

RealTime Transcriptions

TRANSCRIPTION OF THE

COMMISSION OF INQUIRY

MARIKANA

BEFORE TRIBUNAL

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

HELD ON

DAY 267

31 JULY 2014

PAGES 33814 TO 34021



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Page 33814

1 [PROCEEDINGS ON 31 JULY 2014]
 2 [09:17] CHAIRPERSON: The Commission resumes. We
 3 had some housekeeping to attend to this morning which is
 4 why we're not starting at the scheduled time. I'm sorry,
 5 apologise to those who waited in vain for us to start at 9
 6 o'clock. Mr Sinclair, you're still under oath.
 7 GRAEME MILLER SINCLAIR: [s.u.o.]
 8 CHAIRPERSON: Mr Bham.
 9 EXAMINATION BY MR BHAM SC (CONTD.):
 10 Thank you, Mr Commissioner. Mr Sinclair, you still have
 11 your witness statement in front of you, do you?
 12 MR SINCLAIR: Yes, Mr Chairman, I do.
 13 MR BHAM SC: Before we go into your
 14 witness statement and just for the assistance of the
 15 Commission, there have been a few acronyms used about
 16 various units within Lonmin Security Division. There's
 17 been a reference to the TRU, the TPU and the SIU. Could
 18 you explain to the Commission what those acronyms stand for
 19 and what those units deal with? So the first one is the
 20 TRU.
 21 MR SINCLAIR: Mr Chairman, TRU is our
 22 Lonmin Mining Security Tactical Response Unit and they
 23 would deal with issues out of the normal units' operations.
 24 As an example we have banks on our property at the hostels
 25 and that and if there were issues to deal with banks,

Page 33815

1 because you need a different kind of security for that,
 2 they would deal with those type of issues. Copper theft,
 3 they spend a lot of time, were trained to go underground,
 4 etcetera, on copper theft, etcetera.
 5 COMMISSIONER HEMRAJ: And nothing related
 6 to strike activity?
 7 MR SINCLAIR: They were also trained in
 8 crowd control and backing up the Crime Prevention Unit, the
 9 CPU unit, who were out roving on the ground. So they would
 10 be in response to assist them if required.
 11 CHAIRPERSON: How many members were in
 12 the TRU?
 13 MR SINCLAIR: Say again, Sir?
 14 CHAIRPERSON: How many members were in
 15 the TRU?
 16 MR SINCLAIR: In the TRU I, if I recall
 17 correctly I have six permanent members and then I also have
 18 some, we are, we have a contract with one of the security
 19 companies, I also have some of their members contracted in
 20 with the same level and skills that would work with them,
 21 and it –
 22 CHAIRPERSON: About how many of them?
 23 MR SINCLAIR: If I recall correctly there
 24 are, there is one additional team on dayshift. I would
 25 have to go back and just remember exactly –

Page 33816

1 CHAIRPERSON: You say one additional
 2 team. What's a team? How many people –
 3 MR SINCLAIR: A team is two people in a
 4 vehicle –
 5 CHAIRPERSON: I see.
 6 MR SINCLAIR: - in a vehicle there would
 7 be those on dayshift – oh sorry, two on dayshift and one on
 8 nightshift, and then there was also a Dog Unit provided by
 9 the contractors that would be attached to the Tactical
 10 Response Team.
 11 CHAIRPERSON: I see, thank you.
 12 COMMISSIONER HEMRAJ: And what equipment
 13 does the TRU carry?
 14 MR SINCLAIR: Sorry, Ma'am –
 15 COMMISSIONER HEMRAJ: What equipment –
 16 MR SINCLAIR: - I'm a bit hard of
 17 hearing.
 18 COMMISSIONER HEMRAJ: What equipment do
 19 they have? What kind of firearms do the TRU have?
 20 MR SINCLAIR: The TRU would have the
 21 standard issue – if you're asking the firearms, standard
 22 issue firearms, side arms, they would have the shotguns
 23 with rubber and – I'm not an expert in the types that they
 24 have. I have experts to deal with that, but they would
 25 have the appropriate, the shotguns and they would be, we

Page 33817

1 had a licence for a limited number of rifle –
 2 CHAIRPERSON: R5s perhaps?
 3 MR SINCLAIR: R5-type rifle, so I would
 4 have to call Nick Louw or one of those people –
 5 CHAIRPERSON: There was evidence –
 6 MR SINCLAIR: - specific –
 7 CHAIRPERSON: There was evidence about
 8 rifles like R5s that didn't have the automatic facility.
 9 MR SINCLAIR: We are not allowed to have
 10 automatic. They are single fire, but they would be, they
 11 would have access to those as well as one or two of the
 12 other trained and licensed people who were allowed to would
 13 also have access. So it wasn't just the TRU that had
 14 access. For instance if there was an armed robbery at a
 15 bank at the hostels they couldn't go in with rubber bullets
 16 to deal with those type of crimes, so that's why that is
 17 licensed for us to carry those if required, depending on
 18 the circumstances.
 19 CHAIRPERSON: So that's the TRU. The
 20 next one, Mr Bham? What are you going to deal with?
 21 MR BHAM SC: The CPU. The CPU which you
 22 referred to [microphone off, inaudible]
 23 MR SINCLAIR: Mr Chair, the CPU is the Crime
 24 Prevention Unit. Those are the 24/7 teams that we have
 25 responding to the guards, responding to incidents. They

Page 33818

1 are driving, they are on the mine permanently. They cover
 2 a 24/7 shift and they would be the teams that would do the
 3 roving response and backup to access control bars, events,
 4 or any other incidents that might be reported across the
 5 company.

6 CHAIRPERSON: How many CPU members do you
 7 have?

8 MR SINCLAIR: Sir, there were, there, in
 9 the teams there is a CPU leader and he has his vehicle and
 10 a backup with him and then there would be a minimum of
 11 three units, one placed at each mine, and I also had some
 12 contracting units, depending on our workload and our
 13 requirements contracting units that we would bring in so
 14 that we had two units out with the Crime Prevention – a
 15 unit with each, at each mine with the Crime Prevention
 16 Unit, so –

17 CHAIRPERSON: How many members per unit?

18 MR SINCLAIR: Sir, in each vehicle we
 19 tried at all times to make sure that the vehicle with the
 20 driver and his colleague, his partner.

21 CHAIRPERSON: So a unit is effectively
 22 two people?

23 MR SINCLAIR: Two people is a unit in a
 24 vehicle, Sir.

25 MR BHAM SC: And then finally the SIU.

Page 33819

1 MR SINCLAIR: The SIU is very similar to
 2 the Tactical Response Unit, but it's in the process
 3 division and they would be seconded to me – sorry, they are
 4 the Security Intervention Unit, so instead of Security
 5 Tactical Response it would be – and they are very, they are
 6 in the same, well they respond the same, they have the same
 7 type of equipment. It's just the one deals in the process
 8 and the other was in mining. If we needed them they would
 9 come. If that process needed TRU, TRU would go to them,
 10 Sir.

11 MR BHAM SC: And then, Mr Sinclair, one
 12 final question before we go back into your witness
 13 statement. You have made reference to contract security
 14 employees. Now with whom did Lonmin at Marikana contract
 15 in relation to security and in what circumstances were such
 16 contractors used or engaged?

17 MR SINCLAIR: Mr Chairman, we have a
 18 substantial contract with Protea Coin Security for our
 19 guarding, for our access. We also in that contract have
 20 the facility to be able to draw in for instance as I've
 21 explained, additional people to back up the Tactical
 22 Response Units, to bring in dogs, they supplied Dog Units
 23 if we required them, and if we had, for instance we decided
 24 to do, because our roads are all open, if we decided to do
 25 a series of roadblocks, road access control, we could call

Page 33820

1 on them to provide manpower for those conditions, and that,
 2 so we have that substantial contract with Protea Coin.
 3 We then have access to other service, other
 4 service providers in that field, G4S if required, but we
 5 don't have them permanently on our property but we have
 6 access to be able to requisition their services if we
 7 needed them. Other security – then there are smaller
 8 security companies. I know for instance in the Brits area
 9 there is a company, I think they call themselves the PPS,
 10 it's a security company that if we need a short-term or
 11 some rapid response they would come on. They were used at
 12 the process division during this, PPS were used at the
 13 process division during this process at the – if I, I stand
 14 corrected, but at the BMR Smelter. We have records of
 15 where they were used, but they were used there. So, and I
 16 think, to the best of my immediate recall those, Mr Chair,
 17 are the prime security companies that we had access to and
 18 used.

19 CHAIRPERSON: Now Protea we know had a
 20 helicopter.

21 MR SINCLAIR: Say again, Sir?

22 CHAIRPERSON: Protea we know had a
 23 helicopter.

24 MR SINCLAIR: Protea Coin have small
 25 helicopters and I had the access to be able to utilise a

Page 33821

1 helicopter if I saw the need, or through, obviously through
 2 my channels; I would have to go through my direct reports
 3 on things like that –

4 CHAIRPERSON: Yes, what interested me was
 5 you talked about security 24/7.

6 MR SINCLAIR: Yes, Sir.

7 CHAIRPERSON: Now presumably patrolling
 8 was being done –

9 MR SINCLAIR: Yes, Sir.

10 CHAIRPERSON: - right through the day and
 11 night, 24 hours –

12 MR SINCLAIR: Yes, Sir.

13 CHAIRPERSON: - to see if anything was
 14 happening, anything was developing and so on. Did the, was
 15 the helicopter used for that kind of thing on a regular
 16 basis?

17 MR SINCLAIR: Sir, definitely. On, if I
 18 recall correctly, on the Friday of this portion that we're
 19 dealing with, these dates that we're dealing with, that the
 20 helicopter had been –

21 CHAIRPERSON: That's the 10th –

22 MR SINCLAIR: They had used the Friday,
 23 the 10th, Mr Chairman.

24 CHAIRPERSON: 10th of August.

25 MR SINCLAIR: If I recall correctly, and

Page 33822

1 I'll have to go back to – we've got comprehensive records
 2 of when they were there, but I'd have to go back. On the
 3 Friday I know they – I know, I recall that the helicopter
 4 had been brought in and based close to my office, we have a
 5 landing zone, and it was used for observations. Because we
 6 have so many remote areas around our shafts, between our
 7 shafts, there are a lot of remote areas and it's very
 8 difficult for our cameras or even our patrols to see that.
 9 It's incredibly useful to have the helicopter to overfly if
 10 we have a concern or we would like to see something.
 11 CHAIRPERSON: And was overflying done? I
 12 know the –
 13 MR SINCLAIR: Definitely –
 14 CHAIRPERSON: - Protea Coin helicopter
 15 was also made available by Lonmin to the police for
 16 certain –
 17 MR SINCLAIR: No, Mr Chairman, may I –
 18 CHAIRPERSON: No, it was on the 16th for
 19 example where some members of the police service were taken
 20 up because the police helicopters were already used, taken
 21 up into the sky on the Thursday afternoon. But I'm not
 22 concerned about that. From the period from the 10th
 23 onwards –
 24 MR SINCLAIR: Ja.
 25 CHAIRPERSON: I'm not concerned about use

Page 33823

1 for the police.
 2 MR SINCLAIR: Yes, Sir.
 3 CHAIRPERSON: But did you have regular
 4 flights done by the helicopters just to see what was going
 5 on?
 6 MR SINCLAIR: Very definitely so. On the
 7 Friday, I'm sure it was on the Friday it started. On the
 8 Saturday, on the Sunday, and then for the rest of the week
 9 and we had a single helicopter. The security team at
 10 Lonmin had a single helicopter designated to the security
 11 team. It was under our control. It was our security, and
 12 it was used in our operations and my instructions on that –
 13 sorry, you said you don't want to deal with the 16th. My
 14 instructions –
 15 CHAIRPERSON: I'm interested in the
 16 patrolling and the surveying and so on that was done.
 17 MR SINCLAIR: Yes, and it was –
 18 CHAIRPERSON: And what I said was I
 19 didn't want you to go into the question –
 20 MR SINCLAIR: Detail, yes.
 21 CHAIRPERSON: - if it was made available
 22 to the police service. I know it was on the Thursday for
 23 example, but we had evidence about that. I'm interested in
 24 other used of the helicopter during the period from the 10th
 25 through to the 16th.

Page 33824

1 MR SINCLAIR: Ja, so I had a single
 2 helicopter, Mr Chair, that was under our control for
 3 surveillance out to 3 Shaft at Eastern Plats, which is a
 4 considerable distance away from us, and out to the Karee
 5 areas and back and around. On the southern side 90% of
 6 those operations after the Sunday morning when the police
 7 came in, I had instructed that it was on the southern side
 8 of the railway line and they would stay in the helicopter
 9 they allocated me. Protea Coin had a second helicopter
 10 that they had an arrangement with the police. I do not
 11 know what – I was not involved in that, but there was
 12 always a second helicopter there, but their management team
 13 were in discussions with the police on that –
 14 CHAIRPERSON: Okay, I understand that. I
 15 was interested to know whether the helicopter at any stage
 16 part of the surveillance on a regular basis would have
 17 flown over the koppie, or the – in fact there are three
 18 koppies, aren't there?
 19 MR SINCLAIR: That's correct. Mr Chair,
 20 my instructions were explicit and clear and I think, I
 21 believe it was from the Monday morning because on Sunday we
 22 still had a very limited police, but from the Monday
 23 morning when General Mpembe and the teams moved in my
 24 instructions were clear, we stay this side of the railway
 25 line, do not interfere in the police operation at all.

Page 33825

1 That was my instructions and I know Mr Dirk Botes would
 2 have carried that out, Sir.
 3 CHAIRPERSON: I see. Alright, thank you.
 4 COMMISSIONER HEMRAJ: Mr Sinclair, in the
 5 event of your needing to escalate your danger levels to
 6 anything but green, you would theoretically be able to pull
 7 in the full complement of all these units and resources at
 8 your command to protect your property and your employees?
 9 MR SINCLAIR: As the manager of security
 10 I had that authority and responsibility from Lonmin. I
 11 would obviously brief my direct report and whoever I would
 12 need to brief if I was making such a decision.
 13 COMMISSIONER HEMRAJ: Thank you.
 14 CHAIRPERSON: I think we must now ask Mr
 15 Wesley to turn on the clock. I don't think this section
 16 should be debited to Lonmin.
 17 MR BHAM SC: Nonetheless, Mr Chairman, Mr
 18 Sinclair, I'm not going to go through any further aspects
 19 of the witness statement. What's there is there and is
 20 self-explanatory. I would like to use the remaining time
 21 for you to deal with the topic which is going to generate a
 22 lot of interest and it's quite important that it gets a
 23 full explanation.
 24 Mr Sinclair, during the course of Mr Botes'
 25 cross-examination an issue arose –

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

<p style="text-align: right;">Page 33830</p> <p>1 CHAIRPERSON: Keep that short, obviously 2 you must do justice to what you're going to tell us but be 3 as brief as you can because, you know, time is a very 4 precious commodity. 5 MR SINCLAIR: I certainly will. So when 6 I explained yesterday, I was asked about the red, the 7 green, et cetera. We had a process and in that process, 8 when we moved – we had a normal operation, when we moved 9 into the other operations, an orange or a red operation, I 10 had previously on times like that made sure that certain 11 documentation in addition to our normal operations, was put 12 in place because we know that we are asked questions during 13 and before, during and after a situation so I made – these 14 particular documents I had discussed, I know definitely 15 with Henry Blou and Peter Drysdale who were my emergency 16 managers, to say we needed a thing that we, the three of us 17 and whatever - could quickly and effectively have a mind 18 jogger and refer back to without going through tedious 19 books and that sort of thing. So I put, I put these 20 documents in place in our infrastructure with my team and 21 the way it worked, if we went to an orange mode there would 22 be a CCTV camera in that room, there would be a supervisor 23 in that room, depending on the levels, and there would be a 24 junior official, a clerical person, a road safety person 25 that would be based at the computer where this spreadsheet</p>	<p style="text-align: right;">Page 33832</p> <p>1 whoever, so it would be in the public domain. And the 2 document went through and I didn't specifically, and it 3 wasn't there, it was a line item, just a brief description 4 line item. If there had been a specific incident that had 5 not – I knew that there was proper investigation papers, 6 there was proper documentation, there were proper 7 statements that we had that could back up that line item. 8 I then sometime after this complete incident was concluded, 9 would have systematically gone through everything that was 10 associated with this event, before or after and the 11 subsequent. Is the CCTV camera footage correctly, has it 12 been documented, has it been referenced, has it been put 13 away securely, I would have gone through and I went through 14 this document. I can explicitly recall going through and I 15 think it was twice I went through this document and the 16 first time I had a look and I said, guys, there's a whole 17 lot of entries that I think are missing in here, will 18 somebody go and check them? And they went off and I 19 remember explicitly on the changes that were made. The 20 document came back to me and it was captured. It was 21 captured on the initial thing and it was captured on my 22 systems because I would have a backup copy from them 23 because I'm a methodical person. And I went through it and 24 I called Henry and I can't remember who I had discussions 25 with, I remember Henry was there and I said, Henry, I want</p>
<p style="text-align: right;">Page 33831</p> <p>1 – and as you can see, it's a simple Excel spreadsheet – was 2 put in the thing and that person's task would be to apply 3 his mind or her mind and listen, a call coming in, make an 4 entry, something happening on the TV that they notice, on 5 the CCTV they've noticed, make an entry. Myself, I had 6 phoned a manager or a person, I would walk in and say 7 please make an entry, so that we had a running log with a 8 mind jogger and that was the principle behind that. When 9 this situation started on the Thursday, I think we had 10 moved – well, on the Thursday in our security environment 11 we knew there was a potential so I believe that it would 12 have started an orange mode that night. This document 13 would probably have started then, I haven't looked. As I 14 say, I can't remember when it – and that document went 15 through. During the course of that process I would have 16 gone in and then from time to time say, is the log being 17 done, is this being done and this would have been one of 18 the things that I would have focused – because I would have 19 used it. I would have used it for our communications 20 department, they would have had questions from press and 21 whatever and I would use that document and if necessary I 22 would give it to them and that would then move into the 23 public sort of area so I was particular about what was in 24 these documents. I was there and it would go to our human 25 resources if they were dealing with labour people or</p>	<p style="text-align: right;">Page 33833</p> <p>1 this checked because I'm not satisfied. There are spelling 2 mistakes and there's sort of wrong grammar that could be 3 thing – would you please go and collect a hard set of all 4 the occurrence books in emergency operations, in central 5 operations, make photocopies give them to my assistant 6 Amanda van der Merwe and I called her and I said, Amanda, I 7 want you to take these, I want you to get somebody to help 8 you with the documents, somebody reads on that date at that 9 time this happened there. If it is missing, please add it 10 in. Make sure you add it in, in a colour that I can see it 11 was an amendment outside of the original capture. She said 12 yes, ja, I said do you understand and she went through and 13 I was going through a few of the items to explain to her 14 what I think. I came across a couple of items. I remember 15 coming across a security, we were doing some security 16 copper interventions and that was recorded there and I 17 thought, I don't want this in here because it could 18 compromise our security intervention in the copper crimes 19 that were going on, because I know that this document would 20 go through to communications and HR and I said listen, take 21 those out and I noticed there is an entry and I can't 22 remember if it was one or two but I definitely noted that 23 there was an entry about firearms and I said the firearms 24 should not be in here either. And I don't know if I said 25 it to her but I certainly would have said it to Henry, this</p>

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

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

Page 33842

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

Page 33843

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

Page 33844

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

Page 33845

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

Page 33846

1 to you that there is another copy of exhibit EEEE19.1
 2 that's found its way to the Commission and that's as an
 3 annexure to the ICAM report. Are you aware of that?
 4 MR SINCLAIR: It's certainly a version of
 5 this report, it could have been called by the ICAM team
 6 because it was, as I have explained, it was a document that
 7 was available. So they could have called for it, yes.
 8 MS PILLAY: Just to be clear on this, Mr
 9 Sinclair, what clearly transpired because EEEE19.1 and if
 10 we could have that version up on the screen, just to be
 11 clear, EEEE19.1 is an annexure to the ICAM report. Do you
 12 accept that?
 13 MR SINCLAIR: I hear what you say and if
 14 that is your evidence then yes.
 15 MS PILLAY: So in the course of the ICAM
 16 team conducting their investigation and producing their
 17 report when they used the Lonmin Karee RDO occurrence book
 18 this is the document which they worked on.
 19 MR SINCLAIR: If that is what you're
 20 telling me then they would have used it.
 21 MS PILLAY: Because that is what is
 22 annexed as the Lonmin Karee RDO occurrence book to the ICAM
 23 report.
 24 MR SINCLAIR: I personally never looked
 25 to see if it was, but if that's what I'm told then I accept

Page 33847

1 MS PILLAY: But is of interest to us, Mr
 2 Sinclair, is how the ICAM report eventually came before
 3 this Commission. Are you aware that the ICAM report was
 4 not discovered by Lonmin of its own accord?
 5 MR SINCLAIR: When you say not discovered
 6 by Lonmin –
 7 MS PILLAY: Through –
 8 CHAIRPERSON: The procedure – the parties
 9 had to make – we have a procedure here at the Commission
 10 based on the practise in courts. In a civil case various
 11 parties in the case have to what we call discover which
 12 means disclose, make available copies of their documents.
 13 And that applied to the Commission, various parties had to
 14 make their relevant documents available. The ICAM report
 15 is obviously material to our work and that was a document
 16 which should have been as we say discovered. It should
 17 have been disclosed by Lonmin and it wasn't initially.
 18 Lonmin discovered certain, when I use the discover you're
 19 going to say I'm using technical means. Lonmin discovered
 20 certain documents and certain document which should have
 21 been discovered weren't.
 22 MR SINCLAIR: Yes, Sir.
 23 CHAIRPERSON: And among those documents
 24 that should have been discovered was the ICAM report. We
 25 only got that, not because it was given to us voluntarily

Page 33848

1 by Lonmin, but because of procedure which Ms Pillay will
 2 explain to you.
 3 MS PILLAY: And what transpired, Mr
 4 Sinclair, is that the ICAM report was only produced before
 5 the Commission when it was specifically requested by the
 6 evidence leaders who came to learn of the existence of the
 7 ICAM report. Do you accept that?
 8 MR SINCLAIR: I accept that, ja.
 9 CHAIRPERSON: Were you informed of that?
 10 Were you told during the course of development, proceedings
 11 before this Commission – were you told that the ICAM report
 12 had been requested by the evidence leaders or do you hear
 13 this for this time from Ms Pillay?
 14 MR SINCLAIR: I hear this version that it
 15 had not been discovered for the first time. I was asked, I
 16 think it was a couple of weeks ago, where is the ICAM
 17 report, but I can't recall who asked me. So that's the
 18 sort of first time that it came to my attention that it was
 19 required.
 20 MS PILLAY: So, Mr Sinclair, can I put to
 21 you what net effect is of what I've just described to you?
 22 And that is the following. Until August or September last
 23 year the version of the occurrence book which this
 24 Commission was working with was the version which had very
 25 significant deletions from it and those deletions made at

Page 33849

1 your instance.
 2 MR SINCLAIR: Yes sorry –
 3 MS PILLAY: And had it not been for two
 4 processes that instigated and initiated by the evidence
 5 leaders, the one being the investigation of Colonel Scott's
 6 hard drive and the second being the evidence leaders
 7 calling for the ICAM report, this version EEEE19.1 would
 8 not have been before the Commission.
 9 MR SINCLAIR: Mr Chair, I don't think I
 10 can really comment on that, what was put in and what wasn't
 11 and what was discovered and what wasn't because whatever I
 12 was ever asked for was certainly always made available. So
 13 for me personally to comment on that I think it would be
 14 incorrect of me, Sir.
 15 CHAIRPERSON: May I ask you this?
 16 Various statements were prepared from time to time by
 17 Lonmin and made available to the Commission.
 18 MR SINCLAIR: Yes, Sir.
 19 CHAIRPERSON: One of them was a statement
 20 by Mr Botes, in fact various statements, but he made a
 21 statement very earlier on in October I think it was 2012.
 22 Now were you shown these statements, did you read them?
 23 MR SINCLAIR: Mr Chairman, I knew
 24 statements would be taken. I think they were available to
 25 me, I don't recall ever reading anybody's statement. I

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

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

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

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

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

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

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

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

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

1 legal team. If there was a slipup, I had instituted and
2 said please go and correct the spellings, change it into
3 red, there's a thing, do this, do that. Take that out and
4 I believe that those were the documents were given. If I
5 omitted to say this had been adjusted because remember our
6 occurrence books are the hard – the main occurrence books
7 are the hard - this was Henry Blaauw and my reminder
8 document that the ICAM could have used for that. I think
9 Dirk would have given them to Colonel Scott, for what
10 reason I don't know. So this was our reminder and this was
11 not, in my opinion and even as I sit here today, Sir,
12 within my opinion this was not the important document, this
13 is a one line document. The occurrence books, the
14 handwritten where there's more detail is a more substantial
15 – I don't even know as I sit here whether those occurrence
16 books have been given. But certainly the legal team would
17 have known about them.
18 [10:38] Whether they focussed on it to say we need that,
19 I don't know.

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

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

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

11 The next deletion is at 20:35, "GK reported that
12 they shot 10 to 15 rounds of rubber bullets to commuters."

13 The next deletion we see at 9:03 on the 11th and
14 it's "Eight rubber rounds shot to disperse a mob opposite
15 the NUM offices, two SAPS constables available to assist."

16 We then see a prolonged period where there are no
17 deletions. The next deletion is on the 13th of August at
18 14:32 –

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

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

Page 33858

1 CHAIRPERSON: Ja, alright, we'll let's
2 [inaudible] -
3 MS PILLAY: It's at 9:30, "ELP S2
4 observed a group of people attacking Delta 2. They stopped
5 at the taxi rank. Two members were murdered. One was
6 stabbed and the other was set alight. Two security
7 vehicles were also burned down," and we see a comment on
8 the other column saying "Info to be added under mob attack,
9 murdering our members. Follow up and get details of
10 deceased."
11 MR SINCLAIR: I see it. Sorry, your last
12 part, Mr Chair?
13 MS PILLAY: It's more to the right of
14 this document, there's a comment that more information is
15 to be added to the occurrence book. Is that a comment
16 inserted by you?
17 MR SINCLAIR: No, Mr Chair, no comments
18 were inserted by me. Remember what I – may I talk or must
19 I, is there something else –
20 MS PILLAY: No, please explain.
21 MR SINCLAIR: Chair, no comments, I want
22 to be very clear, no comments were inserted. I went to my
23 PA and said please revise this document, please go through,
24 these are the things I want you to look at; add that in,
25 make sure it's an colour, take it out. If there is

Page 33859

1 anything that you are not certain about please come back to
2 me, but I would like this document corrected – not
3 corrected, I would like this document cleaned up so that it
4 is, because it will be used in public, as I have now found
5 out that it is, I didn't realise it had been used at the
6 ICAM but it was used at the ICAM and other places, and so
7 these deletions, she would have gone through and said I
8 think this is Graeme's instruction and take them out. Did
9 I go back and check those? No, I didn't. Did I ask her
10 what she exactly had deleted? No, I didn't, but I was –
11 CHAIRPERSON: [Microphone off, inaudible]
12 MR SINCLAIR: Sorry, Sir?
13 CHAIRPERSON: I told you time is
14 precious, Mr Sinclair.
15 MR SINCLAIR: Sorry, Sir.
16 CHAIRPERSON: You weren't asked about
17 that. What you were asked about was this entry in the
18 comments column, "Info to be added on the mob attack,
19 murdering our members." You say, your answer is you didn't
20 make that entry, that's if I understand you correctly.
21 MR SINCLAIR: I definitely didn't make
22 that.
23 CHAIRPERSON: Okay.
24 MR SINCLAIR: I don't know who made that.
25 CHAIRPERSON: You don't know. Okay, it's

Page 33860

1 fine. I'm sure Ms Pillay will now want to move on to the
2 next question, but it's now quarter to 11, so when it's
3 convenient let me know and we'll take the first comfort
4 break, but I'm in your hands, Ms Pillay.
5 MS PILLAY: Chair, we've just got three
6 more deletions from this book –
7 CHAIRPERSON: Alright, okay.
8 MS PILLAY: - and then we can move on.
9 CHAIRPERSON: No, you will indicate when
10 we can take the adjournment.
11 MS PILLAY: If we can then move to the
12 next deletions, Mr Sinclair, it's on the 13th of August at
13 14:38 – sorry, at 14:32, "Kellerman called and informed us
14 one of the mobsters was shot with a rubber bullet and they
15 need an ambulance. Peter Drysdale said as soon as we have
16 an ambo available we will send one."
17 And a deletion again at 14:38, "Kellerman called
18 and said the group at Karee 3 dispersed and ran towards K4
19 and Mining Security went after them. 20 shots were fired
20 and one person was arrested. That shot was with rubber
21 bullet."
22 And then there's a last deletion, Mr Sinclair,
23 which is on the 27th of August and it's an interesting one
24 because it's the only deletion that's not related to
25 shooting by Lonmin Security. It's on the same document –

Page 33861

1 CHAIRPERSON: What's the date and time?
2 MS PILLAY: It's on the 27th of August
3 2012 and it's at 17:06. The insertion, Mr Sinclair, is,
4 "All ambulance calls to the villages must be authorised by
5 Mr Sinclair," and as I've said it before, it's the only
6 deletion we see that is not specifically related to
7 shooting by Lonmin Security. Can you explain why this was
8 deleted?
9 MR SINCLAIR: I haven't got the faintest
10 idea why Amanda van der Merwe would have deleted that. If
11 I had given that instruction I cannot recall why it would
12 have been deleted.
13 MS PILLAY: Mr Sinclair, you have just
14 testified that the deletions were made on your
15 instructions.
16 MR SINCLAIR: Yes.
17 MS PILLAY: And that you take full
18 responsibility for them. In that context I'm asking for an
19 explanation for this, out of the hundreds of insertions in
20 the occurrence book this particular one, what was the
21 reason for this deletion?
22 MR SINCLAIR: Mr Chair, I think to
23 clarify, I was clearing up this document. I gave
24 instructions that matters relating to the police or matter
25 that were under investigation or matters relating, as an

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

Page 33866

1 circumstances, respond.

2 MS PILLAY: Did you specifically defer

3 the request to any one of your subordinates?

4 MR SINCLAIR: Just please explain that, I

5 don't understand?

6 MS PILLAY: Once the request came in, you

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

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

9 at all?

10 MR SINCLAIR: I was, that afternoon I was

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

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

13 I was aware of that incident.

14 MS PILLAY: And when you say that

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

16 MR SINCLAIR: The Thursday afternoon's,

17 whatever happened on the Thursday afternoon.

18 MS PILLAY: Alright, if we can then go

19 back to the deletions in EEEE19.1.

20 CHAIRPERSON: Are you going back to the

21 ones you've covered already?

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

23 CHAIRPERSON: There's one more that I

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

25 MS PILLAY: Can we have that deletion on

Page 33867

1 the screen, please?

2 CHAIRPERSON: Why is that deleted, 29

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

4 requested 150 food parcels for court tomorrow. Dirk Botes

5 confirmed that the food parcels can be ordered for tomorrow

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

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

8 tomorrow morning." Now why is that deleted?

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

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

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

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

13 CHAIRPERSON: Who were the food parcels

14 for, do you know?

15 MR SINCLAIR: The food parcels were for

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

17 additional people –

18 CHAIRPERSON: Did you have 150 guards,

19 extra guards at the magistrate's court on -

20 MR SINCLAIR: That would have been food

21 parcels that would have been supplied. We supplied food

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

23 officers travelling long distances that were coming in, so

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

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

Page 33868

1 CHAIRPERSON: But you see, that being so

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

3 related to the reasons you gave previously for deleting the

4 other entry. In terms of -

5 MR SINCLAIR: I –

6 CHAIRPERSON: Sorry, let me put the

7 question.

8 MR SINCLAIR: Sorry, sir.

9 CHAIRPERSON: It's not related to the

10 reasons you gave and explained essentially, as I understand

11 it, to your professional assistant as to why certain

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

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

14 MR MPOFU: Chairperson, sorry, before the

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

16 CHAIRPERSON: The 29th –

17 MR MPOFU: Of August?

18 CHAIRPERSON: 29th August, ja.

19 MR MPOFU: Thank you.

20 CHAIRPERSON: Anyway you've heard my

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

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

23 state of be-puzzlement.

24 MR SINCLAIR: Mr Chair, I cannot explain

25 why that particular line would have been deleted. It

Page 33869

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

2 the other lines and I listened to your comments very

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

4 been left in. If I –

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

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

7 should be left in –

8 MR SINCLAIR: Sorry.

9 CHAIRPERSON: So you've told us this was

10 basic instructions you gave to your PA.

11 MR SINCLAIR: Yes.

12 CHAIRPERSON: And it didn't seem to fit

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

14 asked the question.

15 MR SINCLAIR: Ja.

16 CHAIRPERSON: Whether an entry should

17 have been made at all initially is not –

18 MR SINCLAIR: I can't explain why that

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

20 explain why that particular one would have been deleted.

21 CHAIRPERSON: Alright thank you, thank

22 you.

23 MS PILLAY: Mr Sinclair, as I understand

24 your evidence, the primary reason for the deletions was

25 that there were ongoing police investigations and you

Page 33870

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

Page 33871

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

Page 33872

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

Page 33873

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

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

Page 33878

1 shooting incident reports and I'm putting to you that we
2 are not in possession of a shooting incident report
3 relating to that particular shooting incident.

4 MR SINCLAIR: Mr Chair, I was never asked
5 to go and specifically get the shooting reports. I don't
6 know who the request went to. So it is very difficult for
7 me to answer if that particular one has not been made
8 available.

9 MS PILLAY: So is your testimony that a
10 shooting incident report for that particular incident does
11 exist and that we were just not given a copy of it?

12 MR SINCLAIR: Mr Chairman, to my belief
13 and our process a shooting incident for that incident
14 should exist. Where it is, as I sit here I cannot say and
15 it should be available.

16 MS PILLAY: And further Mr Sinclair, we
17 were given the handwritten versions of the different
18 occurrence books and my colleagues have gone carefully
19 through the handwritten versions and they indicate that
20 there is nothing related to that particular shooting
21 incident in the handwritten occurrence book.

22 MR SINCLAIR: Could I just have a look at
23 the date of that, please?

24 MS PILLAY: It's on the 11th –

25 CHAIRPERSON: The 11th, it's the Saturday.

Page 33879

1 MR SINCLAIR: On the Saturday –

2 CHAIRPERSON: This is the Saturday. You
3 remember there was an incident when some strikers went to
4 the NUM office and there was –

5 MR SINCLAIR: Yes.

6 CHAIRPERSON: There is some discrepancy
7 in the documents as to where the engagements between NUM
8 people and the strikers took place, but the evidence seems
9 to be it was very close to the NUM office, about 50 metres
10 away. But anyway, it was on the Saturday and this entry
11 relates to that.

12 MR SINCLAIR: Mr Chairperson, I haven't
13 gone through those logbooks, so I cannot say whether it's
14 true, but I believe the evidence leaders have. In my
15 opinion it should be in the Central Operations incident
16 book, or in the incident book that was in the information
17 centre at my office. It should – whether it is or not I
18 cannot say.

19 MS PILLAY: Mr Sinclair, I'm putting to
20 you as a fact that it's not recorded there, and further
21 that the net effect of your intervention by deleting for
22 example this insertion in the occurrence book is to remove
23 all trace that this shooting incident took place.

24 MR SINCLAIR: Mr Chair, I can assure this
25 Commission that there was absolutely no intention on my

Page 33880

1 part. I believe what I have tabled with you to be
2 absolutely true. I have no reason to remove information.
3 The reason I did is what I have explained, believing, not
4 every time personally checking that those records, but I
5 believe that what I put is absolutely correct and that was
6 my reason for doing it. And I further state that in view
7 of this Commission now with what I've heard this morning it
8 is the view that that should not have been taken out of
9 this report because this was a, this would become a crucial
10 report, then I made an incorrect decision.

