:22 31302:1531283:16 31285:2131292:17TSG 31264:331412:11,25 31413:531286:22 31302:1531283:16 31285:2131392:1731421:9 31424:2131413:20 31414:2431304:19 31307:2131306:6 31308:431392:1731425:18TTS 31421:9 31424:2131247:11,2331361:2 31363:6,731340:9 31343:8,10					-
trades31270:11trying31238:1831379:1631390:1931358:1131373:5upper31248:11s1255:22,2331239:5,1731235:2331391:1731393:1431378:14,15upset31276:4s1255:22,2331254:231255:2131394:131396:1331379:2031381:14upset31280:4s1255:2131256:331311:731382:131403:931408:2531382:1631384:3usage31238:21,22s1300:2331301:2031328:931340:5,1831422:1931434:1631388:2431390:17use31238:24s1238:12s1322:931404:1631341:631343:1031436:631396:1431406:631238:2431247:12traditions31301:1931355:1431383:15type31255:2231256:431407:4,13,2331247:2431248:20tragedy31345:6,931402:1631403:1331255:2231266:231426:4,631261:1431269:2231250:2231252:2231296:143128:1431407:1231262:12,1331266:231426:4,631269:1231277:7,2231296:1431282:1031427:2131262:2331304:1031434:631435:2431269:1231277:7,2231296:1431282:1431427:2131262:2331304:1031434:631435:2431269:1231277:7,2231296:1431282:1431427:2131418:231418:231418:231416:13435:2431269:1231269:1231277:7,22 <td></td> <td></td> <td></td> <td></td> <td></td>					
tradition 31249:2031239:5,17 31253:2331391:17 31393:1431378:14,15upset 31276:431255:22,2331254:2 31266:6,731394:1 31396:1331379:20 31381:14upsets 31280:4traditional 31248:2031275:13 31285:2131403:9 31408:2531382:16 31384:3URL 31287:2331255:21 31256:331311:7 31318:231410:22 31417:1,2031387:16 31388:9,10usage 31238:21,2231300:23 31301:2031328:9 31340:5,1831422:19 31434:1631388:24 31390:17use 31234:16 31238:1231322:9 31404:1631341:6 31343:1031436:631396:14 31406:631238:24 31247:12traditions 31301:1931355:14 31383:15type 31233:17 31248:431407:4,13,2331247:24 31248:20traffic 31263:2031384:4 31391:431255:22 31256:431402:16 31403:1331255:22 31256:431426:4,631261:14 31264:2331296:14 31328:1431406:1 31407:1231262:12,13 31266:231426:21 31432:1931266:9,9 31268:231296:14 31328:1431418:9 31427:2131293:3 31304:1031434:6 31435:2431269:12 31277:7,2231296:14 31328:1431432:2031375:22 31411:631286:22 31302:1531283:16 31285:2131392:17TSG 31264:331412:11,25 31413:531286:22 31302:1531283:16 31285:2131392:1731425:18TTS 31421:9 31424:2131413:20 31414:2431304:19 31307:2131306:6 31308:431392:1731425:18TT 31361:2231247:11,2331361:2 31363:6,731340:9 31343:8,10					
31255:22,2331254:2 31266:6,731394:1 31396:1331379:20 31381:14upsets 31280:4traditional 31248:2031275:13 31285:2131403:9 31408:2531382:16 31384:3URL 31287:2331255:21 31256:331311:7 31318:231410:22 31417:1,2031387:16 31388:9,10usage 31238:21,2231300:23 31301:2031328:9 31340:5,1831422:19 31434:1631388:24 31390:17use 31234:16 31238:1231322:9 31404:1631341:6 31343:1031436:631396:14 31406:631238:24 31247:12traditions 31301:1931355:14 31383:15type 31233:17 31248:431407:4,13,2331247:24 31248:20traffic 31263:2031384:4 31391:431252:21,2231410:7 31411:1531250:22 31250:22tragic 31280:1831406:1 31407:1231262:12,13 31266:231426:21 31432:1931266:9,9 31268:231296:14 31328:1431418:9 31427:2131293:3 31304:1031434:6 31435:2431269:12 31277:7,231392:17TSG 31264:331412:11,25 31413:531286:22 31302:1531283:16 31285:21trail 31272:3trail 31272:3TSG 31264:331412:11,25 31413:531286:22 31302:1531283:16 31285:2131392:1731425:18TSF 31421:9 31424:2131413:20 31414:2431304:19 31307:2131306:6 31308:431392:1731425:18type 31371:731339:13 31342:2231309:11 31319:4trained 31377:7TT 31361:22type 31247:11,2331361:2 31363:6,731340:9 31343:8,10		. 0			
31255:22,2331254:2 31266:6,731394:1 31396:1331379:20 31381:14upsets 31280:4traditional 31248:2031275:13 31285:2131403:9 31408:2531382:16 31384:3URL 31287:2331255:21 31256:331311:7 31318:231410:22 31417:1,2031387:16 31388:9,10usage 31238:21,2231300:23 31301:2031328:9 31340:5,1831422:19 31434:1631388:24 31390:17use 31234:16 31238:1231322:9 31404:1631341:6 31343:1031436:631396:14 31406:631238:24 31247:12traditions 31301:1931355:14 31383:15type 31233:17 31248:431407:4,13,2331247:24 31248:20traffic 31263:2031384:4 31391:431252:21,2231410:7 31411:1531250:22 31250:22tragic 31280:1831406:1 31407:1231262:12,13 31266:231426:21 31432:1931266:9,9 31268:231296:14 31328:1431418:9 31427:2131293:3 31304:1031434:6 31435:2431269:12 31277:7,2tragic 31280:1831406:1 31407:1231293:3 31304:1031434:6 31435:2431269:12 31277:7,231296:14 31328:1431418:9 31427:2131293:3 31304:1031434:6 31435:2431269:12 31277:7,231392:17TSG 31264:331412:11,25 31413:531286:22 31302:1531283:16 31285:21trailers 31392:9,10,16TST 31421:9 31424:2131413:20 31414:2431304:19 31307:2131306:6 31308:431392:1731425:18Type 31247:11,2331361:2 31363:6,731340:9 31343:8,10	tradition 31249:20	31239:5,17 31253:23	31391:17 31393:14	31378:14,15	upset 31276:4
traditional 31248:2031275:13 31285:2131403:9 31408:2531382:16 31384:3ÚRL 31287:2331255:21 31256:331311:7 31318:231410:22 31417:1,2031387:16 31388:9,10usage 31238:21,2231300:23 31301:2031328:9 31340:5,1831422:19 31434:1631388:24 31390:17usage 31238:21,2231322:9 31404:1631341:6 31343:1031436:631396:14 31406:631238:24 31247:12traditions 31301:1931355:14 31383:15type 31233:17 31248:431407:4,13,2331247:24 31248:20traffic 31263:2031384:4 31391:431255:22 31256:431410:7 31411:1531250:22 31252:22tragedy 31345:6,931406:1 31407:1231262:12,13 31266:231426:21 31432:1931266:9,9 31268:231296:14 31328:1431418:9 31427:2131293:3 31304:1031434:6 31435:2431269:12 31277:7,2231296:14 31328:1431432:2031375:22 31411:631286:22 31302:1531283:16 31285:2131392:17TSG 31264:331412:11,25 31413:531286:22 31302:1531283:16 31285:2131392:1731425:18TST 31421:9 31424:2131413:20 31414:2431304:19 31307:2131306:6 31308:431392:1731425:18TT 31361:2231417:731339:13 31342:2231309:11 31319:4trained 31377:7TT 31361:22types 31247:11,2331361:2 31363:6,731340:9 31343:8,10				-	