11 CHAIRPERSON: No, the point is more
12 complicated than that. You could have taken it out of your
13 internal records as much as you liked, but what was given
14 to this Commission –

15 MR SINCLAIR: Yes.

16 CHAIRPERSON: - should not have been an
17 edited, abbreviated, abridged, censored report, which is in
18 fact what happened, and we've been told by your counsel
19 that the other document, the censored one, was the one that
20 was given to them. So they should have been given this so
21 that they could represent you people adequately in the full
22 knowledge of the facts. Now Ms Pillay, are you going to
23 deal with, as part of this, part of the cross-examination
24 with paragraph 30 of his affidavit FFFF1, page 96? Because
25 it is linked. If you're going to do it I won't ask

Page 33881

1 questions about it.

2 MS PILLAY: Chair, I'm happy for you to
3 ask the question. I haven't looked at it.

4 CHAIRPERSON: [Microphone off, inaudible]
5 for me to do it. You can do it, I don't want to take over
6 your cross-examination. I've every confidence in your
7 ability to cross-examine.

8 MS PILLAY: I wasn't going to deal with
9 that now, Chair.

10 CHAIRPERSON: Do you want me to do it?

11 MS PILLAY: Yes, please.

12 CHAIRPERSON: Your statement is FFFF1 and
13 the internal number is page 96, as far as I can see,
14 paragraph 30. Have you got that in front of you?

15 MR SINCLAIR: Is that my statement?

16 CHAIRPERSON: Your statement, yes.

17 MR SINCLAIR: Yes, Sir.

18 CHAIRPERSON: Have you got it in front of
19 you?

20 MR SINCLAIR: I have. I believe I have,
21 Sir.

22 CHAIRPERSON: Alright, now let's look at
23 that paragraph together –

24 MR SINCLAIR: Which paragraph, Sir?

25 CHAIRPERSON: 30, Saturday 11 August.

Page 33882

1 MR SINCLAIR: Yes, Sir.
 2 CHAIRPERSON: "Mining Security had
 3 received information there would be a march by the crowd to
 4 the NUM offices at Wonderkop situated at the mine, on that
 5 day. We received information that the crowd who had by
 6 then gathered outside the Wonderkop Stadium were intent on
 7 burning down NUM offices. I received reports of injury to
 8 workers who had allegedly been part of the crowd, during a
 9 standoff between the marchers and NUM. I went to inspect
 10 and found two injured workers. I was accompanied by
 11 security personnel and medical personnel. We rendered
 12 medical support, took the injured workers to Lonmin
 13 Hospital."
 14 Now those two injured persons are in fact dealt
 15 with in the logbook. There's one entry at 9 o'clock,
 16 "Frans Mabelane reports a person shot at Wonderkop Hostel
 17 Block C5, Room 5. Medics 1 despatched," and then there's a
 18 reference further down to someone who was found at the
 19 Schagen office at 9:08, "Frans reports a person being shot
 20 inside the hostel next to Schagen offices."
 21 Those two people were the injured people you
 22 talked about, but there's no mention in your affidavit,
 23 statement, paragraph 30, of this other information which is
 24 very relevant to understand what precisely happened at the
 25 NUM offices and what the involvement not just of the NUM

Page 33883

1 officials and the strikers was, but also what the
 2 involvement was of Lonmin staff. Can you explain that to
 3 us?
 4 MR SINCLAIR: Mr Chairman, I have stated
 5 where I moved in, got involved. I didn't believe I, when I
 6 made my statement I was aware that statements would be made
 7 by the security team members that were there and they would
 8 detail, they had more information and more accurate
 9 information they would detail and that's why I limited my
 10 statement to that, believing that that is what was
 11 required.
 12 CHAIRPERSON: Do you know whether the
 13 security officials of Lonmin mentioned the firing of these
 14 eight rubber rounds in their statements?
 15 MR SINCLAIR: I do not know.
 16 CHAIRPERSON: Not as far as I know, and
 17 obviously I don't know everything. There are a lot of
 18 things that I hope to discover before the end of the
 19 Commission, but I've never seen any statement – the
 20 statements that are before us make no mention of that, from
 21 the two Lonmin officials who were there. They don't
 22 mention shooting off any rubber rounds or anything.
 23 Anyway, you obviously can't take that further.
 24 MR SINCLAIR: I cannot – I cannot comment
 25 on that, Sir.

Page 33884

1 CHAIRPERSON: No, you can't take that
 2 further and I understand.
 3 MR SINCLAIR: That's right.
 4 COMMISSIONER HEMRAJ: Just to go back to
 5 a previous point that Ms Pillay was dealing with; you gave
 6 the instruction to delete because you were confident that
 7 that information was contained somewhere else, in a
 8 handwritten occurrence book. That's what you told us
 9 earlier today.
 10 MR SINCLAIR: In, I believed it would
 11 have been recorded, without personally checking it, and
 12 that because there was a shooting incident there would be
 13 an accurate shooting report and a shooting incident report
 14 and it would have been passed on to the people. I, that is
 15 what I firmly believed.
 16 COMMISSIONER HEMRAJ: Upon whom would it
 17 have fallen to check that there is in fact such an entry
 18 and that the information is captured somewhere in a
 19 handwritten occurrence book before it is deleted?
 20 MR SINCLAIR: Could you just – I missed
 21 the first part.
 22 COMMISSIONER HEMRAJ: Yes, upon whom
 23 would it fall to ensure and check that this information,
 24 this important information about a shooting is captured in
 25 a handwritten occurrence book somewhere before it is

Page 33885

1 deleted from this log?
 2 MR SINCLAIR: In hindsight, in hindsight
 3 it would be – I should have personally checked that was
 4 there, which I did not.
 5 COMMISSIONER HEMRAJ: At the time did it
 6 fall upon anyone to do such a check before it was deleted?
 7 MR SINCLAIR: In, I never, it, I never,
 8 it never occurred to me to take that stand. I, and I have
 9 clearly stated that I took that stand and if it is now,
 10 because I see the importance of it, if I had thought –
 11 remember at that stage we were already under tremendous
 12 pressure, we had been. There were times when these were
 13 happening. So I definitely didn't say bring that to me, I
 14 want to check it is there. I definitely didn't do that.
 15 MS PILLAY: And do you know, Mr Sinclair,
 16 whether there is a police investigation into the shooting
 17 that's referred to here?
 18 MR SINCLAIR: Into this –
 19 MS PILLAY: By Lonmin Security.
 20 MR SINCLAIR: In this specific shooting?
 21 MS PILLAY: Into the conduct by Lonmin
 22 Security referred to in this particular deletion.
 23 MR SINCLAIR: I cannot answer that. I do
 24 not know.
 25 MS PILLAY: So you are not aware of a

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

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

Page 33894

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

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

22 MR SINCLAIR: Yes.

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

Page 33895

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

3 MR SINCLAIR: that's –

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

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

8 CHAIRPERSON: Okay.

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

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

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

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

Page 33896

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

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

8 MR SINCLAIR: Those –

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

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

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

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

Page 33897

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

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

21 MR SINCLAIR: Do I?

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

25 MR SINCLAIR: Certainly I don't mention

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

Page 33902

1 planning that you were doing, providing you with
 2 information which the security had at the time?" and
 3 Colonel Scott, "Yes, he was actually very helpful to us. I
 4 think without him being there we would have really
 5 struggled. He gave us at that time as well when we went
 6 into that planning circle quite a bit of information
 7 regarding who, at that stage who I'm presuming he thought
 8 the strikers were, how many they were, what their movements
 9 were." So it appears, Mr Sinclair, that you played quite a
 10 key role in the early formulation of the first plan.
 11 MR SINCLAIR: Mr Chairman, that was on –
 12 MR BHAM SC: Mr Chairman, sorry, may I
 13 just – if one goes through the passages my learned friend
 14 is going through, the assistance being referred to by
 15 Colonel Scott is in the provision of information rather
 16 than the formulation of the plan. So to suggest that that
 17 relates to assistance in the formulation of the plan
 18 doesn't accord with the evidence of Colonel Scott because
 19 what he's talking about is the provision of information.
 20 MS PILLAY: The provision of information,
 21 Chair, which led to the formulation of the plan.
 22 CHAIRPERSON: Yes, Mr Bham is making a
 23 valid distinction, drawing a valid distinction between
 24 giving information which was used for the purposes of
 25 compiling the plan and the actual compiling of the plan.

Page 33903

1 It's not suggested by Colonel Scott, and I didn't
 2 understand you to suggest it either, that this witness had
 3 taken, made suggestions as to what the plan should be.
 4 He'd merely given the information, distinctive information
 5 apparently, on the basis of which the plan was drawn up.
 6 That's a correct distinction that Mr Bham makes and I don't
 7 understand you to be challenging him.
 8 MS PILLAY: Chair, we accept that
 9 distinction and the questions to Mr Sinclair were done on
 10 that very basis, that he played a central role in the
 11 initial stages which led to the formulation of the plan.
 12 MR SINCLAIR: Mr Chairman, definitely
 13 when the police teams were moving in - I did not know Mr
 14 Scott; he is one of the people that I did not know before
 15 he had moved there. When the police teams were moving in
 16 there it would have been whoever was saying listen, here
 17 are the guys, can you please, they need to put a plan, an
 18 orientation plan together so they know where they are and
 19 what's going on and where they must deploy, where POPs
 20 units should be, etcetera, and definitely I would have
 21 assisted, I would have been assisted by other people of my
 22 team if they needed something. For instance the printing,
 23 I would have definitely assisted and say you don't have
 24 printers and plotters set up, we have that, I can plot that
 25 for you for you to orientate yourself. They were coming

Page 33904

1 onto the Lonmin property to undertake a task that we could
 2 not deal with and it was a vast task, it wasn't a small –
 3 so definitely I would have been one of the people, Henry
 4 would have been another one, and I can't remember who
 5 assisted exactly with what, but definitely I believe that
 6 of his statement to be very correct, that I would have
 7 assisted him with that orientation information that they
 8 required to whatever they needed to do.
 9 MS PILLAY: In fact, Mr Sinclair, Colonel
 10 Scott describes the information that you provided as
 11 critical and we see that at page 13392.
 12 MR SINCLAIR: I'm – sorry.
 13 MS PILLAY: From line 7 onwards. Or
 14 maybe I should pick up at the beginning of the sentence.
 15 "It's just speaking to the strategy still which was derived
 16 with Colonel Merafe and two others at that meeting, that
 17 evening, and what was critical there was that Mr Sinclair
 18 spoke to us and said but not the whole 3 000 remained at
 19 the koppie overnight. The majority of them move away and
 20 there's only a core group which do remain, and this gave
 21 rise to an opportunistic plan or strategy."
 22 MR SINCLAIR: I gave them – Mr Chairman,
 23 I gave them information that I believed was the right thing
 24 for them to have to deal and effectively try and solve the
 25 – so yes, that information I believe was the right

Page 33905

1 information to give them otherwise how were they going to
 2 do their work?
 3 CHAIRPERSON: That information was
 4 correct, I take it.
 5 MR SINCLAIR: I, that I, that about a
 6 small portion remaining there, I can recall at the early
 7 stages there used to be a small portion lying and the
 8 majority would move out. So I would have given them that
 9 information.
 10 CHAIRPERSON: And where did you get that
 11 information from?
 12 MR SINCLAIR: I would have had it from
 13 my, information from my teams about what's happening,
 14 movement around. I would have had it, I would have had
 15 visuals that I could have seen that movement taking place.
 16 So it was information that I personally was familiar with,
 17 our roads, our, where our roadblocks were, where our
 18 hostels were. All of that would have been crucial to the
 19 police and yes, I definitely would have had that
 20 interaction.
 21 MS PILLAY: And yet you make no mention
 22 of that interaction which we see was critical for SAPS, you
 23 make no mention of that in your statement to this
 24 Commission.
 25 MR SINCLAIR: Mr Chair, I see now my

Page 33906

1 statement is what I believe I put in here. If I had been
 2 requested to enlarge this I would certainly enlarge it. I
 3 saw my legal team, I don't know whether they were allowed
 4 to say to me no, but you need to enlarge this, but –
 5 CHAIRPERSON: They would have been
 6 allowed to do that.
 7 MR SINCLAIR: And I saw the evidence
 8 leader people that came and questioned, or came and took me
 9 through things that they needed to know. At no point was I
 10 said that I need to expand on those type of things,
 11 otherwise I would have had no problem expanding on them,
 12 but I believed that I put this before the Commission, that
 13 is my overview to the Commission to assist the Commission.
 14 That's where I am with my statement.
 15 MS PILLAY: And we see at page 13409 of
 16 this transcript that you offer SAPS the Protea Coin
 17 helicopter to do a reconnaissance flight.
 18 MR SINCLAIR: Mr Chair, I don't know who
 19 put that to the Commission. I definitely did, in my doing
 20 did, I personally did not offer Protea – SAPS a helicopter.
 21 I had, and I have addressed that earlier, had the Protea
 22 Coin helicopter for my use, for my team's use and Protea
 23 Coin were there. The Protea Coin senior person, and I
 24 believe it is Waal de Waal, I believe he offered the other
 25 Protea Coin to the police. It had nothing to do with me.

Page 33907

1 MS PILLAY: So when Colonel Scott says to
 2 us that during the orientation you offered the use of the
 3 Protea Coin helicopter to him, then his testimony was
 4 false?
 5 MR SINCLAIR: Colonel Scott might have
 6 understood that, that offer. I, if - let me just go one
 7 step back to you with my answer. I might have said "We
 8 have a Protea Coin helicopter if we need to use it for
 9 orientation." Certainly I would have, if that's what he
 10 says – and I cannot remember every word that I said, but
 11 certainly I would have put that on the table. I had no
 12 reason to not put something – I think it was a reasonable
 13 thing to put on the table. That was the helicopter that my
 14 teams were using. The other one I cannot speak for, sorry.
 15 MS PILLAY: And finally, Mr Sinclair, we
 16 know that not only were you part of the discussions at the
 17 JOC in relation to the formulation, or the information
 18 gathering which led to the formulation of the first plan,
 19 but you actually drove Colonel Scott around to give him a
 20 sense of the actual physical area.
 21 MR SINCLAIR: Out of that plan I could –
 22 I don't recall, I could well have driven him around. I
 23 would have taken him out, I would have taken him up to the
 24 four-way stop at Wonderkop.
 25 CHAIRPERSON: We not interested in what

Page 33908

1 you would have done. We're interested in what you did do.
 2 Remember I asked you earlier whether the briefing was
 3 confined to things that took place in the JOC and you said
 4 yes, and I now ask you did you take him around in your
 5 vehicle, or would you simply have? Whatever that means.
 6 MR SINCLAIR: Did I – I don't personally
 7 remember taking him around in my vehicle. I could well
 8 have taken him around, Sir. I certainly don't recall that.
 9 Remember there were many trips that I undertook with many
 10 people, so certainly if he says I did, he was the person
 11 that – I will accept that that is a reasonable statement,
 12 Sir.
 13 MS PILLAY: Now Mr Sinclair, you were
 14 part of a meeting with the Provincial Commissioner on the
 15 13th of August before the incident at the railway line.
 16 Isn't that correct?
 17 MR SINCLAIR: That was early in the
 18 morning, is that correct?
 19 MS PILLAY: That's correct.
 20 MR SINCLAIR: I don't recall when she
 21 arrived or where, but if she had arrived I would have been
 22 asked to be part of that briefing.
 23 MS PILLAY: The question, Mr Sinclair,
 24 is, were you part of the meeting with the Provincial
 25 Commissioner on the morning of the 13th of August?

Page 33909

1 MR SINCLAIR: Do you know – may I ask
 2 where it took place, to assist me?
 3 CHAIRPERSON: I think that's a fair
 4 request.
 5 MS PILLAY: It took place at Lonmin's
 6 premises.
 7 CHAIRPERSON: Lonmin premises, which -
 8 where exactly? I think it was the LPD.
 9 MR SINCLAIR: Mr Chair –
 10 CHAIRPERSON: Or OPD. OPD.
 11 MR SINCLAIR: If the Provincial
 12 Commissioner had arrived and gone to OPD I would have been
 13 part of that conversation – sorry, that meeting. I would
 14 have been called in by our management team to be part of
 15 that. Yes, I would have been called in.
 16 MS PILLAY: And once again you don't deal
 17 with this meeting in your statement.
 18 MR SINCLAIR: I believe, Mr Chair, I have
 19 explained my view was that this is where we were and I
 20 haven't specifically mentioned that in my statement.
 21 MS PILLAY: We know, Mr Sinclair, that
 22 you were part of a meeting with the Provincial Commissioner
 23 on the 14th of August.
 24 MR SINCLAIR: I was part of their
 25 meetings with the Provincial Commissioner and others and

Page 33910

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

Page 33911

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

Page 33912

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

Page 33913

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

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

Page 33918

1 would move to the tactical phase the next day?

2 MR SINCLAIR: I have asked for time just

3 for me to try and I will consider whether that might be a

4 mind jogger, it's come to me now that it could be a

5 possibility. I'm going to consider that and if that is the

6 case I will definitely let you know.

7 MS PILLAY: Thank you, Mr Sinclair. We

8 started this topic, Mr Sinclair, of your interaction with

9 SAPS by me establishing with you that you have come to the

10 Commission with clean hands and a full and forthright

11 description of your involvement in the events of Marikana

12 and yet we've seen from the past few hours that in fact

13 there is a substantial body of information relating to your

14 interaction with various SAPS officials that is not

15 included in your statement. And that you have not, of your

16 own accord, shared with this Commission. Can I ask you to

17 respond to that?

18 MR SINCLAIR: Mr Chair, I think for the

19 record, that I have come to the Commission with clean hands

20 and that these issues have been pointed out like the log

21 sheets and these things and I think I have very clearly

22 indicated that if I had been guided to be in more detail I

23 certainly would have done that. And in retrospect now it's

24 easy to go back and say well you should not have changed

25 those things and I think I've dealt extensively –

Page 33919

1 CHAIRPERSON: You're not being asked

2 about that now. You're being asked about your interaction

3 with various senior members of the SAPS which you didn't

4 mention in your statement. And what Ms Pillay is putting

5 to you as I understand her, whether it's correct or not is

6 something we'll have to decide later, but what she's

7 putting to you is that these were matters that it would

8 have been expected of you to have mentioned in your

9 statement if you were telling us all the material facts. I

10 think that's your point, Ms Pillay isn't it?

11 MS PILLAY: That's correct, Chair.

12 CHAIRPERSON: So it doesn't help to tell

13 us about the entries, we've gone over that ground already,

14 but we're busy with the next point you see. So it would

15 help us and I think frankly it would help you if you

16 answered her question directly.

17 MR SINCLAIR: Mr Chair, I have not put in

18 my statements. If I had been sensitised that it was

19 important prior to this I definitely would have had an

20 inclusion of statement and gone and detailed it when I had

21 interacted with your team who interviewed me my team. If

22 it had been sensitised to I definitely would have sat back

23 and gone and diligently found what did I do. And here as I

24 am I am sharing openly with you what I believe and if

25 something like that is pointed out to me I would say yes it

Page 33920

1 is. So definitely I would have done that if I had been

2 requested.

3 MS PILLAY: And Mr Sinclair, just a sweep

4 up of the first issues which we began with today and that's

5 the issue around the occurrence book entries. If I can ask

6 that exhibit XX2.10 be put up on the screen and if we go

7 right to the beginning of this document. Just extreme left

8 and if we can zoom in on the top left-hand corner you will

9 see there, Mr Sinclair, that the date on which the document

10 was sintered was the 8th of October 2012. Do you see that?

11 And the time was 14:55. Let me just remind you this is the

12 deleted version.

13 MR SINCLAIR: Okay.

14 MS PILLAY: And in the middle of the page

15 if we could ask the technician just to move slightly to the

16 right. In the middle of the page you see the name of the

17 directory. Do you see it ends with log sheet. Do you see

18 that? Now if I could ask that exhibit EEEE19.1 be put up,

19 sorry apologies, not that one. That's correct. Chair,

20 this file is what was distributed in hard copy to you.

21 It's the electronic version of what you see before you. So

22 if we could open that document.

23 CHAIRPERSON: I know I'm being tedious I

24 apologise, but could we please see the document that we saw

25 a moment ago? That's the heading of the other exhibit, the

Page 33921

1 earlier exhibit. A little bit to the right, I'd like to

2 see the bit on the extreme left. Printed 8.10.2012, time

3 14:55. Yes, thank you.

4 MS PILLAY: That's correct, Chair.

5 CHAIRPERSON: Thank you.

6 MS PILLAY: And if we go to the

7 electronic version of the document you have before you, to

8 the extreme left corner.

9 CHAIRPERSON: It's the same date 8th

10 October 2012 but at 10:16.

11 MS PILLAY: That's correct, Chair.

12 CHAIRPERSON: So this document was in

13 fact printed in the morning and the other one was printed

14 early in the afternoon.

15 MS PILLAY: At five to three in the

16 afternoon, so what that means, Mr Sinclair, is that we can

17 pinpoint with a fair degree of accuracy when the deletions

18 were made on the document. Do you see that?

19 MR SINCLAIR: I believe that could be

20 correct.

21 MS PILLAY: This becomes significant

22 because in terms of our records the first discovery by

23 Lonmin was made on the 15th of October and I'm sure my

24 learned friend, Mr Bham will correct me if that's not

25 correct. But according to our records Lonmin's discovery

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

Page 33926

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

Page 33927

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

Page 33928

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

Page 33929

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

Page 33930

1 an hour, but I did tell him when he came to see me at
 2 lunchtime that I was prepared to extend it by an extra
 3 quarter of an hour. So if you start now, it's 5 to 2, so
 4 you'll go through to 3 when we take the tea adjournment and
 5 then when we resume you'll have 10 minutes after that if
 6 you need them. So Mr Mpofo, I understand that you'd like
 7 longer but I did explain to you that I haven't got any more
 8 to give you.

9 MR MPOFU: Thank you. Thank you,
 10 Chairperson. I understand that. I think just for the
 11 record and according to my instructions we just have to
 12 record that the, due to the importance of this witness the
 13 time allocated is not adequate, but I did have that
 14 discussion with you and it looks like nothing more can be
 15 done.

16 CHAIRPERSON: Well, let's see what
 17 happens when you cross-examine the witness.

18 CROSS-EXAMINATION BY MR MPOFU: Let's
 19 see, yes. Good afternoon, Mr Sinclair.

20 MR SINCLAIR: Good afternoon, Sir.

21 MR MPOFU: Are you also a former
 22 policeman like Mr Botes?

23 MR SINCLAIR: Just – I didn't hear your
 24 question, Sir.

25 MR MPOFU: Pardon?

Page 33931

1 CHAIRPERSON: He asked whether you, like
 2 Mr Botes, are a former policeman.

3 MR SINCLAIR: I'm sorry, I still –

4 CHAIRPERSON: He asks whether you, like
 5 Mr Botes, are a former policeman.

6 MR SINCLAIR: Mr Chair, when I left
 7 school I was a policeman in Rhodesia in the British South
 8 Africa Police.

9 MR MPOFU: Okay.

10 CHAIRPERSON: The answer is yes.

11 MR SINCLAIR: Say again?

12 CHAIRPERSON: The answer is yes.

13 MR SINCLAIR: The answer is yes, I was in
 14 the British South African Police.

15 MR MPOFU: Yes, thank you. Yes, well the
 16 answer is yes and it also even covers my next question,
 17 which was are you an ex-Rhodesian. The answer is yes to
 18 that too, correct?

19 MR SINCLAIR: The answer is yes, Mr
 20 Chairman.

21 MR MPOFU: Thank you. And yes, I'm
 22 asking that not to be facetious but because in one of the
 23 conversations which I'm going to cross-examine you about,
 24 that's how you were referred to. So I just wanted to check
 25 if you were the same person. Understand that?

Page 33932

1 MR SINCLAIR: Yes, Sir.

2 MR MPOFU: Yes, thanks. Now I'm going to
 3 ask you, you've already answered the question I think the
 4 Chairperson put to you, whether you kept a pocketbook or
 5 not during this relevant period.

6 MR SINCLAIR: Mr Chair, I have, I don't
 7 have pocketbooks. I had a book that I sometimes wrote in,
 8 but I don't have pocketbooks.

9 CHAIRPERSON: I think Mr Mpofo is
 10 interested in whether you kept a diary. A lot of us keep
 11 diaries and we just write appointments and that sort of
 12 thing in, but –

13 MR SINCLAIR: No –

14 CHAIRPERSON: But I asked you whether you
 15 kept, made notes of conversations and so forth and you said
 16 generally speaking you didn't.

17 MR SINCLAIR: Yes.

18 CHAIRPERSON: It's that answer he's
 19 alluding to.

20 MR MPOFU: Yes.

21 MR SINCLAIR: Ja, so I would if I was in
 22 my office, or if I was going there and I remembered to
 23 take, I would make a note in a book that I had, but it
 24 wasn't routine with me.

25 MR MPOFU: Right, well I have to say to

Page 33933

1 you before I ask you questions that your colleagues who
 2 testified here before you, Mr Julius Motlogeloa and Mr Dirk
 3 Botes, were in my view very exemplary witnesses and they
 4 answered candidly. So I hope we're going to go on the same
 5 trend. For example Mr Botes candidly admitted that an
 6 organisation, or a person wouldn't conceal evidence or
 7 alter evidence if they were innocent. Would you agree with
 8 that generally speaking?

9 MR SINCLAIR: [Microphone off, inaudible]

10 MR MPOFU: Would you agree that generally
 11 speaking – there might be, this case might be an exception,
 12 as the Chairperson said, there might be reasonable
 13 explanations and so on, but generally speaking an
 14 organisation or a person wouldn't doctor or change or alter
 15 evidence if they had nothing to hide?

16 MR SINCLAIR: I would accept that.

17 MR MPOFU: Yes.

18 MR SINCLAIR: Sorry, my apologies.

19 Sorry.

20 CHAIRPERSON: You said you would accept
 21 that.

22 MR SINCLAIR: I would accept that, Mr
 23 Chair.

24 MR MPOFU: Thank you. Yes, and the other
 25 thing that Mr Botes said which you are probably in the same

Page 33934

1 position to comment on was that in his estimation, having
 2 watched the goings on at the JOC and so on, it was clear
 3 that the person who was overall in charge was General
 4 Annandale. Would you also agree with Mr Botes?
 5 MR SINCLAIR: I believe, yes I believe
 6 that to be correct. I believe Mr Annandale was in overall
 7 charge.
 8 MR MPOFU: Thanks.
 9 CHAIRPERSON: Well, never mind your
 10 beliefs. In accordance with what you observed that's what
 11 you saw?
 12 MR SINCLAIR: What I saw – again what I –
 13 sorry, forgive me –
 14 CHAIRPERSON: He appeared to be in
 15 charge?
 16 MR SINCLAIR: Let me clarify that. So
 17 what I saw was Mr Annandale was in overall charge.
 18 CHAIRPERSON: Ja, okay.
 19 MR MPOFU: Yes, thank you. And also Mr
 20 Botes also conceded I think candidly that the role played
 21 by people like yourself or other members, and himself,
 22 members of Lonmin Security, was so pivotal to the plan, or
 23 let's call it to the Operation Platinum, as the thing was
 24 called, that had you not played that role, that the
 25 particular operation that took place would not have taken

Page 33935

1 place.
 2 MR SINCLAIR: Operation Platinum I don't
 3 understand. I don't know what –
 4 MR MPOFU: Okay, fine –
 5 CHAIRPERSON: I don't remember that being
 6 put in those terms.
 7 MR MPOFU: Okay, remove the word –
 8 MR BHAM SC: Sorry, I don't want to
 9 interrupt, if I might just make the statement so I'm not
 10 constantly getting into the issue with my learned friend,
 11 Mr Mpofo. I'm just anxious, it happened once previously,
 12 earlier today, that there's an easy conflation between the
 13 provisioning of information and the formulation of the
 14 plan. The evidence that has come previously has made a
 15 clear distinction between that. I don't want to keep
 16 raising an objection, but there was a clear distinction
 17 between that and there's a danger in that being conflated
 18 in the questions in a manner which might mislead the
 19 witness.
 20 MR MPOFU: Okay –
 21 MR BHAM SC: And I'm not saying
 22 deliberately, but it's important that we keep that
 23 distinction.
 24 MR MPOFU: Ja, okay. No, no, there's no
 25 conflation. The only thing I added to was the, was naming

Page 33936

1 the thing Operation Platinum, which I will remove. Mr
 2 Botes when I questioned him, Mr Sinclair, conceded that the
 3 role played by Lonmin Security and people like himself and
 4 yourself and others was so pivotal to the formulation of
 5 the plan, and he – as Mr Bham correctly points out – it was
 6 just not even him; I made the distinction between the plan
 7 and the execution, but that your contribution to the –
 8 CHAIRPERSON: No, no, no, you don't
 9 understand. Mr Bham has got a different point. The
 10 distinction he draws is between information used for the
 11 purposes of compiling the plan and the actual compilation
 12 of the plan.
 13 MR MPOFU: Ja. No, well that's the –
 14 CHAIRPERSON: That's the point Mr Bham
 15 makes.
 16 MR MPOFU: Ja, well that point I'm
 17 ignoring because I'm talking about Mr Botes here. Mr –
 18 MR BHAM SC: Sorry, Mr Commissioner, I
 19 think you must then make a ruling. I'm going to raise it
 20 again, because even Mr Botes' evidence made a clear
 21 distinction between information provided and the
 22 formulation of a plan.
 23 CHAIRPERSON: I must confess that's my
 24 understanding. But the way to deal with it is very easy.
 25 We have a transcript. Mr Mpofo can give us a reference, we

Page 33937

1 can look it up and we can see immediately whether you are
 2 right or Mr Bham is right.
 3 MR MPOFU: Yes.
 4 MR BHAM SC: Can I just say this in order
 5 not to interrupt the cross-examination, because Mr Mpofo
 6 has a limited amount of time. I'm not going to raise the
 7 objection every time I think there's a conflation. I'm
 8 going to put it upfront so that when we argue the matter at
 9 the end of the day –
 10 MR MPOFU: Sure.
 11 MR BHAM SC: - it shouldn't be thought –
 12 but I really don't want to interrupt the cross-examination.
 13 I just want to make it clear that if I don't object time
 14 and again that shouldn't be taken as an acceptance of the
 15 conflation.
 16 CHAIRPERSON: It doesn't follow that you
 17 would have to raise the objection time and again anyway
 18 because we must assume Mr Mpofo has got a number of other
 19 topics he's going to deal with, but this particular one
 20 there's a dispute about what Mr Botes said. Have you got
 21 the reference now or can you perhaps ask your instructing
 22 attorney to look at it and after the tea adjournment you
 23 can come back to it and give us the reference if you
 24 haven't got it at your fingertips?
 25 MR MPOFU: Okay, fine. I don't

Page 33938

1 immediately, Chairperson, but let me put it differently.
 2 Mr Sinclair, would you agree that without the input of
 3 Lonmin or people like yourself, whilst an operation might
 4 have been carried out – I think this is exactly what Mr
 5 Botes said – but this particular operation that happened on
 6 the 16th at that particular time would not have happened in
 7 the same way, so vital was your contribution?
 8 MR SINCLAIR: I'm missing your question,
 9 Sir.
 10 MR MPOFU: Was your contribution to vital
 11 that had it not been there the operation that happened on
 12 the 16th would either not have happened or happened
 13 differently?
 14 MR SINCLAIR: I don't –
 15 CHAIRPERSON: I'm sorry to interrupt. I
 16 must say, Mr Mpofo, I think I understand what you're trying
 17 to say but the question is a bit vague because there are a
 18 couple of aspects to it. The first is the contribution by
 19 Lonmin took the form of providing information, maps and
 20 that kind of thing. The contribution of Lonmin also took a
 21 physical form in making facilities available and so on.
 22 Now I think you should make it clear to the witness if
 23 you're going to hope to extract a meaningful answer from
 24 him what exactly the contribution was which you are asking
 25 him to confirm was pivotal, as you put it, to the actual

Page 33939

1 operations.
 2 MR MPOFU: Ja, Chairperson, I understand
 3 that. The problem is with these limited times one has to
 4 take shortcuts. I had asked this question in exactly the
 5 same way of Mr Botes to avoid having to say you provided
 6 food, you provided the phone, you provided this, you
 7 provided that.
 8 CHAIRPERSON: I take it you're not really
 9 suggesting that the food and that kind of thing –
 10 MR MPOFU: Well, I'm just striking the
 11 point.
 12 CHAIRPERSON: - are pivotal. I suspect
 13 that you really are concentrating on the provision of
 14 information and that kind of thing.
 15 MR MPOFU: That's correct.
 16 CHAIRPERSON: If that's the case then –
 17 MR MPOFU: Ja.
 18 CHAIRPERSON: - the witness understands
 19 what you are putting –
 20 MR MPOFU: Fair enough.
 21 CHAIRPERSON: - and he can answer.
 22 MR MPOFU: Fair enough. Thank you.
 23 Thanks, Chairperson. I'm referring to the more, you know,
 24 important issues like what Ms Pillay spoke to you about,
 25 the flying over the place, providing, sitting with Colonel

Page 33940

1 Scott and identifying places and that kind of thing. You
 2 understand?
 3 MR SINCLAIR: [Microphone off, inaudible]
 4 MR MPOFU: Yes, now what we're going to
 5 argue is that had you not provided that assistance, and I
 6 think that's what Colonel Scott himself said, except that
 7 he put it milder than I'm putting it, he said something
 8 like "We would have really struggled without Mr Sinclair's
 9 involvement." So I'm putting much higher to say the
 10 operation itself would have been, either would not have
 11 happened or would have happened differently. Would you
 12 quarrel with that?
 13 MR SINCLAIR: Mr Chair, I cannot say with
 14 the information we provided whether the operation would
 15 have happened or not. I think it's way beyond my limits to
 16 be able to say that. We, I and my teams needed to provide,
 17 as I've explained, without going into, wasting time, that
 18 we provided information that you've just revisited and I
 19 believe that was then in the police's thing to take it and
 20 use whatever they required in their process. I can't
 21 comment on that, Sir.
 22 MR MPOFU: Okay.
 23 MR SINCLAIR: I don't believe so.
 24 MR MPOFU: Fair enough. But when it
 25 comes to the killings that happened on the 13th you would

Page 33941

1 agree that had you not pointed out the breakaway group
 2 those five people might still be alive?
 3 MR SINCLAIR: The 13th was the Monday, the
 4 five people –
 5 MR MPOFU: Monday, yes. Remember before
 6 the helicopter arrived and all that, ja.
 7 MR SINCLAIR: Mr Chairman, that breakaway
 8 group and the point – I didn't personally point it out, it
 9 would have obviously be picked up on the CCTV cameras and
 10 pointed out to the things. Whether those people would be
 11 alive with what happened subsequently with the police
 12 operation, I cannot say.
 13 MR MPOFU: Right.
 14 MR SINCLAIR: If that was – if I
 15 understood the question correctly.
 16 CHAIRPERSON: I think I understand the
 17 point. What Mr Mpofo is putting to you really I think is
 18 this –
 19 MR SINCLAIR: Yes, Sir?
 20 CHAIRPERSON: - that if the police's
 21 attention had not been drawn to the fact that this
 22 breakaway group had gone off in the direction of, I think
 23 it was K3 –
 24 MR SINCLAIR: Yes.
 25 CHAIRPERSON: - and they'd stayed put at

Page 33942

1 the JOC then the events wouldn't have happened, because
 2 what, we know what happened actually before the police
 3 went. The breakaway group went off to K3, they met some of
 4 your security people. Your security people said to them
 5 look, don't waste your time going to K3, it's not working.
 6 So they turned around and made their way back to where they
 7 had come from. On the way they met the police, because the
 8 police had been alerted to their presence –
 9 MR MPOFU: By you.
 10 CHAIRPERSON: - and the police had come,
 11 and if that hadn't happened and they'd gone back quietly to
 12 the koppie without meeting the police no one would have
 13 died. That's Mr Mpofo's point.
 14 MR MPOFU: Yes.
 15 CHAIRPERSON: Am I right?
 16 MR MPOFU: That's correct.
 17 CHAIRPERSON: And then Mr Mpofo then is
 18 going to put to you now clearly what the contribution was
 19 he says from Lonmin which caused the police to go off on
 20 that expedition with those fatal consequences. Is that
 21 right?
 22 MR MPOFU: That's correct, Chairperson.
 23 CHAIRPERSON: [Microphone off, inaudible]
 24 MR MPOFU: No, thank you, I appreciate,
 25 Chairperson.

Page 33943

1 MR SINCLAIR: Mr Chairperson, to my
 2 understanding nothing that we did could cause the police to
 3 go to that or not to go to it. I, they were in, they made
 4 those decisions. Nothing that I did or my teams did caused
 5 that to happen.
 6 MR MPOFU: Ja.
 7 MR SINCLAIR: We informed them that this
 8 was taking place and that's all.
 9 MR MPOFU: Yes, well it would seem, and
 10 again I'll try and abbreviate this, one thing we know is
 11 that you pointed out the group to the police, at least
 12 according to Calitz. You and yourself.
 13 [14:11] Mr Chairman, the group moving through Marikana to
 14 that area had already been picked up on CCTV and
 15 information from the ground people that said there's a
 16 group moving, so the police were already aware of that.
 17 Calitz, I went out in the helicopter to observe what might,
 18 as I explained earlier, and Calitz only rode – I never
 19 pointed that out, he already knew that before he met with
 20 me. Sorry, am I –
 21 MR MPOFU: Well, Brigadier Calitz at
 22 paragraph 32 of his statement – I'm sorry, Chairperson,
 23 I've just lost the exhibit number.
 24 CHAIRPERSON: That's what the operator
 25 thinks you're referring to.

Page 33944

1 MR MPOFU: Oh.
 2 CHAIRPERSON: Paragraph 32 of this
 3 witness's statement. Ms Pillay will tell us.
 4 MR MPOFU: Yes.
 5 CHAIRPERSON: Brigadier Calitz's
 6 statement, what's his number?
 7 MR MPOFU: JJJ107.
 8 CHAIRPERSON: Let's have a look at
 9 JJJ107, is that the paragraph that you – is that the
 10 paragraph you want? I think actually it looks to me as if
 11 you've got to go back to 30, I suspect.
 12 MR MPOFU: Oh yes, that's correct,
 13 Chairperson.
 14 CHAIRPERSON: No, no, it's not even 30.
 15 MR MPOFU: Yes.
 16 CHAIRPERSON: Here we are, it's 29.
 17 MR MPOFU: 29 actually, yes. He is
 18 discussing a meeting that took place on the 11th, on the
 19 13th. Then he says, "After the meeting with Lonmin
 20 management we proceeded to the JOC where the Lonmin
 21 security manager, Mr Sinclair, showed us two different
 22 groups of protesters on CCTV. There was a larger group"
 23 and so on, "and then the smaller group of approximately
 24 200" in paragraph 30, do you see that?
 25 MR SINCLAIR: I see that.

Page 33945

1 MR MPOFU: It isn't verbatim, ja. So
 2 you're saying that evidence from Mr Sinclair is not
 3 correct?
 4 MR SINCLAIR: That I was in –
 5 MR MPOFU: Calitz, I'm sorry.
 6 MR SINCLAIR: I was in the CCTV room, I
 7 would have seen that and I would have said to whoever the
 8 police officials there – and so would my operators or
 9 whoever was management in there, so I would have said, if I
 10 had seen it I would have said that.
 11 MR MPOFU: Yes.
 12 MR SINCLAIR: I saw it, I said it.
 13 MR MPOFU: Okay, now that you've seen
 14 this you accept that you are the person who pointed it out
 15 to Brigadier Calitz.
 16 MR SINCLAIR: I was one of the people
 17 that pointed out, yes.
 18 MR MPOFU: Alright, so that's the one
 19 contribution, as the Chair said. The next contribution is,
 20 of course, the fact that you've already agreed that you
 21 then went on to the helicopter with Brigadier Calitz.
 22 CHAIRPERSON: That's paragraph 32.
 23 MR MPOFU: Which is 32, yes. You also
 24 accept that contribution?
 25 MR SINCLAIR: I've stated clearly that

Page 33946

1 that happened, Mr Chair.

2 MR MPOFU: Yes, ja. Now let me tell you

3 then, you see because when we do things in the legal

4 environment we talk about acts of commission and acts of

5 omission. So those are things that you did that I've

6 pointed out in relation to the event of the 13th. Now I'm

7 going to talk about something that you did not do, which I

8 will argue you should have done in relation to that event

9 of the 13th. You, according to your evidence you said that

10 you knew that your men had intercepted the group near the

11 bridge, correct?

12 MR SINCLAIR: They had been observing the

13 group from the bridge –

14 MR MPOFU: Ja.

15 MR SINCLAIR: - overlooking where the

16 people, where they were walking through.

17 MR MPOFU: Correct. You said you were in

18 touch, you were getting information of their movements or

19 their successes or failures, correct?

20 MR SINCLAIR: I had been, through CCTV

21 and other means, informed of movements, yes.

22 MR MPOFU: Yes. So you also knew or

23 should have known that your men had concluded that this

24 group was fairly harmless and they had gone on to go and do

25 their other work.

Page 33947

1 MR SINCLAIR: My recollection from the

2 information I received and, very clear, that they were

3 concerned of the behaviour of this group. It wasn't a

4 normal – that's the information that came to me and from

5 who it came or my observation as well, that this group was

6 not just casually walking down that area or from Marikana

7 to that area.

8 MR MPOFU: Yes, but the evidence of Mr

9 Motlogeloa is that he found that group to be very co-

10 operative, very respectful and very submissive.

11 MR SINCLAIR: I cannot say that. That

12 report never came through to me so I can't comment on that,

13 sir.

14 MR MPOFU: Right.

15 CHAIRPERSON: What did happen, according

16 to the evidence, because they were on their way to K3 with

17 all sorts of dangerous weapons and one doesn't like to

18 think of what they would have done if they'd got there.

19 MR SINCLAIR: Yes, sir.

20 CHAIRPERSON: But the evidence is that

21 your men on the bridge spoke to them and asked them what

22 they were doing, they said they were going to K3, just

23 wanted to see if people were working and they said, look,

24 you're wasting your time, they're not working. So on that

25 assurance they turned round and abandoned their intention

Page 33948

1 of going to K3 and you don't have to worry about what

2 mischief they had in mind and they turned round and started

3 going back to where they had come – that's the evidence.

4 And then Mr Mpofo got the witness to agree to the

5 proposition, the adjectives that he's repeated to you. You

6 didn't know about that but did you know that they'd been on

7 the way to K3, your men had spoken to them on the bridge,

8 told them there was no work that was going on at K3 and in

9 effect persuaded them to turn around and go home. Did you

10 know that? Was that communicated to you?

11 MR SINCLAIR: I did not. This is the

12 first time I know of that, Mr Chairman, and that, I had the

13 observations from the chopper –

14 MR MPOFU: Yes. No, fine yes, the only

15 thing I left out was before they turned around they begged

16 Mr Motlogeloa to make sure that the employer would come and

17 address them at the koppie.

18 CHAIRPERSON: When I said they were going

19 home I didn't mean literally home, I meant back to the

20 koppie.

21 MR SINCLAIR: Ja. Mr Chair, I understand

22 that. I did not know of that, that comment either until

23 now, Mr Chair.

24 MR MPOFU: Yes, but what I'm trying to

25 say, as somebody who was a senior person who, according to

Page 33949

1 yourself, was in touch with or was actually worried about

2 this group, was in touch with your people, this is

3 information that you should have known. Would you – if

4 your communication systems were properly in place.

5 MR SINCLAIR: Mr Chairman, from the

6 observations in the ops room, the CCTV, to me going out and

7 saying, I want to over-fly and see what's happening, I left

8 Dirk Botes or Henry Blou, whoever was responsible at the

9 time and they were in touch with the ground troops and the

10 communication and feeding back. In the helicopter I had no

11 communication except what I visually saw, that's the only

12 communication that I had.

13 MR MPOFU: Okay, no, fair enough, fair

14 enough Mr Sinclair. Okay, let me put it this way then,

15 let's assume you, for some genuine reason, were not in

16 touch with that information but would you agree that if

17 anybody from Lonmin security had communicated that

18 information, the five people might still be alive? The

19 police might have even decided not to go there.

20 MR SINCLAIR: I cannot comment on that.

21 MR MPOFU: Is it possible?

22 MR SINCLAIR: I don't believe it, I don't

23 see how I can comment on that.

24 MR MPOFU: No, you can comment, you are a

25 human being. You know that had, if – okay, let me put it

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

Page 33954

1 I did hear was that they are not going to talk to the
2 workers.

3 CHAIRPERSON: No, I understand. It may
4 be disputed as to whether they said they were scared but
5 what seems clearly, without being accused of prejudging the
6 matter is, if they'd said they were scared on the 10th they
7 would've been a nonsense excuse because the quest was for
8 these people to speak to them, their representatives –

9 MR SINCLAIR: Yes.

10 CHAIRPERSON: - to speak to them in the
11 LPD.

12 MR SINCLAIR: Yes.

13 CHAIRPERSON: There's no reason for the
14 management, if they were, if they said that, to be scared
15 that anything adverse would happen to them on their own
16 turf, as it were, in the LPD. That's right, isn't it?

17 MR SINCLAIR: If I hear it correctly
18 you're saying should they have been scared? Is that what
19 I'm hearing? I –

20 CHAIRPERSON: It may be a disputed
21 question later as to whether they said they were scared.

22 MR SINCLAIR: Okay.

23 CHAIRPERSON: But on the assumption that
24 they may have said it, if they had said it, it would have
25 been a nonsense excuse.

Page 33955

1 MR SINCLAIR: It would have been not –

2 CHAIRPERSON: Clearly, it would have been
3 rubbish –

4 MR SINCLAIR: - went and spoke to them,
5 why couldn't they? I was, our management.

6 CHAIRPERSON: Yes, so you went out and
7 spoke to them, you wouldn't allow them into the LPD to
8 speak to the management people who were there, I think Mr
9 Da Costa and others who would presumably have had more
10 authority than you had to deal with their wage claim, is
11 that right?

12 MR SINCLAIR: Just to relate –

13 MR MPOFU: Thank you.

14 MR SINCLAIR: - sorry, I was just
15 relating that I went out and spoke with no fear.

16 MR MPOFU: Yes.

17 MR SINCLAIR: That is what I'm –

18 MR MPOFU: No, but fine –

19 MR SINCLAIR: - because I thought I'd –

20 MR MPOFU: No, that's not my question –

21 MR SINCLAIR: - heard from Mr Mpofu, so.

22 MR MPOFU: That's correct. No, the
23 conversation you had with –

24 CHAIRPERSON: You're talking about Da
25 Costa and the others who were in the LPD at the time,

Page 33956

1 right?

2 MR SINCLAIR: Russo-Bello, Barnard, those
3 people. I don't –

4 CHAIRPERSON: That's right, whoever they
5 were. Now I think we'll find there's a dispute at the end
6 as to what exactly was said and conveyed but I put it on
7 the assumption that Mr Mpofu is right.

8 MR SINCLAIR: Yes.

9 CHAIRPERSON: And they said they were
10 scared. If they said that they were talking nonsense and
11 you've agreed with that.

12 MR SINCLAIR: I agree with that, sir.

13 MR MPOFU: Thanks. Thank you, okay, that
14 covers that point. In other words, the reason – well, the
15 reason why they did not speak or they refused, they took
16 what I called a hard line stance of not speaking to the
17 workers at that time when you had to convey the message
18 from the one group to the other, whatever the reason was
19 but it was not that they were scared of anything or had any
20 reason to be scared of anything, correct?

21 MR SINCLAIR: I believe that to be
22 correct.

23 MR MPOFU: Thank you. And moreover,
24 would you – okay, let me start by saying if through, that
25 HR and security work hand in glove, particularly when

Page 33957

1 you're dealing with an unprotected strike, otherwise known
2 as a wildcat strike, correct?

3 MR SINCLAIR: HR and security have to
4 work together. HR are the advisers on those related
5 matters.

6 MR MPOFU: Yes. In other words, when you
7 have a wildcat strike, as that phrase suggests, there's the
8 wildcat and there's the strike, those two things are so
9 intertwined that inextricably you'll have an HR element and
10 a security element, correct?

11 MR SINCLAIR: I missed something, sir,
12 I'm sorry.

13 MR MPOFU: When you have an unprotected
14 strike or wildcat strike which, according to Mr Da Costa,
15 always has a potential to have violence, then the HR and
16 security issues are inextricably linked.

17 MR SINCLAIR: They are linked, with
18 management.

19 MR MPOFU: Yes.

20 MR SINCLAIR: Management, HR and
21 security.

22 MR MPOFU: Both.

23 MR SINCLAIR: Yes, sir.

24 MR MPOFU: Ja, thank you. Now in
25 relation to that, what I've now called the hard line stance

Page 33958

1 of management, would you also agree that it was against the
 2 rules and procedures of Lonmin itself, that their own rules
 3 and procedures would have prescribed that they engage with
 4 these strikers.

5 MR SINCLAIR: Mr Chairman, I –
 6 MR MPOFU: In your experience.
 7 MR SINCLAIR: I don't believe I can
 8 honestly make that – there are processes in place that
 9 Lonmin management and the workers have to communicate and
 10 they have to deal with their things. If they make the
 11 decision that they have to do it this way or that way, it's
 12 not me as an emergency or security person to judge that
 13 decision .

14 MR MPOFU: Ja, no, it's not that simple,
 15 Mr Sinclair.

16 MR SINCLAIR: Maybe I missed you, sir.
 17 MR MPOFU: Yes. Is it true that
 18 according to, if we go to XXX8 –

19 CHAIRPERSON: XXX8 is in your, is at page
 20 327 of the bundle, the big bundle which we were given by
 21 your attorneys. It's the Lonmin mining security
 22 procedures. It's the counter-industrial action response
 23 procedure. So it's exhibit XXX8, there we are.

24 MR SINCLAIR: Yes.
 25 CHAIRPERSON: At page 327. Have you got

Page 33959

1 it there?

2 MR SINCLAIR: I see it there, sir.
 3 CHAIRPERSON: Well, perhaps you'd like to
 4 have your own copy in front of you.
 5 MR SINCLAIR: Sorry, I –
 6 CHAIRPERSON: What's the page you're
 7 referring the witness to, Mr Mpofo?
 8 MR MPOFU: It's 25. It's 3, 25 of the
 9 document and 340. Now let's go to 24, page 24, 339. Is it
 10 correct that that is the prescribed procedure to be
 11 followed in respect of unprotected industrial action?
 12 MR SINCLAIR: This is the procedure for
 13 Lonmin security –
 14 MR MPOFU: Yes.
 15 MR SINCLAIR: As a guideline for them to
 16 try and –
 17 MR MPOFU: That's correct.
 18 MR SINCLAIR: - best handle these
 19 situations.
 20 MR MPOFU: That's correct, yes. Okay,
 21 and according to that procedure, would you agree that it
 22 says exactly what you, should be done?
 23 MR SINCLAIR: - in the guideline of what
 24 should be done, Mr Chair.
 25 MR MPOFU: Yes.

Page 33960

1 MR SINCLAIR: It is our guideline as to
 2 what should be done.
 3 CHAIRPERSON: It's actually a bit
 4 stronger than that, isn't it? If you look at paragraph
 5 1.1.1 on page 329 it says, "The purpose of this document is
 6 to set out a uniform procedure for mining security to which
 7 all security members must operate in order to effectively
 8 manage and normalise any form of unrest situation. And
 9 then it continues, "this procedure we utilise as a
 10 guideline.
 11 [14:31] When managing an unrest situation in order to
 12 minimise the loss of life, production and/or assets of the
 13 company and private entities." And there wasn't exactly
 14 unrest situation on the 10th, was there? The unrest more or
 15 less came later, but what you did have was an unprotected
 16 strike on the 10th and you had an approach by the people who
 17 wanted to talk to you and in fact it does appear that a
 18 management committee or the equivalent could be identified
 19 because there were particular spokespeople, as it were.
 20 They didn't all talk. There was a group, I think it was
 21 about five, wasn't it, who actually spoke to you?
 22 MR SINCLAIR: I asked for them, they came
 23 forward. There, and yes, you are correct with that, Sir.
 24 MR MPOFU: Yes –
 25 CHAIRPERSON: And you effectively, to use

Page 33961

1 the language of 8.3.6 on page 339, you effectively
 2 identified, or caused to be identified a committee that
 3 could talk to management?
 4 MR SINCLAIR: I, those individual –
 5 because it was a massive group, in my conversation, because
 6 I had spoken in Fanagalo to them, I am fluent in that, with
 7 the police officers, we couldn't speak to the crowd and we
 8 needed to speak to things, and they came forward with those
 9 people to Henry Blaauw and myself.
 10 MR MPOFU: Good. Yes, that's exactly the
 11 point. You were acting according to how you are supposed
 12 to act. You couldn't speak to a crowd of 2 000 or 3 000
 13 people.
 14 MR SINCLAIR: I accept.
 15 MR MPOFU: In line with these guidelines
 16 you identified a few spokespersons –
 17 MR SINCLAIR: Yes.
 18 MR MPOFU: And then you went to
 19 management and say, ja, now everything is in place, we've
 20 got the spokespersons, we've got the crowd there, will you
 21 talk to them, and they, in contrast to what is expected in
 22 these guidelines, refused to talk. That is exactly what
 23 happened, correct?
 24 MR SINCLAIR: That is correct in my
 25 opinion, yes.

Page 33962

1 MR MPOFU: Thank you. And that's what I
2 mean when I say they were breaching their own Lonmin rules
3 in taking that hard-line stance –
4 MR SINCLAIR: I just want to –
5 MR MPOFU: - for whatever reason.
6 MR SINCLAIR: - clarify; this is our
7 security. There could be other, this is for us in
8 security –
9 MR MPOFU: Ja, are you Lonmin Security?
10 MR SINCLAIR: Yes, Sir.
11 MR MPOFU: Yes, thank you. So these
12 rules are prescribed by Lonmin for how an unprotected
13 industrial action should be handled, correct?
14 MR SINCLAIR: Accept.
15 MR MPOFU: Thank you. Now there's a
16 company called PPS. Is this one of the companies you
17 subcontracted?
18 MR SINCLAIR: It's the one I explained
19 this morning, it's from the Brits area, PPS Security.
20 MR MPOFU: Yes.
21 CHAIRPERSON: It's a security firm that
22 you used.
23 MR SINCLAIR: It's a security firm based
24 in Brits.
25 MR MPOFU: Yes, and were you aware that

Page 33963

1 they were carrying live ammunition?
2 MR SINCLAIR: My recollection is that PPS
3 at this point in time over this were only engaged by the
4 BMR Smelter, the process security areas. They were not
5 engaged by me and I was not aware of that.
6 MR MPOFU: And were you also aware that
7 some of their vehicles were kind of part of the police
8 convoys involved in this operation at the relevant time?
9 MR SINCLAIR: I don't – they could have
10 been there. I don't recall seeing them.
11 MR MPOFU: Okay, and are you aware that
12 their managing director was allegedly, was charged with
13 alleged attempted murder related to stopping a strike?
14 MR SINCLAIR: I'm not aware of that at
15 all, Sir.
16 MR MPOFU: Okay, it's fine. We'll
17 provide that information and the footage, relevant footage,
18 but if you're not aware there's no point in canvassing that
19 with you. Alright –
20 CHAIRPERSON: You say he was charged.
21 MR MPOFU: Yes.
22 CHAIRPERSON: What happened with the
23 case? Was he convicted or acquitted?
24 MR MPOFU: I'm not sure, Chairperson.
25 I'll follow it up. I just know –

Page 33964

1 CHAIRPERSON: Well, if it's relevant
2 then.
3 MR MPOFU: Yes.
4 CHAIRPERSON: If they didn't know about
5 it, they didn't appoint this firm –
6 MR MPOFU: He didn't know, yes.
7 CHAIRPERSON: They didn't appoint this
8 firm on the strength of this action and breaking the strike
9 then it wouldn't be relevant for our purposes.
10 MR MPOFU: Yes, thank you, Chairperson.
11 Now you would agree again that the operation that was
12 meted, or carried out on the 16th at least can be described
13 as a joint operation as between Lonmin and the police?
14 MR SINCLAIR: Mr Chair, the operation
15 that was carried out at the koppie area was an SAP
16 operation. Lonmin were up to and involved on the rest of
17 the property, the four-way stop. It was not a joint
18 operation at the koppie from Lonmin Security side at all.
19 MR MPOFU: Okay, so you differ with Mr
20 Botes that it was a joint operation?
21 MR SINCLAIR: No, I'm not – Mr Chair, I'm
22 not saying that at all. Lonmin participated, and I've
23 explained about the, most of our stuff with the police.
24 The operation at the koppie was a police operation.
25 MR MPOFU: Ja.

Page 33965

1 MR SINCLAIR: We were at the four – we
2 were out on the site at the four-way stop at Rowland Shaft
3 where the dirt road is, and we were at the hospital and we
4 participated in that, definitely. The police were also at
5 the four-way stop. I don't know if they were at the
6 hospital –
7 MR MPOFU: Okay –
8 MR SINCLAIR: And we were on the rest of
9 our property.
10 MR MPOFU: Alright, for the purposes of
11 progress then let's exclude the koppie. Was it at any
12 stage in your estimation a joint operation?
13 MR SINCLAIR: Specifically at the koppie?
14 MR MPOFU: No, excluding the koppie.
15 MR SINCLAIR: Excluding the koppie.
16 CHAIRPERSON: Just leave out the koppie.
17 MR SINCLAIR: We had to be involved with
18 the police because it was our property, so we had to be
19 involved in certain aspects of that operation.
20 MR MPOFU: And to that extent it was a
21 joint operation?
22 MR SINCLAIR: If that's the term you want
23 to use, I'm not going to dispute that, Sir.
24 MR MPOFU: Thank you. Then what I'm
25 going to do, Mr Botes, is to show you – Mr Sinclair, sorry.

Page 33966

1 Sorry, Mr Botes is my favourite, ja. So I'm just going to
 2 show you the connectedness as it were between these events,
 3 because our – and the reason I'm doing that is because our
 4 argument, or starting from day 1 is that these events were
 5 feeding into each other from the 10th, which is the refusal
 6 to talk, to the 11th, which is the incident outside the NUM
 7 offices, to the 12th, which is the security killings which
 8 were linked to the events of the 11th, the 13th, which,
 9 where the five people were killed and how that had a
 10 bearing on the mood and how it led up to the massacre on
 11 the 16th. You understand what I'm saying? You don't have
 12 to agree, but it's something –

13 MR SINCLAIR: Mr Chairman, I understand
 14 that.

15 MR MPOFU: Yes.

16 MR SINCLAIR: I just want clarification,
 17 I think I heard you say from the 1st.

18 MR MPOFU: 10th, sorry.

19 MR SINCLAIR: 10th.

20 MR MPOFU: I started on the 10th.

21 MR SINCLAIR: Okay, thank you. I just
 22 wanted to clarify that, thank you, Mr Chairman.

23 MR MPOFU: Alright, and I'm not going to
 24 go back to the 10th. The important thing in this chain that
 25 I'm drawing about the 10th is what we've called the hard-

Page 33967

1 line stance of refusing to talk, which you and I have
 2 already covered.

3 MR SINCLAIR: Yes, Sir.

4 MR MPOFU: Okay, ja. Now because of that
 5 hard-line – at least the version of the people that I
 6 represent is that because of that hard-line stance they
 7 then went to re-congregate near the stadium. You're aware
 8 of that?

9 MR SINCLAIR: What day was that?

10 MR BHAM SC: Sorry, Mr Chairman –

11 MR MPOFU: On the 10th, I'm sorry.

12 MR BHAM SC: If I could just have a short
 13 moment. I don't want to take away from Mr Mpofo's time.

14 MR MPOFU: Yes.

15 MR BHAM SC: If it's being presented as a
 16 version, presumably we'll get the evidence, direct evidence
 17 on that issue?

18 CHAIRPERSON: I think the evidence is –

19 MR MPOFU: It's very clear.

20 CHAIRPERSON: - that they, after having
 21 been told they couldn't talk to management –

22 MR MPOFU: It's common cause.

23 CHAIRPERSON: - on the 10th they turned
 24 around and went in the direction of the stadium and stopped
 25 there. I mean they had a meeting there as far as I

Page 33968

1 remember.

2 MR MPOFU: Correct, it's common cause.

3 CHAIRPERSON: I think that's virtually
 4 common cause evidence.

5 MR BHAM SC: I'm not going to argue it.
 6 I'm talking about the way it was framed. At a later stage
 7 we'll argue it by reference to what's in the transcript –

8 MR MPOFU: No, fair enough.

9 MR BHAM SC: And I don't want to jump up
 10 and down all the time. I just want to make it clear that
 11 where something is paraphrased on what the evidence has
 12 been –

13 MR MPOFU: Yes.

14 MR BHAM SC: - and we think there are
 15 subtleties between what was said and what is now being
 16 said, we'll deal with it by reference to the record. I
 17 don't want to argue every time about it now.

18 MR MPOFU: Yes. No, no, I think that's
 19 fair. Let me put it this way. We'll do the connections
 20 later. Subsequent to them being turned away, as it were,
 21 subsequent to them being turned away due to the stance that
 22 you and I have discussed, they went to re-congregate near
 23 the koppie. That much you know.

24 MR SINCLAIR: Yes, Sir.

25 MR MPOFU: Yes, and the evidence, which

Page 33969

1 you won't know, is that at that subsequent meeting they
 2 then took a decision to meet the following day outside of
 3 the stadium.

4 MR SINCLAIR: Sorry, Sir, outside the
 5 where?

6 MR MPOFU: Outside of the stadium –

7 MR SINCLAIR: Yes.

8 MR MPOFU: The Wonderkop Stadium.

9 MR SINCLAIR: I believe that to be
 10 correct.

11 MR MPOFU: Yes, and indeed when they met
 12 there one of the issues that they discussed was the fact
 13 that management had said look, we can only speak to you
 14 through the appropriate structures, which is just a
 15 euphemism for NUM. You understand?

16 MR SINCLAIR: I understood the
 17 appropriate – yes, NUM at –

18 MR MPOFU: At that time it was your
 19 recognised –

20 MR SINCLAIR: - at the shafts or at,
 21 wherever they had the structures in place, yes.

22 MR MPOFU: Yes, yes, because then it was
 23 the recognised union –

24 CHAIRPERSON: The only union – sorry,
 25 sorry, the only union that was recognised for the purposes

Page 33970

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

Page 33971

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

Page 33972

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

Page 33973

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

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

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

Page 33982

1 what I've been handed.
 2 MR MPOFU: Yes.
 3 CHAIRPERSON: And brief 2 is page 427 and
 4 brief 3 is page 271.
 5 MR MPOFU: That's correct.
 6 CHAIRPERSON: So that's all put in order.
 7 MR MPOFU: Thank you very much,
 8 Chairperson. Now what I'm saying, Mr Sinclair, and this is
 9 very important because as you can see I'm building up to
 10 the 16th, is that on top of what you said there, which you
 11 and I have now covered, for a – let me put it this way, the
 12 connectedness between the events of the 11th and the events
 13 of the 12th would have been patent and predictable to an
 14 experienced security person like you, correct?
 15 MR SINCLAIR: They would –
 16 MR MPOFU: That there might be revenge.
 17 MR SINCLAIR: - been predictable, yes.
 18 MR MPOFU: Yes. And therefore even
 19 before you got the, you did get information obviously from
 20 sources that there will be another march but even before
 21 that you would have predicted that something like that
 22 might occur.
 23 MR SINCLAIR: We would have certainly
 24 focused on it.
 25 MR MPOFU: Yes.

Page 33983

1 MR SINCLAIR: Thought about it.
 2 MR MPOFU: Ja. And in fact if you look
 3 at 2A of that same fax, or rather e-mail, you say that "The
 4 security operation was stepped up on Saturday afternoon to
 5 a double red status because of the potential mass revenge
 6 conflict indicated in point 1."
 7 MR SINCLAIR: Absolutely.
 8 MR MPOFU: Yes. And "because of" means
 9 exactly that, the events of the 12th were directly connected
 10 to those of the 11th.
 11 MR SINCLAIR: Yes, sir.
 12 MR MPOFU: Thanks. So one can then
 13 safely say that had the – okay, no, I'll do that at the
 14 end. And as you know, on the 12th two of your colleagues
 15 lost their lives and as I put it, on the 11th your security
 16 personnel had decided, wisely in my view, that the crowd
 17 that was marching to the NUM should not be confronted. Do
 18 you remember that?
 19 MR SINCLAIR: I –
 20 MR MPOFU: That they should –
 21 MR SINCLAIR: - I was not there at the
 22 time but I heard it on –
 23 MR MPOFU: You heard about it.
 24 MR SINCLAIR: Yes.
 25 MR MPOFU: Yes, and you would agree that

Page 33984

1 was a wise thing to do?
 2 MR SINCLAIR: They were competent –
 3 MR MPOFU: 3 000 –
 4 MR SINCLAIR: They were competent people
 5 and I respect their decision.
 6 MR MPOFU: You respect their decision,
 7 yes. And yet on the 12th when a similar – well, not
 8 similar, an armed version of that crowd was coming, the
 9 decision was taken to confront them. You would agree if
 10 the first one was wise, then the second one must be unwise,
 11 correct?
 12 MR SINCLAIR: I can go no further than,
 13 of that opinion, yes.
 14 MR MPOFU: Yes, thank you. Right, and
 15 that is why Mr Botes made the concession yesterday to say
 16 if you look at it like that, then Lonmin was partially to
 17 blame for the deaths of those people. Would you agree with
 18 Mr Botes?
 19 MR SINCLAIR: Lonmin was partially to
 20 blame for the deaths, of those individuals' decisions?
 21 MR MPOFU: No.
 22 MR SINCLAIR: The security team's
 23 decision?
 24 MR MPOFU: Yes, ja, the Lonmin security
 25 should have –

Page 33985

1 MR SINCLAIR: It's a Lonmin issue, yes.
 2 MR MPOFU: Yes, you agree.
 3 MR SINCLAIR: Yes.
 4 MR MPOFU: Thank you. Now, because
 5 remember that's what this Commission is about, is to find
 6 who should be blamed for what. I mean that's not the only
 7 reason, ja. And now having, with those events of the 12th
 8 having happened, obviously the tensions were getting more
 9 and more intense, correct?
 10 MR SINCLAIR: The tensions with?
 11 MR MPOFU: Ja, I'm saying –
 12 MR SINCLAIR: Overall?
 13 MR MPOFU: Yes, overall.
 14 MR SINCLAIR: I believe that to be a
 15 correct statement.
 16 MR MPOFU: Yes and –
 17 CHAIRPERSON: It was double red.
 18 MR SINCLAIR: It was double red, that's
 19 why I believe it to be a –
 20 CHAIRPERSON: Is double red as hot as
 21 you, as high as you can go?
 22 MR SINCLAIR: That is what this brief
 23 was, to alert people that this was escalating into tensions
 24 that were of a nature that we had never ever anticipated
 25 or seen before.

Page 33986

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

Page 33987

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

Page 33988

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

Page 33989

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

Page 33990

1 MR SINCLAIR: - because we had this
2 potential of this massive escalation that we were seeing
3 unfold.
4 CHAIRPERSON: Alright.
5 MR MPOFU: Chairperson, if I may, just so
6 that when I come back I come to something else, just one
7 question. I'm sorry, Mr Sinclair, I think it's my fault I
8 didn't ask the question properly. I don't think you
9 understood what I was saying. What I was saying is simply
10 this, your decision to alert the police on the 13th to the
11 breakaway group must have been influenced by what, I've
12 just made up this, by the triple red situation which had
13 accumulated from the 11th to the 12th to the killing and
14 then when you saw those people, surely that must have – if
15 it had just happened on a normal sunny day you wouldn't
16 have alerted the police, would you agree –
17 MR SINCLAIR: We would definitely, even
18 on the Saturday, have elevated and alerted the police to
19 these problems right through until the Sunday.
20 MR MPOFU: Yes, but specifically the one
21 of the 13th when you saw that group –
22 MR SINCLAIR: Yes.
23 MR MPOFU: - in that environment, it was
24 influenced by the tragic things that had just happened.
25 MR SINCLAIR: My teams on the ground – my

Page 33991

1 teams, Mr Chairman, on the ground would definitely have
2 alerted the SAPS to the situation.
3 MR MPOFU: Yes, and influenced by the
4 deaths of their colleagues and other people, correct?
5 MR SINCLAIR: I think even before that.
6 MR MPOFU: Yes.
7 MR SINCLAIR: Even before that, Mr Chair.
8 MR MPOFU: Chairperson, I think I'd like
9 to try again –
10 CHAIRPERSON: We'll take a 15 minute
11 adjournment now?
12 MR MPOFU: Yes, Chair.
13 CHAIRPERSON: You got the answer you
14 wanted, I think.
15 MR MPOFU: Yes, I did, thanks.
16 CHAIRPERSON: 15 minutes. It's got to be
17 15 minutes because Mr Mpofo has got a problem, he's got
18 another engagement tomorrow.
19 [COMMISSION ADJOURNS COMMISSION RESUMES]
20 [15:22] CHAIRPERSON: The Commission resumes.
21 You're still under oath, Mr Sinclair. Mr Mpofo, by Mr
22 Wesley's calculations you've got seven minutes but I give
23 you 10.
24 MR MPOFU: You're very kind, Chairperson.
25 MR GOTZ: Chair, AMCU is happy to donate

Page 33992

1 15 minutes to the injured and arrested.
2 MR MPOFU: Thank you.
3 CHAIRPERSON: I didn't know these times
4 are transferrable, but in this case I'll accept it.
5 MR MPOFU: Thank you, Chairperson. That
6 makes it about ten to five, thank you. Thank you, Mr Gotz.
7 MR MPOFU: Okay, Mr Sinclair, let's go
8 through this very quickly. What I want to do because of
9 the time problem is - you see where I was going I was
10 building up the connectedness between all the events
11 towards the 16th, but I will do that with other witness as
12 from the 13th. You have helped me to connect the events
13 from the 10th to the 13th and as I understand it you agree
14 that because of what I call the triple red status you
15 became more sensitive to that breakaway group, correct?
16 MR SINCLAIR: That is correct, Sir.
17 MR MPOFU: Yes so from the further
18 connectedness from the 13th onwards and the political
19 pressure and all that I will deal with that with other
20 witnesses because we don't have time to do what I was
21 intending to do, to build up the events after the 15th. But
22 thank you for helping me with the first connectedness up to
23 the 13th. The only thing in that respect that I'd like to
24 canvas with you is that it's just a concern that it was
25 your view that had SAPS responded to your numerous

Page 33993

1 approaches which I discussed with Mr Botes, between the
2 time you got the information that there was a threat to
3 burn the NUM offices on the 11th and the actual happening of
4 that event had SAPS responded timeously that event could
5 have been prevented. Correct that you have that view?
6 MR SINCLAIR: That was on the Sunday the
7 13th.
8 MR MPOFU: The Saturday.
9 MR SINCLAIR: On the Saturday I think
10 that my opinion is if there had been a bigger SAPS or a
11 different SAPS response there might have been a different
12 outcome.
13 MR MPOFU: Yes thank you, thank you very
14 much. In fact just for completion, on page FFFF6, big 271,
15 you can put it back on the screen please. 4 to 8 I think,
16 Chairperson it would be, 271, the big 271 ja. That's your
17 brief 3, Chairperson, yes.
18 CHAIRPERSON: Three.
19 MR MPOFU: Yes I'm just to read –
20 CHAIRPERSON: I've just heard that FFFF6
21 before the bundle 425, it starts earlier than that and so
22 this would really be part of FFFF6.
23 MR MPOFU: That's correct, Chairperson.
24 CHAIRPERSON: So we don't have to mark it
25 separately.