31255:21 31256:3 31301:2031311:7 31318:2 31328:9 31340:5,18 31322:9 31404:1631311:7 31318:2 31328:9 31340:5,18 31328:9 31340:5,18 31322:9 31404:1631311:7 31318:2 31328:9 31340:5,18 31328:9 31340:5,18 31321:9 31402:16 3143:1031410:22 31417:1,20 31426:431387:16 31388:9,10 31388:24 31390:17 31388:24 31390:17 31396:14 31406:6usage 31238:21,22 use 31238:16 31238:12traditions 31301:19 trafic 31263:2031384:4 31391:4 31384:4 31391:431436:6 31252:21,2231407:4,13,23 31402:16 31403:13usage 31238:24 31247:12 31252:22,22tragedy 31345:6,9 31296:14 31328:1431406:1 31407:12 31406:1 31407:1231255:22 31256:4 31262:12,13 31266:231426:21 31432:19 31426:21 31432:1931266:9,9 31268:2 31266:9,9 31268:231296:14 31328:14 tragically 31327:2231418:9 31427:21 31432:2031293:3 31304:10 31375:22 31411:631434:6 31435:24 31432:2031269:12 31277:7,22 31304:10trail 31272:3 trail 31272:3TSG 31264:3 31421:9 31424:2131413:20 31414:24 31413:20 31414:2431304:19 31307:21 31304:19 31307:21 31306:6 31308:4 31309:11 31319:4trailed 31377:7 trained 31377:7TT 31361:22type 31247:11,2331361:2 31363:6,731309:11 3139:4					-
31300:23 31301:2031328:9 31340:5,1831422:19 31434:1631388:24 31390:17use 31234:16 31238:1231322:9 31404:1631341:6 31343:1031436:631396:14 31406:631238:24 31247:12traditions 31301:1931355:14 31383:15type 31233:17 31248:431407:4,13,2331247:24 31248:20traffic 31263:2031384:4 31391:431252:21,2231410:7 31411:1531250:22 31252:22tragedy 31345:6,931402:16 31403:1331255:22 31256:431423:8,9 31426:4,631261:14 31264:23tragic 31280:1831406:1 31407:1231262:12,13 31266:231426:21 31432:1931266:9,9 31268:231296:14 31328:1431418:9 31427:2131293:3 31304:1031434:6 31435:2431269:12 31277:7,22tragically 31327:2231432:2031375:22 31411:631286:22 31302:1531283:16 31285:21trail 31272:3TSG 31264:331412:11,25 31413:531286:22 31302:1531283:16 31285:2131392:1731425:18TT 31421:9 31424:2131413:20 31414:2431391:1 31307:2131306:6 31308:431392:1731425:18TT 31361:22types 31247:11,2331361:2 31363:6,731309:11 31319:4					
31322:9 31404:1631341:6 31343:1031436:631396:14 31406:631238:24 31247:12traditions 31301:1931355:14 31383:1531436:631396:14 31406:631238:24 31247:12traffic 31263:2031384:4 31391:431252:21,2231410:7 31411:1531250:22 31252:22tragedy 31345:6,931402:16 31403:1331255:22 31256:431423:8,9 31426:4,631261:14 31264:23tragic 31280:1831406:1 31407:1231262:12,13 31266:231426:21 31432:1931266:9,9 31268:231296:14 31328:1431418:9 31427:2131293:3 31304:1031434:6 31435:2431269:12 31277:7,22tragically 31327:2231432:2031375:22 31411:631286:22 31302:1531283:16 31285:21trail 31272:3TSG 31264:331412:11,25 31413:531286:22 31302:1531283:16 31285:21trail 31272:3TST 31421:9 31424:2131413:20 31414:2431394:19 31307:2131306:6 31308:431392:1731425:18TT 31361:22type 31247:11,2331361:2 31363:6,731340:9 31343:8,10			-	-	
traditions 31301:1931355:14 31383:15type 31233:17 31248:431407:4,13,2331247:24 31248:20traffic 31263:2031384:4 31391:431252:21,2231410:7 31411:1531250:22 31252:22tragedy 31345:6,931402:16 31403:1331255:22 31256:431423:8,9 31426:4,631261:14 31264:23tragic 31280:1831406:1 31407:1231262:12,13 31266:231426:21 31432:1931266:9,9 31268:231296:14 31328:1431418:9 31427:2131293:3 31304:1031434:6 31435:2431269:12 31277:7,22tragically 31327:2231432:2031375:22 31411:631286:22 31302:1531283:16 31285:21trail 31272:3TSG 31264:331412:11,25 31413:531286:22 31302:1531283:16 31285:21trailers 31392:9,10,16TST 31421:9 31424:2131413:20 31414:2431304:19 31307:2131306:6 31308:431392:1731425:18typed 31371:731339:13 31342:2231309:11 31319:4trained 31377:7TT 31361:22types 31247:11,2331361:2 31363:6,731340:9 31343:8,10	31300:23 31301:20	31328:9 31340:5,18	31422:19 31434:16	31388:24 31390:17	use 31234:16 31238:15
traditions 31301:1931355:14 31383:15type 31233:17 31248:431407:4,13,2331247:24 31248:20traffic 31263:2031384:4 31391:431252:21,2231410:7 31411:1531250:22 31252:22tragedy 31345:6,931402:16 31403:1331255:22 31256:431423:8,9 31426:4,631261:14 31264:23tragic 31280:1831406:1 31407:1231262:12,13 31266:231426:21 31432:1931266:9,9 31268:231296:14 31328:1431418:9 31427:2131293:3 31304:1031434:6 31435:2431269:12 31277:7,22tragically 31327:2231432:2031375:22 31411:631286:22 31302:1531283:16 31285:21trail 31272:3TSG 31264:331412:11,25 31413:531286:22 31302:1531283:16 31285:21trailers 31392:9,10,16TST 31421:9 31424:2131413:20 31414:2431304:19 31307:2131306:6 31308:431392:1731425:18typed 31371:731339:13 31342:2231309:11 31319:4trained 31377:7TT 31361:22types 31247:11,2331361:2 31363:6,731340:9 31343:8,10	31322:9 31404:16	31341:6 31343:10	31436:6	31396:14 31406:6	31238:24 31247:12
traffic 31263:2031384:4 31391:431252:21,2231410:7 31411:1531250:22 31252:22tragedy 31345:6,931402:16 31403:1331255:22 31256:431423:8,9 31426:4,631261:14 31264:23tragic 31280:1831406:1 31407:1231262:12,13 31266:231426:21 31432:1931266:9,9 31268:231296:14 31328:1431418:9 31427:2131293:3 31304:1031434:6 31435:2431269:12 31277:7,22tragically 31327:2231432:2031375:22 31411:631286:22 31302:1531283:16 31285:21trail 31272:3TSG 31264:331412:11,25 31413:531286:22 31302:1531283:16 31285:21trailers 31392:9,10,16TST 31421:9 31424:2131413:20 31414:2431304:19 31307:2131306:6 31308:431392:1731425:18typed 31371:73139:13 31342:2231309:11 31319:4trained 31377:7TT 31361:22types 31247:11,2331361:2 31363:6,731340:9 31343:8,10					
tragedy 31345:6,931402:16 31403:1331255:22 31256:431423:8,9 31426:4,631261:14 31264:23tragic 31280:1831406:1 31407:1231262:12,13 31266:231426:21 31432:1931266:9,9 31268:231296:14 31328:1431418:9 31427:2131293:3 31304:1031434:6 31435:2431269:12 31277:7,22tragically 31327:2231432:2031375:22 31411:631286:22 31302:1531283:16 31285:21trail 31272:3TSG 31264:331412:11,25 31413:531286:22 31302:1531283:16 31285:21trailers 31392:9,10,16TST 31421:9 31424:2131413:20 31414:2431304:19 31307:2131306:6 31308:431392:1731425:18typed 31371:731339:13 31342:2231309:11 31319:4trained 31377:7TT 31361:22types 31247:11,2331361:2 31363:6,731340:9 31343:8,10					
tragic 31280:1831406:1 31407:1231262:12,13 31266:231426:21 31432:1931266:9,9 31268:231296:14 31328:1431418:9 31427:2131293:3 31304:1031434:6 31435:2431269:12 31277:7,22tragically 31327:2231432:2031375:22 31411:631286:22 31302:1531283:16 31285:21trail 31272:3TSG 31264:331412:11,25 31413:531286:22 31302:1531283:16 31285:21trailers 31392:9,10,16TST 31421:9 31424:2131413:20 31414:2431304:19 31307:2131306:6 31308:431392:1731425:18typed 31371:731339:13 31342:2231309:11 31319:4trained 31377:7TT 31361:22types 31247:11,2331361:2 31363:6,731340:9 31343:8,10			-		
31296:14 31328:14 tragically 31327:2231418:9 31427:21 31432:2031293:3 31304:10 31375:22 31411:6 31412:11,25 31413:531434:6 31435:24 31264:331269:12 31277:7,22 31275:22 31411:6 31412:11,25 31413:5trail 31272:3 trailers 31392:9,10,16 31392:17TSG 31264:3 31425:1831412:11,25 31413:5 31413:20 31414:24 typed 31371:731286:22 31302:15 31286:22 31307:21 31306:6 31308:4 31392:13 31342:2231269:12 31277:7,22 31283:16 31285:21trained 31377:7TT 31361:22typed 31371:7 types 31247:11,2331361:2 31363:6,731340:9 31343:8,10					
31296:14 31328:14 tragically 31327:2231418:9 31427:21 31432:2031293:3 31304:10 31375:22 31411:6 31412:11,25 31413:531434:6 31435:24 31264:331269:12 31277:7,22 31275:22 31411:6 31412:11,25 31413:5trail 31272:3 trailers 31392:9,10,16 31392:17TSG 31264:3 31425:1831412:11,25 31413:5 31413:20 31414:24 typed 31371:731286:22 31302:15 31286:22 31307:21 31306:6 31308:4 31392:13 31342:2231269:12 31277:7,22 31283:16 31285:21trained 31377:7TT 31361:22typed 31371:7 types 31247:11,2331361:2 31363:6,731340:9 31343:8,10	tragic 31280:18		31262:12,13 31266:2	31426:21 31432:19	31266:9,9 31268:2
tragically 31327:2231432:2031375:22 31411:6understanding31279:14 31281:8trail 31272:3TSG 31264:331412:11,25 31413:531286:22 31302:1531283:16 31285:21trailers 31392:9,10,16TST 31421:9 31424:2131413:20 31414:2431304:19 31307:2131306:6 31308:431392:1731425:18typed 31371:731339:13 31342:2231309:11 31319:4trained 31377:7TT 31361:22types 31247:11,2331361:2 31363:6,731340:9 31343:8,10		31418:9 31427:21			-
trail 31272:3TSG 31264:331412:11,25 31413:531286:22 31302:1531283:16 31285:21trailers 31392:9,10,16TST 31421:9 31424:2131413:20 31414:2431304:19 31307:2131306:6 31308:431392:1731425:18typed 31371:731339:13 31342:2231309:11 31319:4trained 31377:7TT 31361:22types 31247:11,2331361:2 31363:6,731340:9 31343:8,10	/ 31 1 1.02				
trailers 31392:9,10,16TST 31421:9 31424:2131413:20 31414:2431304:19 31307:2131306:6 31308:431392:1731425:18typed 31371:731339:13 31342:2231309:11 31319:4trained 31377:7TT 31361:22types 31247:11,2331361:2 31363:6,731340:9 31343:8,10					
31392:1731425:18typed 31371:731339:13 31342:2231309:11 31319:4trained 31377:7TT 31361:22types 31247:11,2331361:2 31363:6,731340:9 31343:8,10	The second second				
trained 31377:7 TT 31361:22 types 31247:11,23 31361:2 31363:6,7 31340:9 31343:8,10				31304:19 31307:21	
trained 31377:7 TT 31361:22 types 31247:11,23 31361:2 31363:6,7 31340:9 31343:8,10	31392:17	31425:18	typed 31371:7	31339:13 31342:22	31309:11 31319:4
51717.2,751721.21 1117 51500.10 $51240.251250.15$ $515/0.7551405.15$ $51544.0,15,15$		Prof. Ward and det and the second	• =		
ARCHIVE FOR LUSTICE			51270.2 51250.15	51570.7 51405.15	51577.0,15,15

				Page 26
31346:18 31352:17	31264:18	31314:20 31318:10	31407:19	31407:13 31410:16
31357:14 31358:6	view 31242:6 31259:16	31320:4 31324:25	way 31228:12 31230:9	weren't 31240:8
31390:8,18 31402:25	31261:10 31270:23	31326:4 31327:15	31233:12 31239:20	31353:22 31356:18
31405:15 31406:7	31282:2 31287:6	31330:12,14 31351:9	31253:12 31254:23	31362:7 31369:14
31410:13 31411:24	31316:14 31318:18	31360:20,21	31257:10 31266:14	31375:5
31412:2 31413:5	31320:1 31322:16	31374:19 31379:18	31268:6 31279:7	weren't 31363:9
31415:19 31416:9	31326:5 31336:19	31383:12,12	31283:15 31286:16	31393:13 31424:22
31420:13 31421:19	31338:22 31357:15	31387:12 31390:20	31295:16 31309:14	west 31232:21,24
31423:5 31426:7	31358:22 31388:19	31394:16 31397:6	31313:5 31317:3	31233:8 31250:21
31428:15 31429:13	31390:7 31395:18	31399:18,21	31318:24 31320:4	31259:2 31262:2
31431:18 31432:24	31428:11	31407:22 31421:12	31327:11 31337:17	31383:14