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

Page 33998

1 because the longer it goes it is giving all the other
 2 opportunities to comment and seize the opportunity and it
 3 gets out of control." Then she says "That's it." Then
 4 Mokwena says "I think let tomorrow be D Day where we issue
 5 ultimatum and say if you do not show up for work sorry that
 6 is it" and so on and so on. And then you say "Please just
 7 get them to me early, I will do it during the night because
 8 there is issues with the chopper, I hear you." Do you
 9 remember that?

10 MR SINCLAIR: Yes.

11 MR MPOFU: In other words what you are
 12 saying is – they were saying because of these political
 13 reasons and opportunism and what have you the thing must
 14 fast tracked and there must be pamphlets. And you were
 15 saying please get them to me as quick as possible and so on
 16 and so on.

17 MR SINCLAIR: That is correct, Sir.

18 MR MPOFU: You remember that.

19 MR SINCLAIR: Yes.

20 MR MPOFU: Okay sure and then on the
 21 following page then there's a discussion about that, about
 22 these people must see action otherwise they become
 23 demoralised and then you say "They are also going to see
 24 that wow. These people are working together and not
 25 bugging around. And that is important, Barnard okay."

Page 33999

1 Do you remember saying that?

2 MR SINCLAIR: I definitely would have
 3 said it, yes.

4 MR MPOFU: Thank you. And then further
 5 down you say "I've got my attorney, we are working very
 6 closely with our attorneys" very close and so on,
 7 inaudible, inaudible then you say "Okay so why I'm saying
 8 to this, they need to get their strategies right. We have
 9 deployed 140 across the, inaudible SAP to go and interact
 10 with our security as the operation, inaudible. We have got
 11 now the horse unit, we want to deploy as well for visible
 12 policing." Do you remember that?

13 MR SINCLAIR: I recall that conversation,
 14 Sir.

15 MR MPOFU: And the we you were talking
 16 about here was obviously consistent with the joint
 17 operation mentality. You were saying we meaning SAPS and
 18 Lonmin, correct?

19 MR SINCLAIR: I was saying that.

20 MR MPOFU: When you are using the word
 21 we, you don't have a horse unit yourself at Lonmin,
 22 correct?

23 MR SINCLAIR: We don't have.

24 MR MPOFU: A horse unit.

25 MR SINCLAIR: We don't have.

Page 34000

1 MR MPOFU: So when you say we have now
 2 got the horse unit you were meaning you and SAPS as a
 3 partnership or as a joint force.

4 MR SINCLAIR: I wasn't meaning that.

5 MR MPOFU: Well what did you mean by we?

6 MR SINCLAIR: Mr Chairman, in that
 7 context I use the word we, the horse unit had arrived. We
 8 had had, Lonmin security had had a problem in the remote
 9 areas between shafts and I had seen the horse unit as
 10 advantageous to be able to get through those remote areas
 11 as visible policing. So where I went there I said the SAP
 12 have the horse units here and there was a discussion to
 13 deploy them into those areas where you couldn't get the
 14 vehicles to do and that's what that conversation was about.

15 MR MPOFU: No I know what it was about,
 16 Mr Sinclair, please answer the question. When you said
 17 there we have got now the horse unit, we want to deploy as
 18 well for visible policing. You were referring to the we
 19 was meaning Lonmin and SAPS as a joint force.

20 MR SINCLAIR: I said we, ourselves wanted
 21 to make sure that deployment was for visible policing.

22 CHAIRPERSON: But that's Mr Mpofu's
 23 point. You were putting Lonmin and the police together as
 24 the joint agents as it were in doing the deploying and -

25 MR SINCLAIR: Yes, Sir.

Page 34001

1 CHAIRPERSON: Do you agree with that?

2 MR SINCLAIR: Yes, Sir.

3 MR MPOFU: Thank you, thank you very
 4 much. And then the next important thing which might seem
 5 unimportant is that the SAPS commissioner then says to you
 6 "I think it's very right what Graham is saying" and so on
 7 and so on. That does suggest that you were on first name
 8 terms with the Commissioner.

9 MR SINCLAIR: No she knew my first name,
 10 I always the Commissioners, the PC as Ma'am or -

11 MR MPOFU: Okay, but she called you by
 12 your first name.

13 MR SINCLAIR: She called me by my first
 14 name. I'd always been introduced as Graham across any -

15 MR MPOFU: Yes, no in fact I think
 16 somewhere you call her Ma'am ja. But she called you by
 17 your first name.

18 MR SINCLAIR: Yes.

19 MR MPOFU: And she had your telephone
 20 numbers as indicated by Ms Pillay earlier.

21 MR SINCLAIR: I believe the Commissioner,
 22 I stand corrected, but I believe the Commissioner – the
 23 Provincial Commissioner definitely had my telephone number.

24 MR MPOFU: Yes she must have because she
 25 called you on the 15th during the National Management

Page 34002

1 meeting.

2 MR SINCLAIR: That is correct, Sir.

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

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

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

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

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

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

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

10 the hand.

11 MR SINCLAIR: The eradications off the

12 document?

13 MR MPOFU: Yes.

14 MR SINCLAIR: I gave instructions for

15 that to be done.

16 MR MPOFU: Yes and insofar as those

17 deletions are systemic and the logic in them someone must

18 have been looking out for specific things, correct?

19 MR SINCLAIR: My assistant was looking

20 out for those items, yes.

21 MR MPOFU: Yes specifically.

22 MR MPOFU: Specifically items, there were

23 items to add in and those to delete.

24 MR MPOFU: Yes okay well enough for my

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

Page 34003

1 specific items and then they were deleted. For the

2 purposes of this questioning whether it was you or someone

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

4 might be important in other proceedings. The point is

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

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

7 somebody was doing the alterations. Someone who worked for

8 Lonmin, correct?

9 MR SINCLAIR: For days before somebody

10 had been doing alterations.

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

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

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

14 of October 2012.

15 MR SINCLAIR: That is correct, Mr Chair.

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

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

18 somebody working for Lonmin was making those systemic

19 deletions from the document.

20 MR SINCLAIR: Well they were already

21 made.

22 MR MPOFU: Yes well but someone was

23 editing or effecting them to cause the two documents to

24 differ in that five hours.

25 MR SINCLAIR: - they could have been

Page 34004

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

2 time and frame they were done.

3 MR MPOFU: Yes, but they were effected,

4 Mr Sinclair.

5 MR SINCLAIR: They were effected.

6 MR MPOFU: They were effected in that

7 five hour period obviously just from objective reading of

8 the document, would you agree?

9 MR SINCLAIR: I agree.

10 MR MPOFU: Thank you. Now the next issue

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

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

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

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

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

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

17 remarkable because they've been accused of making

18 themselves invisible. So when we were discussing this

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

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

21 CHAIRPERSON: They did it without using

22 any muti either.

23 MR MPOFU: Yes that's exactly what they

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

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

Page 34005

1 MR SINCLAIR: Definitely I was not

2 intending making anything invisible, Sir.

3 MR MPOFU: Okay but they were invisible

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

5 3.

6 MR SINCLAIR: I hear you, Sir.

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

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

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

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

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

12 instructions, whether this would have been a candidate for

13 deletion which just escaped.

14 CHAIRPERSON: I wonder what 15:50 means

15 as well.

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

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

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

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

20 spotted it?

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

22 Lonmin shooting incident.

23 MR MPOFU: Oh, you were only deleting

24 Lonmin shooting incidents.

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

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

Page 34010

1 to shoot the mob were being sought?

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

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

4 confident of that.

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

6 was simply that this –

7 CHAIRPERSON: We also have the police

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

9 being recorded in the police occurrence book, unless there

10 were deletions from that as well.

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

12 before, Chairperson. So the other candidate for deletion

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

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

15 think that given your instructions, this one is also

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

17 Mr Sinclair" –

18 MR BHAM SC: [Microphone off, inaudible]

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

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

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

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

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

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

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

Page 34011

1 MR SINCLAIR: My emergency teams had

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

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

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

5 obviously changed and said something we already –

6 MR MPOFU: Yes, yes, yes.

7 MR SINCLAIR: - knowing that it would not

8 happen.

9 MR MPOFU: Oh, but –

10 MR SINCLAIR: I definitely –

11 MR MPOFU: Is your evidence that after

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

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

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

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

16 MR MPOFU: But if it was not going to

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

18 these OBs are important events?

19 MR SINCLAIR: I take that they should be

20 important.

21 MR MPOFU: Yes.

22 MR SINCLAIR: Should that have been

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

24 it was a passing –

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

Page 34012

1 been a candidate –

2 MR SINCLAIR: It should not be and Amanda

3 should have realised and taken it out, sir.

4 MR MPOFU: Should she have deleted it?

5 Should she have deleted it?

6 MR SINCLAIR: She should have deleted it,

7 it's irrelevant.

8 MR MPOFU: Ja, okay.

9 MR SINCLAIR: She should have – to me at

10 that time, sir.

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

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

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

14 anyone would find that explanation acceptable, why would

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

16 MR SINCLAIR: Sir, that would have been

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

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

19 paid attention to it, sir.

20 MR MPOFU: How did you know Colonel

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

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

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

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

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

Page 34013

1 MR MPOFU: Why was he harassing you?

2 MR SINCLAIR: Because he –

3 MR MPOFU: How was he harassing –

4 MR SINCLAIR: I want, I need a flight

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

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

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

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

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

10 suit.

11 MR MPOFU: Ja, but when you say no

12 branding on the suits that means exactly you were resolving

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

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

15 then it would be inappropriate.

16 MR SINCLAIR: Ja.

17 MR MPOFU: That's why you gave the

18 instruction.

19 MR SINCLAIR: I hear you.

20 MR MPOFU: Isn't that correct? Please

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

22 branding to be removed?

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

24 sir?

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

Page 34014

1 and is Colonel McIntosh's wife Sergeant Venter?

2 MR SINCLAIR: I haven't got a clue, sir.

3 MR MPOFU: You don't know her size?

4 MR SINCLAIR: Did I record her size?

5 MR MPOFU: Yes.

6 MR SINCLAIR: If I did, certainly – but I

7 don't know who she was, sir.

8 MR MPOFU: Thank you, Chairperson.

9 CHAIRPERSON: It sounds like the end of

10 your cross-examination really.

11 MR MPOFU: It is, Chairperson.

12 CHAIRPERSON: On that elevated note.

13 MR MPOFU: On that note, yes, Chair.

14 CHAIRPERSON: Very well. It occurs to me

15 that something I said earlier might have been susceptible

16 to misinterpretation. As far as the police occurrence book

17 is concerned there is, as far as I understand it, no

18 question of any deletion because it's a hard copy book of

19 which we have a copy. So there's no possibility, as far as

20 I see it, of any deletion and it seems quite clear, (a)

21 that no order was given to shoot the mob on the 14th and

22 there was no entry in the police –

23 MR MPOFU: As far as that one is –

24 CHAIRPERSON: - occurrence book.

25 MR MPOFU: Chairperson, please, I just

Page 34015

1 forgot one document and one question. There's a loose

2 document which I just handed up, Chairperson, it's marked

3 433.

4 CHAIRPERSON: You wanted me to give it an

5 exhibit number, I suppose?

6 MR MPOFU: Yes, Chairperson.

7 MR SEMENYA SC: In the meantime -

8 CHAIRPERSON: This will be FFFF –

9 MR MPOFU: 6.

10 CHAIRPERSON: 7.

11 MR MPOFU: It can be a continuation – it

12 doesn't really.

13 CHAIRPERSON: Sorry, Mr Semenya, did you

14 turn your light on?

15 MR SEMENYA SC: No, I just wanted to

16 place on record that we welcome that correction, Chair,

17 because we could go nowhere to put an objection.

18 CHAIRPERSON: No, I realised when I said

19 it that in fact there was no basis for saying it and that's

20 why I hastened to correct it. I'm glad you've accepted the

21 correction. Yes, so you say it's part of FFFF6 really?

22 MR MPOFU: We might as well make it as

23 part of –

24 CHAIRPERSON: Alright, then I'll take it

25 out of my book.

Page 34016

1 MR MPOFU: Yes, Mr Sinclair, this

2 document, this loose document marked 433 which is in front

3 of you, there is evidence which I canvassed with Mr Botes

4 about the fact that some of the people I represent were

5 incarcerated at Lonmin premises on the 16th. I'm not going

6 to canvass with you, it is common cause. Do you

7 understand?

8 MR SINCLAIR: Yes, sir.

9 MR MPOFU: Yes. Now here there's an e-

10 mail sent to you by Myniya Lezo on the 19th, two days after

11 or three days after the massacre.

12 MR SINCLAIR: Yes, sir.

13 MR MPOFU: Where she says to you, "Good

14 morning, it is now two calls received to Lonmin helpdesk

15 since yesterday reporting that there are people held at

16 Middelkraal which are beaten and have gone days without

17 food."

18 MR SINCLAIR: Yes.

19 MR MPOFU: "Not sure how true this is but

20 if it can get to the media it won't look good. I thought

21 you should be informed." Were you aware of any rumours,

22 discussions, information about any people, further people

23 who were incarcerated at Lonmin premises anywhere, apart

24 from Middelkraal, after the 16th.

25 MR SINCLAIR: Apart from Middelkraal, no.

Page 34017

1 MR MPOFU: Ja, anywhere else.

2 MR SINCLAIR: Mr Chairman, there was

3 nobody incarcerated at the security offices or that at

4 Middelkraal at all and I think I replied to that, these was

5 information that came through, we have a communication

6 system and she [inaudible]. I think the only

7 incarcerations were on the 16th and I'm not absolutely

8 familiar with it, were at the –

9 MR MPOFU: Number 1 shaft, I think.

10 MR SINCLAIR: - at BT, at the contractor

11 hub.

12 MR MPOFU: Yes.

13 MR SINCLAIR: That was the only place

14 where any incarceration – at Middelkraal under my

15 jurisdiction I can categorically say that I know of no

16 incarcerations, nobody was held there for any reason at any

17 time.

18 MR MPOFU: Yes. No, I accept that Mr –

19 the reason why I'm saying that is because your answer was

20 quite curious. You said no-one is held at Middelkraal

21 Lonmin, by Lonmin security, which would suggest that maybe

22 other people were held at places other than Middelkraal.

23 That's the real reason I'm asking you that question.

24 MR SINCLAIR: I hear you, sir.

25 MR MPOFU: And then on page 272 of FFF6 –

<p style="text-align: right;">Page 34018</p> <p>1 CHAIRPERSON: I think you only had one 2 question left, Mr Mpofu. 3 MR MPOFU: Yes, but I also have five 4 minutes. 5 CHAIRPERSON: No, you haven't, your time 6 is up. 7 MR MPOFU: Thank you, Chairperson. 8 CHAIRPERSON: What's the question? Let 9 me hear the question and see whether it's of the same 10 calibre as the McIntosh flying suit one, which was a 11 frivolous one. 12 MR MPOFU: No, it's – no, it's a more 13 important thing, Chairperson. You said, or let me put it 14 this way, you were aware that there was pressure which had 15 to be put at high levels, I think as you put it, at very 16 high levels to SAPS. You were aware of this – 17 CHAIRPERSON: There's a statement to that 18 effect in the document, it's not on the screen at the 19 moment. I think we must go down the screen a bit to look 20 at that. 21 MR MPOFU: Yes. No, not that one, 22 there's another one. Yes – 23 CHAIRPERSON: H. H says, "SAPS support 24 is again very low key during much of Saturday. Security 25 management and EA continue to apply pressure to all levels</p>	<p style="text-align: right;">Page 34020</p> <p>1 MR MPOFU: That's fine, Mr Sinclair. All 2 I'm saying is that it's not about individuals. 3 MR SINCLAIR: No, I'm – 4 MR MPOFU: You were aware that Lonmin was 5 intent on applying high level pressure on SAPS. 6 MR SINCLAIR: I agree with that. 7 MR MPOFU: Thank you very much. Thanks, 8 Chairperson. 9 CHAIRPERSON: We will adjourn till 9 10 o'clock tomorrow morning. Thank you, that's your cross- 11 examination, Mr Mpofu? 12 MR MPOFU: It is, thank you very much, 13 Chairperson and thank you to the evidence leaders for 14 accommodating me. 15 [16:02] CHAIRPERSON: Ms Pillay will resume her 16 cross-examination tomorrow. Also we'll have abbreviated 17 cross-examination by AMCU, and who else, Mr Wesley? 18 MR WESLEY: Sorry, Chair. Sorry, could 19 we have silence, please? Chair, tomorrow Ms Pillay must 20 finish her cross-examination, then the allocations as they 21 stand as of now, NUM and Mrs Fundi have two hours, SAPS 22 have got 60 minutes, AMCU have 30 minutes now, and the 23 families 45 minutes. 24 CHAIRPERSON: Are we going to compress 25 all that into tomorrow?</p>
<p style="text-align: right;">Page 34019</p> <p>1 of SAPS and provincial administration in an effort to 2 improve the SAPS visibility and intervention." That's the 3 passage you're referring to. 4 MR MPOFU: And if you – yes, that's the 5 one, Chairperson – you read it with the previous page 271, 6 number 6, 271, just 271 not – ja, number 6. 7 CHAIRPERSON: High level, sorry, "Very 8 high level interaction continues to muster up support from 9 SAPS." 10 MR MPOFU: Yes. I'm saying you – I'm not 11 accusing you of having exerted the pressure but from what 12 you were hearing you were aware that there were efforts at 13 very high level to apply pressure to SAPS, correct? 14 MR SINCLAIR: Mr Chairman, what I was 15 indicating to my management in this brief was that Henry 16 Blou, myself, my team were applying high levels of pressure 17 on the Marikana, the local SAPS, the clusters and the 18 provincial SAPS. That is what I was meaning in this brief, 19 that we were applying high levels of pressure to try and 20 engender a response that we were not satisfied – 21 MR MPOFU: Yes. No, sir, I'm not again – 22 MR SINCLAIR: I wasn't saying that 23 somebody else must apply high pressure. I was saying we 24 were. I think that's what I was saying in this brief to my 25 managers.</p>	<p style="text-align: right;">Page 34021</p> <p>1 MR WESLEY: We can try, Chair. I know 2 that – 3 CHAIRPERSON: We must try. 4 MR WESLEY: Ja. 5 MR BHAM SC: That leaves out any possible 6 re-examination. 7 MR WESLEY: And 15 minutes of re- 8 examination. 9 CHAIRPERSON: Alright, well you've heard 10 that, Mr Bham. We now adjourn till 9 o'clock tomorrow. 11 [COMMISSION ADJOURNED] 12 . 13 . 14 . 15 . 16 . 17 . 18 . 19 . 20 . 21 . 22 . 23 . 24 . 25 .</p>

<p style="text-align: center;">A</p> <p>abandoned 33947:25 abbreviate 33943:10 abbreviated 33854:10 33880:17 33923:18 34020:16 ability 33881:7 able 33819:20 33820:6 33820:25 33825:6 33829:9 33877:18 33913:21 33914:4 33925:25 33926:1 33928:7 33940:16 33971:9 34000:10 abridged 33880:17 absolute 33854:1 absolutely 33836:1 33854:13 33879:25 33880:2,5 33983:7 34017:7 accede 33953:14 accept 33845:8,22,24 33846:12,25 33848:7 33848:8 33876:8,10 33895:24 33901:16 33903:8 33908:11 33910:11 33911:8,10 33911:13 33913:2 33924:5 33926:3 33933:16,20,22 33945:14,24 33953:18,20 33961:14 33962:14 33970:16,19 33971:15 33972:10 33972:11 33974:9,20 33977:12 33978:23 33978:24 33992:4 34003:11 34017:18 acceptable 34012:14 acceptance 33937:14 accepted 33973:15 33974:20 34012:24 34015:20 accepting 33972:16 access 33817:11,13,14 33818:3 33819:19,25 33820:3,6,17,25 33852:3 34009:1,2 accommodating 34020:14 accompanied 33882:10 33896:16 accord 33847:4 33902:18 33918:16 accorded 33926:11 account 33886:22 33887:9 accumulated 33990:13 accumulation 33979:10 accuracy 33921:17 accurate 33835:3 33883:8 33884:13 accused 33954:5 34004:17</p>	<p>accusing 34019:11 achieve 33897:17 achieved 33897:16 acquitted 33963:23 acronyms 33814:15,18 act 33872:12 33961:12 acting 33961:11 action 33958:22 33959:11 33962:13 33964:8 33998:22 activity 33815:6 acts 33946:4,4 actual 33856:21 33902:25 33907:20 33936:11 33938:25 33993:3 33994:24 33997:1 add 33833:9,10 33858:24 33862:21 34002:23 added 33858:8,15 33859:18 33870:25 33875:4,14,20 33935:25 33977:25 adding 33875:3 addition 33830:11 additional 33815:24 33816:1 33819:21 33867:17 33893:6 33988:17 additions 33875:10 address 33871:10 33875:9 33948:17 addressed 33887:4 33906:21 33927:22 addressing 33891:11 adequate 33871:4 33893:15 33930:13 adequately 33880:21 adjacent 33901:7 adjective 33923:18 adjectives 33948:5 adjourn 33898:7,10 33988:24 34020:9 34021:10 ADJOURNED 34021:11 adjournment 33829:4 33860:10 33863:16 33898:18 33925:23 33926:7,11 33930:4 33937:22 33986:4,6 33988:11 33991:11 ADJOURNS 33829:5 33863:20 33898:20 33926:13 33991:19 adjusted 33856:5 33872:1 adjustments 33854:21 33925:12 administration 34019:1 admitted 33854:25 33933:5 advance 33929:9 advantageous</p>	<p>33870:12 34000:10 adverse 33954:15 advise 33871:12 advised 33851:1,5,6 33988:19 advisers 33957:4 aerial 33897:17,23 affect 33870:1 affidavit 33880:24 33882:22 33897:20 afraid 33953:17 Africa 33931:8 African 33931:14 afternoon 33822:21 33866:10,17 33889:22 33921:14 33921:16 33922:6 33923:1,21 33924:10 33925:11 33926:5 33929:2 33930:19,20 33976:18 33983:4 afternoon's 33866:16 agents 34000:24 aggressive 33857:3 ago 33848:16 33920:25 agree 33843:10 33910:10 33933:7,10 33934:4 33938:2 33941:1 33948:4 33949:16 33956:12 33958:1 33959:21 33964:11 33966:12 33983:25 33984:9,17 33985:2 33990:16 33992:13 33997:25 34001:1 34002:7 34004:8,9 34012:12 34020:6 agreed 33929:22 33945:20 33956:11 agreeing 33972:16,17 ahead 33850:5 33852:1 33900:24 air 33987:8 alarm 33837:7,17 alarms 33837:8,19 Albert 33839:24 alert 33985:23 33990:10 alerted 33942:8 33987:13,23 33990:16,18 33991:2 alerting 33987:6,17 alight 33858:6 alive 33941:2,11 33949:18 allegations 33891:4,5 alleged 33963:13 allegedly 33882:8 33963:12 allocated 33824:9 33930:13 allocations 34020:20 allow 33929:23 33955:7 allowed 33817:9,12</p>	<p>33906:3,6 alluding 33932:19 alright 33825:3 33829:2,3,9 33840:9 33842:19 33858:1 33860:7 33866:18 33869:21 33881:22 33945:18 33963:19 33965:10 33966:23 33975:25 33978:3 33990:4 34015:24 34021:9 alter 33933:7,14 alterations 34003:7,10 Alternatively 33974:11 33974:12 Amanda 33833:6,6 33861:10 33872:1 33924:18 34007:6 34008:23 34012:2 ambo 33860:16 ambulance 33860:15 33861:4 33864:6,13 33865:3,8 ambulances 33864:25 33865:12,16 AMCU 33970:3 33991:25 34020:17 34020:22 amendment 33833:11 ammunition 33963:1 amount 33937:6 34013:6 and/or 33960:12 Annandale 33892:20 33893:5 33894:1,1,7 33934:4,6,17 annexed 33846:22 annexure 33841:16,24 33846:3,11 33851:20 33855:19 anomaly 33836:10 answer 33828:25 33855:7 33859:19 33871:1,5,7,12 33872:24 33877:19 33878:7 33885:23 33888:23 33907:7 33914:13 33926:6 33927:14 33928:1,3 33928:18 33931:10 33931:12,13,16,17,19 33932:18 33938:23 33939:21 33950:20 33951:3,7,11 33974:13,20 33991:13 34000:16 34013:21 34017:19 answered 33835:7 33843:20 33919:16 33932:3 33933:4 answers 33868:15 anticipated 33985:24 anxious 33935:11 anybody 33834:10 33862:3 33949:17</p>	<p>anybody's 33849:25 33850:1,6 anyway 33839:3 33854:15 33868:20 33879:10 33883:23 33929:8 33937:17 33975:13 33981:11 33995:21 apart 34016:23,25 apologies 33871:10 33920:19 33933:18 apologise 33814:5 33826:8 33842:5 33857:24 33900:13 33920:24 apparent 33922:14 apparently 33903:5 33922:9 33924:12 appear 33855:20 33900:8 33926:1 33960:17 33994:20 33994:21 appeared 33934:14 appearing 33887:19 33924:4 appears 33902:9 33981:5,5,5,6,7 33996:11 applied 33847:13 33864:5 apply 33831:2 33912:20 33914:20 34018:25 34019:13 34019:23 applying 34019:16,19 34020:5 appoint 33964:5,7 appointed 33891:24 appointments 33932:11 appraised 33950:2 appreciate 33942:24 approach 33960:16 approaches 33993:1 appropriate 33816:25 33863:16 33969:14 33969:17 approximate 33900:3 approximately 33944:23 area 33820:8 33831:23 33864:16,22 33895:17 33896:19 33897:7,16 33901:4 33907:20 33943:14 33947:6,7 33962:19 33964:15 33976:23 33989:23 33994:6,17 33994:19,22 33995:2 34008:15 areas 33822:6,7 33824:5 33850:22 33893:11,13,24 33963:4 33988:15 33995:24 34000:9,10 34000:13</p>
--	---	--	--	---

<p>aren't 33824:18 argue 33937:8 33940:5 33946:8 33968:5,7,17 33973:5 33974:8 34002:4 argument 33966:4 arises 33854:18 arm 33972:4,5 33973:1 armed 33817:14 33984:8 arms 33816:22 arose 33825:25 arrange 33928:8,13,14 33929:2 arranged 33901:2,13 arrangement 33824:10 arranging 33892:18,22 33893:2,3 arrest 33997:25 arrested 33860:20 33992:1 arrived 33890:16 33895:14 33908:21 33908:21 33909:12 33941:6 33995:6,9,11 34000:7 asked 33827:21 33830:6,12 33835:2,5 33848:15,17 33849:12 33853:21 33859:16,17 33862:7 33865:11,16 33869:14 33870:9 33878:4 33897:5 33901:12,13 33908:2 33908:22 33918:2 33919:1,2 33927:8 33928:6 33931:1 33932:14 33939:4 33947:21 33960:22 33987:21 33994:9 34007:6 34008:23 34009:9,9 asking 33816:21 33826:7 33855:7 33861:18 33872:12 33876:9 33877:10 33931:22 33938:24 33997:1 34007:14 34017:23 asks 33901:2,24 33931:4 aspect 33892:5 aspects 33825:18 33913:13 33938:18 33965:19 assembled 33994:16 assembly 33994:22 33995:20,23 assessed 33893:8,11 assets 33960:12 assist 33815:10 33857:15 33865:6 33870:12 33873:4 33876:18 33877:6 33886:15 33906:13</p>	<p>33909:2 33989:9,23 assistance 33814:14 33864:25 33902:14 33902:17 33940:5 33995:4 assistant 33833:5 33868:11 34002:19 assisted 33863:3,6 33867:22 33895:16 33896:2,2,3 33899:20 33903:21,21,23 33904:5,7 associated 33832:10 association 33928:4 assume 33842:14 33937:18 33949:15 assuming 33916:21 34007:21 assumption 33954:23 33956:7 assurance 33829:7 33947:25 assure 33879:24 assured 33844:2 33877:25 attached 33816:9 attack 33858:8 33859:18 33973:22 33976:24 33978:21 attacked 33893:10 33900:4 33972:25 attacking 33858:4 attempted 33963:13 attend 33814:3 33866:7 attended 33917:15 attending 33863:3 33912:4 attention 33848:18 33850:6 33853:13 33863:1 33875:6,7 33941:21 33951:8 33952:25 34012:19 attorney 33873:19,22 33874:2 33937:22 33999:5 attorneys 33873:4,8,11 33873:12 33874:15 33874:19 33875:11 33924:5 33958:21 33999:6 August 33821:24 33827:3 33839:9,13 33839:19 33845:12 33845:16,19 33848:22 33856:25 33857:17,20 33860:12,23 33861:2 33864:2,3 33865:15 33866:24 33868:17 33868:18 33881:25 33889:4 33892:13 33908:15,25 33909:23 33910:16 33911:11 33912:2,3 33917:24 33926:23 34005:9 34010:13</p>	<p>authorise 33865:6,12 33865:16,21 authorised 33861:4 33864:4,6 33865:4,23 authority 33825:10 33865:5 33955:10 33970:5 automatic 33817:8,10 avail 33995:5 available 33822:15 33823:21 33842:12 33842:18 33846:7 33847:12,14 33849:12,17,24 33852:21 33857:15 33860:16 33862:3 33865:18,21 33866:7 33876:7,18 33877:6 33878:8,15 33894:4,8 33894:17,25 33897:2 33901:6 33928:15 33929:21 33938:21 33994:5 33995:2 avenge 33973:24 avoid 33939:5 aware 33846:3 33847:3 33852:18 33854:1 33866:13 33870:24 33870:24 33883:6 33885:25 33886:4,16 33912:5,6 33943:16 33950:10 33952:20 33962:25 33963:5,6 33963:11,14,18 33967:7 33972:6,7 33996:12 34016:21 34018:14,16 34019:12 34020:4 awkward 33922:13 33923:5 33925:15 awkwardness 33922:15 Azhar 33981:20</p> <hr/> <p style="text-align: center;">B</p> <hr/> <p>back 33815:25 33819:12,21 33822:1 33822:2 33824:5 33830:18 33832:7,20 33836:16 33844:13 33844:13 33853:16 33859:1,9 33862:7,9 33866:19,20 33867:6 33874:17 33884:4 33893:16 33896:23 33897:10,12,16 33899:8 33907:7 33912:22 33913:8 33918:24 33919:22 33937:23 33942:6,11 33944:11 33948:3,19 33949:10 33950:6 33966:24 33990:6 33993:15 34002:5 background 33826:4 backing 33815:8 backup 33818:3,10</p>	<p>33832:22 33995:3 bad 33916:10 badges 34013:8,9,14 band 33988:14 bank 33817:15 banks 33814:24,25 barbed 33892:18,22 33893:2,3,6 33894:4 33894:8,24 Barnard 33890:17,19 33917:2 33956:2 33979:20 33998:25 barrier 33893:15 bars 33818:3 based 33822:4 33830:25 33843:25 33847:10 33929:14 33929:16,17 33962:23 33996:2 34006:17 basic 33869:10 basically 33894:19 basing 33929:6 basis 33821:16 33824:16 33895:1 33903:5,10 33953:10 33987:25 34015:19 bearing 33966:10 beaten 34016:16 began 33920:4 begged 33948:15 beginning 33904:14 33920:7 behalf 33873:20 33970:6 behaviour 33947:3 belief 33837:16 33838:1 33855:24 33878:12 33887:10 beliefs 33934:10 believe 33824:21 33829:18 33831:11 33843:20 33844:6,11 33844:18 33845:7 33850:1 33852:20 33853:20,22,24 33854:21,23 33856:4 33870:21,22,23 33873:15 33874:2 33875:14,15 33876:5 33876:12 33877:12 33877:21 33879:14 33880:1,5 33881:20 33883:5 33886:25,25 33887:11,13,14 33894:12 33904:5,25 33906:1,24,24 33909:18 33914:10 33916:12 33919:24 33921:19 33928:16 33934:5,5,6 33940:19 33940:23 33949:22 33956:21 33958:7 33969:9 33970:7 33971:12 33972:9 33985:14,19</p>	<p>33995:22 34001:21 34001:22 34010:2 believed 33853:21 33884:10,15 33904:23 33906:12 33971:25 believing 33880:3 33883:10 Bello 33917:1,7 bench 33975:23 best 33820:16 33837:16 33838:1 33959:18 better 33912:24 33926:5 33996:16 beyond 33865:3,4 33940:15 be-puzzlement 33868:23 Bham 33814:8,9,13 33817:20,21 33818:25 33819:11 33825:17 33826:20 33826:21 33828:2,17 33829:15,16,19 33838:4 33873:15,17 33873:24 33874:5,9 33874:16 33902:12 33902:22 33903:6 33921:24 33924:3 33935:8,21 33936:5,9 33936:14,18 33937:2 33937:4,11 33967:10 33967:12,15 33968:5 33968:9,14 33981:4 33981:20 34010:18 34010:19 34021:5,10 big 33897:15 33958:20 33975:5 33993:14,16 34010:22,24,25 34012:15 bigger 33971:15 33993:10 bit 33816:16 33868:21 33902:6 33921:1,2 33922:13 33923:5 33925:15 33926:20 33926:21 33928:23 33929:5 33938:17 33960:3 34018:19 bits 33853:16 33855:16 Blaauw 33856:7 33888:8 33961:9 black 33922:17,22 blame 33984:17,20 blamed 33985:6 blank 33915:5 Block 33882:17 Blou 33830:15 33839:6 33839:12,19 33865:5 33865:24 33949:8 33950:24 34019:16 BMR 33820:14 33963:4 body 33918:13 book 33826:24,25 33827:10,13 33837:2</p>
--	---	---	---	---

<p>33837:2,8,23,25 33843:6,11 33844:20 33844:25 33845:3,11 33845:22 33846:17 33846:22 33848:23 33851:16,19,21 33854:10,19 33855:16,17 33858:15 33860:6 33861:20 33871:15 33874:20 33877:17 33877:19 33878:21 33879:16,16,22 33884:8,19,25 33920:5 33932:7,23 34010:8,9 34014:16 34014:18,24 34015:25</p> <p>books 33827:23,24 33830:19 33833:4 33836:19,24 33837:13 33856:6,6 33856:13,16 33870:2 33875:2 33877:3 33878:18 33924:20</p> <p>borrow 33828:22</p> <p>Botes 33825:1,24 33826:22 33837:23 33849:20 33850:9,9 33865:24 33867:4 33896:3 33930:22 33931:2,5 33933:3,5 33933:25 33934:4,20 33936:2,17,20 33937:20 33938:5 33939:5 33949:8 33950:24 33964:20 33965:25 33966:1 33984:15,18 33993:1 34016:3</p> <p>bottom 33900:17 33997:4</p> <p>boundaries 33864:8,10 33864:14,18,19,23 33865:4</p> <p>boundary 33864:10,20</p> <p>branding 34010:23 34013:12,22</p> <p>breaching 33962:2</p> <p>break 33860:4 33863:25 33898:3,17 33981:23 33986:23</p> <p>breakaway 33941:1,7 33941:22 33942:3 33987:6,10,12,13,18 33990:11 33992:15</p> <p>breaking 33964:8</p> <p>bridge 33897:3 33946:11,13 33947:21 33948:7 33950:23</p> <p>brief 33825:11,12 33830:3 33832:3 33871:22 33896:3 33980:13,21,21 33981:4,5,6,7,24,25</p>	<p>33982:3,4 33985:22 33993:17 33994:3,4 33994:15 33995:10 34019:15,18,24</p> <p>briefed 33895:14,15,21 33895:24,24</p> <p>briefing 33895:22 33896:6,11,14 33908:2,22</p> <p>briefings 33895:20 33896:4,12</p> <p>briefly 33870:4 33952:17</p> <p>briefs 33980:15 33981:2</p> <p>Brigadier 33892:13 33896:17 33897:24 33943:21 33944:5 33945:15,21</p> <p>bring 33818:13 33819:22 33885:13 33893:21</p> <p>bringing 33894:4 33913:10</p> <p>British 33931:7,14</p> <p>Brits 33820:8 33962:19 33962:24</p> <p>broad 33843:24</p> <p>broken 33828:11</p> <p>brought 33822:4 33889:25</p> <p>brush 34012:17</p> <p>BT 34017:10</p> <p>buggering 33998:25</p> <p>build 33992:21</p> <p>building 33890:13,15 33979:13 33982:9 33992:10</p> <p>bullet 33860:14,21</p> <p>bullets 33817:15 33827:4 33857:9,12</p> <p>bundle 33838:16,21,24 33839:2,13,15,21 33840:2,3,10,16 33841:1,3,9 33842:21 33842:21,23,24 33843:10 33958:20 33958:20 33977:24 33977:25 33978:1,8,9 33978:11,12,16 33980:24 33981:6,22 33981:25 33993:21</p> <p>burn 33993:3</p> <p>burned 33858:7</p> <p>burning 33882:7</p> <p>business 33951:14</p> <p>busy 33840:24 33857:4 33919:14 33981:25</p> <p>button 34004:24</p> <p>buy 34012:15</p> <p>buying 34010:24</p> <p>B379 33842:23</p> <p style="text-align: center;">C</p> <p>calculations 33991:22</p> <p>calibre 34018:10</p>	<p>Calitz 33892:13 33894:7 33896:17 33897:6,10,24 33943:12,17,18,21 33945:5,15,21 33951:16</p> <p>Calitz's 33944:5</p> <p>call 33817:4 33819:25 33820:9 33831:3 33834:3 33835:16 33836:2 33838:19 33847:11 33912:14 33912:19 33914:8,11 33914:23 33915:5 33917:12 33928:4,19 33928:20 33929:8,14 33934:23 33977:15 33977:16,17 33986:20 33992:14 34001:16</p> <p>called 33832:24 33833:6 33835:15 33846:5,7 33850:18 33860:13,17 33867:3 33890:18 33909:14 33909:15 33934:24 33956:16 33957:25 33962:16 33966:25 33970:23 33974:22 33978:14 34001:11 34001:13,16,25</p> <p>calling 33849:7 33995:3</p> <p>calls 33835:12 33836:8 33836:9 33861:4 33864:6 33865:1,2 33870:15 33929:7 34016:14</p> <p>camera 33830:22 33832:11 33837:24 33837:24</p> <p>cameras 33822:8 33941:9</p> <p>candidate 34005:12 34010:12 34012:1</p> <p>candidly 33933:4,5 33934:20</p> <p>canons 33997:10</p> <p>canvas 33992:24</p> <p>canvass 34016:6</p> <p>canvassed 34016:3</p> <p>canvassing 33963:18</p> <p>can't 33848:17 33883:23 33884:1 33904:4 33913:12 33914:22,24 33916:1 33916:2 33925:11 33927:6 33940:20 34004:1</p> <p>capture 33833:11 34007:3 34008:2</p> <p>captured 33832:20,21 33832:21 33834:1,2 33835:11 33843:22 33843:24 33844:2,6 33884:18,24 34007:5</p>	<p>captures 33844:3</p> <p>capturing 33844:9</p> <p>capturi8ng 33835:20</p> <p>careful 33852:6,10 33864:12 33870:8</p> <p>carefully 33827:9 33878:18 33886:17</p> <p>carried 33825:2 33938:4 33964:12,15 33996:16</p> <p>carry 33816:13 33817:17 33842:7 33898:6 33975:14 33986:4</p> <p>carrying 33917:19,19 33917:20 33963:1</p> <p>case 33847:10,11 33865:7 33918:6 33924:1 33933:11 33939:16 33963:23 33992:4</p> <p>casually 33947:6</p> <p>casualties 33988:20</p> <p>categoric 33886:14</p> <p>categorically 33886:4 34017:15</p> <p>category 33970:15</p> <p>caught 33914:2</p> <p>cause 33943:2 33967:22 33968:2,4 34003:23 34016:6</p> <p>caused 33871:17 33942:19 33943:4 33961:2</p> <p>caution 33877:1</p> <p>cautioned 33871:20</p> <p>CCTV 33830:22 33831:5 33832:11 33835:17 33941:9 33943:14 33944:22 33945:6 33946:20 33949:6</p> <p>censored 33880:17,19 33923:18,19</p> <p>central 33833:4 33837:6 33877:21 33879:15 33903:10</p> <p>centre 33835:15,16,25 33836:3,9 33877:17 33877:22 33879:17 33950:14 34008:21</p> <p>centres 33835:23</p> <p>certain 33822:16 33830:10 33837:4 33847:18,20,20 33854:13 33859:1 33868:11 33891:4,5 33901:14 33965:19 33970:3 33974:6</p> <p>certainly 33830:5 33833:25 33843:24 33846:4 33849:12 33850:6 33853:24 33854:13 33855:3 33856:16 33862:9 33869:1 33870:5,6,24</p>	<p>33872:2 33886:18 33887:14 33890:19 33897:25 33906:2 33907:9,11 33908:8 33908:10 33915:21 33916:23 33917:3 33918:23 33953:10 33982:23 34008:16 34009:12 34014:6</p> <p>cetera 33830:7 33865:9</p> <p>chain 33966:24 33973:14</p> <p>Chairman 33814:12,21 33819:17 33821:23 33822:17 33825:17 33826:1 33827:22 33828:3 33849:23 33862:15,19 33873:17 33878:12 33883:4 33887:10,15 33892:24 33902:11 33902:12 33903:12 33904:22 33910:21 33911:16 33928:22 33931:20 33941:7 33943:13 33948:12 33949:5 33958:5 33966:13,22 33967:10 33970:19 33980:20 33981:4 33991:1 34000:6 34008:18 34017:2 34019:14</p> <p>challenge 33924:6</p> <p>challenging 33903:7</p> <p>chamber 33838:25</p> <p>chance 33916:24 33925:24</p> <p>change 33856:2 33875:8 33933:14</p> <p>changed 33870:25 33918:24 34011:5</p> <p>changer 33986:21</p> <p>changes 33832:19</p> <p>channels 33821:2</p> <p>chanting 33994:18</p> <p>charge 33834:4 33934:3,7,15,17</p> <p>charged 33963:12,20</p> <p>Chaskalson 33828:7,8 33828:9,16 33872:23 34008:3,8,11 34009:24</p> <p>chatting 33826:12</p> <p>check 33832:18 33853:23,23 33859:9 33862:21,21 33884:17,23 33885:6 33885:14 33931:24 34004:13</p> <p>checked 33833:1 33853:1 33875:16 33885:3</p> <p>checking 33880:4 33884:11</p> <p>chief 33891:13</p>
--	--	--	---	--

<p>chop 34010:20 34012:12 chopper 33948:13 33998:8 circle 33902:6 circumstances 33817:18 33819:15 33827:10 33829:20 33866:1 civic 33950:3 civil 33847:10 civvies 34011:2 claim 33955:10 clarification 33966:16 clarified 34007:15 clarify 33827:23 33861:23 33934:16 33962:6 33966:22 clarity 33852:12 clean 33918:10,19 cleaned 33859:3 clear 33824:20,24 33828:6 33844:9 33846:8,11 33851:24 33854:1 33858:22 33862:7 33871:11 33874:24 33875:2 33876:12 33893:1 33897:4 33901:19 33928:20 33929:15 33934:2 33935:15,16 33936:20 33937:13 33938:22 33947:2 33953:12 33967:19 33968:10 33974:16 33978:20 33981:23 33986:15 33994:23 34009:7 34014:20 clearer 33842:6,11 33927:2 33994:25 clearing 33861:23 clearly 33846:9 33851:17,19 33852:3 33852:4 33853:3 33862:16,23 33869:3 33870:17,19 33872:3 33875:13 33885:9 33886:12 33897:12 33911:16 33918:21 33942:18 33945:25 33954:5 33955:2 clerical 33830:24 clerk 33836:13 34006:9 34006:15,19,22 34007:1,18,19 34008:4 clever 33916:3 client 34004:16 Cliffe 33873:20 clips 33875:3,5 clock 33825:15 close 33822:4 33866:12 33879:9 33887:20 33896:23 33999:6 closely 33999:6 clue 34014:2</p>	<p>clusters 34019:17 coding 33986:18 Coin 33819:18 33820:2 33820:24 33822:14 33824:9 33897:2 33906:16,22,23,23,25 33907:3,8 colleague 33818:20 colleagues 33850:9 33874:1 33878:18 33890:3 33933:1 33983:14 33991:4 collect 33828:13 33833:3 Colonel 33845:2,12,20 33849:5 33851:17 33855:9,18 33856:9 33872:25 33893:25 33895:14 33896:10 33899:3,5 33901:2,6 33901:8,20,20 33902:3,15,18 33903:1 33904:9,16 33907:1,5,19 33939:25 33940:6 34010:23,24 34012:15,20 34014:1 colour 33833:10 33842:17 33858:25 column 33858:8 33859:18 come 33819:9 33820:11 33829:21 33835:24 33850:3 33855:7 33859:1 33865:20 33874:17 33886:18 33897:7,9 33912:22 33918:4,9,19 33927:10,16,21 33935:14 33937:23 33942:7,10 33948:3 33948:16 33950:8,14 33950:22 33951:7 33952:2 33974:17 33989:2,4 33990:6,6 comes 33837:3 33924:13 33940:25 comfort 33860:3 33898:3 comfortable 33829:1,3 33888:5 33896:25 33898:6 coming 33831:3 33833:15 33835:24 33867:23 33899:24 33903:25 33913:4,12 33922:7 33928:5 33984:8 command 33825:8 33851:2 comment 33836:12 33849:10,13 33858:7 33858:14,15 33883:24 33924:17 33934:1 33940:21 33947:12 33948:22</p>	<p>33949:20,23,24 33971:9 33998:2 34012:17 comments 33858:17,21 33858:22 33859:18 33869:2 commission 33814:2,15 33814:18 33827:6,18 33829:5,5,6 33844:16 33844:21,25 33845:17 33846:2 33847:3,9,13 33848:5 33848:11,24 33849:8 33849:17 33851:21 33853:11 33863:20 33863:20,21 33871:14,16 33879:25 33880:7,14 33883:19 33886:9,10 33886:14,16 33887:12,13,19 33888:16 33898:20 33898:20,21 33905:24 33906:12 33906:13,13,19 33910:12 33911:22 33912:3,23 33914:10 33914:19 33918:10 33918:16,19 33922:7 33926:13,13,14 33946:4 33972:2 33973:4 33985:5 33991:19,19,20 34007:11 34021:11 commissioner 33814:10 33815:5 33816:12,15,18 33825:4,13 33835:10 33835:22 33836:4,18 33836:23 33837:12 33837:20 33838:2,4 33842:1,4,8 33863:2 33863:13 33875:25 33877:16 33884:4,16 33884:22 33885:5 33888:25 33889:4,7 33890:1,1,16 33891:3 33900:21 33908:14 33908:25 33909:12 33909:22,25 33910:8 33910:16,23 33911:2 33911:7 33912:4,11 33912:15 33914:9 33917:14,16,16,25 33926:22 33927:10 33927:13,15,17,21 33929:18 33936:18 33980:1,3 33996:10 33996:14 33997:4,25 34001:5,8,21,22,23 Commissioners 33981:10 34001:10 Commission's 33886:20 committee 33960:18 33961:2</p>	<p>commodity 33830:4 common 33967:22 33968:2,4 34016:6 communicate 33870:19 33913:6,7 33950:4 33951:14 33958:9 communicated 33948:10 33949:17 33950:11,17 33951:21 33987:24 communication 33949:4,10,11,12 33976:20 33995:3 34017:5 communications 33831:19 33833:20 33834:8 33979:21 34007:14 commuters 33857:2,7 33857:12 companies 33815:19 33820:8,17 33962:16 company 33818:5 33820:9,10 33893:18 33893:18 33960:13 33962:16 compared 33857:22 compels 33834:16,18 competent 33984:2,4 compilation 33936:11 compiling 33902:25,25 33936:11 complaint 33953:8 complement 33825:7 complete 33832:8 33851:16,19 33854:11,11,16,18,24 33872:21 33888:3 33924:7 33925:1,9 33929:23 completed 33922:8 completely 33842:2 33852:19 33854:14 completion 33993:14 compliance 33872:22 complicated 33880:12 complied 33872:17 complying 33873:4 comprehensive 33822:1 33870:5 compress 34020:24 compromise 33833:18 computer 33830:25 33835:19 33855:9 33871:25 34007:23 conceal 33876:6 33933:6 conceded 33934:20 33936:2 concentrate 33899:10 concentrated 33988:12 33989:6,11 concentrating 33939:13 Concentration 33898:13</p>	<p>concern 33822:10 33992:24 34007:8 concerned 33822:22,25 33828:14 33913:20 33913:23 33947:3 33952:21 34002:4 34014:17 concerns 34007:8 concession 33984:15 concluded 33832:8 33946:23 conclusions 33974:18 concurrent 33872:4 conditions 33820:1 conduct 33853:17 33885:21 conducting 33846:16 conference 33927:23 confess 33923:5 33936:23 confidence 33881:6 confident 33834:13,21 33884:6 34010:4 confidential 33980:14 confined 33908:3 confirm 33927:5 33938:25 33974:10 33994:2 confirmed 33867:5 33874:7 conflated 33935:17 conflation 33935:12,25 33937:7,15 conflict 33983:6 confront 33973:25 33984:9 confrontation 33976:21 33994:20 33994:24 33995:5,21 33995:24 confronted 33976:25 33983:17 confused 33828:3 confusion 33981:20 connect 33992:12 connected 33983:9 33997:23 connectedness 33966:2 33982:12 33992:10 33992:18,22 33996:6 33997:16 connection 33839:1 33974:1 connections 33968:19 consequences 33942:20 consider 33871:12 33918:3,5 considerable 33824:4 consistent 33999:16 consolidated 33838:16 constables 33857:15 33876:18 33877:6 constantly 33935:10 contact 33873:13 33928:13 contacted 33929:3</p>
--	--	--	---	--

<p>contacting 33873:11 contain 33981:2 contained 33876:1 33884:7 contains 33851:22 CONTD 33814:9 33829:16 33863:24 33898:25 33926:18 contemporaneous 33843:11,18 33845:18 33875:12 content 33914:20,21 context 33861:18 34000:7 contingent 33897:13 continuation 34015:11 continue 33826:20 34018:25 continues 33872:8 33960:9 34019:8 continuous 33850:23 33974:24 33977:11 33981:22 33987:25 contract 33815:18 33819:13,14,18,19 33820:2 contracted 33815:19 contracting 33818:12 33818:13 contractor 34017:10 contractors 33816:9 33819:16 contrast 33961:21 contributed 33952:15 contribution 33936:7 33938:7,10,18,20,24 33942:18 33945:19 33945:19,24 33952:14 control 33815:8 33818:3 33819:25 33823:11 33824:2 33827:12 33829:21 33836:3 33837:6,7,17 33837:17 33843:13 33843:19 33894:3 33998:3 convenient 33860:3 33986:3,5,6 conversation 33894:13 33894:13,21 33899:8 33899:9,11 33901:8 33909:13 33910:15 33910:22 33911:6,15 33911:17,18,21 33912:1,9,10,21 33914:14 33915:17 33915:19,24,24 33916:2 33917:8 33926:22 33927:3,10 33928:16 33929:1,1 33955:23 33961:5 33996:13,18 33999:13 34000:14 34011:3 conversations 33826:5</p>	<p>33888:10 33894:2 33901:11 33911:1,2 33915:7,7,8,16 33916:7,9 33928:25 33931:23 33932:15 convey 33956:17 conveyed 33953:15 33956:6 convicted 33963:23 convoys 33963:8 cope 33989:8 copies 33842:17,17 33847:12 33975:14 33980:23 33981:10 copper 33815:2,4 33833:16,18 copy 33828:21,22 33832:22 33837:2 33842:1,3,14 33846:1 33878:11 33901:3 33920:20 33922:7 33924:9 33959:4 33975:16 33978:10 33981:9 34014:18,19 core 33904:20 corner 33920:8 33921:8 corrected 33820:14 33859:2,3 33923:7 33924:17 33979:20 34001:22 correction 33922:21 34015:16,21 correctly 33815:17,23 33821:18,25 33832:11 33835:3 33853:22 33859:20 33893:17 33897:14 33924:18 33936:5 33941:15 33954:17 34008:19 34009:2 Costa 33955:9,25 33957:14 couldn't 33817:15 33913:6 33917:1 33928:23 33961:7,12 33967:21 34000:13 counsel 33826:17 33880:18 33924:4 counter-industrial 33958:22 couple 33833:14 33834:22 33848:16 33938:18 course 33825:24 33826:22 33831:15 33842:5 33846:15 33848:10 33910:6 33916:15 33945:20 33971:21 33975:14 33981:3,11 court 33867:4,19 courts 33847:10 cover 33818:1 covered 33866:21 33886:7,20 33967:2</p>	<p>33982:11 covers 33931:16 33956:14 CPU 33815:9 33817:21 33817:21,23 33818:6 33818:9 crew 33865:8 crews 33864:13 Crime 33815:8 33817:23 33818:14 33818:15 crimes 33817:16 33833:18 33834:11 criminal 33872:11 33886:1 crisply 33925:20 critical 33904:11,17 33905:22 cross 33836:16 34020:10 cross-examination 33825:25 33826:23 33838:11 33843:1 33863:24 33880:23 33881:6 33898:25 33926:18 33929:24 33930:18 33937:5,12 33975:15 33981:17 34014:10 34020:16 34020:17,20 cross-examine 33838:7 33881:7 33929:22 33930:17 33931:23 cross-examiners 33898:12 crowd 33815:8 33882:3 33882:5,8 33961:7,12 33961:20 33983:16 33984:8 crucial 33880:9 33905:18 cup 33863:18 curious 34017:20 C5 33882:17</p> <p style="text-align: center;">D</p> <p>D 33988:14 33998:4 Da 33955:9,24 33957:14 daily 33980:3 dancing 33994:18 danger 33825:5 33935:17 dangerous 33947:17 33953:6,18 dark 33899:21 date 33833:8 33840:5 33841:20 33852:25 33861:1 33868:15 33878:23 33920:9 33921:9 33922:2 dated 33839:9,13,19 33840:10,16 33841:3 33841:12,19 dates 33821:19 day 33821:10 33829:13</p>	<p>33836:10,10 33857:7 33882:5 33888:6,7 33895:22 33899:6 33900:5,11 33910:18 33910:20 33912:3 33918:1 33922:8 33923:3,21 33924:10 33924:18 33927:11 33927:11,16 33937:9 33966:4 33967:9 33969:2 33971:4 33973:23 33990:15 33998:4 34003:6 days 33924:19,20,21 33925:7,7,7 34003:9 34003:13 34016:10 34016:11,16 dayshift 33815:24 33816:7,7 de 33906:24 deal 33814:19,23,25 33815:2 33816:24 33817:16,20 33823:13 33825:21 33880:23 33881:8 33888:20 33892:5,8 33892:22 33897:19 33904:2,24 33909:16 33910:6 33913:21 33914:6 33928:7 33936:24 33937:19 33955:10 33958:10 33968:16 33980:17 33988:20 33989:24 33992:19 34006:9 dealing 33821:19,19 33831:25 33850:2 33864:1 33884:5 33913:13 33917:3 33957:1 dealings 33895:18 33896:10 33929:18 deals 33819:7 dealt 33882:14 33918:25 33929:17 33994:15 34002:6 deaths 33984:17,20 33991:4 debited 33825:16 deceased 33858:10 December 33840:7,12 33840:18 decide 33919:6 33972:25 decided 33819:23,24 33949:19 33983:16 decision 33825:12 33876:7,8,10 33880:10 33950:18 33958:11,13 33969:2 33970:25 33971:4,13 33972:2,4,5,5 33973:23 33984:5,6,9 33984:23 33986:16 33987:5 33990:10 decisions 33876:4</p>	<p>33943:4 33972:8 33974:16,18 33984:20 decision's 33922:6 deduction 33928:18 deemed 33851:4 defer 33866:2,7 defined 33852:5 definitely 33821:17 33822:13 33823:6 33830:14 33833:22 33835:7 33854:2,5 33859:21 33863:11 33870:10,13 33873:12 33874:20 33875:20 33885:13 33885:14 33888:10 33888:12,13 33892:7 33893:3 33894:14 33895:9 33896:2 33901:12,12 33903:12,20,23 33904:3,5 33905:19 33906:19 33910:22 33911:1 33912:19,22 33913:8,13,22 33918:6 33919:19,22 33920:1 33924:20 33950:8 33953:24 33965:4 33987:23,24 33990:17 33991:1 33999:2 34001:23 34005:1 34008:25 34011:10 34012:23 degree 33921:17 Dekker 33873:20 delay 33829:24 delete 33884:6 34002:23 34004:15 34004:24 deleted 33855:16 33856:24 33859:10 33861:8,10,12 33867:2,8,11,12 33868:2,12,25 33869:19,20 33884:19 33885:1,6 33920:12 33922:11 33923:17 33924:17 34003:1,6 34005:19 34006:6 34012:4,5,6 deleting 33868:3 33879:21 34005:23 deletion 33857:1,4,6,11 33857:13,17,22,25 33860:17,22,24 33861:6,21 33864:4 33866:25 33876:15 33876:16 33885:22 33886:1,2 34005:13 34010:12 34014:18 34014:20 deletions 33848:25,25 33851:22,23 33856:22 33857:17 33859:7 33860:6,12</p>
--	--	--	--	--

33861:14 33863:4 33864:1 33866:19 33869:24 33875:10 33875:11 33876:1 33921:17 33922:2 33924:10 34002:5,8 34002:17 34003:3,19 34004:13 34010:10 deliberate 34002:25 34013:13 deliberately 33886:13 33935:22 Delta 33858:4 demands 33953:17 demoralised 33998:23 department 33831:20 33835:8 33836:25 34007:13,14 depend 33915:23 depending 33817:17 33818:12 33830:23 depends 33877:20 deploy 33903:19 33989:8 33999:11 34000:13,17 deployed 33988:8,18 33989:17 33999:9 deploying 34000:24 deployment 34000:21 der 33833:6 33861:10 33863:2 33867:7 34003:12 34008:10 derived 33904:15 described 33848:21 33964:12 describes 33904:10 description 33832:3 33871:22 33918:11 designated 33823:10 desk 33826:13 desks 33874:4 despatched 33882:17 detail 33823:20 33856:14 33883:8,9 33918:22 detailed 33834:2,2 33891:6 33919:20 details 33834:12 33858:9 developed 33888:8 developing 33821:14 development 33848:10 Dewald 33989:3 diaries 33932:11 diary 33915:10 33932:10 didn't 33817:8 33823:19 33853:14 33853:23 33854:3 33859:5,9,10,19,21 33883:5 33885:13,14 33890:6 33899:21 33903:1 33914:5 33919:3 33924:2 33927:16 33930:23 33932:16 33941:8	33960:20 33964:4,5,6 33964:7 33992:3 33994:13 died 33942:13 33987:1 differ 33964:19 34003:24 different 33815:1 33845:3,21 33878:17 33936:9 33944:21 33981:22 33993:11 33993:11 33995:16 33995:17,24 differently 33938:1,13 33940:11 difficult 33822:8 33826:6,7 33863:11 33878:6 33899:10 difficulty 33851:12 33894:10 diligently 33836:8,15 33919:23 direct 33821:2 33825:11 33864:14 33896:18 33967:16 directed 33837:10,10 direction 33913:24 33941:22 33967:24 directive 33864:5 directly 33913:20 33919:16 33971:3 33983:9 director 33963:12 directory 33920:17 Dirk 33825:1 33837:23 33856:9 33865:24 33867:4 33896:3 33933:2 33949:8 dirt 33965:3 discharged 33827:3 disclose 33847:12 33853:16 disclosed 33847:17 disclosure 33853:11,15 33853:19 33855:8,10 33855:11,14,15 33872:12 discourteous 33924:24 discover 33847:11,18 33883:18 discovered 33827:1 33844:15,21 33845:2 33845:8 33847:4,5,16 33847:18,19,21,24 33848:15 33849:11 33873:19 33922:23 discovery 33844:16 33870:10 33871:16 33874:21 33921:22 33921:25 discrepancy 33879:6 discretion 33862:13 discuss 33901:5 discussed 33830:14 33968:22 33969:12 33993:1 discussing 33850:13	33944:18 34004:18 discussion 33870:14 33890:11 33891:4,7 33900:6 33930:14 33996:6,9 33997:17 33997:24 33998:21 34000:12 discussions 33824:13 33832:24 33850:8,12 33850:16,21,23,24 33890:4 33907:16 33996:13 34016:22 disperse 33857:14 33876:17 dispersed 33860:18 displeasure 33929:15 dispute 33937:20 33956:5 33965:23 disputed 33954:4,20 disruption 33977:19,23 33978:15 33980:13 33980:18 disseminate 33915:3 disseminated 33852:17 distance 33824:4 distances 33867:23 distinction 33902:23,23 33903:6,9 33935:15 33935:16,23 33936:6 33936:10,21 distinctive 33903:4 distributed 33920:20 diverted 33836:8,9 division 33814:16 33819:3 33820:12,13 dockets 33994:25 doctor 33933:14 documentary/photog... 33886:8 documentation 33830:11 33832:6 33872:13 documented 33832:12 33901:10 documents 33828:19 33830:14,20 33831:24 33833:8 33834:15 33837:5 33838:22 33847:12 33847:14,20,23 33855:25 33856:4 33870:9,24 33873:1,6 33873:7 33875:12,16 33875:18 33877:24 33879:7 33986:14 34003:23 34007:16 document's 33922:12 doesn't 33855:10,20 33888:15 33900:19 33902:18 33915:23 33919:12 33925:6 33937:16 33973:3 Dog 33816:8 33819:22 dogs 33819:22 doing 33833:15 33836:14,14	33852:11 33876:12 33880:6 33894:2 33902:1 33906:19 33913:4 33947:22 33966:3 34000:24 34003:7,10 domain 33832:1 33853:7 33870:7 donate 33991:25 double 33983:5 33985:17,18,20 33986:18,23,25 33987:22 33988:2 33989:24 draw 33819:20 33853:12 33854:15 33973:14 33995:10 drawing 33902:23 33966:25 33973:15 drawn 33903:5 33941:21 draws 33936:10 drill 33970:12,18 drive 33845:2,11,21 33849:6 33851:17 33855:9,18 33872:25 driven 33907:22 driver 33818:20 driving 33818:1 drove 33907:19 Drysdale 33830:15 33860:15 33865:5,24 due 33898:16 33910:6 33930:12 33968:21 33975:14 33981:3,11 dumped 33894:15 duty 33853:14 33865:7 33950:3	EEEE19.1 33843:7 33845:10 33846:1,9 33846:11 33849:7 33864:2 33866:19 33871:14 33920:18 EEEE19.2 33828:5 effect 33848:21 33879:21 33948:9 34018:18 effected 34004:3,5,6 effecting 34003:23 effectively 33818:21 33830:17 33904:24 33960:7,25 33961:1 effort 34019:1 efforts 34019:12 eight 33857:14 33876:17 33883:14 either 33826:15 33833:24 33842:17 33865:23 33898:13 33903:2 33910:9 33924:6 33927:16 33928:6 33938:12 33940:10 33948:22 33971:1 33973:9,24 33975:25 34004:22 electronic 33837:5 33842:10,11,17 33920:21 33921:7 element 33957:9,10 elevated 33910:25 33990:18 34014:12 ELP 33858:3 else's 33835:8 email 33916:17,19 33917:8 33976:4,10 33976:12 33977:20 emergency 33827:24 33830:15 33833:4 33836:3,19,24 33837:1,17 33841:12 33841:14,18 33842:23 33864:24 33893:9 33913:21 33914:4 33958:12 33988:18 34011:1 34013:9 employees 33819:14 33825:8 employer 33948:16 endeavour 33922:16 ends 33920:17 engage 33958:3 33970:5 engaged 33819:16 33963:3,5 engagement 33901:20 33991:18 engagements 33879:7 engender 34019:20 English 33834:24 enlarge 33899:17 33906:2,2,4 ensure 33865:10 33884:23
E				
e 34016:9 EA 34018:25 earlier 33849:21 33884:9 33900:4 33906:21 33908:2 33915:12 33921:1 33923:3 33926:19 33935:12 33943:18 33951:6 33993:21 33994:9 34001:20 34002:6 34014:15 early 33901:22 33902:10 33905:6 33908:17 33921:14 33922:8 33927:11 33995:4 33998:7 ears 33952:25 Eastern 33824:3 easy 33918:24 33935:12 33936:24 eat 33981:16,16 edited 33880:17 editing 34003:23 EEEE19 33828:21 33843:17 33844:9 34005:8				

<p>entire 33912:3 entirety 33855:25 entities 33960:13 entries 33832:17 33868:12 33919:13 33920:5 33922:10 34004:13 34005:8 entry 33831:4,5,7 33833:21,23 33856:25 33857:21 33859:17,20 33868:2 33868:4 33869:16 33879:10 33882:15 33884:17 34006:15 34008:5,5,9,13,25 34010:8 34014:22 environment 33831:10 33899:20 33946:4 33990:23 equipment 33816:12 33816:15,18 33819:7 equivalent 33960:18 eradication 34002:11 Erasmus 33840:15 33841:3 escalate 33825:5 33986:17 escalated 33914:1 33997:18 escalating 33985:23 escalation 33976:19 33990:2 escaped 34005:13 34010:20 34012:12 escorted 33865:9 especially 33871:15 essentially 33843:12 33868:10 33979:22 established 33912:25 establishing 33918:9 estimation 33934:1 33965:12 et 33830:7 33865:9 etcetera 33815:4,4 33903:20 euphemism 33969:15 evening 33904:17 33910:24 33976:18 event 33825:5 33832:10 33946:6,8 33987:20 33993:4,4 33995:13 34012:13 events 33818:3 33840:23 33886:20 33886:23 33887:9 33888:19,22 33918:11 33942:1 33952:15 33966:2,4,8 33974:1 33979:10 33982:12,12 33983:9 33985:7 33986:15 33992:10,12,21 33996:7,7 34011:17 34011:18 eventual 33952:15 eventually 33847:2</p>	<p>33893:20 everybody 33914:2 evidence 33817:5,7 33823:23 33826:6,22 33845:1,11,20 33846:14 33848:6,12 33849:4,6 33869:24 33872:20 33876:15 33877:23 33879:8,14 33886:8 33890:8 33891:3,13 33896:25 33898:15 33899:10 33899:13 33902:18 33906:7 33912:2 33925:8 33933:6,7,15 33935:14 33936:20 33945:2 33946:9 33947:8,16,20 33948:3 33952:7,17 33952:23 33953:12 33967:16,16,18 33968:4,11,25 33970:23 33971:23 33987:21 34004:20 34011:11 34016:3 34020:13 evidence-in-chief 33887:8 ex 33997:11 exacerbated 33987:4 exact 33844:5 exactly 33815:25 33856:22 33859:10 33862:24 33876:3 33904:5 33909:8 33938:4,24 33939:4 33956:6 33959:22 33960:13 33961:10 33961:22 33983:9 33997:1 34004:23 34013:12 examination 33814:9 33829:16 34020:11 34021:8 example 33814:24 33822:19 33823:23 33834:8 33862:1 33879:22 33933:5 33952:15 34003:12 Excel 33831:1 exception 33933:11 excess 33913:11 exchange 33894:20 exclude 33965:11 excluding 33870:21 33965:14,15 excuse 33954:7,25 execution 33936:7 exemplary 33933:3 exercised 33862:13 exerted 34019:11 exhibit 33828:4 33838:23 33844:13 33846:1 33920:6,18 33920:25 33921:1 33943:23 33958:23</p>	<p>33977:4,8 34015:5 exhibits 33838:12 exist 33876:22 33877:2 33877:4,9 33878:11 33878:14 existence 33848:6 33925:10 expand 33906:10 expanding 33906:11 expect 33914:9 33951:20 expected 33850:20 33888:23 33919:8 33961:21 expedition 33942:20 experience 33898:13 33898:14 33958:6 experienced 33982:14 expert 33816:23 experts 33816:24 explain 33814:18 33827:12 33833:13 33848:2 33858:20 33861:7 33866:4 33868:24 33869:18 33869:20 33883:2 33888:21 33911:24 33930:7 explained 33819:21 33830:6 33837:23 33843:22,23,23 33846:6 33868:10,21 33869:1 33880:3 33900:1 33909:19 33940:17 33943:18 33962:18 33964:23 34007:22 explains 33900:23 explanation 33825:23 33851:12 33855:12 33855:23 33856:21 33861:19 33923:6 33924:13,14 33925:16 34012:14 explanations 33933:13 explicit 33824:20 explicitly 33832:14,19 extend 33930:2 extensive 33890:4 extensively 33918:25 extent 33886:22 33899:2 33965:20 extra 33838:23 33867:7 33867:19 33930:2 extract 33938:23 extraneous 33868:12 extreme 33911:21 33913:17 33920:7 33921:2,8 extremely 33852:10 33914:2 ext-door 33836:3 ex-Rhodesian 33931:17 e-mail 33839:6,10,19 33842:21 33873:13 33983:3</p>	<p>e-mailed 33870:16 <hr/> F <hr/> face 33987:15 34002:7 faceless 33890:7,10 faces 33890:10 facetious 33931:22 facie 33854:15 facilitate 33890:17 facilities 33938:21 facility 33817:8 33819:20 33837:11 33928:7,14 33929:2 fact 33824:17 33849:20 33852:24 33853:13 33853:14 33854:10 33870:16 33877:10 33879:20 33880:18 33882:14 33884:17 33897:24 33898:17 33899:1 33901:23 33904:9 33916:4 33918:12 33921:13 33927:16,22 33929:8 33941:21 33945:20 33953:9,18 33960:17 33969:12 33983:2 33993:14 34001:15 34008:4 34015:19 34016:4 facts 33880:22 33919:9 33929:9 33973:4 failures 33946:19 faintest 33861:9 fair 33844:6,9 33898:12,12 33909:3 33921:17 33929:4,7 33939:20,22 33940:24 33949:13 33949:13 33968:8,19 33972:17 fairly 33836:11 33891:6 33899:2 33946:24 33950:5 33977:21 fall 33864:18 33884:23 33885:6 33898:16 fallen 33884:17 false 33907:4 familiar 33828:24 33836:13 33905:16 34017:8 families 34020:23 Fanagalo 33961:6 far 33881:13 33883:16 33887:9 33890:4 33967:25 33973:3 34002:3 34014:16,17 34014:19,23 fast 33997:18 33998:14 fatal 33942:20 fatalities 33900:2 fault 33826:10,11 33898:16 33951:6 33990:7 favourite 33966:1</p>	<p>fax 33983:3 fear 33953:10 33955:15 feeding 33949:10 33966:5 feint 34005:10 FFFF 33838:19,21 34015:8 FFFF1 33880:24 33881:12 33887:3 33897:22 FFFF2 33839:7,9,18 33842:20 FFFF3 33839:22,23 33840:9 FFFF4 33841:2 33842:22 FFFF5 33842:20,23 FFFF6 33974:22 33977:10,13,14 33993:14,20,22 34015:21 FFF6 34017:25 field 33820:4 33894:15 file 33920:20 final 33819:12 33841:8 finally 33818:25 33907:15 34009:16 find 33838:16 33843:8 33877:10 33898:11 33900:16 33901:18 33923:5 33956:5 33985:5 34012:14 fine 33850:5 33860:1 33935:4 33937:25 33948:14 33955:18 33963:16 33972:14 33973:7,15 33976:3 33995:18 34020:1 fingertips 33937:24 finish 33837:3 34020:20 finished 33829:3 34009:19 fire 33817:10 33834:16 33857:2 33988:18 firearms 33816:19,21 33816:22 33827:3 33833:23,23 33834:1 33834:3,3,17,19 fired 33860:19 firing 33883:13 firm 33962:21,23 33964:5,8 firmly 33884:15 firms 33988:25 first 33814:19 33827:10,22 33832:16 33838:7 33839:5 33842:20 33848:15,18 33856:25 33857:4 33860:3 33866:12 33884:21 33899:4,4 33902:10 33907:18 33920:4 33921:22 33922:17,22</p>
---	--	--	--	--