useful 31273:13	viewed 31298:25	wanted 31234:11	31344:23 31345:21	we'd 31301:2
31335:6	views 31236:7 31237:3	31260:7 31276:7	31356:22,24	we'll 31229:4 31264:10
usually 31423:10	31283:2 31296:12	31282:1 31288:17	31372:25 31374:19	31268:21,21 31277:3
utilise 31414:22	31306:25 31309:22	31311:21,22 31322:5	31383:12 31385:18	31287:23 31289:13
31416:2	vigorously 31306:22	31329:20 31367:21	31390:9,18 31395:8	31290:4,5,16
	violence 31247:7	31368:15 31373:9	31398:13 31400:19	31337:10 31344:2,9
V	31251:11 31255:3	31383:9,11,21	31405:8,8 31406:13	31345:20 31357:3
vacuum 31294:21	31271:10,15	31389:5 31397:5	31407:24 31408:15	31359:3 31361:6
valuable 31267:8	31273:19,20,24	wanting 31275:12	31414:23 31419:5	31364:3 31372:18
value 31236:1	31274:1,23 31275:18	31326:17	31423:13 31425:2,15	31384:1,2 31400:23
31277:15 31278:15	31282:25 31351:5	wants 31302:15,15	31428:20 31431:16	31406:11 31410:19
31278:16 31325:9	31352:12	31304:14 31317:3	ways 31390:18 31416:3	31412:20 31416:2,9
31340:18 31355:17	violent 31299:10	31318:3 31319:11	weapon 31412:15	31419:16,24
31355:18	virtually 31270:19	31324:21 31327:11	31423:3 31425:19	31437:10
van 31407:8,16	vis 31359:4	31327:12 31355:10	31434:19 31436:21	we're 31248:19
variety 31232:15	visible 31297:19	31383:7 31386:15	weaponry 31253:10,15	31262:4 31263:5
31270:21 various 31233:22	31365:18	31387:8 31407:21,21	31412:11,25 31413:5 weapons 31247:11,17	31264:11 31266:19
31244:17 31262:11	vis-a-vis 31292:17 31320:22 31333:13	warn 31390:7,9 31391:6	31255:16,19,21	31268:2 31270:18 31272:10 31274:9
31270:25 31274:3	31333:18 31344:10	warning 31383:24	31256:15 31300:23	31275:6 31276:11
31285:3 31291:7	vis-à-vis 31353:3	31386:16 31393:9	31301:21,22 31309:9	31279:17 31287:20
31312:1 31339:19	31386:8	31394:3,5,6,9	31317:13 31319:17	31294:21 31301:8
31350:23 31367:13	voluntarily 31301:25	31396:3,8,13,16,22	31319:25 31322:9	31304:7 31312:22
31375:4 31421:3	31303:2 31357:11	31397:6,9,15	31356:2,7,9,10,18,21	31317:24 31318:9
31435:1	31362:8	31414:20,21	31356:22 31357:2,3	31320:14,17,24
vary 31263:4	volunteered 31400:3	31435:21,24,25	31357:11 31360:21	31321:20 31322:8,9
vast 31232:19,20	volunteers 31377:21	31436:2,6	31361:3 31362:7,10	31322:10,13
31251:21	vote 31275:22	warnings 31392:4	31369:5,13 31404:16	31324:14,22 31327:5
vehicle 31248:20	VVV6 31434:25	warrant 31330:17	31404:17 31406:7	31343:22 31345:22
31371:9 31403:13		31423:3	31411:3,17,24	31357:10 31362:11
31424:25,25	W	warrior 31404:14	31412:2 31413:7	31363:24 31364:22
31425:14,17	wait 31367:21	warriors 31309:16	31423:1	31367:16 31377:20
vehicles 31266:16	waited 31302:20	wasn't 31238:18,20	wear 31256:7	31380:25 31381:1
31386:23	31339:22 31340:20	31240:12 31261:6	weary 31236:8	31388:6 31389:13
verbal 31253:8	31371:2	31268:15 31270:6	web 31286:17,21	31396:18 31399:14
verbally 31253:13	waiting 31398:17	31281:25 31284:22	website 31285:19	31399:14 31402:11
31297:3	31430:17	31285:17,19,21	Wednesday 31356:13	31405:4,20 31406:11
Vermaak 31305:17	Wales 31265:16	31286:9 31289:24	31357:8 31360:13	31406:15 31408:16
vernacular 31303:9	31291:6 walk 31255:9 31269:9	31305:22 31306:7	31362:6 31369:6	31408:19,21,21
version 31284:9 31289:5 31291:12	31301:25	31330:25 31335:2 31351:16 31357:6	31370:7,12 week 31260:7 31271:11	31409:19 31411:21 31416:12 31419:5
31289:5 31291:12 31306:23 31307:6,12	walked 31308:15	31370:10,13	31353:19 31354:20	31410:12 31419:3
31311:12 31365:22	walking 31239:15	31375:18 31391:13	31359:25 31408:22	we've 31231:25
31372:21 31375:7,9	31240:4	wasn't 31248:25	weekend 31295:14	31245:7,17 31254:10
31375:13 31376:8	wall 31256:18,20	31297:9 31298:14	31301:23 31313:9	31256:9 31283:11
versions 31306:21	walls 31250:25	31323:21 31325:6,18	31417:16	31289:25 31324:8
31375:4 31435:6	wandering 31318:22	31360:17 31362:25	weeks 31249:25	31329:24 31335:22
versus 31378:5,5	want 31228:11,21	31401:12,13,24	31252:20 31271:18	31362:18,19
31386:14 31397:10	31229:1 31237:20	31402:12	Welfare 31336:10	31376:22 31379:11
Victor 31359:18	31265:22,24,24	watch 31428:21	went 31235:21	31398:3 31401:2
video 31305:19	31266:8,9,9,21,22	watched 31428:19	31271:17 31284:17	31402:20 31411:22
31422:17 31428:10	31268:6,8 31270:19	water 31269:2,3,4,7,13	31292:3 31323:10	31437:5,7
31428:13,18,20,21	31275:7 31279:25	31269:20 31270:5,17	31336:8 31342:18	whatsoever 31308:18
31429:8,12 31432:4	31280:8 31281:21	31270:19 31346:23	31360:10 31372:19	31309:7,12
video-recorded	31285:16,24	31404:20 31407:18	31378:10 31401:6	what's 31254:24
ARCHIVE FO	R JUSTICE		1	L]

RealTime Transcriptions

Pretoria

$ \begin{array}{ c c c c c c c c c c c c c c c c c c c$	2:21 ,17,18 0 6 31403:5 25 31271:9 2:16 5:11 0:1 7,13 23,25 ,8,9,17,20 31298:18 31300:11 31315:8 31331:24 1335:14,15 1337:1 17
$\begin{array}{ c c c c c c c c c c c c c c c c c c c$	2:21 ,17,18 0 6 31403:5 25 31271:9 2:16 5:11 0:1 7,13 23,25 ,8,9,17,20 31298:18 31300:11 31315:8 31331:24 1335:14,15 1337:1 17
$\begin{array}{ c c c c c c c c c c c c c c c c c c c$	2:21 ,17,18 0 6 31403:5 25 31271:9 2:16 5:11 0:1 7,13 23,25 ,8,9,17,20 31298:18 31300:11 31315:8 31331:24 1335:14,15 1337:1 17