<p>33923:14 33924:19 33938:18 33948:12 33980:22 33984:10 33986:13 33992:22 34001:7,9,12,13,17 firstly 33873:10 33886:13 33888:3 33899:22 34004:15 fit 33869:12 five 33828:12 33866:12 33921:15 33941:2,4 33949:18 33960:21 33966:9 33992:6 34003:5,24 34004:7 34018:3 five-minute 33829:4 flare-up 33976:21 flew 33897:9,9,16 flight 33906:17 34010:21,22,24 34011:2 34012:21,23 34013:4,5,9 flights 33823:4 34013:5 flowing 33872:8 flown 33824:17 fluent 33961:6 flying 33939:25 34018:10 focused 33831:18 33852:19 33982:24 focussed 33856:18 follow 33858:9 33937:16 33963:25 33975:18 34006:18 followed 33828:5 33877:5 33959:11 34008:15 following 33848:22 33969:2 33973:23 33994:14 33998:21 follow-up 33871:5 food 33867:4,5,7,13,15 33867:20,21,22 33939:6,9 34016:17 footage 33832:11 33963:17,17 force 34000:3,19 forget 33834:17 forgive 33934:13 forgot 34010:13 34015:1 forgotten 33853:23 34004:14 form 33872:21 33938:19,21 33960:8 formally 33888:10 format 33852:21 33862:3 33871:18,20 33876:7,21,25 former 33930:21 33931:2,5 formulating 33899:3 formulation 33902:10 33902:16,17,21 33903:11 33907:17 33907:18 33935:13</p>	<p>33936:4,22 forth 33853:7 33872:14 33932:15 forthright 33886:22 33918:10 fortuitously 34012:12 Forum 33912:5,12 forward 33844:20 33872:6 33886:18 33914:5 33960:23 33961:8 found 33840:2 33845:11,21 33846:2 33851:17 33859:4 33872:25 33882:10 33882:18 33919:23 33947:9 four 33838:1,12 33965:1 34009:22 fourth 33842:22 four-way 33907:24 33964:17 33965:2,5 frame 34004:2 framed 33968:6 Frank 33917:1 33976:8 33979:19,19 frankly 33919:15 33973:2 Frans 33882:16,19 Friday 33821:18,22 33822:3 33823:7,7 33929:14 friend 33902:13 33921:24 33935:10 frivolous 34018:11 front 33814:11 33881:14,18 33959:4 34016:2 frustrated 33928:23 full 33825:7,23 33853:11,15 33855:8 33855:10,10,14,15,16 33855:17,18 33861:17 33880:21 33887:9 33918:10 fuller 33924:6 fully 33827:17 Fundi 34020:21 further 33825:18 33838:5 33866:22 33878:16 33879:20 33880:6 33882:18 33883:23 33884:2 33886:15 33888:14 33890:8 33900:15 33978:22 33984:12 33992:17 33994:19 33999:4 34016:22</p>	<p>Gauteng 33890:1 General 33824:23 33890:2 33892:20 33893:5 33894:1 33896:18 33934:3 generally 33898:14 33932:16 33933:8,10 33933:13 generals 33928:11 generate 33825:21 genuine 33949:15 getting 33842:17,17 33896:24 33935:10 33946:18 33985:8 33994:8 GGG23 34008:5 give 33831:22 33833:5 33841:19 33871:13 33905:1 33907:19 33913:25 33925:16 33926:5 33930:8 33936:25 33937:23 33978:6 33987:21 33991:22 34009:21 34015:4 given 33847:25 33851:15,16,18,19,21 33851:22 33852:8 33854:11,12,14,17,22 33854:22,24 33855:17,18,20,21,22 33855:25 33856:4,9 33856:16 33857:23 33861:11 33871:18 33874:3,13,19 33877:25 33878:11 33878:17 33880:13 33880:20,20 33886:7 33886:21 33893:14 33903:4 33905:8 33917:22 33929:20 33929:25 33958:20 33974:21 33975:13 33981:8 33989:18 33996:12 34005:18 34006:1,1,23 34009:8 34009:13 34010:15 34014:21 gives 33925:24 giving 33862:20,22 33902:24 33998:1 GK 33857:7,11 glad 34015:20 glove 33956:25 goes 33888:14 33902:13 33998:1 going 33817:20 33823:4 33825:18,21 33826:12 33827:8,16 33828:20 33830:2,18 33832:14 33833:13 33833:19 33836:10 33838:7 33847:19 33850:13 33851:8 33862:6 33863:14 33866:20,22 33870:6</p>	<p>33880:22,25 33881:8 33888:15 33893:10 33897:6,7,18 33899:11 33902:14 33903:19 33905:1 33914:20 33918:5 33931:23 33932:2,22 33933:4 33936:19 33937:6,8,19 33938:23 33940:4,17 33942:5,18 33946:7 33947:22 33948:1,3,8 33948:18 33949:6 33954:1 33965:23,25 33966:1,23 33968:5 33974:8,20,22 33980:25 33986:4 33992:9 33998:23 34011:15,16 34013:8 34016:5 34020:24 goings 33934:2 good 33834:25 33843:1 33843:3 33898:6 33916:9,11 33925:22 33926:6 33930:19,20 33961:10 33971:18 33977:3 33995:18 34013:5 34016:13,20 Google 33899:23 33900:5 Gotz 33991:25 33992:6 Graeme 33814:7 33829:14 33863:23 33898:23 33926:16 33928:5 Graeme's 33859:8 Graham 33997:3,4,6 34001:6,14 grammar 33833:2 granted 33926:10 graphic 33852:14 grateful 33868:22 green 33825:6 33830:7 greet 33888:11 ground 33815:9 33919:13 33943:15 33949:9 33990:25 33991:1 group 33858:4 33860:18 33890:6 33904:20 33941:1,8 33941:22 33942:3 33943:11,13,16 33944:22,23 33946:10,24 33947:3 33947:5,9 33949:2 33950:5 33956:18 33960:20 33961:5 33976:20 33987:6,7 33987:10,12,13,18 33990:11,21 33992:15 groups 33944:22 groSup 33946:13 guarantee 33843:21 guarding 33819:19</p>	<p>guards 33817:25 33827:2 33867:16,18 33867:19,25 guess 33929:5,6 guided 33918:22 guideline 33959:15,23 33960:1,10 guidelines 33961:15,22 guy 34010:25 guys 33832:16 33850:18 33903:17 G4S 33820:4</p> <hr/> <p style="text-align: center;">H</p> <p>H 34018:23,23 hadn't 33942:11 half 33893:22 33898:11 hand 33956:25 34002:10 handed 33838:23 33872:21 33982:1 34015:2 handing 33873:6 handle 33959:18 handled 33873:8 33874:15 33962:13 hands 33860:4 33918:10,19 33986:12 handwritten 33856:14 33871:22 33877:3,14 33877:16 33878:17 33878:19,21 33884:8 33884:19,25 Hannes 33867:6 happen 33826:14 33943:5 33947:15 33954:15 34011:8,15 34011:17 happened 33833:9 33850:14,17,19 33866:17 33880:18 33882:24 33901:10 33927:23 33929:11 33935:11 33938:5,6 33938:11,12,12 33940:11,11,15,25 33941:11 33942:1,2 33942:11 33946:1 33961:23 33963:22 33971:22 33985:8 33987:7 33990:15,24 33994:15 33996:9 34010:11 happening 33821:14 33831:4 33885:13 33905:13 33913:16 33913:23 33949:7 33993:3 happens 33930:17 happy 33881:2 33923:6 33991:25 harassing 34012:23 34013:1,3 hard 33816:16 33826:2 33833:3 33836:18,24</p>
---	--	--	---	---

<p>33837:2 33842:5 33845:1,11,21 33849:6 33851:17 33855:9,18 33856:6,7 33872:25 33877:3 33920:20 33956:16 33957:25 33966:25 34014:18 hardcopies 33828:19 33828:21 hardcopy 33863:8,9 hardcover 33827:24 hard-line 33962:3 33967:5,6 harmless 33946:24 33950:5 hasn't 33925:20 33974:17 33977:3 hastened 34015:20 hate 33915:4 haven't 33857:22 33861:9 33879:12 33881:3 33909:20 33930:7 33937:24 33975:22 33977:3 head 33826:13 headed 33841:11 heading 33920:25 33977:22 33980:12 headphones 33826:13 hear 33826:6,7,14,15 33845:14,15 33846:13 33848:12 33848:14 33876:3 33923:6 33930:23 33951:25 33954:1,17 33972:18 33973:17 33973:20 33998:8 34005:6 34013:19 34017:24 34018:9 heard 33868:20 33874:18 33880:7 33951:2 33952:6,7 33953:24 33955:21 33966:17 33983:22 33983:23 33993:20 34007:2,2,4,18,19,20 34007:21 34008:1 34021:9 hearing 33816:17 33826:2 33954:19 34019:12 hears 33826:16 held 33853:16 34016:15 34017:16 34017:20,22 helicopter 33820:20,23 33821:1,15,20 33822:3,9,14 33823:9 33823:10,24 33824:2 33824:8,9,12,15 33896:17,18 33897:2 33897:6,10 33906:17 33906:20,22 33907:3 33907:8,13 33941:6 33943:17 33945:21</p>	<p>33949:10 33951:12 33951:17 helicopters 33820:25 33822:20 33823:4 help 33833:7 33842:2 33842:15 33868:13 33868:22 33874:12 33919:12,15,15 33922:14 33925:6,25 33926:1,4 33929:10 helpdesk 34016:14 helped 33992:12 helpful 33901:21 33902:3 33926:6 helping 33863:10 33992:22 Hemraj 33815:5 33816:12,15,18 33825:4,13 33835:10 33835:22 33836:4,18 33836:23 33837:12 33837:20 33838:2 33842:1,4,8 33863:2 33863:13 33875:25 33877:16 33884:4,16 33884:22 33885:5 33900:21 33917:14 33980:1,3 Henry 33830:15 33832:24,25,25 33833:25 33834:3 33839:6,12 33856:7 33865:5,24 33872:4 33888:8 33890:18 33892:1 33904:3 33949:8 33961:9 34019:15 He'd 33903:4 he's 33902:19 33932:18 33937:19 33948:5 33974:8 33991:17 33996:2 34010:25 34011:14 hide 33933:15 high 33985:21 34018:15,16 34019:7 34019:8,13,16,19,23 34020:5 higher 33890:16 33940:9 highlighted 33950:8 33951:8 hindsight 33885:2,2 hold 33917:1 33922:19 home 33948:9,19,19 honest 33855:24 33875:21 honestly 33876:5 33958:8 34007:11 hope 33829:2,12 33836:8 33883:18 33887:14 33924:23 33933:4 33938:23 horse 33999:11,21,24 34000:2,7,9,12,17 hospital 33882:13</p>	<p>33965:3,6 33988:19 hostel 33882:16,20 33976:23,25 33994:19 hostels 33814:24 33817:15 33895:25 33905:18 hot 33985:20 hour 33898:8,11,11,18 33930:1,3 34004:7 hours 33821:11 33918:12 34003:5,24 34020:21 house 33873:5,7 33874:14 33989:1 housekeeping 33814:3 33838:12 HR 33833:20 33917:3 33956:25 33957:3,4,9 33957:15,20 hub 34017:11 huge 34013:6 human 33831:24 33867:6 33949:25 hundred 33929:13 hundreds 33861:19 hypothetical 33951:24 33952:1</p> <hr/> <p style="text-align: center;">I</p> <p>ICAM 33841:17,24,25 33846:3,5,11,15,22 33847:2,3,14,24 33848:4,7,11,16 33849:7 33851:18,20 33854:12 33855:10 33855:19 33856:8 33859:6,6 33871:24 ICAMs 33851:25 idea 33861:10 33867:9 33867:11 33925:22 33926:6 33973:13 identified 33960:18 33961:2,2,16 identify 33893:12 33978:16 identifying 33940:1 ignoring 33936:17 illegible 33842:2 imagine 33842:13 immediate 33820:16 33916:25 immediately 33851:5 33917:12 33922:10 33928:24 33937:1 33938:1 imminence 33924:4,4 imparted 33891:5 imperative 33864:12 implementation 33827:11 33892:19 implemented 33827:11 importance 33885:10 33911:21 33913:17 33930:12 important 33825:22</p>	<p>33826:15,16 33829:25 33856:12 33874:5 33875:23 33876:1,6 33884:24 33915:7,16,25 33916:14,22,25 33917:3,4 33919:19 33925:17 33935:22 33939:24 33950:18 33951:13 33966:24 33972:2,4 33974:11 33982:9 33996:7 33998:25 34001:4 34003:3,4 34006:18 34011:18,20 34012:25 34013:9 34018:13 importantly 33997:14 impress 33973:14 impressed 33973:8 impression 33845:17 33925:25 improbable 33973:3 improve 34019:2 inappropriate 34013:15 inaudible 33817:22 33858:2 33859:11 33881:4 33933:9 33940:3 33942:23 33999:7,7,9,10 34010:18 34017:6 incarcerated 34016:5 34016:23 34017:3 incarceration 34017:14 incarcerations 34017:7 34017:16 incident 33832:4,8 33834:2,6 33852:15 33866:13,15 33876:23 33877:4,13 33878:1,2,3,10,10,13 33878:13,21 33879:3 33879:15,16,23 33884:12,13 33889:5 33889:10 33891:17 33893:9 33895:15 33897:9 33908:15 33966:6 33971:24 33972:1 33994:4 34005:22 34006:7 incidents 33817:25 33818:4 33851:3 33895:15 34005:24 included 33892:25 33918:15 including 33855:16 33870:20,20 inclusion 33919:20 incomplete 33853:13 33925:4 incorrect 33849:14 33880:10 incorrectly 33837:10 incredibly 33822:9 indicate 33860:9</p>	<p>33878:19 33978:5 indicated 33873:25 33894:24 33918:22 33976:20 33983:6 34001:20 34002:6 indicates 33901:14 indicating 34019:15 indications 33829:10 individual 33961:4 individuals 33984:20 34020:2 industrial 33959:11 33962:13 inextricably 33957:9 33957:16 inference 33854:15 influenced 33990:11,24 33991:3 Info 33858:8 33859:18 inform 33875:11 informally 33888:10 informed 33848:9 33860:13 33867:6 33870:10 33943:7 33946:21 34016:21 informing 33845:23 infrastructure 33830:20 33895:25 33914:6 initial 33832:21 33901:22 33903:11 initially 33847:17 33854:16 33869:17 initiated 33849:4 injured 33882:10,12,14 33882:21 33992:1 injury 33882:7 innocent 33933:7 input 33938:2 inquiry 33852:14 inserted 33838:24 33858:16,18,22 insertion 33857:10 33861:3 33879:22 insertions 33861:19 inside 33882:20 34007:22 insofar 34002:16 34004:12 inspect 33882:9 inspecting 33845:20 inspection 33897:23 instance 33817:14 33819:20,23 33820:8 33849:1 33851:23,23 33853:25 33863:7 33875:3 33877:5 33903:22 33915:19 33989:2 instances 33827:1,4,14 instigated 33849:4 instituted 33852:17 33856:1 instruct 33913:7 instructed 33824:7 instructing 33873:19</p>
---	---	--	--	--

<p>33874:2 33937:21 instruction 33834:22 33852:19 33859:8 33861:11 33862:22 33863:6 33867:12 33873:18 33874:10 33874:16 33884:6 33893:19 34005:18 34009:8,13 34010:3 34013:13,18 instructions 33823:12 33823:14 33824:20 33824:24 33825:1 33834:23 33835:7,8 33861:15,24 33862:20 33869:10 33869:13 33874:12 33893:14 33917:22 33930:11 34002:14 34004:12 34005:12 34006:24 34009:25 34010:15 instrumental 33892:18 33892:21,25 33893:1 intended 33893:23 intending 33973:12 33992:21 34005:2 intense 33985:9 intent 33882:6 34020:5 intention 33854:23 33879:25 33947:25 intentional 33855:3 intentionally 34002:9 interact 33914:7 33999:9 interacted 33899:3 33919:21 interacting 33913:1 interaction 33887:17 33887:21,21 33905:20,22 33910:8 33918:8,14 33919:2 34019:8 intercepted 33946:10 interest 33825:22 33847:1 33973:4 interested 33821:4 33823:15,23 33824:15 33896:9 33907:25 33908:1 33932:10 34006:11 34006:14 interesting 33860:23 interfere 33824:25 internal 33835:9 33880:13 33881:13 33989:9,10 interpose 33929:23 interpretation 33826:14 33829:8 33862:5 34007:4 interrupt 33836:5 33924:22 33935:9 33937:5,12 33938:15 intertwined 33957:9 intervention 33819:4</p>	<p>33833:18 33879:21 33913:22 34019:2 interventions 33833:16 interviewed 33919:21 intimidate 33857:4,8 intricately 33913:1 introduced 33889:6 34001:14 investigating 33845:20 investigation 33832:5 33846:16 33849:5 33852:8,9,11,17,22 33861:25 33863:18 33885:16 33886:1,5 34006:2 investigations 33869:25 33870:1 investigators 33851:18 invisible 34004:18,20 34005:2,3,4 invited 33953:9 involuntary 34002:9 involved 33824:11 33850:10 33883:5 33898:14 33913:1,3,9 33913:13,14 33963:8 33964:16 33965:17 33965:19 33989:12 33989:15 33996:8 involvement 33882:25 33883:2 33886:20,22 33887:4,9 33918:11 33940:9 involving 33888:19 irrelevant 33893:18 34011:23 34012:7 irrespective 33864:4 isn't 33844:16 33845:3 33908:16 33910:14 33916:4 33919:10 33922:13 33945:1 33973:6 33974:13 issue 33816:21,22 33825:25 33843:6 33876:11 33910:6 33920:5 33935:10 33967:17 33985:1 33998:4 34002:5 34004:10 issued 33994:4 issues 33814:23,25 33815:2 33887:3 33918:20 33920:4 33939:24 33957:16 33969:12 33998:8 item 33832:3,4,7 33844:5,5 items 33833:13,14 33834:23 33875:17 34002:20,22,23 34003:1 I'd 33822:2 33901:13 33921:1 33955:19 33991:8 33992:23 34001:14 I'll 33822:1 33874:16</p>	<p>33911:24 33923:6 33927:7 33943:10 33963:25 33981:23 33983:13 33986:6,22 33992:4 34005:10,11 34009:21 34012:18 34013:9 34015:24 I've 33819:20 33828:21 33843:23 33848:21 33851:11 33861:5 33880:7 33881:6 33883:19 33911:10 33911:12 33918:25 33940:17 33950:5 33964:22 33982:1 33993:20 33999:5 34012:24</p> <hr/> <p style="text-align: center;">J</p> <hr/> <p>J 33841:3 ja 33822:24 33824:1 33828:20 33833:12 33848:8 33858:1 33868:18 33869:15 33888:17 33889:16 33932:21 33934:18 33935:24 33936:13 33936:16 33939:2,17 33941:6 33943:6 33945:1 33946:2,14 33948:21 33957:24 33958:14 33961:19 33962:9 33964:25 33966:1 33967:4 33971:21 33973:10 33973:18,19 33976:10 33979:3 33983:2 33984:24 33985:7,11 33986:20 33989:21 33993:16 33997:14 34001:16 34002:3 34009:11 34012:8,18 34013:7 34013:11,16 34017:1 34019:6 34021:4 Jacques 33840:15 33841:3 Jakes 33840:15 jeopardising 33852:11 JJJ107 33944:7,9 JJJ19.2 33996:11,12 JJJ192 33910:4 33975:21 job 33851:10 33871:7,8 33913:4 JOC 33835:16 33837:23 33865:23 33895:18 33896:7,15 33897:16 33901:5,7 33907:17 33908:3 33934:2 33942:1 33944:20 33950:23 33952:3,6 jogger 33830:18 33831:8 33915:20 33918:4</p>	<p>jogging 33915:12 join 33977:10 joined 33970:18,20 joint 33950:14 33964:13,17,20 33965:12,21 33999:16 34000:3,19 34000:24 joking 33997:3,13 judge 33958:12 Julius 33933:2 JULY 33814:1 jump 33968:9 33997:23 junior 33830:24 33836:13 jurisdiction 34017:15 justice 33830:2 justify 33853:17</p> <hr/> <p style="text-align: center;">K</p> <hr/> <p>Kallie 33989:2 Karee 33824:4 33844:20 33846:17 33846:22 33860:18 33970:4 keep 33830:1 33915:11 33932:10 33935:15 33935:22 keeping 33829:20 Kellerman 33860:13 33860:17 Kent 33839:24 33840:10 kept 33877:17 33886:10,13 33932:4 33932:10,15 33980:8 key 33902:10 34018:24 kill 33996:15 killed 33966:9 33972:1 killings 33889:18,18 33990:13 killings 33940:25 33966:7 33986:24 33987:4 kilometres 33976:22 kind 33815:1 33816:19 33821:15 33929:6 33938:20 33939:9,14 33940:1 33963:7 33979:9 33991:24 34010:8 knew 33831:11 33832:5 33849:23 33894:4 33896:22 33897:3 33943:19 33946:10,22 34001:9 knobkieries 33857:9 knowing 33835:1 33854:12 33855:22 33874:1,1 33888:11 34011:7,15 knowledge 33880:22 33888:9 33971:11,13 33973:19 33974:4,5 known 33856:17</p>	<p>33946:23 33949:3 33951:12 33957:1 knows 33827:6 33834:4 koppie 33824:17 33901:4 33904:19 33942:12 33948:17 33948:20 33950:6 33953:5,16 33964:15 33964:18,24 33965:11,13,14,15,16 33968:23 33972:3,6 34005:17 34006:23 koppies 33824:18 Kruger 33840:15 33841:3 K3 33941:23 33942:3,5 33947:16,22 33948:1 33948:7,8 K4 33860:18 33893:9 33896:23,23</p> <hr/> <p style="text-align: center;">L</p> <hr/> <p>labour 33831:25 lack 33952:15 landing 33822:5 language 33961:1 large 33877:3 33901:3 33994:16 larger 33944:22 lasts 33829:12 late 33845:12 latest 33853:2 33854:4 law 33834:16,18,20 33898:14 lawyers 33923:22,24 33923:24,25 33924:12,12 33925:14 lead 33827:9,16 33929:9 leader 33818:9 33906:8 leaders 33845:1,11,20 33848:6,12 33849:5,6 33872:20 33877:24 33879:14 34020:13 leading 33895:15 34003:13 learn 33848:6 learned 33902:13 33921:24 33935:10 leave 33852:20 33899:12 33965:16 leaves 34021:5 led 33902:21 33903:11 33907:18 33966:10 left 33838:25 33869:4,7 33920:7 33921:2,8 33931:6 33948:15 33949:7 34018:2 left-hand 33920:8 legal 33850:2 33853:19 33854:2,9,12,19 33855:11,20 33856:1 33856:16 33870:11 33870:14,14,18,23 33871:14,21</p>
--	--	--	---	---

<p>33887:11 33906:3 33946:3 34007:13 legible 33842:14 Letitia 33867:7 letting 33917:25 let's 33829:12 33837:14 33842:20 33850:18 33858:1 33875:9 33876:14 33881:22 33930:16 33930:18 33934:23 33944:8 33949:15 33952:16,16,21 33959:9 33965:11 33975:14 33976:3,10 33981:15,15,16 33986:15 33992:7 33996:5 33997:15 34002:5 34005:16 34012:13 34013:7 level 33815:20 34019:7 34019:8,13 34020:5 levels 33825:5 33830:23 33913:14 33995:3 34018:15,16 34018:25 34019:16 34019:19 Lezo 34016:10 liaise 33892:2 33928:9 liaison 33891:24 33892:6 licence 33817:1 licensed 33817:12,17 Lieutenant 33890:1 life 33960:12 light 33876:9 34015:14 lighter 34004:15 liked 33880:13 limited 33817:1 33824:22 33883:9 33937:6 33939:3 limits 33940:15 line 33824:8,25 33832:3,4,7 33834:23 33856:13 33867:10 33868:25 33870:5 33889:5,11,21 33895:16 33896:24 33897:12 33899:14 33899:18,19 33900:14,18 33901:1 33904:13 33908:15 33956:16 33957:25 33961:15 33967:1 33997:24 lines 33863:9 33869:2 34007:12 lining 33827:5 33828:5 link 33978:20 33979:4 linked 33880:25 33957:16,17 33966:8 33971:3 33978:21 list 33853:23 33888:15 listen 33831:3 33833:20 33854:25 33899:13,13</p>	<p>33903:16 listened 33869:2 listing 33996:7 literally 33948:19 little 33835:14 33851:6 33868:21 33921:1 33928:23 live 33963:1 lives 33983:15 local 34019:17 located 33836:3 33901:4 location 33835:12 33888:6 log 33831:7,16 33854:2 33854:4,10,18 33855:16,17 33871:21 33872:4,20 33872:24 33875:2 33885:1 33918:20 33920:17 logbook 33882:15 34008:21,22 logbooks 33863:7 33879:13 logic 34002:17 logistical 33913:9 logs 33871:23 long 33867:23 33897:11 33914:13 longer 33862:18 33863:15 33898:15 33913:21 33930:7 33998:1 Lonmin's 33909:5 33921:25 look 33832:16 33854:3 33856:21 33858:24 33864:20 33878:22 33881:22 33899:5,18 33900:19 33937:1,22 33942:5 33944:8 33947:23 33960:4 33969:13 33980:16 33980:19 33983:2 33984:16 33987:6 34002:7 34008:13 34016:20 34018:19 looked 33831:13 33846:24 33870:4 33881:3 33899:22 looking 33989:17 34002:18,19,25 looks 33930:14 33944:10 34004:19 34004:24 loose 33974:25 34015:1 34016:2 loss 33960:12 lost 33943:23 33983:15 33987:9 lot 33815:3 33822:7 33825:22 33832:17 33863:15 33872:13 33883:17 33932:10 Louw 33817:4</p>	<p>Louws 33989:3 low 34018:24 LPD 33890:13,15 33909:8 33953:9 33954:11,16 33955:7 33955:25 lunch 33925:23 33926:7 lunchtime 33930:2 lying 33905:7</p> <hr/> <p style="text-align: center;">M</p> <p>Mabelane 33882:16 madam 33835:21 magistrate's 33867:19 mail 34016:10 main 33856:6 majority 33904:19 33905:8 making 33825:12 33852:10 33902:22 33913:4 33938:21 33950:18 33971:3 33978:22 33979:9 34003:18 34004:17 34004:19 34005:2 34007:7 manage 33835:8 33851:8 33960:8 managed 33893:17 management 33824:12 33850:20 33873:11 33891:24 33897:5 33909:14 33912:5,12 33913:8,19 33928:9,9 33928:12,15 33944:20 33945:9 33952:18,23 33953:23 33954:14 33955:5,8 33957:18 33957:20 33958:1,9 33960:18 33961:3,19 33967:21 33969:13 33970:25 33979:23 33979:23 33980:7 34001:25 34018:25 34019:15 manager 33825:9 33831:6 33850:17,23 33944:21 managers 33830:16 33914:4 33988:15 34019:25 managing 33960:11 33963:12 manner 33935:18 33973:16 manpower 33820:1 man's 34004:25 map 33895:17 33899:23 33900:5 maps 33899:22 33901:12,14 33938:19 march 33882:3 33971:1,3 33973:23</p>	<p>33974:1 33978:20 33982:20 marched 33971:22 marchers 33882:9 marching 33896:19 33983:17 Marikana 33819:14 33841:12,15,19 33895:14 33913:2 33918:11 33943:13 33947:6 34019:17 mark 33993:24 marked 33974:23 33975:4 34015:2 34016:2 mass 33983:5 33987:22 33988:20 massacre 33966:10 34016:11 masses 33913:12 massive 33914:1 33961:5 33990:2 material 33838:24 33847:15 33853:25 33854:1 33872:21 33919:9 matter 33834:7 33853:14 33861:24 33877:10 33937:8 33954:6 34004:19 matters 33827:17 33861:24,25 33862:1 33892:3 33919:7 33957:5 maximum 33988:4 ma'am 33816:14 33836:22 33837:11 33837:25 33843:4 33845:14 33851:14 33851:24 33876:20 33877:15 33917:17 34001:10,16 McIntosh 34010:23,24 34018:10 McIntosh's 34012:15 34012:21 34014:1 mean 33853:5,16 33855:15 33866:15 33869:5 33924:24 33948:19 33962:2 33967:25 33978:19 33985:6 34000:5 34002:9 34006:22 34009:8 meaning 33996:15 33999:17 34000:2,4 34000:19 34019:18 meaningful 33938:23 means 33847:12,19 33908:5 33914:22 33921:16 33946:21 33950:20,21 33983:8 34005:14 34013:12 meant 33948:19 media 34016:20 medical 33864:24</p>	<p>33882:11,12 33988:18 Medics 33882:17 meet 33969:2 meeting 33835:14 33889:3,10,14 33890:3,13,20 33891:1,14,17 33904:16 33908:14 33908:24 33909:13 33909:17,22 33910:3 33910:5,7 33912:4,12 33942:12 33944:18 33944:19 33967:25 33969:1 33970:24,24 33971:13 33972:3 34002:1 meetings 33891:17,18 33891:19,20 33909:25 33917:15 members 33815:11,14 33815:17,19 33818:6 33818:17 33822:19 33858:5,9 33859:19 33883:7 33887:18,20 33919:3 33934:21,22 33950:24 33960:7 memorandum 33839:24 33840:1,6 33840:10,15 33841:2 33842:21,22 memory 33915:12,20 men 33834:13 33946:10,23 33947:21 33948:7 33950:22 mentality 33999:17 mention 33882:22 33883:20,22 33892:15 33897:23 33897:24,25 33905:21,23 33910:7 33919:4 mentioned 33883:13 33895:4,6,10 33909:20 33919:8 33996:8,9 mentioning 33952:23 mentions 33891:14 Merafe 33904:16 merely 33903:4 Merwe 33833:6 33861:10 33863:3 34003:12 34008:10 message 33956:17 met 33889:3 33892:13 33942:3,7 33943:19 33969:11 meted 33964:12 methodical 33832:23 metres 33879:9 microphone 33817:22 33859:11 33881:4 33933:9 33940:3 33942:23 34010:18 Middelkraal 34016:16</p>
---	--	---	---	--

<p>34016:24,25 34017:4 34017:14,20,22 middle 33912:11 33920:14,16 milder 33940:7 Miles 33989:2 MILLER 33814:7 33829:14 33863:23 33898:23 33926:16 million 33893:22 mind 33830:17 33831:3 33831:3,8 33912:20 33914:20 33918:4 33934:9 33948:2 33975:17 33978:11 mine 33818:1,11,15 33828:22 33834:10 33864:11,19,20,21 33882:4 33893:12 33894:5 33899:22 33900:2 33928:6 miners 33899:24 minimise 33960:12 minimum 33818:10 mining 33814:22 33819:8 33860:19 33882:2 33958:21 33960:6 33977:18,23 33978:15 33988:5 minus 33994:17 34006:23 minute 33991:10 minutes 33828:12 33863:19 33914:16 33925:8 33930:5 33986:4 33991:16,17 33991:22 33992:1 34009:21 34018:4 34020:22,22,23 34021:7 mischief 33948:2 misdirected 33836:2 misinterpretation 34014:16 mislead 33935:18 missed 33836:15 33884:20 33957:11 33958:16 missing 33832:17 33833:9 33922:12 33938:8 misspelt 33997:5 mistake 33980:21 mistakes 33833:2 mob 33857:14 33858:8 33859:18 33876:17 34005:19 34006:5,25 34008:16 34009:8 34010:1 34014:21 mobsters 33860:14 mode 33830:21 33831:12 33835:17 modes 33835:21 modus 33917:17 Mokwena 33890:17,19 33917:2 33979:21</p>	<p>33996:10,14,19 33997:3,4,10,24 33998:4 moment 33874:2 33891:12 33920:25 33924:15 33967:13 33975:18 33994:8 34018:19 Monday 33824:21,22 33888:5 33889:22 33894:12 33941:3,5 monitors 34007:24 mood 33966:10 morning 33814:3 33824:6,21,23 33838:23 33843:2,3 33867:6,8 33880:7 33886:7 33908:18,25 33911:6 33912:25 33921:13 33922:8,11 33923:15 33924:7 33925:9 33927:22 33962:19 33974:22 33975:1,9 33976:22 33977:1 33995:4 33996:12 34016:14 34020:10 morning's 33994:14 Motlogeloa 33933:2 33947:9 33948:16 move 33831:22 33860:1,8,11 33904:19 33905:8 33918:1 33920:15 33952:10 33976:3 33996:5 34012:18,25 moved 33824:23 33830:8,8 33831:10 33883:5 33888:3,3,5 33903:15 33917:21 33994:19 movement 33865:12,16 33905:14,15 34002:9 movements 33902:8 33946:18,21 moving 33903:13,15 33943:13,16 33987:7 Mpembe 33824:23 33896:19 Mpofu's 33942:13 33967:13 33981:16 33981:16 34000:22 murder 33963:13 murdered 33858:5 murdering 33858:9 33859:19 muster 34019:8 mustn't 33826:14 muti 34004:22,25 Myniya 34016:10</p> <p style="text-align: center;">N</p> <p>nagging 34011:14 name 33920:16 33997:5 34001:7,9,12 34001:14,17</p>	<p>names 33888:11 33916:10 naming 33935:25 National 33888:25 33889:4,7 33891:3 33912:5,12 33917:16 33927:15,16 34001:25 nature 33856:23 33985:24 near 33946:10 33967:7 33968:22 33994:11 necessarily 33929:5 necessary 33831:21 33851:5 33951:2,20 33951:20 need 33815:1 33820:10 33821:1 33825:12 33837:4,5,13 33850:1 33850:4,22 33851:25 33853:20,20 33856:18 33860:15 33864:11 33903:17 33906:4,10 33907:8 33930:6 33999:8 34005:17 34006:23 34007:3,12 34008:2 34013:4,5 needed 33819:8,9 33820:7 33830:16 33850:17 33862:3 33864:14 33893:6 33894:7,11,16,17 33895:20 33897:17 33903:22 33904:8 33906:9 33910:25 33913:22,25 33928:6 33928:11,12 33940:16 33961:8 needing 33825:5 needs 33834:10 negotiations 33970:1,2 33970:6 neither 33891:13 net 33848:21 33879:21 never 33846:24 33853:1,5 33862:4,7 33862:23,25,25 33874:19 33878:4 33883:19 33885:7,7,8 33934:9 33943:18 33947:12 33952:25 33953:24 33974:17 33975:17 33978:11 33985:24 new 33838:12 Nick 33817:4 night 33821:11 33831:12 33893:10 33998:7 nightshift 33816:8 nonsense 33953:11 33954:7,25 33956:10 normal 33814:23 33830:8,11 33835:18 33917:17 33947:4</p>	<p>33989:8 33990:15 normalise 33960:8 normally 33916:9,9,11 33927:6 33929:7 33989:14 note 33915:11,18 33916:1,3 33932:23 34004:15 34014:12 34014:13 notebook 33917:19,19 noted 33833:22 34011:17 notes 33915:6,22 33916:7,8 33917:15 33917:20,21 33932:15 notice 33831:4 33866:24 noticed 33831:5 33833:21 no-one 34017:20 NUM 33857:15 33876:18 33879:4,7,9 33882:4,7,9,25,25 33966:6 33969:15,17 33970:1,6 33971:1,3 33971:5 33973:24 33976:24 33983:17 33993:3 33994:11,16 34020:21 number 33817:1 33857:3 33877:24 33881:13 33937:18 33943:23 33944:6 33975:2,5,5 33977:4 33977:13 33978:1,4 33994:16 34001:23 34015:5 34017:9 34019:6,6 numbers 33838:23 33981:12,20,21,22 34001:20 numerous 33874:24 33992:25</p> <p style="text-align: center;">O</p> <p>oath 33814:6 33829:13 33863:22 33898:22 33926:15 33991:21 OB 33853:13 33874:20 33877:3 34011:23 object 33937:13 objection 33935:16 33937:7,17 34015:17 objective 33925:8 34004:7 OBs 34011:18 observation 33947:5 observations 33822:5 33887:5 33948:13 33949:6 observe 33943:17 observed 33858:4 33934:10 33995:11 observing 33946:12 obtained 33852:4</p>	<p>33873:1 obvious 33986:14 obviously 33821:1 33825:11 33830:1 33847:15 33850:10 33883:17,23 33922:6 33941:9 33974:10 33982:19 33985:8 33987:21 33994:15 33997:13 33999:16 34003:13 34004:7 34011:5 occasions 33874:24 33892:2 occur 33982:22 occurred 33845:12 33851:3 33885:8 33973:22 occurrence 33826:24 33826:25 33827:10 33827:13,23 33833:4 33836:19,24 33837:8 33837:13,22,25 33843:6,11 33844:20 33844:25 33845:3,10 33845:22 33846:17 33846:22 33848:23 33851:16,19,21 33856:6,6,13,15 33858:15 33861:20 33870:2 33871:15 33877:14,15,17,19 33878:18,21 33879:22 33884:8,19 33884:25 33920:5 34010:8,9 34014:16 34014:24 occurrences 33843:12 occurs 34014:14 October 33849:21 33850:13 33920:10 33921:10,23 33922:1 33922:24 33923:2 33925:9 34003:14,17 offer 33906:16,20 33907:6 offered 33906:24 33907:2 office 33822:4 33835:14 33850:4 33870:15 33879:4,9 33879:17 33882:19 33888:6 33889:8 33895:19 33932:22 33994:11,16 officer 33834:17,19 33867:3 officers 33867:23 33961:7 offices 33857:15 33873:14 33876:18 33882:4,7,20,25 33896:24 33966:7 33993:3 34017:3 official 33830:24 officials 33883:1,13,21</p>
---	--	--	---	--