31320:4 31332:6 31238:18,20 31239:4 31306:12 31323:10 31304:19 31307:17 110 31393:7 31342:21 31355:4 31289:1,2 3138:4,5 31336:17 31360:5 31307:11 31309:23 31307:11 31309:23 31405:21 31413:24 31352:17 31415:19 31401:12 31400:13 31307:14 31315:6 112 31420:1 31448:14 31431:21 wording 31369:11 wording 31369:11 31325:18 31326:23 31347:9 31315:6 112 31377:4 31406:1 31297:16,20 31343:1 31336:17 31416:1 313372:5 31374:24 31336:17 31401:18 31396:24 31414:3 3136:10 31422:5 X X1335:8 3139:11 31385:18 3139:19 31339:17 31395:19 12:33 3134 31396:24 31414:3 work 31233:17 31343:15 31345:20 313410:18 21:3337.7 31396:17 31401:18 12:53 3137.7 3120:16 31234:18 31327:3 31331:21 XYZ 31314:5 Z 213356:14,19 31294:22 3127:2 31289:15 31321:3 31242:45 31382:9 31401:9 Y 31335:8 31294:46 31294:2 31287:10 31429:3 3135:7 31242:45 31382:9 31357.3 31294:46 31387:18 3144:13 31242:13 31224:22 YZZ8 31285:15 31229:12 </td <td>7,17,18 0 6 31403:5 25 31271:9 9:16 5:11 9:16 7,13 23,25 ,8,9,17,20 31298:18 31300:11 31315:8 31331:24 1335:14,15 1337:1 17</td>	7,17,18 0 6 31403:5 25 31271:9 9:16 5:11 9:16 7,13 23,25 ,8,9,17,20 31298:18 31300:11 31315:8 31331:24 1335:14,15 1337:1 17
$\begin{array}{c c c c c c c c c c c c c c c c c c c $	0 6 31403:5 25 31271:9 2:16 2:11 2:12 2:13 2:3,25 ,8,9,17,20 31298:18 31300:11 31315:8 31331:24 1335:14,15 1337:1 17
$\begin{array}{c c c c c c c c c c c c c c c c c c c $	6 31403:5 25 31271:9 216 3:11 3:1 3:1 3:1 3:2 3:25 ,8,9,17,20 31298:18 31300:11 31315:8 31331:24 1335:14,15 1337:1 17
$\begin{array}{ c c c c c c c c c c c c c c c c c c c$	6 31403:5 25 31271:9 216 3:11 3:1 3:1 3:1 3:2 3:25 ,8,9,17,20 31298:18 31300:11 31315:8 31331:24 1335:14,15 1337:1 17
31418:14 31431:21 31432:6 wording 31369:11 words 31238:24 wrote 31234:7 3130:14 31347:9 31351:11 31365:24 3130:6 12 31377:4 : 3130:14 what-ifs 31324:9 31406:1 31297:16,20 31343:1 31297:16,20 31343:1 31362:10 31422:5 31362:10 31422:5 31302:12 31372:4 : 31302:12 31302:14 31372:5 31374:24 31372:5 31374:24 31372:5 31374:24 31372:5 31374:24 31325:11 31372:5 31374:24 31325:11 31393:17 31395:19 12:13 3132 whilst 31264:15 31425:6 31426:22 X 31335:8 31391:11 31343:15 31345:20 31411:1 31433:4 12:53 3136 31425:6 31345:9 31268:24 31311:7 31230:16 31234:18 31327:3 31331:21 31377:23 31371:7 31343:15 31345:20 31411:1 31433:4 12:5 31377.17 31278:1 31288:15 31377:23 31371:7 31335:8 31335:8 31294:4,6 31287:22 31289:8 31382:9 31401:9 Y 31335:8 Y 31356:14,19 31299:13 31299:13 31294:2 31377:6 31377:23 31379:9 Y Y 313357:8 31299:13 31366:17 31299:13 31294:2 31387:16 31419:8 31429:21 31429:21 31236:16 31275:20 31366:16,17 313299:19 31336:23 31336:23 31336:6 3 31336:6 3 31336:6 3 31336:6 3 31336:6 3 31336:12 313392:14 31339	31403:5 25 31271:9 9:16 5:11 7.13 23,25 8,9,17,20 31298:18 31300:11 31315:8 31331:24 1335:14,15 1337:1 17
$\begin{array}{c c c c c c c c c c c c c c c c c c c $	25 31271:9 9:16 5:11 5:1 5,13 23,25 5,8,9,17,20 31298:18 31300:11 31315:8 31331:24 1335:14,15 1337:1 17
$\begin{array}{ c c c c c c c c c c c c c c c c c c c$	31271:9 9:16 6:11 9:1 7,13 23,25 ,8,9,17,20 31298:18 31300:11 31315:8 31331:24 1335:14,15 1337:1 17
$\begin{array}{ c c c c c c c c c c c c c c c c c c c$	0:16 0:1 1,13 23,25 ,8,9,17,20 31298:18 31300:11 31315:8 31331:24 1335:14,15 1337:1 17
whilst 31246:15 31362:10 31422:5 X 31393:17 31395:19 12:33 31345 31253:19 31316:2 31425:6 31426:22 X 31335:8 31339:11 31396:17 31410:18 31396:17 31410:18 12:53 31361 31396:24 31414:3 work 31233:17 31343:15 31345:20 31341:15 3143:42:02 31411:1 3143:4 12:53 3137:7 31420:19 31435:9 31268:24 31311:7 31345:23 31351:23 31411:1 3143:4 12:53 3137:7 31230:16 31224:24,25 31347:7,18 31377:17 3143:4:15 XYZ 31314:5 13149:4315 31278:21 31283:15 31377:23 31379:9 Y X 31335:8 31294:4.6 31294:2 31337:16 31419:8 31423:24 yeah 31359:19 year 31232:12 31366:14,19 31299:13 31420:10 worked 31243:11 31254:14 31257:10 31271:8,16 3127:23 31363:21 31363:21 who's 31304:13 31254:14 31257:10 31279:7 31301:3 31263:21 31366:8 3 31366:8 3 31387:18 31414:21 312414 31225:10 31232:33 31248:24 31366:8 3 31366:8 3 31293:18 31293:13 31226:1 31226:5,10 000 31	5:11 5:1 7,13 23,25 ,8,9,17,20 31298:18 31300:11 31315:8 31331:24 1335:14,15 1337:1 17
Silesiins):1 (,13 23,25 (,8,9,17,20 31298:18 31300:11 31315:8 31331:24 1335:14,15 1337:1 17
31396:24 31414:3 31420:19 31435:9 work 31233:17 31268:24 31311:7 31268:24 31311:7 31230:16 31234:18 31268:24 31311:7 31268:24 31311:7 313147:31321:5,17 31230:16 31234:18 313268:24 31311:7 31327:3 31331:21 31230:16 31234:18 31347:15 31345:20 31343:15 31411:1 31433:4 31345:23 31351:23 31434:15 125 31337:7 31434:15 White's 3129:24.25 31237:22 31289:8 31340:7,18 31377:17 31329:24 31347:16 31347:23 31379:9 31287:22 31289:8 31382:9 31401:9 31382:9 31401:9 XYZ 31314:5 Zokwana 31356:14,19 31294:22 31294:46 31294:22 31300:14 Mo's 3137:16 31419:8 31423:24 31292:10 yeah 31359:19 year 31232:12 Y 31335:8 yeah 31359:19 ZzZ8 31289:16,17 31292:10 31320:14 31299:9 313320:24 31332:23 313320:24 31332:23 313320:14 31232:12 31336:63 who's 31315:15 31279:7 31301:3 31267:18 31320:14 31321:13 year 31232:7,14 31232:3 31248:24 à-vis 31359:5 31336:83 31366:83 wide 31278:10 31285:15 31322:6 31267:19 31259:5 31366:19 31419:11 31262:3 31275:19 31361:2 31404:12,15 31361:2 31404:12,15 31380:24 wide 31291:21 3149:21 31420:2,5 31293:18 31492:21 31232:6 31237:21 31248:22 31380:24 wide 31291:21 3149:21 31420:2,5 31291:7 31235:6 31237:21 31243:2 14:07 31377 wide 31291:21 3149:21 31420:2,5 31291	23,25 ,8,9,17,20 31298:18 31300:11 31315:8 31331:24 1335:14,15 1337:1 17