<p>33918:14 33945:8 oh 33816:7 33927:20 33944:1,12 33975:24 33987:11 33997:5 34005:23 34009:20 34011:9 okay 33824:14 33828:18 33859:23 33859:25 33860:7 33895:8,12 33911:23 33916:13 33920:13 33923:16 33931:9 33934:18 33935:4,7 33935:20,24 33937:25 33940:22 33945:13 33949:13 33949:14,25 33954:22 33956:13 33956:24 33959:20 33963:11,16 33964:19 33965:7 33966:21 33967:4 33970:21 33974:19 33975:25 33976:3 33983:13 33989:5 33992:7 33996:1,4 33997:9,14,22 33998:20,25 33999:7 34001:11 34002:3,3 34002:24 34005:3,7 34009:5,16 34012:8 34013:7,25 omission 33910:11,12 33946:5 omitted 33856:5 once 33852:8 33866:6 33909:16 33935:11 33973:21 ones 33866:21 33997:7 ongoing 33850:23 33869:25 33886:5 33994:6 33995:2 onwards 33822:23 33901:1 33904:13 33953:13 33974:24 33992:18 OPD 33909:10,10,12 open 33819:24 33864:22 33886:21 33920:22 openly 33919:24 operandi 33917:18 operate 33850:25 33915:2 33960:7 operated 33917:13 operation 33824:25 33830:8,9 33835:21 33887:24 33888:2 33894:8 33896:5 33913:2,15 33934:23 33934:25 33935:2 33936:1 33938:3,5,11 33940:10,14 33941:12 33950:14 33963:8 33964:11,13 33964:14,16,18,20,24</p>	<p>33964:24 33965:12 33965:19,21 33983:4 33996:16 33997:17 33999:10,17 operational 34008:21 34008:24 operations 33814:23 33823:12 33824:6 33827:25 33830:9,11 33833:4,5 33837:1,6 33862:2 33877:21 33879:15 33939:1 operative 33947:10 operator 33836:13 33943:24 operators 33945:8 33970:13,18 opinion 33856:11,12 33869:3,6,6 33879:15 33887:1 33929:1 33961:25 33973:6,6 33979:11 33984:13 33993:10 opportunism 33998:13 opportunistic 33904:21 opportunities 33998:2 opportunity 33998:2 opposite 33857:14 33876:17 ops 33949:6 options 33901:5 orange 33830:9,21 33831:12 33835:17 33835:20 order 33867:7 33890:9 33893:23 33897:15 33937:4 33960:7,11 33977:3 33982:6 34010:22 34014:21 ordered 33867:5 34010:22 ordinary 33836:10 organisation 33933:6 33933:14 orientate 33895:17 33903:25 33913:24 orientating 33899:20 orientation 33903:18 33904:7 33907:2,9 original 33828:23 33833:11 originally 33857:23 33863:8 outcome 33852:13 33993:12 33995:16 33995:17 outside 33826:5 33833:11 33835:18 33864:9,9,13,22 33882:6 33899:9 33966:6 33969:2,4,6 33994:12,17,22 33995:20 overall 33934:3,6,17 33985:12,13 overflow 33828:10,14</p>	<p>33829:8 overfly 33822:9 overflying 33822:11 overlooking 33946:15 overnight 33904:19 overview 33906:13 over-flight 33897:3,7 over-fly 33949:7 o'clock 33814:6 33882:15 33911:9 33912:9 33923:20 33925:6,12,19 33994:5 34003:5,6,17 34005:4 34020:10 34021:10 o'clock 33898:2 33986:3 34009:22</p> <hr/> <p style="text-align: center;">P</p> <p>PA 33858:23 33862:12 33862:13 33869:10 page 33838:16 33839:13,15 33840:2 33840:3,16,25 33841:9 33880:24 33881:13 33897:22 33899:14,15,16,17 33900:17,17 33904:11 33906:15 33920:14,16 33958:19,25 33959:6 33959:9 33960:5 33961:1 33975:4 33978:1,4,7,8,9 33981:5,5,6,6,7,12,20 33981:21,25 33982:3 33982:4 33993:14 33997:2,14,15 33998:21 34017:25 34019:5 pages 33900:24 33980:25 paginated 33981:21 pagination 33974:24 33977:11 paid 33850:5 33862:25 34012:19 pamphlets 33998:14 pangas 33857:8 papers 33832:5 paragraph 33880:24 33881:14,23,24 33882:23 33887:2 33897:20 33943:22 33944:2,9,10,24 33945:22 33960:4 33976:17 33979:5 33994:3,14 33996:2 paraphrased 33968:11 paraphrasing 33996:17 parcels 33867:4,5,7,13 33867:15,21,22,22 Pardon 33930:25 33997:20 part 33824:16 33826:12 33838:15</p>	<p>33854:23 33858:12 33863:18 33864:22 33865:9 33872:21 33880:1,23,23 33882:8 33884:21 33889:3,9 33891:3,14 33899:4 33907:16 33908:14,22,24 33909:13,14,22,24 33910:11,12 33912:25 33963:7 33978:8 33988:5 33993:22 34007:5 34015:21,23 partially 33984:16,19 participated 33964:22 33965:4 particular 33830:14 33831:23 33861:20 33867:10 33868:25 33869:20 33874:24 33874:25 33878:3,7 33878:10,20 33885:22 33896:14 33934:25 33937:19 33938:5,6 33960:19 33978:8 particularly 33850:10 33852:7 33896:9 33956:25 33970:4 33971:24 parties 33847:8,11,13 33910:5 partner 33818:20 partnership 34000:3 party 33890:5 pass 33896:3 33913:7 passage 34019:3 passages 33902:13 passed 33874:4 33884:14 33916:15 33916:21 33924:1,12 33925:14 passing 34011:3,24 34012:17 patent 33982:13 patient 33981:9 patrolling 33821:7 33823:16 patrols 33822:8 pay 33875:6,7 PC 34001:10 percent 33929:13 perfectly 33924:14 performed 33950:3 period 33822:22 33823:24 33827:2 33837:22 33843:19 33857:16 33887:5,22 33887:24 33932:5 34004:7 periodical 33980:5,6,9 permanent 33815:17 permanently 33818:1 33820:5 permission 33864:14</p>	<p>33926:7,10,11 person 33830:24,24 33831:6 33832:23 33836:13 33860:20 33870:18 33874:25 33874:25 33882:16 33882:19 33893:12 33906:23 33908:10 33931:25 33933:6,14 33934:3 33945:14 33948:25 33958:12 33982:14 33997:5 personal 33973:18 personally 33846:24 33849:13 33862:23 33873:13 33876:24 33880:4 33884:11 33885:3 33901:16 33905:16 33906:20 33908:6 33941:8 33972:7 personnel 33882:11,11 33983:16 persons 33882:14 33994:16 person's 33831:2 persuaded 33948:9 Peter 33830:15 33860:15 33865:5,24 Petros 33890:2 phase 33892:19 33901:22 33918:1 Phiyega 33891:3 phone 33870:15 33917:11,12 33929:6 33939:6 phoned 33831:6 33912:16,16 33916:21,24 33917:11 33928:5 33929:14 phones 33915:11 photo 33901:3 photocopies 33833:5 photographs 33852:13 33852:14,15,16 phrase 33957:7 physical 33907:20 33938:21 pick 33904:14 picked 33911:4 33941:9 33943:14 picture 33897:4 33971:16 Pillay's 33871:8 pinpoint 33921:17 pivotal 33934:22 33936:4 33938:25 33939:12 place 33830:12,20 33850:16 33864:17 33864:18 33874:5,10 33874:19 33879:8,23 33894:13,13 33896:7 33896:15 33905:15 33908:3 33909:2,5</p>
--	--	--	---	--

<p>33912:1,9,19 33915:18 33925:13 33934:25 33935:1 33939:25 33943:8 33944:18 33949:4 33958:8 33961:19 33969:21 33970:24 33972:3 33979:12 33995:4,20,25 34015:16 34017:13 placed 33818:11 places 33859:6 33940:1 34017:22 plan 33864:20 33899:4 33901:22 33902:10 33902:16,17,21,25,25 33903:3,5,11,17,18 33904:21 33907:18 33907:21 33934:22 33935:14 33936:5,6 33936:11,12,22 34013:7 planners 33893:25 planning 33894:2 33902:1,6 34006:5 plans 33895:21 plate 34013:6 Platinum 33934:23 33935:2 33936:1 Plats 33824:3 played 33902:9 33903:10 33934:20 33934:24 33936:3 33987:5,16 please 33831:7 33833:3 33833:9 33836:12,16 33836:22 33852:1 33854:1 33856:2 33858:20,23,23 33859:1 33865:6 33866:4 33867:1 33878:23 33881:11 33899:6,9 33900:9,10 33900:12 33903:17 33920:24 33925:16 33975:3 33993:15 33998:6,15 34000:16 34013:20 34014:25 34020:19 plot 33903:24 plotted 33899:23,24 33900:3,5 plotters 33903:24 plus 33994:16 34006:22 PMR 33988:7,24 33989:11 pocketbook 33932:4 pocketbooks 33932:7,8 point 33875:19 33880:11 33884:5 33894:19,21 33895:5 33895:12 33901:13 33906:9 33919:10,14 33923:4,13 33925:20 33936:9,14,16</p>	<p>33939:11 33941:8,8 33941:17 33942:13 33951:1 33953:4 33956:14 33961:11 33963:3,18 33971:2 33978:18,22 33979:8 33983:6 33986:10,17 33986:22 33995:6,7 34000:23 34003:4 34010:5 pointed 33918:20 33919:25 33941:1,10 33943:11,19 33945:14,17 points 33936:5 pointed 33946:6 policeman 33930:22 33931:2,5,7 policemen 33889:18 police's 33940:19 33941:20 policing 33999:12 34000:11,18,21 political 33992:18 33997:17,23 33998:12 POPs 33903:19 portion 33821:18 33864:21 33905:6,7 position 33900:3 33926:5 33934:1 positions 33900:4 possession 33878:2 33953:6 possibility 33836:2 33918:5 34014:19 possible 33949:21 33980:20 33998:15 34021:5 potential 33831:11 33957:15 33983:5 33987:22 33990:2 PPS 33820:9,12 33962:16,19 33963:2 practice 34006:25 practise 33847:10 precious 33830:4 33859:14 33981:16 precipitated 33972:1 precise 33856:23 precisely 33882:24 predictable 33982:13 33982:17 predicted 33982:21 prefer 33923:18 prejudging 33954:5 premises 33909:6,7 34016:5,23 preparation 33873:6 33976:24 prepared 33849:16 33930:2 33987:24 preparing 33901:22 prescribed 33958:3 33959:10 33962:12 presence 33942:8</p>	<p>33994:5 33995:2 present 33901:25 33987:20 33996:19 33996:21 presented 33967:15 33971:24 press 33831:20 33927:22 pressure 33885:12 33992:19 34018:14 34018:25 34019:11 34019:13,16,19,23 34020:5 presumably 33821:7 33955:9 33967:16 33981:1 presume 33923:19 presuming 33902:7 prevented 33993:5 33995:14 prevention 33815:8 33817:24 33818:14 33818:15 33988:18 previous 33884:5 33971:4 33974:21 33980:15 34019:5 previously 33830:10 33868:3 33935:11,14 prima 33854:15 primary 33869:24 prime 33820:17 principle 33831:8 33843:14,25 33928:13 print 33901:3 33922:7 33924:19 printed 33921:2,13,13 33922:9 33923:1,3,20 33924:7,11 33925:1,5 33925:10 33975:5 33981:21 printers 33903:24 printing 33903:22 prior 33892:19 33919:19 33995:21 private 33960:13 33988:25 privy 33950:15 probability 33896:14 33971:19 33972:21 33972:25 33973:5 probably 33831:13 33866:12 33895:21 33916:17 33917:10 33929:10 33933:25 33997:3 problem 33826:11,12 33839:1 33850:21 33894:9,25 33897:8 33906:11 33939:3 33991:17 33992:9 33994:10 34000:8 34013:13 problems 33853:7 33990:19 procedure 33847:8,9</p>	<p>33848:1 33872:12 33958:23 33959:10 33959:12,21 33960:6 33960:9 34006:1 proceedures 33841:12 33841:15,19 33842:24 33958:2,3 33958:22 proceed 33829:9,11 proceeded 33944:20 proceeding 33897:15 proceedings 33814:1 33848:10 34003:4 process 33819:2,7,9 33820:12,13,13 33829:24 33830:7,7 33831:15 33844:16 33850:3 33872:5 33878:13 33913:25 33914:5,7 33928:18 33940:20 33963:4 processes 33849:4 33958:8 produced 33848:4 33854:6 producing 33846:16 production 33960:12 professional 33868:11 progress 33965:11 prolonged 33857:16 prompted 33986:17 proper 33832:5,6,6 properly 33949:4 33990:8 33995:13 property 33814:24 33820:5 33825:8 33893:13 33904:1 33913:5,10 33964:17 33965:9,18 proposal 33977:9 proposition 33948:5 propositions 33974:6 Protea 33819:18 33820:2,19,22,24 33822:14 33824:9 33897:1 33906:16,20 33906:21,22,23,25 33907:3,8 protect 33825:8 protection 33893:15 protesters 33944:22 provide 33820:1 33940:16 33963:17 provided 33816:8 33877:24 33904:10 33936:21 33939:5,6,6 33939:7 33940:5,14 33940:18 providers 33820:4 providing 33902:1 33938:19 33939:25 provincial 33889:25 33908:14,24 33909:11,22,25 33910:8,16,22 33911:2,7 33912:4,11</p>	<p>33912:14 33914:9 33917:15,25 33926:22 33927:18 33927:20,21 33996:10,14 34001:23 34019:1,18 provision 33902:15,19 33902:20 33939:13 provisioning 33935:13 pro9perty 33893:21 public 33831:23 33832:1 33852:6,7 33853:7 33859:4 33870:7 pull 33825:6 purpose 33896:18 33960:5 purposes 33902:24 33936:11 33964:9 33965:10 33969:25 34002:25 34003:2 put 33828:4 33830:11 33830:19,19 33831:2 33832:12 33839:2 33843:7 33844:6,20 33845:25 33848:20 33849:10 33864:2 33868:6 33880:5 33887:12 33888:7,22 33890:5,10 33899:6 33900:11 33903:17 33906:1,12,19 33907:11,12,13 33914:18 33919:17 33920:6,18 33922:15 33925:20 33932:4 33935:6 33937:8 33938:1,25 33940:7 33941:25 33942:18 33949:14,25 33952:21 33953:11 33956:6 33968:19 33971:10 33975:19 33980:21 33982:6,11 33983:15 33993:15 33995:23 34004:11 34015:17 34018:13 34018:15,15 putting 33845:9 33876:3,9 33878:1 33879:19 33891:8 33919:4,7 33939:19 33940:7,9 33941:17 33972:11,13 33974:6 33995:1 34000:23 puzzled 33868:22 PW 33857:1,9</p>
Q				
<p>qualified 33973:15 quality 33898:15 quarrel 33940:12 quarter 33860:2 33866:12 33898:8,11 33898:18 33917:24 33923:4,14 33925:1</p>				

33925:23 33926:8,23 33930:3 query 33875:1 33914:24 quest 33954:7 question 33819:12 33823:19 33827:22 33836:21 33854:18 33860:2 33868:7,21 33869:14 33871:1,5 33872:7 33881:3 33890:21,24 33891:11 33908:23 33914:12 33919:16 33924:5 33927:5,7 33928:2 33930:24 33931:16 33932:3 33938:8,17 33939:4 33941:15 33953:3 33954:21 33955:20 33986:22 33990:7,8 33996:25 34000:16 34009:9 34014:18 34015:1 34017:23 34018:2,8,9 questioned 33890:8 33906:8 33936:2 questioning 34003:2 questions 33826:7 33830:12 33831:20 33835:5 33838:5 33871:8 33881:1 33897:5 33899:11 33903:9 33933:1 33935:18 33986:10 quick 33998:15 quickly 33830:17 33992:8 quietly 33942:11 quite 33825:22 33870:9 33888:19 33899:21 33902:6,9 33922:13 33953:12 33974:16 34004:16 34005:10 34007:11 34009:24 34014:20 34017:20 qu8ckly 33988:24	rand 33893:22 rank 33858:5 ranks 33888:12 rapid 33820:11 rash 33916:4 RDO 33844:20 33846:17,22 33977:18 33978:15 33980:13,17 RDP 33977:23 reach 33866:8 reached 33866:11 reacting 33951:6 read 33842:8 33844:4 33849:22 33850:1 33862:23 33863:10 33863:10,11 33892:9 33993:19 34005:10 34005:11 34009:15 34019:5 reading 33849:25 33850:6 33863:8,8 33986:14 34004:7 reads 33833:8 ready 33829:11 33988:19 real 34007:8 34017:23 realise 33859:5 realised 34012:3 34015:18 really 33842:6 33849:10 33902:4 33912:6 33926:1 33937:12 33939:8,13 33940:8 33941:17 33978:18,22 33993:22 33996:2 34014:10 34015:12 34015:21 reason 33834:21 33835:1 33856:10 33861:21 33865:10 33867:10 33869:13 33869:24 33875:7 33876:13 33880:2,3,6 33886:10 33907:12 33922:10 33949:15 33950:16 33954:13 33956:14,15,18,20 33962:5 33966:3 33985:7 34009:4 34013:21,23,25 34017:16,19,23 reasonable 33907:12 33908:11 33933:12 reasons 33868:3,10 33952:14,18 33953:13 33996:15 33997:17 33998:13 recall 33815:16,23 33820:16 33821:18 33821:25 33822:3 33832:14 33844:14 33848:17 33849:25 33850:6 33861:11 33866:11 33875:19	33889:12 33893:17 33893:20 33895:22 33896:12 33897:14 33900:6,8 33901:8,16 33905:6 33907:22 33908:8,20 33911:14 33911:17,18 33912:20,21 33914:19 33915:1,2 33924:18 33926:23 33926:25 33928:4,24 33929:13 33952:22 33963:10 33999:13 34008:19 receive 33914:8 received 33872:11 33873:21 33882:3,5,7 33926:11 33947:2 33950:5 33995:10 34016:14 recognised 33969:19 33969:23,25 recognition 33970:5 recollection 33901:19 33926:21 33927:3 33928:20 33947:1 33963:2 reconnaissance 33906:17 record 33837:4 33843:12,18 33873:18 33874:6,10 33874:19 33877:11 33915:21 33918:19 33930:11,12 33968:16 34006:8 34014:4 34015:16 recorded 33833:16 33836:5 33837:6 33850:3 33877:11 33879:20 33884:11 33891:19,21 33996:11,13 34007:25 34008:4,17 34010:9 34011:23 recording 33834:19 33836:14 records 33820:14 33822:1 33829:21 33834:15 33835:1,3 33877:12 33880:4,13 33911:5,12 33912:19 33917:12 33921:22 33921:25 recourse 33837:13 red 33827:5 33828:5 33830:6,9 33835:17 33835:21 33856:3 33857:21 33983:5 33985:17,18,20 33986:18,23,24,25 33987:16,22 33988:2 33989:25 33990:12 33992:14 reduced 33851:22 refer 33830:18	reference 33814:17 33819:13 33826:23 33826:24 33827:1,14 33827:15 33875:4 33882:18 33886:21 33895:17 33936:25 33937:21,23 33968:7 33968:16 referenced 33832:12 33836:17 referred 33817:22 33835:15 33885:17 33885:22 33902:14 33931:24 33997:6,8 referring 33828:1 33939:23 33943:25 33959:7 33981:21 34000:18 34019:3 reflect 33835:4 refreshed 33863:18 refusal 33966:5 33971:4 refused 33952:19 33956:15 33961:22 refusing 33953:14 33967:1 regard 33896:20 regarding 33902:7 regular 33821:15 33823:3 33824:16 reinforces 33995:12 relate 33836:20,25 33837:8 33870:6 33955:12 related 33815:5 33857:10 33860:24 33861:6 33868:3,9 33878:20 33957:4 33963:13 relates 33879:11 33902:17 33997:15 relating 33861:24,25 33862:1 33872:13 33876:22 33878:3 33918:13 33955:15 relation 33819:15 33852:7 33892:3 33907:17 33946:6,8 33957:25 33997:1 relationship 33973:23 relevant 33827:2 33834:14 33847:14 33870:8 33877:25 33882:24 33886:9 33887:22 33896:4 33932:5 33963:8,17 33964:1,9 33970:12 33970:23 reliable 33976:19 rely 33838:13 33853:12 33853:15 remain 33904:20 remained 33904:18 remaining 33825:20 33905:6 remarkable 34004:17	remember 33815:25 33831:14 33832:19 33832:24,25 33833:14,22 33856:5 33858:18 33875:22 33879:3 33885:11 33890:4,10 33893:18 33894:6,6 33904:4 33907:10 33908:2,7,9 33914:10,22,23,24 33915:13,20 33916:1 33916:12 33925:11 33927:1 33929:11 33935:5 33941:5 33951:7 33968:1 33980:8 33983:18 33985:5 33986:25 33987:12 33994:9 33996:17,23 33997:18 33998:9,18 33999:1,12 34004:1 34007:22 34008:20 34009:2 34010:8 remembered 33855:2 33932:22 remembering 33916:10 33916:11 remind 33920:11 reminder 33856:7,10 34008:19 remote 33822:6,7 34000:8,10 remove 33862:21 33879:22 33880:2 33935:7 33936:1 removed 33862:2 33875:15 33877:9 34013:22 rendered 33882:11 repeat 33829:19 33874:23 repeated 33948:5 repeatedly 34011:4 replace 33894:10 33895:1 replaced 33894:18 replied 34017:4 report 33825:11 33828:9 33834:2,3,20 33837:14 33841:17 33841:24,25 33846:3 33846:5,11,17,23 33847:2,3,14,24 33848:4,7,11,17 33849:7 33851:20 33855:19 33864:15 33877:4 33878:2,10 33880:9,10,17 33884:13,13 33916:25 33947:12 33950:5 reported 33818:4 33827:4 33834:5,6 33843:12,19 33857:2 33857:7,11 33877:7 33913:20 33976:20
--	--	--	---	--

R

radio 33950:22,23
34007:2,17,18,19,21
34007:23 34008:9,11
34008:13,17,20
34009:1,3
radios 33950:13,15
34009:25
railway 33824:8,24
33889:5,11,21
33895:16 33896:24
33897:12 33908:15
raise 33936:19 33937:6
33937:17
raised 33911:5 33953:4
raising 33910:6
33935:16
ran 33860:18

<p>reporting 33851:2 34016:15</p> <p>reports 33821:2 33835:23 33836:6 33877:4,13,13,15 33878:1,5 33882:7,16 33882:19 34005:17 34006:22</p> <p>represent 33880:21 33967:6 34016:4</p> <p>representatives 33954:8 33976:25</p> <p>reprinted 33922:12</p> <p>request 33826:8 33865:19,20 33866:3 33866:6 33878:6 33892:21 33893:6 33909:4 33928:11 33953:14 34011:3</p> <p>requested 33845:1 33848:5,12 33853:19 33855:4 33867:4 33894:24 33906:2 33920:2</p> <p>requesting 33873:14</p> <p>requests 33894:5,6</p> <p>require 33873:12</p> <p>required 33815:10 33817:17 33819:23 33820:4 33837:16 33848:19 33851:9 33853:11 33855:5 33863:7 33867:16 33870:13 33883:11 33887:11 33898:17 33904:8 33910:13 33940:20 34007:9,10</p> <p>requirements 33818:13</p> <p>requisition 33820:6</p> <p>resolving 34013:12</p> <p>resources 33825:7 33831:25</p> <p>respect 33959:11 33984:5,6 33992:23</p> <p>respectful 33947:10</p> <p>respond 33819:6 33864:9 33865:6 33866:1 33918:17</p> <p>responded 33992:25 33993:4 33995:13</p> <p>responding 33817:25 33817:25</p> <p>response 33814:22 33815:10 33816:10 33818:3 33819:2,5,22 33820:11 33929:15 33958:22 33993:11 34019:20</p> <p>responsibility 33825:10 33861:18 33862:11 33862:18,20,22 33865:25 33981:19</p> <p>responsible 33827:11 33827:12 33851:9 33854:9 33888:9 33949:8 33976:21</p> <p>33986:16</p> <p>rest 33823:8 33844:2 33964:16 33965:8 33981:9 34002:4</p> <p>result 33845:19</p> <p>resume 33925:23 33930:5 34020:15</p> <p>resumes 33814:2 33829:5,6 33863:20 33863:21 33898:20 33898:21 33926:13 33926:14 33991:19 33991:20</p> <p>retreat 33972:6</p> <p>retrospect 33918:23</p> <p>returned 33897:10</p> <p>revenge 33982:16 33983:5</p> <p>revenues 33987:22</p> <p>review 33850:18</p> <p>revise 33858:23</p> <p>revision 33852:25</p> <p>revisions 33853:3</p> <p>revisited 33940:18</p> <p>re-congregate 33967:7 33968:22</p> <p>re-congregated 33994:12</p> <p>re-examination 34021:6</p> <p>Rhodesia 33931:7</p> <p>Rhodesian 33997:11</p> <p>rifle 33817:1,3</p> <p>rifles 33817:8</p> <p>right 33821:10 33826:19 33836:3 33850:21 33858:13 33877:2 33884:3 33887:14 33891:8 33895:2 33900:19 33901:6,10 33904:23 33904:25 33912:11 33915:4 33920:7,16 33921:1 33932:25 33937:2,2 33941:13 33942:15,21 33947:14 33954:16 33955:11 33956:1,4,7 33977:5 33984:14 33989:7 33990:19 33994:20 33999:8 34001:6 34006:15 34013:14</p> <p>Rightly 33870:22 33876:2</p> <p>rights 33970:4</p> <p>rise 33904:21</p> <p>risk 33893:12</p> <p>rituals 33976:24</p> <p>road 33819:25 33830:24 33965:3</p> <p>roadblocks 33819:25 33905:17</p> <p>roads 33819:24 33896:1 33905:17</p> <p>robbery 33817:14</p> <p>rock 33970:12,17</p> <p>rode 33943:18</p> <p>role 33852:5 33892:5 33902:10 33903:10 33914:1,1 33934:20 33934:24 33936:3 33987:5,17</p> <p>roll 33893:20</p> <p>rolling 33979:10</p> <p>rolls 33893:16</p> <p>room 33828:10,15 33829:8 33830:22,23 33835:14 33837:6,7 33837:17,17 33843:13,19 33882:17 33888:4 33894:3 33899:12 33901:7,7 33945:6 33949:6 34007:22 34008:14,19,20,24 34009:3</p> <p>Rosa 33917:1,7</p> <p>round 33947:25 33948:2</p> <p>rounding 33986:10</p> <p>rounds 33857:2,9,12,14 33876:17 33883:14 33883:22</p> <p>routine 33932:24</p> <p>roving 33815:9 33818:3</p> <p>Rowland 33965:2</p> <p>rubber 33816:23 33817:15 33827:3 33857:9,12,14 33860:14,20 33876:17 33883:14 33883:22</p> <p>rubbish 33955:3</p> <p>rubric 33838:19</p> <p>rule 33916:6,8</p> <p>rules 33865:8,10 33958:2,2 33962:2,12</p> <p>ruling 33936:19</p> <p>rumours 34016:21</p> <p>running 33831:7</p> <p>run-up 33899:3</p> <p>Russo-Bello 33956:2 33979:19</p> <p>R5s 33817:2,8</p> <p>R5-type 33817:3</p>	<p>33891:25 33892:2,6 33892:18 33893:2,3,6 33893:24 33901:23 33905:22 33906:16 33906:20 33912:5 33913:1,22,25 33917:25 33918:9,14 33919:3 33950:14 33987:25 33991:2 33992:25 33993:4,10 33993:11 33994:5 33995:1,3,6,13 33997:4 33999:17 34000:2,19 34001:5 34005:17 34006:2,5 34006:22 34008:9,11 34008:13,20,21 34009:1,3,25 34018:16,23 34019:1 34019:2,9,13,17,18 34020:5,21</p> <p>SAPS's 34008:15</p> <p>sat 33919:22</p> <p>satellite 33901:3</p> <p>satisfied 33833:1 33844:8 33887:7 34019:20</p> <p>Saturday 33823:8 33878:25 33879:1,2 33879:10 33881:25 33976:18,21 33977:1 33983:4 33990:18 33993:8,9 34018:24</p> <p>save 33924:24</p> <p>saw 33821:1 33838:25 33888:6 33906:3,7 33912:18 33920:24 33934:11,12,17 33945:12 33949:11 33976:18 33987:5,17 33990:14,21 34010:25</p> <p>saying 33853:6,10 33858:8 33862:10,17 33874:23 33875:22 33877:2 33903:16 33916:5 33935:21 33945:2 33949:7 33952:14 33953:25 33954:18 33956:24 33964:22 33966:11 33979:9 33982:8 33985:11 33987:6,13 33987:15 33990:9,9 33996:19,20 33998:12,12,15 33999:1,7,17,19 34001:6 34003:16 34007:3 34015:19 34017:19 34019:10 34019:22,23,24 34020:2</p> <p>says 33826:16 33873:22 33889:24 33907:1,10 33908:10 33942:19 33944:19</p> <p>33959:22 33960:5 33971:5 33973:5,6 33980:13 33997:3,9 33997:10,24,24 33998:3,4 34001:5 34006:4 34010:16,16 34010:21 34016:13 34018:23</p> <p>SC 33814:9,13 33817:21 33818:25 33819:11 33825:17 33826:21 33828:2,7,9 33828:16,17 33829:16,19 33838:4 33872:23 33873:17 33873:24 33874:5,9 33874:16 33902:12 33935:8,21 33936:18 33937:4,11 33967:10 33967:12,15 33968:5 33968:9,14 33981:4 34008:3,8,11 34010:18 34015:7,15 34021:5</p> <p>scared 33952:20,24 33953:24,25 33954:4 33954:6,14,18,21 33956:10,19,20</p> <p>scene 33864:17,17,25 33864:25 33865:12 33865:13,16,17 33866:15,15</p> <p>Schagen 33882:19,20</p> <p>scheduled 33814:4</p> <p>school 33931:7</p> <p>Scott 33845:2,6,12 33852:4 33856:9 33895:14,19,21,22 33896:10,12 33899:3 33899:5 33901:2,6,8 33901:20 33902:3,15 33902:18 33903:1,14 33904:10 33907:1,5 33907:19 33922:19 33924:9,9 33940:1,6</p> <p>Scott's 33845:21 33849:5 33851:17 33855:9,18 33871:25 33872:25 33901:20</p> <p>screen 33828:4 33843:7 33843:17 33846:10 33867:1 33899:6,17 33900:12 33920:6 33923:3 33975:13,18 33976:2,4,6 33978:8 33993:15 34018:18 34018:19</p> <p>screens 34008:22</p> <p>second 33824:9,12 33827:20 33842:21 33849:6 33857:6 33864:10 33984:10 33988:11</p> <p>seconded 33819:3 33989:19,20,22</p> <p>section 33825:15</p>
---	--