31420:19 31435:9 31268:24 31311:7 31345:23 31351:23 13 3140:5 White's 31229:24,25 31314:7 31321:5,17 31345:23 31351:23 13th 31293: 31230:16 31234:18 31327:3 31331:21 31434:15 Z 31294:4,6 31245:8,18 31246:8 31340:7,18 31377:17 31335:8 Zokwana 31356:14,19 31294:22 31287:22 31289:8 31382:9 31401:9 Y 31335:8 Zokwana 31356:14,19 31299:13 31294:22 31337:16 31419:8 31423:24 yeah 31359:19 ZZZ8 31289:16,17 31332:24 31420:10 worked 31243:11 31254:14 31257:10 31271:8,16 31275:23 31366:10 31384:20 31385:7 31320:14 31321:13 31230:14 31321:13 31232:7,14 31233:31248:24 31384:20 31385:7 31320:14 31321:13 31232:15 31232:7,14 31234:43 31259:5 31366:8 3 3149:12 31346:13 3122:6 31232:7,14 31232:16 31394:1 31394:1 31384:20 31385:7 31320:14 31321:13 31285:15 31322:6 31232:7,14 31248:24 31368:21 31394:1 31249:12 31248:24 31366:19 31419:11 31262:3 31275:19 31366:12 31404:12,15 31380:24<	23,25 ,8,9,17,20 31298:18 31300:11 31315:8 31331:24 1335:14,15 1337:1 17
$\begin{array}{ c c c c c c c c c c c c c c c c c c c$,8,9,17,20 31298:18 31300:11 31315:8 31331:24 1335:14,15 1337:1 17
Nucleon 11 String 11	,8,9,17,20 31298:18 31300:11 31315:8 31331:24 1335:14,15 1337:1 17
31245:8,18 31246:8 31340:7,18 31377:17 Zokwana 31356:14,19 31294:22 31278:21 31283:15 31377:23 31379:9 Y 31356:20,25 31357:3 31299:13 31294:22 31289:8 31382:9 31401:9 Y 31335:8 zone 31240:2 31300:14 31294:2 31337:16 31419:8 31423:24 yeah 31359:19 ZZZ8 31289:16,17 31329:24 31420:10 worked 31243:11 31254:14 31257:10 31279:7 31301:3 31234:14 31259:20 Z-series 31289:15 31336:6 3 who're 31304:13 31254:14 31257:10 31279:7 31301:3 31363:21 X X 31344:16, 31275:23 31387:18 31414:21 31343:4 31370:4,15 31233:3 31248:24 31366:12 X X 31368:8 3 31387:18 31414:21 31343:4 31370:4,15 31232:1,13 31233:3 31248:24 X	31298:18 31300:11 31315:8 31331:24 1335:14,15 1337:1 17
31278:21 31283:15 31377:23 31379:9 Y 31356:20,25 31357:3 31299:13 31287:22 31289:8 31382:9 31401:9 31335:8 zone 31240:2 31300:14 31294:2 31337:16 31419:8 31423:24 yeh 31359:19 year 31232:12 31290:9 31332:24 31420:10 worked 31243:11 31254:14 31257:10 31234:14 31259:20 31290:9 31336:32 who're 31304:13 31254:14 31257:10 31271:8,16 31275:23 31363:21 31347:16, who's 31315:15 31279:7 31301:3 31363:21 years 31232:7,14 313359:5 31368:8 3 31387:18 31414:21 31343:4 31370:4,15 31233:3 31248:24 31394:1 31394:1 31424:1 31427:25 working 31260:14 31249:13 31251:16 000 31348:9 31354:23 31364:8 3 wide 31278:10 31285:15 31322:6 31265:3,10 31259:5 31366:19 31419:11 31265:3,10 31259:5 31361:2 31404:12,15 31366:2 31380:24 wide 31421:24 works 31282:21 31237:7 you'd 31228:5 31230:3 09:31 31243:2 1446 31400 wing 31234:5 31291:7 you'll 31235:6 09:31 31257:18 140 31363:2 wire 31238:13 31239:7	31300:11 31315:8 31331:24 1335:14,15 1337:1 17
31287:22 31289:8 31382:9 31401:9 31335:8 zone 31240:2 31300:14 31294:2 31337:16 31419:8 31423:24 yeah 31359:19 zZZ8 31289:16,17 31300:14 31376:6,13,15 31429:21 year 31232:12 31290:9 31333:23 313329:24 who're 31304:13 31254:14 31257:10 31271:8,16 31275:23 31290:9 31333:23 31366:3 who's 31315:15 31279:7 31301:3 31363:21 years 31232:7,14 313359:55 31368:8 3 31382:18 31414:21 31343:4 31370:4,15 31232:15, 19 31259:5 31366:19 31419:11 31260:14 31252:15,19 31259:5 31361:2 31404:12,15 31380:24 wide 31278:10 31285:15 31322:6 31225:15,19 31259:5 31361:2 31404:12,15 31380:24 wider 31291:21 31419:21 31420:2,5 31265,10 000 31348:9 31354:23 31380:24 31293:18 31437:7 you'd 31228:5 31230:3 09:12 31228:2 31380:24 wing 31234:5 31291:7 you'll 31235:6 09:31 31243:2 14:6 31400 wire 31238:13 31239:7 31272:10,13 31287:9 31356:23 31397:14 1 1	31315:8 31331:24 1335:14,15 1337:1 17
31294:2 31337:1631419:8 31423:24yeah 31359:19ZZZ8 31289:16,1731329:2431376:6,13,1531429:21year 31232:1231290:931333:2 331420:10worked 31243:1131254:14 31257:1031271:8,16 31275:2331366:3who're 31304:1331254:14 31257:1031271:8,16 31275:2331363:2131347:16,who's 31315:1531279:7 31301:331363:2131363:2131347:16,31384:20 31385:731320:14 31321:1331233:3 31248:2431368:8 331387:18 31414:2131343:4 31370:4,1531233:3 31248:2431399:531424:1 31427:25working 31260:1431285:15 31322:631252:15,19 31259:531361:2 31404:12,15wide 31278:1031285:15 31322:631252:15,19 31259:531361:2 31404:12,1531380:24wider 31291:2131419:21 31420:2,531326:5,10000 31348:9 31354:2314th 31368:31293:1831437:7you'd 31228:5 31230:309:31 31243:214:07 31377wife 31421:24works 31282:2131237:2109:31 31243:214:46 31406winning 31234:531291:7you'll 31235:609:51 31257:18140 31363:2wire 31238:13 31239:731272:10,13 31287:931356:23 31397:141115 31276:21	31331:24 1335:14,15 1337:1 17
31376:6,13,15 31429:21 year 31232:12 31290:9 31333:2 3 31420:10 worked 31243:11 31234:14 31259:20 31234:14 31259:20 31336:6 3 who's 31315:15 31279:7 31301:3 31363:21 31363:21 31347:16 31384:20 31385:7 31320:14 31321:13 31363:21 years 31232:7,14 313359:5 31368:8 3 31387:18 31414:21 31343:4 31370:4,15 31233:3 31248:24 313399:5 31368:8 3 31424:1 31427:25 working 31260:14 31249:13 31251:16 0 31394:1 wide 31278:10 31285:15 31322:6 31252:15,19 31259:5 31361:2 31404:12,15 31380:24 wider 31291:21 31419:21 31420:2,5 31265:5,10 000 31348:9 31354:23 31380:24 wife 31421:24 works 31282:21 31237:21 09:31 31243:2 14:07 31377 wife 31421:24 works 31282:21 31237:21 09:31 31243:2 14:46 31406 winning 31234:5 31291:7 you'll 31235:6 09:51 31257:18 140 31363:2 wire 31238:13 31239:7 31272:10,13 31287:9 31256:17,18 140 31363:2 149 31367:9 wire 31238:13 31239:7 31272:10,	1335:14,15 1337:1 17