<p>33872:11 33873:1 section 33873:5 secure 33893:13,23 securely 33832:13 seeing 33963:10 33990:2 seen 33875:5 33876:25 33883:19 33905:15 33911:10,12 33918:12 33945:7,10 33945:13 33977:3 33985:25 34000:9 seize 33998:2 self-explanatory 33825:20 Semenya 33901:2,24 34015:7,13,15 send 33860:16 33979:16 sending 33976:15,15 senior 33887:18,20 33906:23 33919:3 33948:25 seniors 33864:11 sense 33868:13 33907:20 34007:7,12 sensitised 33916:25 33917:2 33919:18,22 sensitising 33917:7 sensitive 33992:15 sent 33865:1,3 33922:18,19 34016:10 sentence 33904:14 separately 33993:25 September 33840:16 33840:19,20,21 33841:12,21 33845:13,16,19 33848:22 33867:3 Sergeant 34014:1 series 33819:25 serious 33922:5 serves 33843:12 service 33820:3,4 33822:19 33823:22 services 33820:6 set 33833:3 33836:18 33836:24 33858:6 33895:19 33903:24 33960:6 33979:5 sets 33837:12 seven 33991:22 shaft 33824:3 33965:2 34017:9 shafts 33822:6,7 33969:20 34000:9 share 33912:22 shared 33855:3 33892:14 33918:16 sharing 33919:24 sheet 33854:3,4 33920:17 sheets 33827:25 33828:1 33918:21 she'd 33916:23</p>	<p>she'll 33871:5 she's 33919:6 shift 33818:2 33972:3 shoot 34005:18 34006:25 34009:8 34010:1 34014:21 shooting 33827:14 33857:10 33860:25 33861:7 33864:17 33876:23 33877:4,11 33877:13 33878:1,2,3 33878:5,10,13,20 33879:23 33883:22 33884:12,13,13,24 33885:16,20 33886:2 33910:20 34005:22 34005:24 34006:6,9 34006:10 shootings 33862:1 33866:15 33872:13 short 33829:24,25 33830:1 33898:17 33914:2 33967:12 shortcuts 33939:4 shorter 33923:19 33924:11 33925:13 shortly 33922:1 short-term 33820:10 shot 33857:9,12,14 33860:14,20 33876:17 33882:16 33882:19 33971:23 33971:25 shotguns 33816:22,25 shots 33860:19 shouldn't 33869:3 33937:11,14 should've 33981:1 show 33828:18 33965:25 33966:2 33998:5 showed 33845:7 33899:25 33900:3 33944:21 shown 33849:22 33854:16 side 33816:22 33824:5 33824:7,24 33964:18 34007:24 significant 33848:25 33869:1 33887:21 33888:19 33897:14 33910:4 33921:21 33986:21 33987:8 silence 34020:19 similar 33819:1 33984:7,8 simple 33831:1 33953:3 33958:14 33978:18,22 simply 33855:22 33908:5 33971:2 33973:14 33990:9 34003:5 34010:6 Sinclair's 33940:8 single 33817:10</p>	<p>33823:9,10 33824:1 33995:5 sinister 33926:2 33929:5 sintered 33920:10 sit 33856:11,15 33872:1 33876:3 33878:14 33886:3,16,24 33890:18 33917:18 site 33965:2 sitting 33862:6 33897:3 33901:10 33912:21 33914:19 33939:25 34007:2 situated 33882:4 situation 33830:13 33831:9 33913:5,21 33960:8,11,14 33986:23 33987:16 33990:12 33991:2 situations 33959:19 SIU 33814:17 33818:25 33819:1 six 33815:17 33827:15 33893:20 sixteen 33925:8 size 34012:21,23 34014:3,4 skills 33815:20 sky 33822:21 slightly 33842:11 33920:15 slipup 33856:1 small 33820:24 33864:21 33904:2 33905:6,7 smaller 33820:7 33944:23 Smelter 33820:14 33963:4 SMS 33851:7 Solidarity 33970:7,11 33970:21 solve 33904:24 somebody 33832:18 33833:7,8 33862:6 33863:9 33870:7 33916:16 33917:5 33948:25 33950:4 33953:24 34003:7,9 34003:18 34007:2,9 34007:12,21 34008:14 34019:23 soon 33860:15 33915:3 33987:17 sooner 33996:16 sort 33828:15 33830:19 33831:23 33833:2 33848:18 33850:22 33929:6 33932:11 33986:17 sorted 33826:20 sorts 33947:17 33996:15 sought 34010:1 sound 33828:10,14</p>	<p>33829:7 sounds 33929:4 33980:14 34008:12 34008:14,16 34014:9 source 33893:15,17 sources 33982:20 sourcing 33894:11 South 33931:7,14 southern 33824:5,7 space 33835:14 33898:6 33910:24 speak 33907:14 33952:19 33953:16 33954:8,10 33955:8 33956:15 33961:7,8 33961:12 33969:13 speaking 33904:15 33932:16 33933:8,11 33933:13 33956:16 special 33835:17,18,19 specific 33817:6 33832:4 33865:7 33873:18 33874:9 33876:22 33885:20 33896:21 34002:18 34003:1 specifically 33832:2 33834:25 33837:9,18 33848:5 33861:6 33866:2 33875:2,10 33878:5 33887:24 33894:5 33895:22 33899:23 33909:20 33965:13 33990:20 34002:21,22 speller 33834:25 spelling 33833:1 33862:21 spellings 33856:2 spend 33815:3 spoke 33904:18 33929:3 33939:24 33947:21 33955:4,7 33955:15 33960:21 spoken 33948:7 33961:6 spokespeople 33960:19 spokespersons 33961:16,20 spotted 34005:20 spreadsheet 33830:25 33831:1 stabbed 33858:6 stadium 33882:6 33967:7,24 33969:3,6 33969:8 33994:12,18 33994:22 33995:20 staff 33837:24 33867:25 33883:2 stage 33824:15 33854:16 33885:11 33902:7 33911:17 33953:11 33965:12 33968:6 34007:10 stages 33903:11 33905:7</p>	<p>stance 33956:16 33957:25 33962:3 33967:1,6 33968:21 stand 33814:18 33820:13 33885:8,9 33979:20 34001:22 34020:21 standard 33816:21,21 standoff 33882:9 start 33814:5 33837:3 33839:4 33888:25 33930:3 33952:16 33956:24 33987:20 33997:15 34005:16 started 33823:7 33831:9,12,13 33918:8 33948:2 33966:20 33987:12 33994:18 starting 33814:4 33966:4 starts 33993:21 state 33868:23 33880:6 33886:4,13 33887:3 stated 33870:17,19 33883:4 33885:9 33945:25 statement 33814:11,14 33819:13 33825:19 33849:19,21,25 33850:7 33870:5 33881:12,15,16 33882:23 33883:6,10 33883:19 33887:3,4,6 33887:8 33888:20 33891:12,13,15,16,21 33891:22 33892:4,7 33892:10,14,22,25 33893:4 33895:5,7,10 33896:22 33898:1 33900:10 33904:6 33905:23 33906:1,14 33908:11 33909:17 33909:20 33910:9 33918:15 33919:4,9 33919:20 33935:9 33943:22 33944:3,6 33985:15 33996:8 34008:4,6 34018:17 statements 33832:7 33849:16,20,22,24 33850:2,4 33883:6,14 33883:20 33891:20 33919:18 states 33857:1 33876:16 stating 33862:23 status 33983:5 33992:14 stay 33824:8,24 stayed 33941:25 step 33907:7 stepped 33983:4 steps 33844:13 stop 33870:15 33907:24 33964:17</p>
---	--	--	--	--

33965:2,5 stopped 33858:4 33967:24 stopping 33963:13 33971:1 strange 33901:19 strategies 33999:8 strategy 33904:15,21 strength 33964:8 strike 33815:6 33957:1 33957:2,7,8,14,14 33960:16 33963:13 33964:8 strikers 33879:3,8 33883:1 33889:19 33896:19 33899:25 33902:8 33953:14,15 33958:4 33994:11 striking 33896:22 33897:11 33939:10 stronger 33960:4 structures 33969:14,21 struggled 33901:23 33902:5 33940:8 struggling 33842:7 stuff 33838:25 33964:23 subcontracted 33962:17 subject 33886:2 33980:13 submissive 33947:10 subordinates 33866:3,8 subpoena 33872:11,17 33872:22 33873:5,10 subsequent 33832:11 33968:20,21 33969:1 subsequently 33941:11 substantial 33819:18 33820:2 33834:15 33835:1,3 33856:14 33862:3 33893:22 33918:13 subtleties 33968:15 successes 33946:19 suggest 33826:5 33828:21 33902:16 33903:2 34001:7 34017:21 suggested 33890:9 33903:1 33977:25 suggesting 33854:9 33926:2 33939:9 suggestions 33903:3 33952:18 suggests 33957:7 33996:14 suit 34012:15,21 34013:5,5,10 34018:10 suits 34010:21,22,23,24 34011:2 34013:5,12 sum 33894:20 summoned 33897:1 Sunday 33823:8 33824:6,21 33888:3	33900:2 33910:23 33911:17 33915:19 33929:14 33990:19 33993:6 sunny 33990:15 superiors 33916:16 supervisor 33830:22 supplied 33819:22 33867:21,21 support 33882:12 33980:9 34018:23 34019:8 suppose 33857:3 33923:25 33929:7 34006:18 34015:5 supposed 33961:11 sure 33818:19 33823:7 33828:22 33830:10 33833:10 33842:15 33852:10,13,21 33854:5 33855:21 33858:25 33860:1 33863:12 33875:1,17 33877:2 33890:5 33899:12 33910:5 33913:4 33921:23 33937:10 33948:16 33963:24 33980:7 33998:20 34000:21 34016:19 surely 33915:25 33986:23 33987:4,15 33987:18 33990:14 surprise 33914:3 surveillance 33824:3 33824:16 surveying 33823:16 susceptible 34014:15 suspect 33939:12 33944:11 33974:13 suspected 33873:3 33923:25 suspicious 34002:8 sweep 33920:3 system 33827:10 33829:7,20 33835:18 33851:7 34017:6 systematically 33832:9 systemic 34002:17 34003:18 systems 33832:22 33835:19 33836:14 33851:7 33949:4 s.u.o 33814:7 33829:14 33863:23 33898:23 S2 33858:3	take 33829:3 33833:7 33833:20 33834:9,13 33838:18 33844:12 33852:20 33854:8 33856:3 33858:25 33859:8 33860:3,10 33861:17 33862:4,5 33862:11,13,14,19,22 33862:24 33863:15 33863:16,17,19 33870:7 33874:16 33876:4 33881:5 33883:23 33884:1 33885:8 33896:7 33898:3,17 33900:9 33905:4 33908:4 33912:9 33913:15 33914:3,5,6 33915:22 33924:13 33925:20 33925:22 33926:7 33930:4 33932:23 33939:4,8 33940:19 33967:13 33981:2,15 33981:19 33986:3,6,7 33986:22 33988:11 33991:10 34008:23 34011:17,19 34015:24 taken 33822:19,20 33834:23 33849:24 33850:16 33854:25 33855:1 33862:8,11 33862:12,25 33865:25 33875:21 33880:8,12 33896:14 33903:3 33907:23,23 33908:8 33915:18,18 33922:6,18 33934:25 33937:14 33970:25 33984:9 33995:20 34012:3 takes 33912:1 talk 33836:19 33858:18 33899:14 33917:6 33946:4,7 33952:24 33953:25 33954:1 33960:17,20 33961:3 33961:21,22 33966:6 33967:1,21 33971:4,5 33994:19 talked 33821:5 33882:22 33888:7 33915:12 talking 33826:4 33827:5,6 33828:6 33829:17 33856:23 33887:24 33896:7 33902:19 33922:11 33936:17 33955:24 33956:10 33968:6 33971:2 33994:3 33999:15 34007:22 task 33831:2 33904:1,2 tasked 33892:1 taxi 33858:5 tea 33863:16,18,25	33898:18 33930:4 33937:22 33986:3,6 team 33815:24 33816:2 33816:2,3,10 33823:9 33823:11 33824:12 33830:20 33846:5,16 33850:20,24 33853:19 33854:2,9 33854:12,19 33855:11,19,20 33856:1,16 33870:14 33870:18,23 33871:14,21 33873:11 33883:7 33888:3 33893:9 33897:5 33903:22 33906:3 33909:14 33913:8 33915:4 33917:4,5 33919:21 33919:21 33928:9,10 33928:12,15 33975:8 33988:8,24 34019:16 teams 33817:24 33818:2,9 33824:23 33850:2,16 33870:11 33887:12 33893:23 33903:13,15 33905:13 33907:14 33913:14 33940:16 33943:4 33988:18 33989:9 33990:25 33991:1 34011:1 team's 33906:22 33984:22 technical 33847:19 technician 33920:15 tedious 33830:18 33920:23 telephone 33835:18,19 33873:13 33910:15 33910:22 33911:1,2,5 33911:6 33912:8,10 33917:8 33926:21 33927:3 33928:4,19 33928:20 34001:19 34001:23 34007:23 telephonic 33980:8,10 tell 33829:20 33830:2 33839:3 33851:12 33853:14 33855:2 33899:18 33901:25 33919:12 33927:7 33930:1 33944:3 33946:2 33974:11,12 33981:3 33988:10,24 telling 33846:20 33852:5 33914:24 33919:9 ten 33923:4,14 33925:2 33925:9 33992:6 tensions 33985:8,10,23 term 33965:22 terminology 33834:4 33834:17 terms 33868:4 33872:22 33886:19	33886:21 33921:22 33935:6 34001:8 test 33856:20 33876:14 testified 33861:14 33887:20 33888:16 33895:23 33926:19 33933:2 testify 33827:17 33888:19 testimony 33871:13 33877:8 33878:9 33892:20 33899:5 33901:21 33907:3 thanks 33932:2 33934:8 33939:23 33956:13 33978:25 33983:12 33991:15 34020:7 that'll 33839:7 theft 33815:2,4 theoretically 33825:6 theory 33929:10,13 there's 33814:16 33832:16 33833:2 33835:6 33838:24 33852:23 33856:3,14 33857:20 33858:14 33860:22 33864:20 33866:23 33872:4 33882:15,17,22 33899:11 33904:20 33924:3 33935:12,17 33935:24 33937:7,20 33943:15 33954:13 33956:5 33957:7,8 33962:15 33963:18 33981:19 33986:24 33987:7 33994:19 33997:3 33998:21 34014:19 34015:1 34016:9 34018:17,22 they'd 33941:25 33942:11 33947:18 33948:6 33953:11 33954:6 they're 33851:16,19 33947:24 33950:6 33953:25 33974:9 33989:17 they've 33831:5 33837:4 34004:17 thick 33837:2 thing 33821:15 33829:25 33830:16 33830:19 33831:2 33832:21 33833:3 33835:6 33837:19 33852:9,12 33856:3 33877:2 33896:21 33904:23 33907:13 33913:9 33914:6,22 33915:4,20 33924:21 33932:12 33933:25 33934:23 33935:25 33936:1 33938:20 33939:9,14 33940:1
---	--	--	--	---

T

table 33837:23

33886:18 33901:5

33907:11,13

tabled 33853:21,22

33880:1

tactical 33814:22

33816:9 33819:2,5,21

33892:19 33918:1

<p>33940:19 33943:10 33948:15 33966:24 33984:1 33986:21,24 33992:23 33996:15 33998:13 34001:4 34006:1,9 34011:23 34018:13 things 33821:3 33831:18 33834:11 33834:20 33853:6 33855:1 33858:24 33862:13,21 33883:18 33890:9 33893:21 33896:1,13 33897:5 33901:14 33906:9,10 33908:3 33910:25 33916:11 33918:21,25 33922:12 33927:23 33928:14 33929:17 33941:10 33946:3,5 33957:8 33958:10 33961:8 33972:2 33990:24 33996:9 33997:16 34002:18 34007:6,15 34012:25 thinking 34007:10,11 thinks 33871:4 33943:25 33973:3 third 33840:14 33842:22 Thobejane 33867:3 thought 33833:17 33863:15 33871:9 33885:10 33902:7 33928:24,24 33937:11 33951:13 33955:19 33983:1 34007:3 34008:1 34016:20 thoughts 33827:20 33828:13 threat 33993:2 three 33818:11 33824:17 33830:16 33837:21 33860:5 33889:18 33921:15 33980:14 33986:2 33993:18 34016:11 through 33950:15 Thursday 33822:21 33823:22 33831:9,10 33866:16,17 tie 34007:7 till 34003:17 34009:22 34020:9 34021:10 timeously 33993:4 times 33818:19 33830:10 33871:15 33885:12 33922:15 33939:3 33992:3 today 33856:11 33876:9 33884:9 33920:4 33926:19 33929:24 33935:12 toilets 33913:11</p>	<p>token 33835:23 told 33846:25 33848:10 33848:11 33853:10 33859:13 33862:12 33869:9 33880:18 33884:8 33917:5 33923:25 33924:3 33948:8 33950:2 33951:16,19 33967:21 tomorrow 33867:4,5,8 33929:21 33991:18 33998:4 34020:10,16 34020:19,25 34021:10 top 33852:24,25 33920:8 33977:4 33979:22,23 33980:10 33982:10 topic 33825:21 33918:8 topics 33937:19 tot 33855:18 total 33914:19,21 touch 33946:18 33949:1,2,9,16 TPU 33814:17 trace 33837:14 33879:23 34006:21 traced 33917:11 tracked 33997:18 33998:14 traditional 33929:18 33976:24 tragic 33990:24 trained 33815:3,7 33817:12 transcript 33906:16 33910:3 33936:25 33968:7 transferrable 33992:4 translation 33828:10 33828:11 transpired 33843:18 33844:3,10 33846:9 33848:3 travelling 33867:23 33916:8 tremendous 33885:11 trend 33933:5 tried 33818:19 33928:18 trip 33896:18 triple 33986:24 33987:16 33990:12 33992:14 trips 33908:9 troops 33949:9 trouble 33890:7 33953:3 TRU 33814:17,20,21 33815:12,15,16 33816:13,19,20 33817:13,19 33819:9 33819:9 true 33879:14 33880:2 33889:2 33910:14</p>	<p>33958:17 34016:19 trust 33997:11 try 33898:7,10 33904:24 33918:3 33922:17 33927:1 33943:10 33959:16 33980:7 33991:9 34019:19 34021:1,3 trying 33837:14 33842:5,7 33871:19 33871:19,20 33900:16 33916:3 33924:24 33938:16 33948:24 33995:23 Tuesday 33894:12 turf 33954:16 turn 33825:15 33844:13 33948:9 34015:14 turned 33942:6 33947:25 33948:2,15 33967:23 33968:20 33968:21 turning 33986:16 TV 33831:4 twice 33832:15 two 33816:3,7 33817:11 33818:14 33818:22,23 33826:24 33833:22 33844:12 33849:3 33857:15 33858:5,6 33863:7 33876:18 33877:5 33882:10,14 33882:21 33883:21 33887:18 33889:18 33900:1 33904:16 33914:15,17 33917:24 33922:15 33925:23 33929:9 33944:21 33957:8 33971:22,24 33972:2 33974:21 33981:10 33983:14 34003:23 34004:13 34005:7 34010:22 34012:18 34016:10,14 34020:21 two-minute 33929:8 type 33815:2 33817:16 33819:7 33834:10 33837:7,19 33893:19 33896:1,4 33906:10 types 33816:23 33916:10,11</p>	<p>undergoing 33976:23 underground 33815:3 understand 33824:14 33833:12 33835:11 33836:12 33844:22 33853:6,9,10 33856:22 33859:20 33866:5,24 33868:2 33868:10 33869:23 33870:10 33882:24 33884:2 33903:2,7 33912:13 33919:5 33922:13,14 33924:25 33927:17 33928:17,19 33929:21 33930:6,10 33931:25 33935:3 33936:9 33938:16 33939:2 33940:2 33941:16 33948:21 33953:4 33954:3 33966:11,13 33969:15 33971:5,6 33980:24 33992:13 33994:8 34009:5 34014:17 34016:7 understandable 33924:14 understanding 33894:17 33936:24 33943:2 33950:20 understands 33939:18 understood 33907:6 33941:15 33953:21 33969:16 33990:9 undertake 33904:1 undertook 33897:23 33908:9 unfair 33891:5 unfold 33990:3 uniform 33960:6 unimportant 34001:5 union 33969:23,24,25 33970:4 unit 33814:22 33815:8 33815:9 33816:8 33817:24 33818:15 33818:16,17,21,23 33819:2,4 33999:11 33999:21,24 34000:2 34000:7,9,17 units 33814:16,19,23 33818:11,12,13,14 33819:22,22 33825:7 33903:20 34000:12 unkind 33926:1 unpleasant 33852:15 unprotected 33957:1 33957:13 33959:11 33960:15 33962:12 unrest 33960:8,11,14 33960:14 unwise 33984:10 update 33976:14 33977:23 33978:15 33979:5,17 33980:13</p>	<p>updates 33980:4,6,8,10 upfront 33937:8 use 33822:25 33825:20 33831:21 33847:18 33870:12 33871:23 33872:4 33894:7,14 33906:22,22 33907:2 33907:8 33925:5 33928:10 33940:20 33960:25 33965:23 34000:7 useful 33822:9 33870:21 33872:3,5 utilise 33820:25 33960:9 33989:18 utilised 33888:4 utterances 33910:4</p> <hr/> <p style="text-align: center;">V</p> <p>vacuo 33888:23 vague 33899:2 33900:9 33900:9 33938:17 vain 33814:5 valid 33902:23,23 33924:14 value 34002:7 van 33833:6 33861:10 33863:2 33867:7 34003:12 34008:10 various 33814:16 33847:10,13 33849:16,20 33891:18 33895:21 33913:13 33918:14 33919:3 33927:23 33977:17 vast 33904:2 vehicle 33816:4,6 33818:9,18,19,24 33908:5,7 33995:6 vehicles 33858:7 33897:13,15,15 33963:7 34000:14 veld 33976:23 33994:17,22 Venter 34014:1 verbalised 33917:21 verbatim 33945:1 34008:5,8 verified 34007:15 version 33826:25 33827:4,13 33842:6 33842:10,12 33843:17 33844:14 33844:24 33845:3,6 33845:10,18,21 33846:4,10 33848:14 33848:23,24 33849:7 33851:15,16,18,19,21 33851:22 33852:1,2,4 33852:23,23 33853:1 33853:2,2 33854:3 33855:18 33871:15 33872:24 33874:20 33875:4 33899:4 33920:12,21 33921:7</p>
U				
	<p>UASA 33970:9,11,20 ultimately 33827:12 ultimatum 33998:5 unable 33914:10 33975:18 uncensored 33922:9 unclear 33926:20,21 undeleted 33874:20 33923:9,11,14</p>			

<p>33922:22,23 33923:10,12,14 33924:11 33925:14 33967:5,16 33972:19 33975:20 33984:8 versions 33826:24 33852:3 33875:6 33878:17,19 video 33853:25 33854:1 33875:3,4 33896:25 view 33853:18 33854:20,21,24 33870:3,3 33880:6,8 33897:17 33899:1 33901:15 33909:19 33933:3 33971:6 33983:16 33992:25 33993:5 33995:13 vigilant 33987:23 villages 33861:4 33864:6 violence 33865:7 33957:15 33976:19 viral 33852:16 virtually 33968:3 visibility 33988:5 34019:2 visible 33999:11 34000:11,18,21 34005:4 visually 33949:11 visuals 33905:15 vital 33938:7,10 voluntarily 33847:25 vulnerable 33893:11 33893:12</p> <hr/> <p style="text-align: center;">W</p> <p>Waal 33906:24,24 wage 33953:17 33955:10 33970:1,2,5 waited 33814:5 walk 33831:6 walking 33894:3 33897:11 33916:7 33946:16 33947:6 33950:6 34011:2 Walt 33867:7 want 33823:13,19 33826:4 33827:9,16 33827:20,23 33828:25 33832:25 33833:7,7,17 33834:9 33841:7 33853:6 33858:21,24 33860:1 33870:1 33871:18 33873:18 33876:6,25 33877:1 33881:5,10 33885:14 33893:1,14 33899:8,12,13 33900:9,10 33925:25 33928:8 33935:8,15 33937:12,13 33944:10 33949:7 33962:4 33965:22</p>	<p>33966:16 33967:13 33968:9,10,17 33978:18 33986:9 33992:8 33999:11 34000:17 34013:4 wanted 33873:14 33896:22 33897:2,4 33931:24 33947:23 33953:15 33960:17 33966:22 33988:4 33991:14 34000:20 34004:13,15 34013:21 34015:4,15 wants 33870:7 33873:16 33996:1 Warrant 33867:3 wasn't 33817:13 33847:17 33849:10 33849:11 33853:12 33855:22 33881:8 33904:2 33912:15 33917:20 33932:24 33960:13,21 33974:16 34000:4 wasn't 33832:3 33869:1 33875:23 33896:2,25 33947:3 33980:21 34005:21 34005:25 34007:10 34007:11 34011:15 34019:22 waste 33942:5 wasting 33940:17 33947:24 watched 33896:13 33934:2 water 33997:10 way 33830:21 33844:6 33844:7 33846:2 33850:25 33915:2 33936:24 33938:7 33939:5 33940:15 33942:6,7 33947:16 33948:7 33949:14 33950:1 33952:21 33958:11,11 33968:6 33968:19 33973:9 33982:11 34004:11 34018:14 weapons 33947:17 33953:6 Wednesday 33910:19 week 33823:8 weeks 33848:16 welcome 34015:16 well-versed 33836:11 went 33830:21 33831:14 33832:2,13 33832:15,18,23 33833:12 33850:21 33852:16,18 33853:1 33858:22 33860:19 33862:4,7,23 33871:24 33872:14 33878:6 33879:3 33882:9 33889:24</p>	<p>33897:24 33902:5 33925:14 33942:3,3 33943:17 33945:21 33955:4,6,15 33961:18 33967:7,24 33968:22 33994:11 34000:11 weren't 33847:21 33854:16 33859:16 33970:12,17 Wesley 33825:15 33829:10 34020:17 34020:18 34021:1,4,7 Wesley's 33991:22 we'd 33975:12 we'll 33829:3 33838:18 33839:3 33842:7 33858:1 33860:3 33863:17,19 33898:17 33919:6 33956:5 33963:16 33967:16 33968:7,16 33968:19 33971:5 33975:14 33981:9,10 33986:3 33991:10 33997:23 34002:4 34013:7 34020:16 we're 33814:4 33821:18,19 33829:2 33829:17 33840:23 33842:6 33844:9 33856:22 33900:24 33908:1 33919:14 33933:4 33940:4 33975:17 33980:24 33980:25 33981:9,24 we've 33822:1 33826:19 33842:5 33860:5 33880:18 33892:9 33899:16 33911:4 33918:12 33919:13 33922:11 33929:22,25 33961:19,20 33966:25 33976:1 33981:8 what's 33816:2 33825:19 33840:5 33861:1 33903:19 33905:13 33913:23 33944:6 33949:7 33959:6 33968:7 33971:10 33989:17 34018:8 whilst 33938:3 white 33922:17,22 34004:25 wife 34010:23 34012:15 34014:1 wife's 34012:21 wildcat 33957:2,7,8,14 wire 33892:18,22 33893:2,3,7 33894:4 33894:4,8,24 wise 33984:1,10 wisely 33983:16</p>	<p>wiser 33876:11 withheld 33854:14,19 witness 33814:11,14 33819:12 33825:19 33826:6,7,15 33828:6 33828:12,18 33839:19 33868:15 33874:1,12 33903:2 33912:15,15 33914:13 33930:12 33930:17 33935:19 33938:22 33939:18 33948:4 33959:7 33973:3 33992:11 witnesses 33888:16 33898:12 33933:3 33992:20 witness's 33898:16 33944:3 wonder 33826:2 34005:14 Wonderkop 33864:16 33882:4,6,16 33907:24 33969:8 33976:22,25 33994:12,17,22 won't 33880:25 33969:1 33973:8 word 33827:17 33891:5 33907:10 33935:7 33989:17 33999:20 34000:7 words 33827:8 33925:5 33956:14 33957:6 33998:11 work 33815:20 33835:9 33842:16 33847:15 33857:8 33886:9 33905:2 33911:21 33946:25 33948:8 33956:25 33957:4 33998:5 34006:25 worked 33830:21 33846:18 33924:18 33924:19,20 33925:5 33925:7 34003:7 workers 33857:8 33882:8,10,12 33896:22 33897:11 33952:19,24 33953:25 33954:2 33956:17 33958:9 33970:6 working 33829:7 33834:7 33837:24 33844:25 33848:24 33851:9 33942:5 33947:23,24 33998:24 33999:5 34003:12,13,18 workings 33925:12 workload 33818:12 worried 33949:1 worry 33948:1 worth 33971:17 33979:5</p>	<p>wouldn't 33854:13 33917:21 33933:6,14 33942:1 33964:9 wouldn't 33867:9,11 33894:25 33955:7 33989:16 33990:15 34005:19 34012:18 would've 33837:18 would've 33867:11 33950:23 33954:7 34011:14 34012:17 wow 33998:24 write 33837:3 33839:3 33932:11 writes 34006:15 written 33877:19,20 33978:11 33981:11 wrong 33833:2 33862:8 33876:7,8,8,10 33994:21 33995:19 34004:12 wrongly 33870:23 33876:2 33971:25 wrote 33932:7</p> <hr/> <p style="text-align: center;">X</p> <p>XX 33873:23 XXX8 33958:18,19,23 XX2 33828:4 33873:24 XX2.10 33828:4 33844:14 33873:20 33920:6</p> <hr/> <p style="text-align: center;">Y</p> <p>year 33845:12,13,17,19 33848:23 years 33887:18 yellow 33857:21 yesterday 33830:6 33842:6 33984:15 34016:15 you'd 33853:16 33930:6 33959:3 34002:7 you'll 33843:10 33852:25 33857:1 33930:4,5 33957:9 33987:19 33988:10 34004:11 you're 33814:6 33816:21 33828:3 33829:3,13 33830:2 33845:23 33846:19 33847:18 33854:8 33862:17 33863:22 33880:25 33896:6 33898:22 33919:1,2 33926:1,15 33929:6 33938:16,23 33939:8 33943:25 33945:2 33947:24 33950:20 33954:18 33955:24 33957:1 33959:6 33963:18 33967:7 33972:11,13 33986:4 33991:21,24 33994:3</p>
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<p>33994:8 34013:8 34019:3 you've 33852:3 33866:21 33868:20 33869:9 33874:18 33927:8 33932:3 33940:18 33944:11 33945:13,20 33956:11 33973:16 33974:24 33989:3,10 33991:22 33994:2 34015:20 34021:9</p> <hr/> <p style="text-align: center;">Z</p> <p>zone 33822:5 zoom 33920:8</p> <hr/> <p style="text-align: center;">0</p> <p>000 33904:18 33961:12 33961:12 33984:3 34005:17 34006:23 09:17 33814:2 09:59 33829:6</p> <hr/> <p style="text-align: center;">1</p> <p>1 33864:17,17,25 33865:12,16 33866:15 33882:17 33899:19 33925:19 33966:4 33972:2 33976:17 33979:5 33981:2,4,5,24,25 33983:6 33994:14 34017:9 1st 33966:17 1.1.1 33960:5 1.5 33976:22 10 33857:2,12 33930:5 33986:4 33991:23 34003:5 34009:21 10th 33821:21,23,24 33822:22 33823:24 33856:25 33952:16 33953:4,5,21 33954:6 33960:14,16 33966:5 33966:18,19,20,24,25 33967:11,23 33992:13 10:00 34005:4 10:09 34010:14,14,20 10:15 34003:17 10:16 33921:10 10:18 33844:4 10:38 33856:18 100% 33844:5 33852:13 11 33860:2 33881:25 11th 33857:13 33876:16 33878:24 33878:25 33944:18 33966:6,8 33973:22 33974:1 33978:21 33982:12 33983:10 33983:15 33986:15 33990:13 33993:3 33994:4,5</p>	<p>11:12 33863:21 11:31 33876:12 11:51 33888:24 12 33898:2 33997:15 12th 33857:20 33892:13 33910:23 33966:7 33973:24 33974:2 33978:21 33982:13 33983:9,14 33984:7 33985:7 33986:25 33987:4 33990:13 12/8/2012 33977:24 33978:15 12:23 33898:21 12:43 33912:8 128 33899:6 13 33997:14 13th 33857:17 33860:12 33889:4,10 33895:16 33896:17 33908:15,25 33940:25 33941:3 33944:19 33946:6,9 33952:16 33953:13 33966:8 33987:12,20 33990:10,21 33992:12,13,18,23 33993:7 13:03 33925:22 13:40 34008:13 13:51 33926:14 131 33900:11 13352 33899:15 13381 33900:12,18,21 33900:22,23 13382 33901:24 13383 33900:17 13392 33904:11 13409 33906:15 13882 33900:13 14th 33909:23 33996:22 34005:8,9 34009:7 34014:21 14:11 33943:13 14:22 34005:9,9,16 34009:17,18 14:31 33960:11 14:32 33857:18 33860:13 14:38 33860:13,17 14:50 33978:14 14:55 33920:11 33921:3 140 33999:9 15 33857:9,12 33863:19 33991:10,16,17 33992:1 33997:2 34021:7 15th 33910:16 33911:11 33912:2,3 33912:10 33914:9 33917:24 33921:23 33922:1,23 33926:23 33992:21 34001:25 15:22 33991:20</p>	<p>15:42 34005:7 15:50 34005:14 34006:4 150 33867:4,7,18 16 33827:3 33897:15 16th 33822:18 33823:13,25 33865:11,15 33887:25 33892:20 33927:22 33938:6,12 33964:12 33966:11 33982:10 33992:11 34016:5,24 34017:7 16:02 34020:15 17:06 33861:3 33864:3 17:40 33866:24 33867:3 18 33997:24 18:35 33856:25 18:59 33857:7 19th 34016:10</p> <hr/> <p style="text-align: center;">2</p> <p>2 33858:4 33864:25 33865:13,17 33866:15 33887:2 33911:9 33912:9 33923:20 33925:6,12 33926:8,23 33930:3 33961:12 33972:3 33981:2,5,6 33982:3 33994:4 34005:17 34006:23 2A 33983:3 20 33860:19 33980:25 20th 33840:7,12 20/12/2011 33840:11 20/12/2012 33840:11 20:35 33857:11 200 33944:24 2006 33841:13,23 2011 33839:13,19 33840:8,11,12,12 2012 33840:17,21 33849:21 33850:13 33861:3 33866:24 33867:3 33920:10 33921:10 33922:1 34003:14,17 34005:9 34010:14 2014 33814:1 205 33872:11 33873:2,5 33874:13 21 33841:12,21 22 33839:19 24 33821:11 33959:9,9 24/7 33817:24 33818:2 33821:5 25 33839:13 33840:18 33840:21 33959:8,8 25th 33839:9 33840:16 25/9/2012 33841:4 266 33975:5 268 33981:5,6 27th 33860:23 33861:2 33864:1,2</p>	<p>270 33981:6 271 33981:7 33982:4 33993:14,16,16 34019:5,6,6 272 33976:10 34017:25 276 33839:16 29 33866:24 33867:2 33944:16,17 29th 33868:16,18</p> <hr/> <p style="text-align: center;">3</p> <p>3 33824:3 33839:15,18 33860:18 33904:18 33930:4 33959:8 33961:12 33981:2,7 33982:4 33984:3 33993:17 33994:3 34003:6,17 34005:4,5 30 33880:24 33881:14 33881:25 33882:23 33944:11,14,24 34020:22 300 33994:17 31 33814:1 31st 34010:13 31/08 34010:19 31/08/2012 34010:20 32 33943:22 33944:2 33945:22,23 327 33958:20,25 329 33960:5 339 33959:9 33961:1 340 33959:9 37 33897:20 376 33838:17 33839:13 33839:15,16,17,21 33842:21 378 33840:2,3,4,10 33842:22 379 33840:16,25 33841:3 33842:23 381 33841:9 33842:24</p> <hr/> <p style="text-align: center;">4</p> <p>4 33857:3,3 33980:13 33980:21,21 33993:15 33994:3 33995:1 33996:2 404 33980:24 423 33974:23 33975:4 425 33978:9,10,12,16 33980:24 33981:25 33993:21 427 33982:3 433 34015:3 34016:2 45 34020:23</p> <hr/> <p style="text-align: center;">5</p> <p>5 33882:17 33930:3 50 33879:9 500 33900:24</p> <hr/> <p style="text-align: center;">6</p> <p>6 34015:9 34019:6,6 60 34020:22</p>	<p style="text-align: center;">7</p> <p>7 33900:18 33901:1 33904:13 34015:10</p> <hr/> <p style="text-align: center;">8</p> <p>8 33993:15 8th 33920:10 33921:9 33923:2 33925:9 34003:13,17 8.10.2012 33921:2 8.3.6 33961:1 81 33900:18</p> <hr/> <p style="text-align: center;">9</p> <p>9 33814:5 33827:2 33882:15 34020:9 34021:10 9th 33887:25 9:03 33857:13 33876:16 33877:11 9:08 33882:19 9:30 33858:3 33927:23 90% 33824:5 96 33880:24 33881:13 98 33897:22</p>
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