31420:10 worked 31243:11 31234:14 31259:20 Z-series 31289:15 31336:63 who're 31304:13 31254:14 31257:10 31271:8,16 31275:23 X <thx< th=""> X <thx< th=""> X<!--</td--><td>1337:1 17</td></thx<></thx<>	1337:1 17
who're 31304:1331254:14 31257:1031271:8,16 31275:2331347:16,who's 31315:1531279:7 31301:331363:21 À 31343:4 31370:4,1531387:18 31414:2131343:4 31370:4,1531232:631233:3 31248:2431394:131424:1 31427:25working 31260:1431285:15 31322:631225:15,19 31259:5000 31348:9 31354:23wide 31278:1031285:15 31322:631366:19 31419:1131262:3 31275:1931361:2 31404:12,1531380:24wider 31291:2131419:21 31420:2,531437:7you'd 31228:5 31230:309:12 31228:214:07 31377wife 31421:24works 31282:2131291:7you'l 31235:609:51 31257:1814:07 31377winer 31409:22world 31238:2031272:10,13 31287:931356:23 31397:14115 31276:21wire 31238:13 31239:731272:10,13 31287:931356:23 31397:141115 31276:21	17
who's 31315:1531279:7 31301:331363:21À13:30 3134831384:20 31385:731320:14 31321:1331343:4 31370:4,1531233:3 31248:24à-vis 31359:531368:8 331424:1 31427:25working 31260:1431285:15 31322:631249:13 31251:16031347.7 313644wide 31278:1031285:15 31322:631262:3 31275:1931361:2 31404:12,1531380:24widey 31274:231366:19 31419:1131262:3 31275:1931361:2 31404:12,1531380:24wider 31291:2131419:21 31420:2,531265:10000s 31246:11 31247:614:07 3137731293:1831437:7you'd 31228:5 31230:309:12 31228:214:27 31393wife 31421:24works 31282:2131237:2109:31 31243:214:46 31406winning 31234:531291:731272:10,13 31287:931256:17,18140 31363:2wire 31238:13 31239:731272:10,13 31287:931356:23 31397:14115 31276:21	
31384:20 31385:7 31320:14 31321:13 years 31232:7,14 à-vis 31359:5 31368:8 3 31387:18 31414:21 31343:4 31370:4,15 years 31232:7,14 à-vis 31359:5 31368:8 3 31424:1 31427:25 working 31260:14 31285:15 31322:6 31222:15,19 31259:5 000 31348:9 31354:23 31366:19 31419:11 wide 31291:21 31419:21 31420:2,5 31366:19 31419:11 31262:3 31275:19 31361:2 31404:12,15 31380:24 wide 31291:21 31419:21 31420:2,5 31326:5,10 000s 31246:11 31247:6 14:07 31377 you'd 31228:5 31230:3 31291:7 you'l 31235:6 09:31 31243:2 14:46 31406 wine 31238:13 31239:7 31272:10,13 31287:9 31326:23 31397:14 1 140 31363:2	$\cdot 731349 \cdot 2$
31387:18 31414:21 31343:4 31370:4,15 31233:3 31248:24 31394:1 31424:1 31427:25 working 31260:14 31233:3 31248:24 31394:1 wide 31278:10 31285:15 31322:6 31252:15,19 31259:5 000 31348:9 31354:23 14th 31368: widely 31274:2 31366:19 31419:11 31262:3 31275:19 31361:2 31404:12,15 31380:24 wider 31291:21 31419:21 31420:2,5 31326:5,10 000s 31246:11 31247:6 14:07 31377 31293:18 31437:7 you'd 31228:5 31230:3 09:12 31228:2 14:07 31377 wife 31421:24 works 31282:21 31291:7 31291:7 09:31 31243:2 14:46 31406 winer 31409:22 world 31238:20 31256:17,18 31256:17,18 149 31367:9 wire 31238:13 31239:7 31272:10,13 31287:9 31356:23 31397:14 1 15 31276:21	
31424:1 31427:25working 31260:1431249:13 31251:16013:47 31364wide 31278:1031285:15 31322:631252:15,19 31259:5000 31348:9 31354:2314th 31368:widely 31274:231366:19 31419:1131262:3 31275:1931361:2 31404:12,1531380:24wider 31291:2131419:21 31420:2,531265;10000s 31246:11 31247:614:07 3137731293:1831437:7you'd 31228:5 31230:309:12 31228:214:27 31393wife 31421:24works 31282:2131237:2109:31 31243:214:46 31406winning 31234:531291:7you'll 31235:609:51 31257:18140 31363:2wire 31238:13 31239:731272:10,13 31287:931356:23 31397:14115 31276:21	1393:22
wide 31278:1031285:15 31322:631252:15,19 31259:5000 31348:9 31354:2314th 31368:widely 31274:231366:19 31419:1131262:3 31275:1931361:2 31404:12,1531380:24wider 31291:2131419:21 31420:2,531326:5,10000s 31246:11 31247:614:07 3137731293:1831437:7you'd 31228:5 31230:309:12 31228:214:07 31377wife 31421:24works 31282:2131237:2109:31 31243:214:46 31406winning 31234:531291:7you'll 31235:609:51 31257:18140 31363:2wire 31238:13 31239:731272:10,13 31287:931356:23 31397:14115 31276:21	
widely 31274:2 wider 31291:2131366:19 31419:11 31419:21 31420:2,5 31293:1831262:3 31275:19 31326:5,10 you'd 31228:5 31230:331361:2 31404:12,15 000s 31246:11 31247:631380:24 14:07 31377 14:07 31377wife 31421:24 winning 31234:5 winter 31409:22 wire 31238:13 31239:731291:7 31272:10,13 31287:931262:3 31275:19 31228:5 31230:331361:2 31404:12,15 000s 31246:11 31247:631380:24 14:07 31377 09:12 31228:2wife 31421:24 winter 31409:22 wire 31238:13 31239:731291:7 31272:10,13 31287:9you'll 31235:6 31256:17,18 31356:23 31397:1409:51 31257:18 149 31367:9115 31276:21	.:7
wider 31291:2131419:21 31420:2,531326:5,10000s 31246:11 31247:614:07 3137731293:1831437:7you'd 31228:5 31230:309:12 31228:214:27 31393wife 31421:24works 31282:2131237:2109:31 31243:214:46 31406winning 31234:531291:7you'll 31235:609:51 31257:18140 31363:2wire 31238:13 31239:731272:10,13 31287:931356:23 31397:14115 31276:21	12
31293:1831437:7you'd 31228:5 31230:309:12 31228:214:27 31393wife 31421:24works 31282:2131237:2109:31 31243:214:46 31406winning 31234:531291:7you'll 31235:609:51 31257:18140 31363:2winter 31409:22world 31238:2031272:10,13 31287:931356:23 31397:14115 31276:21	
wife 31421:24 winning 31234:5 winter 31409:22 wire 31238:13 31239:7works 31282:21 31291:7 world 31238:2031237:21 you'll 31235:6 31256:17,18 31356:23 31397:1409:31 31243:2 09:51 31243:2 09:51 31257:1814:46 31406 140 31363:2 149 31367:9wire 31238:13 31239:731272:10,13 31287:931356:23 31397:14115 31276:21	:24
wife 31421:24 winning 31234:5works 31282:21 31291:731237:21 you'll 31235:609:31 31243:2 09:51 31257:1814:46 31406 140 31363:2winter 31409:22 wire 31238:13 31239:7world 31238:20 31272:10,13 31287:931256:17,18 31356:23 31397:1409:51 31257:18 15 31276:21149 31367:9 15 31276:21	:4
winning 31234:531291:7you'll 31235:609:51 31257:18140 31363:2winter 31409:22world 31238:2031256:17,18149 31367:9wire 31238:13 31239:731272:10,13 31287:931356:23 31397:141	5:15
winter 31409:22 world 31238:20 31256:17,18 149 31367:9 wire 31238:13 31272:10,13 31287:9 31356:23 31397:14 1 15 31276:21	
wire 31238:13 31239:7 31272:10,13 31287:9 31356:23 31397:14 1 15 31276:21	
jouree120021 19129,219129,21	
31240:1,1,5 31252:22 world's 31287:13 31240:8 31260:16 31244:3 31246:7,11 31408:9	
31253:1 31346:22 worried 31410:2 31261:8 31265:21 31247:6 31318:3 15H00 3140	3:3
31383:7,7,15,17 worrying 31350:11 31267:11 31269:7 31343:14 31345:9 15th 31368:	
31384:24 31386:9 worth 31311:6 31273:18 31277:8 31346:6,9 31379:17 31380:24	12
31387:19 31388:3,20 worthy 31334:9 31278:10,11 31281:3 31420:12 31425:23 15-minute 3	1290.16
31389:12,18 31390:4 worldy 31354.9 31276:16,11 51281.5 31426.12 31425.25 15-11114tc 3	
31391:10,22 31392:2 31279:25 31285:16 31283:3 31285:25 31425:25 31428:9 15:13 31405	
/ · · · · · · · · · · · · · · · · · · ·	
31394:2,7,9,19,24 31373:9 31383:23 31302:10,11 1:30 31367:18 31368:1 151 31289:1 31305:6 31306:1 3.4 31369:1 31309:1 31310:20 313107:1 313109:1 3131000000000000000000000000000000000	
31395:6 31396:1,3,4 31389:9 31310:12 31319:20 31369:20,24 15125 31369 21200:0 15 22 31201:04 21220:10 21201:17 21270 22 21275 25 15127 21265	
31396:9,15,23 wouldn't 31301:24 31320:10 31321:17 31370:23 31375:25 15127 3136	,
31397:5 31323:13 31360:21 31322:24 31324:16 31381:1 31385:13 16th 31293:	
	5 31296:14
	31337:2,6,9
	22 31338:5
wish 31231:4 31279:21 wound 31328:7,7 31349:24 31356:23 31297:24 31337:7 31339:6 3	
	31347:8,12
wished 31365:16 write 31286:13 31375:11 31378:22 31389:19 31393:2,21 31347:24	
wishes 31332:4 31316:20 31379:15 31382:17 31384:1 31395:2 31434:12,19 31351:20	31353:13
31364:9 31397:25 31389:3,12 31398:16 31434:23 31366:4 3	1367:18
witness 31231:2 writing 31284:10 31410:1,2 31420:19 10th 31295:5 31351:19 1690 31250:	6
31364:10 31393:18 31292:5 31370:22 31427:11 31431:20 10.1.1 31337:14 17th 31250:	5
31419:23 31371:6 31432:20 10:11 31272:14 178.10 3123	
witnesses 31331:11 written 31285:11 you've 31233:12,18 10:31 31287:8 178.11 3123	0:18
31354:11 31308:7 31344:13 31235:9,12 31240:15 10:57 31290:18 178.12 3123	
wondered 31406:7 31377:2,5,9,14 31245:22 31260:18 100 31301:12 18 31363:21	0:18
wondering 31278:9 31378:21,25 31379:2 31263:25 31272:2 100s 31246:11 31247:6 18th 31235:	0:18 0:18
won't 31330:16 31379:5,15,23 31273:11,20,20 11 31278:21,24 180 31432:1	0:18 0:18
Wolf (31350.10 31 5177.5,15,25 31 275.11,20,20 11 31278.21,24 100 31452.1	0:18 0:18 14

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RealTime Transcriptions

Marikana Commission of Inquiry

			 Page
1982 31232:8	30th 31363:20	9	
1990s 31252:9	300 31300:21,22	9 31230:7 31398:6	
	31301:8 31320:25	31403:20 31437:4,10	
2	31348:12,23	9th 31293:17,24	
2 31278:21,24 31279:15	31354:23 31361:11	31353:13	
31289:9 31300:21,22	31404:12,12	9:30 31409:18	
31301:8 31312:23	31417:11 31424:19	91 31393:23	
31318:3 31320:25	316 31393:7 320 21202:17 18		
31343:14 31379:19 31394:21 31437:1,1	320 31393:17,18 328 31422:14 31426:8		
2.2.2 31279:8 31280:7	328 31422.14 31420.8 34 31340:22		
2.3 31376:6	365 31275:23		
2.3.10 31377:4	38 31309:15		
2.3.5 31398:7,10	0001000000		
2.3.6 31398:10	4		
2.3.7 31403:20	4 31264:1 31361:22		
2.3.9 31398:13	31392:22 31435:1		
2/3 31354:25 31359:15	31437:1		
2:30 31401:7 31402:2	4C 31243:7		
31402:16 31403:2	4E 31243:7		
20 31371:6 31392:22	4.2 31343:6		
31407:8 31408:2	40 31252:1 31319:9		
2001/2002 31291:13	31320:7		
2005 31271:20	400 31417:8		
2009 31291:14,15	44 31340:22		
2010 31284:9 31285:11	5		
31292:18 2011 31283:18	5 31264:2 31294:2		
31284:22 31285:11	5.2 31323:20		
2012 31232:8 31279:11	5.2.11 31299:19		
31285:17 31293:23	31302:24		
2013 31235:15 31245:2	50 31282:23 31294:2		
31285:19 31397:24	500 31361:10		
2014 31228:1	55 31299:22		
209 31241:7	59 31349:5 31350:3		
22 31264:1			
23 31263:25,25 31264:1	6		
24 31263:25 31271:3	6 31229:24 31230:16		
25 31228:1 31263:25	31237:19,22 31238:9		
251 31281:6,9 31282:14	31238:11,13		
31289:17,18	31239:10 31240:18		
26 31345:3,15	31370:18 31383:17		
262 31279:9 31281:5,25	6AM 31348:2,10,24		
31282:15 31290:9	31400:14		
31343:10 31378:25	6-series 31230:15 6.2 31349:25		
3	6.3 31330:11		
3 31281:9 31282:15	6:30 31372:9		
31289:18 31346:12	60 31282:23 31347:1		
31346:15,16,20	31406:5,11 31411:2,8		
31348:9 31354:23	31413:6		
31361:2,10 31363:21	61 31349:5		
31404:12,15 31409:2			
31409:5,8,13,15,22	7		
31410:5,15,16,17	7 31237:19,22 31369:10		
31417:8,11	31376:7,11		
3pm 31271:21	7.5 31420:11		
3.3 31345:4	70 31301:11 31318:13		
3.3.2 31346:2	31377:18		
3:20 31371:16	82013		
3:30 31367:17 31368:8			
31390:25 31409:24	8 31230:7 31237:19,22		
31410:2	31242:2		
3:30pm 31340:12	8:50AM 31348:14,16		
30 31232:7,14 31326:5	8:59AM 31348:22		
31326:10 31403:7,8	80 31301:11 31377:18		1